



# DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT <b>INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING</b>	POLICY NO. <b>500.27</b>	EFFECTIVE DATE <b>04/14/03</b>	PAGE <b>1 of 6</b>
APPROVED BY:  Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S) <b>1</b>

## PURPOSE

- 1.1 To establish a policy and procedure to protect the privacy and security of Protected Health Information (PHI) accessed, created or received by non-covered MOU Departments from or on behalf of the Covered Component. The County has Interdepartmental MOU provisions approved by the Board of Supervisors (“approved Interdepartmental MOU” or “approved MOU”) in which each MOU Department will safeguard PHI and use PHI only as permitted by the Interdepartmental MOU.

## POLICY

- 2.1 The Covered Component shall execute an approved MOU with each designated MOU Department in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule at 45 CFR, Section 164.504(e). The Covered Component and its officers, workforce members and agents shall not disclose PHI to any MOU Department in the absence of a properly executed MOU. The MOU shall state the permitted uses and disclosures of PHI by the MOU Department and state its obligations to safeguard PHI.
- 2.2 An Interdepartmental MOU is not required for disclosures by the Covered Component to a health care provider concerning the treatment of an individual.
- 2.3 Covered Component Liability for the Actions of MOU Departments The Covered Component is not responsible or liable for privacy violations of the MOU Departments. The Covered Component is not required to actively monitor or oversee the means by which the MOU Department carries out privacy safeguards or the extent to which the MOU Department abides by the privacy requirements of the MOU.
- 2.4 Departments participating in the MOU shall follow the Board approved Administrative Dispute Resolution Process (ADRP) to resolve disputes.

## DEFINITIONS

- 3.1 **“Protected Health Information”** (PHI) means information that (i) is created or received by a health care provider; (ii) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (iii) identifies the individual,



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or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

3.2 **“Covered Component”** means the Department of Health Services (DHS) Department of Mental Health (DMH) and the Kirby Center Program of the Probation Department.

3.3 **“MOU Department”** means a person or entity that perform certain functions, activities or services on behalf of the Covered Component, other than a member of the Covered Component’s workforce, requiring the use and/or disclosure of PHI.

3.3.1 These functions include, but are not limited to:

- Claims Processing or Administration
- IT Services
- Billing
- Practice Management
- Auditing
- Accounting
- Data Aggregation
- Administration Support
- Financial Services
- Transcription
- Data Analysis
- Quality Assurance
- Benefit Management
- Legal
- Actuarial
- Consulting
- Management Support
- Accreditation
- Training
- Document Destruction

3.3.2 The County has identified the MOU Department as:

- Chief Administrative Office (CAO)
- Auditor-Controller (AC)
- Treasurer-Tax Collector (TTC)
- Internal Services Department (ISD)
- County Counsel

## **PROCEDURE**

### 4.1 Managing Interdepartmental MOU’s

4.1.1 The Covered Component shall be responsible for managing and tracking all Interdepartmental MOU’s, assuring that the required provisions are included in all appropriate MOU’s and that such provisions are current and in compliance with the requirements of the HIPAA Privacy Rule.

4.1.2 Contract Form The provisions of the Interdepartmental MOU’s to be used by the Covered Component for the MOU Departments are detailed in the Board Letter,



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approved on March 25, 2003, entitled, “**Approval of the Health Insurance Portability and Accountability Act (HIPAA) Interdepartmental Memorandums of Understanding (MOU) for Los Angeles County as a Covered Hybrid Entity**”. If a non-covered Department requires the use or disclosure of PHI from the Covered Component for non-treatment purposes, the Covered Component must execute the Board approved “Interdepartmental MOU” (Attachment I) with such Department.

- 4.1.3 Changes to Interdepartmental MOU’s No changes or modifications to the language of the Interdepartmental MOU may be made without prior legal review and authorization by County Counsel and the Chief Information Privacy Officer.
- 4.2 Covered Component’s Responsibilities to the MOU Departments
- 4.2.1 With regard to the use and/or disclosure of PHI by MOU Departments, the Covered Component shall (1) inform the MOU Departments of the privacy practices of the Covered Component; (2) notify the MOU Departments of any restrictions to the use or disclosure of PHI that the Covered Component has agreed to in accordance with 45 CFR, Section 164.522, to the extent that such restriction may affect the MOU Departments’ use or disclosure of PHI; and (3) notify the MOU Departments of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect MOU Departments’ use or disclosure of PHI.
- 4.2.2 MOU Departments Awareness of the Covered Component HIPAA Privacy Policies The Covered Component Privacy Officer(s), or their designee(s), shall make available the relevant HIPAA Privacy policies and procedures and forms to the MOU Department, upon request, to assure that the MOU Departments understand the basics of how the Covered Component is executing the HIPAA Privacy Rule, the Covered Components’ legal obligations and the expectations of the Covered Component regarding the activities of the MOU Departments to assure the Covered Components’ compliance with the HIPAA Privacy Rule.
- 4.2.3 Changes in Use or Disclosure of PHI The Covered Component Privacy Officer(s), or their designee(s), shall notify the MOU Departments in writing within ten (10) business days of any arrangements permitted or required by the Covered Component that may impact the use or disclosure of PHI by its MOU Departments.
- 4.3 MOU Departments’ Obligations to the Covered Component
- 4.3.1 Access to PHI At the request of and in the time and manner designated by the appropriate Covered Component’s Privacy Officer, MOU Departments shall provide access to PHI in a Designated Record Set to the Covered Component, the client or their representative, to whom such PHI relates in order to meet the requirements of 45 CFR



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Section 164.524 in accordance with the Covered Component's Right to Access Information Policy.

- 4.3.2 Amendment to PHI At the request of and in the time and manner designated by the appropriate Covered Component's Privacy Officer, MOU Department shall make any amendments to PHI in the Designated Record Set that the Covered Component direct and agrees to pursuant to 45 CFR, Section 164.526 in accordance with the Covered Component's Right to Amend Health Information Policy.
- 4.3.3 Accounting of Disclosure of PHI At the request of and in the time and manner designated by the appropriate Covered Component's Privacy Officer, MOU Departments shall provide an accounting of disclosure to the Covered Component, the client or their representative, to whom such PHI relates in order to meet the requirements of 45 CFR Section 164.528 in accordance with the Covered Component's Right to Accounting of Disclosures Policy.
- 4.3.4 Permitted Use and Disclosure of PHI MOU Departments shall not use or disclose PHI, except as permitted by the MOU or required by law. The MOU recognizes that a MOU Department may use or disclose PHI for the proper management and administration of its business and as required by law.
- 4.3.5 Minimum Necessary The MOU Departments shall take responsible steps to ensure that it limits the use and disclosure of PHI to the minimum necessary to carry out their functions for the Covered Component.
- 4.3.6 Appropriate Safeguards MOU Departments shall use appropriate safeguards to prevent an impermissible use or disclosure of PHI.
- 4.3.7 Reporting Impermissible Use and Disclosure MOU Departments shall report violations to the appropriate Covered Component's Privacy Officer within forty-eight (48) hours upon learning of any impermissible use or disclosure of PHI.
- 4.3.8 Contractors, Subcontractors and Agents MOU Departments shall ensure that any agent, including a contractor or subcontractor, that receives PHI from the MOU Departments or creates PHI for the MOU Departments, agrees to the same restrictions and conditions on the use and disclosure of PHI that apply to the MOU Departments.
- 4.3.9 Records Available to Secretary MOU Departments shall make its internal practices, and books and records related to the use or disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining the Covered Components' compliance with the HIPAA Privacy Rule.



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- 4.3.10 Mitigation Each MOU Department shall mitigate, the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI by it in violation of the MOU requirements.
- 4.3.11 Training Each MOU Department shall ensure that all workforce members have access to PHI complete "HIPAA for MOU Departments" training.
- 4.4 Disposition of PHI at Service Termination In the event specific services are no longer required, the MOU Departments shall return or destroy all PHI in its possession relating to any Covered Component, if feasible. MOU Departments shall also recover, return or destroy any PHI in the possession of its contractors, subcontractors or agents. If it is not feasible to return or destroy the PHI, the provisions of the MOU shall be extended to protect the PHI so that no one has access to, or can use or disclose, that PHI.
- 4.5 Administrative Dispute Resolution Process (ADRP)
- 4.5.1 The ADRP approved by the Board of Supervisors provides for the resolution of disputes between departments and for the enforcement of the MOUs as required by HIPAA. (Attachment 1 to the MOU).
- 4.5.2 If the Covered Component believes the terms of the MOU have been or will be violated by any recipient of PHI in another department, the Covered Component shall file a written complaint with the Chief Information Privacy Officer (CIPO). The CIPO will investigate the complaint and will work with the affected departments to develop a mutually satisfactory resolution of the complaint.
- 4.5.3 If the department believes the Covered Component is not complying with the terms of the MOU, a complaint may be filed with the CIPO.
- 4.5.4 If the CIPO and the affected departments are not able to resolve their differences to their mutual satisfaction, the matter will be referred to the Chief Administrative Office (CAO), provided it is not an involved party, for resolution. If the CAO is involved, County Counsel shall supervise the resolution.
- 4.5.5 If neither the CAO nor County Counsel are able to satisfactorily resolve the dispute, the issues will be submitted to the Board of Supervisors for final resolution.
- 4.5.6 In the event the Board determines that a department has violated the terms of the MOU, it may take or recommend appropriate administrative action. The Board's recommendations regarding obligations under the MOU shall be final.



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## **DOCUMENT RETENTION**

- 5.1 The Covered Component will document and retain the executed MOUs for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

## **AUTHORITY**

HIPAA 45 CFR, Sections 160.103 and 164.504(e)

## **ATTACHMENT**

Attachment I Interdepartmental Memorandum of Understanding Regarding HIPAA and the Disclosure of Protected Health Information from the Covered Component to Certain Other Departments of the County of Los Angeles – plus its Attachment 1

**INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING REGARDING  
HIPAA AND THE DISCLOSURE OF PROTECTED HEALTH INFORMATION FROM  
THE COVERED COMPONENT TO CERTAIN OTHER DEPARTMENTS OF  
THE COUNTY OF LOS ANGELES**

**I. Purpose**

The purpose of this Memorandum of Understanding (MOU) is to set forth the obligations of certain Departments of Los Angeles County (MOU Departments) with respect to their receipt of Protected Health Information from the covered components of the County, pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and its implementing regulations. Under HIPAA, the covered components cannot disclose Protected Health Information to the MOU Departments in question without a MOU, unless it is for treatment purposes.

**II. HIPAA Covered Component Departments**

Department of Health Services (DHS), Department of Mental Health (DMH), and the Dorothy Kirby Center of the Probation Department (Kirby).

**III. MOU Departments**

Chief Administrative Office (CAO), Auditor-Controller (AC), Treasurer-Tax Collector (TTC), Internal Services Department (ISD), and County Counsel.

**IV. Enforcement of the MOU**

This MOU will be effective upon execution by both parties, which includes the administrative procedures for its enforcement. The Departments are expected to safeguard Protected Health Information using reasonable measures. Privacy and security issues that cannot be resolved between the affected departments and to the satisfaction of the County's Chief Information Privacy Officer (CIPO), the CAO or County Counsel will require resolution by the Board of Supervisors, in accordance with the Administrative Dispute Resolution Process (ADRP) (Attachment 1).

**Terms and Conditions of the HIPAA MOU**

Under this MOU, the MOU Departments provide services to County (also Covered Entity) and receive, have access to, or create Protected Health Information in order to fulfill its obligations in providing those services. The Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164 ("Privacy Regulations");

The Privacy Regulations require the Covered Entity have this MOU between its covered components and the MOU Departments in order to mandate certain protections for the privacy and security of Protected Health Information, and those regulations prohibit the disclosure to the MOU Departments of Protected Health Information if such a MOU is not in place;

Therefore, the Covered Component and MOU Departments agree as follows:

### **DEFINITIONS**

- 1.1 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such information within a MOU Department’s internal operations.
- 1.2 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside a MOU Department’s internal operations or to other than its employees.
- 1.3 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.4 “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by a MOU Department from or on behalf of a Covered Component Department. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identified the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by a MOU Department from or on behalf of a Covered Component Department, or is created by a MOU Department, or is made accessible to a MOU Department by a Health Care Component Department.
- 1.5 “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

## **IDENTIFIED Protected Health Information DISCLOSURES**

- 2.1 {Covered Department} discloses Protected Health Information to {MOU Department} for the following purposes:
- (a) {Purpose 1}
    - (i) {Covered Department} understands that {MOU Department} will further disclose this Protected Health Information to the following persons or organizations:
      - a. {Person/Organization 1}
      - b. {Person/Organization 2}
      - c. {Person/Organization 3}...
  - (b) {Purpose 2}
    - (i) {Covered Department} understands that {MOU Department} will further disclose this Protected Health Information to the following persons or organizations:
      - a. {Person/Organization 1}
      - b. {Person/Organization 2}
      - c. {Person/Organization 3}...
  - (c) {Purpose 3}...

## **OBLIGATIONS OF MOU DEPARTMENTS**

- 3.1 Permitted Uses and Disclosures of Protected Health Information. A MOU Department:
- (a) Shall Use and Disclose Protected Health Information as necessary to perform its obligations to the Covered Entity, the covered components or a department thereof;
  - (b) Shall Disclose Protected Health Information to the Covered Entity or the covered component Departments upon request;
  - (c) May, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
    - (i) Use protected Health Information; and
    - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.
  - (d) A MOU Department shall not Use or Disclose Protected Health Information for any other purpose.

- 3.2 Adequate Safeguards for Protected Health Information. Each MOU Department warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this MOU. Each MOU Department agrees to limit the Use and Disclosure of Protected Health Information to the **minimum necessary** in accordance with the Privacy Regulation’s minimum necessary standard.
- 3.3 Reporting Non-Permitted Use or Disclosure. Each MOU Department shall report to the appropriate covered component Department(s) each Use or Disclosure that is made by the MOU Department, its employees, representatives, agents, contractors or subcontractors but is not specifically permitted by this Agreement. The initial report shall be made by telephone call to [the covered Departmental Privacy Officer], telephone number \_\_\_\_\_ within forty-eight (48) hours from the time the MOU Department becomes aware of the non-permitted Use or Disclosure, followed by a full written report no later than ten (10) business days from the date the MOU Department becomes aware of the non-permitted Use or Disclosure to the Chief Information Privacy Officer at:

Chief Information Privacy Officer  
Kenneth Hahn Hall of Administration  
500 West Temple ST  
Suite 493  
Los Angeles, CA 90012  
(213) 974-2164  
[cipo@cio.co.la.ca.us](mailto:cipo@cio.co.la.ca.us)

- 3.4 Mitigation of Harmful Effect. Each MOU Department agrees to mitigate, to the extent practicable, any harmful effect that is known to it of a Use or Disclosure of Protected Health Information by it in violation of the requirements of this MOU.
- 3.5 Access to Protected Health Information. Each MOU Department shall, to the extent the Covered Entity or a Covered Component Department determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified available to the Individual(s) identified by the Covered Entity or the Covered Component Department as being entitled to access and copy that Protected Health Information. Each MOU Department shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from the Covered Entity or the Covered Component Department, and shall provide copies of that Protected Health Information within five (5) business days after receipt of the request.
- 3.6 Amendment of Protected Health Information. Each MOU Department shall, to the extent the Covered Entity or a the Covered Component Department determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by the Covered Entity or a Covered Component Department. The MOU

Department shall make such amendment within ten (10) business days after receipt of the request in order for the Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

3.7 Accounting of Disclosures.

- a. Upon the Covered Entity's request, MOU Department shall provide to the Covered Entity an accounting of each disclosure of Protected Health Information made by its employees, agents, representatives, contractors or subcontractors. However, MOU Departments are not required to provide an accounting of Disclosures that are necessary to perform the Services because such Disclosures are for either payment or health care operations purposes, or both.
- b. Any accounting provided by the MOU Department under this shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting, the MOU Department shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. MOU Departments shall provide to the covered components, within ten (10) business days after receipt of request from the covered components, information collected in accordance with this Section 3.7 to permit the covered components to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

3.8 Use of Contractor, Subcontractors and Agents. Each MOU Department shall require each of its agents, contractors and subcontractors that receive Protected Health Information from it, or create Protected Health Information for it, to execute a written agreement obligating the agent, contractor or subcontractor to comply with all the terms of this MOU.

3.9 Training. Each MOU Department shall ensure that all personnel that have access to Protected Health Information shall complete the requisite training curriculum, "HIPAA for MOU Departments."

3.10 Amendment. The parties to this MOU may amend its terms from time to time, as may be necessary to conform to law or to clarify their obligations, as long as the written changes are approved by the County Counsel and the CIPO.

**AGREED, Effective as of April 14, 2003:**

\_\_\_\_\_  
**Department Head**  
**MOU Department:**

\_\_\_\_\_  
**Department Head**  
**Covered Component Department:**

\_\_\_\_\_  
**Department**

\_\_\_\_\_  
**Department**

## **Attachment 1**

### **Administrative Procedures to Implement MOU Between Covered Component and Departments or Offices Receiving Protected Health Information**

#### **Purpose of MOU: To Govern the Exchange of Protected Health Information (PHI) Between the County's HIPAA Covered Component and Other Departments**

#### **Purpose of These Administrative Procedures: To Provide an Enforcement Mechanism Related to the MOU Process, To Deal with Disputes Between County Departments or Offices Regarding the MOU**

1. The Board of Supervisors will adopt the MOU itself and these administrative procedures for its enforcement.
2. The County's Covered Component is comprised of the Departments of Health Services (DHS), Mental Health (DMH), and the Dorothy Kirby Center of the Probation Department
3. The Covered Component will provide "protected health information" (PHI) to other County departments only in accordance with the MOU.
4. The purpose of these administrative procedures is to set forth the process whereby the MOU will be enforced within the County.
5. In the event the Covered Component, or any department thereof, believes that the terms of the MOU have been or will be violated by any recipient of PHI in another department, the Covered Component or department thereof shall file with the County's Chief Information Privacy Officer ("Privacy Officer") a written complaint. The Privacy Officer will investigate the complaint and will be authorized to work with the affected departments to develop a mutually satisfactory resolution of the complaint.
6. In the event a department believes the Covered Component, or a department thereof, is not complying with the terms of the MOU, a complaint may be filed with the Privacy Officer, as set forth at point 5, above.
7. If the Privacy Officer and the affected departments are not able to resolve their differences to their mutual satisfaction, the matter will be referred to the Chief Administrative Officer (CAO), or his/her designee for resolution. The Privacy Officer will provide his/her findings and recommendations to the CAO before resolution of the matter. In the event the dispute involves the CAO, the matter shall be referred to the County Counsel, or his/her designee for resolution. A resolution by the CAO (or County Counsel) which is satisfactory to the affected departments shall be a final resolution of the matter.

8. In the event the matter is not resolved to the satisfaction of the affected departments and the CAO (or County Counsel), the matter shall be referred to the Board of Supervisors, in its capacity as the final authority of the County of Los Angeles. The affected departments, the CAO, and the Privacy Officer shall provide the Board their respective positions in writing before the Board's determination of the matter.
9. In the event the Board determines that a department has violated the terms of the MOU, it may, in its determination, take or recommend appropriate administrative action. The Board's determination regarding obligations under the MOU shall be final.