

DHHS POLICIES AND PROCEDURES

Section VIII:	Privacy and Security
Title:	Privacy Manual
Chapter:	Administrative Policies, Privacy Complaints
Current Effective Date:	5/1/05
Revision History:	1/10/03, 8/21/03, 4/6/05
Original Effective Date:	4/14/03

Purpose

This policy establishes the North Carolina Department of Health and Human Services (NC DHHS) process for providing information and controlling the receipt and disposition of concerns and complaints regarding the department's practices, policies, and procedures related to the privacy protections of individually identifiable health information, as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

This policy shall apply to the following DHHS agencies, whether or not they serve clients:

- *HIPAA covered health care components;*
- *Internal business associates; and*
- *Non-covered health care components that maintain individually identifiable health information.*

Background

The HIPAA Privacy Rule requires that health care providers and health care plans develop procedures for responding to individuals who make inquiries, express concerns, and/or file complaints regarding an agency's privacy practices, policies, and procedures. Such communications may be rendered:

- In person;
- In writing (letter/e-mail/fax); or
- By telephone.

DHHS has determined that this communications process for privacy should be extended to all agencies within this department that maintain individually identifiable health information.

Policy

DHHS agencies shall respond to every identifiable privacy complaint received. Each identifiable privacy complaint shall generate an investigation and a response. Ensuing investigations should focus on both the specific privacy complaint and any patterns of similar privacy complaints. Documentation of privacy complaints, investigative efforts,

and complaint disposition is considered administrative information and shall be maintained in administrative files for at least six (6) years. Documentation of privacy complaint information shall not be filed in a client's treatment, financial, or other designated record sets.

DHHS agencies shall develop procedures for responding to individuals who wish to file a privacy complaint against their agency whenever there is reason for an individual to believe that an agency's privacy practices have been breached in some manner. Privacy complaints shall be documented, investigated, and resolved in a timely manner, ensuring clients and other individuals that the department is committed to protecting the health information that is created, received, and maintained by DHHS agencies.

Each agency shall designate a staff member who is responsible for communicating and assisting individuals who have questions or concerns, or who wish to file a complaint regarding the agency's privacy practices. It is strongly recommended that this responsibility be limited to one person in the agency to ensure control of investigative activities, resolution, and follow-up as required.

Agencies that are required to comply with the HIPAA Privacy Rule are encouraged to designate the agency's privacy official as the primary contact for privacy complaints; however, if another staff member is designated as the primary contact person (or as a back-up), the agency shall ensure that all privacy complaints are processed according to the department's requirements and that the facts are discussed with the agency's privacy official prior to final resolution. All complaint documentation collected by an agency's primary contact person shall be forwarded to the agency privacy official who is responsible for maintaining the agency's official file of complaints and resolutions.

Agencies that are NOT required to comply with the HIPAA Privacy Rule, but maintain individually identifiable health information, are required to designate a staff member to fulfill this responsibility. A staff member who is designated as the primary contact person for complaints must be familiar with state and federal laws and regulations regarding privacy, as well as HIPAA requirements including the agency's privacy policies and procedures, adequate safeguards, and client rights.

The DHHS Privacy Officer is the department's privacy expert and serves as a resource to CARE-LINE referral specialists, agency privacy officials, and agency primary contact persons. The DHHS Privacy Officer shall be contacted whenever a privacy complaint alleges inappropriate or unauthorized disclosure of individually identifiable health information outside of a covered health care component or agency (e.g., disclosure of individually identifiable health information to the news media), and whenever an agency needs assistance in resolving a privacy complaint.

The DHHS Privacy Officer is responsible for maintaining a current list of privacy contacts in each agency and for informing CARE-LINE of any changes for referral purposes; therefore, each agency is required to notify the DHHS Privacy Officer of any staff changes in the

agency Privacy Official and/or primary contact person. The DHHS Privacy Officer is required to keep CARE-LINE staff informed of each agency's current privacy contact person.

Investigation of privacy complaints must begin immediately following receipt of an expressed complaint. Investigative actions and resolution shall be documented on the [DHHS Health Information Privacy Complaint Form](#) and must be approved according to agency requirements for review (i.e., agency attorney, risk management team) prior to developing a written response to the individual who filed the privacy complaint. Complaint resolution should be completed within 30 days, unless there is a significant reason for delay, at which time an extension up to 30 days may be granted by the agency director.

The Notice of Privacy Practices, required for DHHS covered health care components that must comply with the HIPAA Privacy Rule, shall include the designated agency privacy complaint contact information, as well as the CARE-LINE contact information. (Refer to the DHHS Policy [Client Rights Policies, Notice of Privacy Practices](#) for complete policy requirements.)

Implementation

Regardless of how a complaint is received, DHHS agencies shall stress the importance it places on privacy and its receptivity to learning about privacy concerns.

Communication Methods

1. **By Telephone to CARE-LINE**
The DHHS Information and Referral Service located in the Office of Citizen Services, known as the CARE-LINE, was established to provide information and to assist callers with problem resolution for concerns or complaints. Therefore, the CARE-LINE telephone communication system may be utilized to receive individuals' concerns regarding the department's privacy practices, policies, and procedures related to the protection of individually identifiable health information. CARE-LINE is responsible for providing callers with general information regarding HIPAA but refers specific questions, concerns, and complaints to the individual agency, or to the DHHS Privacy Officer, as appropriate.
2. **In Person/In Writing/By Telephone to a Specific Agency**
Appearing in person, sending written documents, or telephoning staff in the agency against which a complaint is being filed are methods of contact that may be utilized by an individual when filing a privacy complaint directly with an agency.

The agency privacy official or primary contact person shall manage inquiries or complaints relating to the agency and shall report complaint resolution to the DHHS Privacy Officer. DHHS agencies shall not retaliate against any individual for filing a privacy complaint with the agency, the department, or the US Department of Health and Human Services Secretary.

3. **In Person/In Writing/By Telephone to the Department**
An individual may file a complaint with the DHHS Privacy Officer if, for some reason, the individual does not wish to speak to the agency privacy official or primary contact person. Such communication may be accomplished in person, in writing, or by telephone.

DHHS Health Information Privacy Complaint Form

DHHS agencies shall ensure that all privacy complaints are documented on the [DHHS Health Information Privacy Complaint Form](#). Documentation may be done by agency staff or by the individual who is filing the complaint. Agency procedures shall specify the complaints procedures for each agency.

Agency Tracking Log

Each DHHS agency shall develop and implement a log based on the [DHHS Privacy Complaints Tracking](#) template for tracking its privacy complaint forms that will indicate the status of pending investigations.

Department Statistical Database

The DHHS Privacy Officer shall develop and implement a statistical database for privacy complaints from all divisions and offices. Reports will be designed to establish trends and patterns, if any, and will highlight any areas of concern.

Notice of Privacy Practices

DHHS health care components covered by HIPAA are required to publish and distribute their Notice of Privacy Practices, which includes the CARE-LINE telephone number, identification of the agency contact person, and the contact information for the Secretary of the US Department of Health and Human Services.

Procedures

CARE-LINE

Whenever an individual calls CARE-LINE, the information and referral staff shall determine whether the caller is primarily seeking general information about HIPAA or the caller wishes to file a privacy complaint against the department or a specific agency within the department.

1. If an individual is requesting general information regarding the HIPAA Privacy Rule, CARE-LINE is available for responding to general questions.

2. If an individual has questions and/or concerns about specific requirements of the privacy rule that CARE-LINE staff are unable to answer, the individual shall be referred to the DHHS Privacy Officer. Likewise, if the caller has a complaint against an agency but does not wish to speak with the agency's privacy official or primary contact person, CARE-LINE shall refer the call to the DHHS Privacy Officer.
3. If an individual expresses concern or wishes to file a complaint against a specific agency and is willing to speak to that agency's privacy official or primary contact person, CARE-LINE shall refer the caller to the appropriate agency. CARE-LINE staff shall encourage callers with concerns or complaints about a specific agency, to speak directly with that agency's privacy official or primary contact person since that agency is responsible for conducting an investigation and resolving the issue.
4. Whenever CARE-LINE staff determines a call to be a privacy complaint, the caller shall be referred to either the DHHS Privacy Officer or an agency privacy official or primary contact person. CARE-LINE staff shall obtain the individual's name and enter such information into their database.
5. CARE-LINE staff shall immediately contact the DHHS Privacy Officer or the agency privacy official or primary contact person, as appropriate, to alert him/her of the referral, including the name of the individual who called and any information that would be helpful to the referral resource.

Agency

If an individual contacts the agency initially, the agency's privacy official or primary contact person shall determine if the issue can be resolved at the agency level. If so, the privacy official or primary contact person shall be responsible for processing and documenting the concern until the issue is resolved. Divisions/facilities/schools operated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services are encouraged to involve their internal client advocates in the complaint investigation process when deemed appropriate.

If the privacy official or primary contact person determines the issue concerns other agencies in the department as well or if he/she is unable to obtain resolution at the agency level, the issue shall be forwarded to the DHHS Privacy Officer for resolution.

DHHS Privacy Officer

If an individual contacts the DHHS Privacy Officer first, the DHHS Privacy Officer shall determine if the issue is agency-specific and shall attempt to refer the individual to the appropriate agency, as needed. If the individual does not wish to speak with agency staff directly, the DHHS Privacy Officer shall collect the complaint information and work with the agency privacy official or primary contact person to resolve the issue.

In general, the DHHS Privacy Officer shall handle only those issues or concerns that affect the department as a whole or those complaints referred by CARE-LINE or a DHHS agency. Resolution of department issues may require involvement of the DHHS Secretary and the Attorney General offices. The DHHS Privacy Officer shall refer complaints to the US DHHS Secretary whenever appropriate.

Documentation

The [DHHS Health Information Privacy Complaint Form](#) shall be used to document an individual's complaint. Each agency shall make every effort to ensure documentation of privacy complaints is accurate and reflects the complainant's concerns.

Agencies shall make a good faith effort to have all complaint documentation signed by the complainant and should use their same procedures for obtaining signatures for privacy complaints as they use to obtain signatures for authorizations and consents. If a complainant appears in person to an agency privacy official or primary contact person, or the DHHS Privacy Officer, the complaint information may be documented by the complainant or by DHHS staff, at which time the complainant shall be requested to sign the documentation. Written documentation received through the US mail, e-mail, or facsimile from the complainant shall constitute signature. Telephone complaints shall be documented by the agency privacy official or primary contact person, or the DHHS Privacy Officer. A copy of the documented complaint shall be sent to the complainant with a request for signature. Regardless of whether a signed copy of the form is returned by the complainant, the sending of a copy by DHHS staff will constitute a good faith effort to obtain signature. Investigation of a complaint shall begin immediately following receipt of the complaint.

1. **CARE-LINE**

CARE-LINE shall maintain documentation that is consistent with their information and referral database, including the caller's age, gender, city calling from, and code the call as a "privacy" call in their database.

However, if CARE-LINE determines the call to be a complaint and needs to refer the caller to a DHHS agency or to the DHHS Privacy Officer, referral specialists shall also ask for the caller's name.

2. **Complainant**

Individuals who telephone or appear in person to file a privacy complaint shall be asked to document his/her complaint on the [DHHS Health Information Privacy Complaint Form](#), whenever possible. DHHS staff shall assist individuals in meeting this requirement. Whenever a complainant sends written information, the agency privacy official/primary contact person or DHHS Privacy Officer shall initiate a complaint form and attach the individual's correspondence prior to conducting an investigation.

3. Agency/Department

The agency privacy official or primary contact person, or the DHHS Privacy Officer may document communications with an individual who wishes to file a privacy complaint if the complainant is unable to do so. To ensure the accuracy of the documentation, a copy of the complaint documentation shall be presented to the individual who shall be asked to review and sign the documentation, thereby attesting to its accuracy.

Resolution

Whenever the agency privacy official or primary contact person is satisfied that a privacy complaint has been adequately investigated and resolved, a copy of the completed [DHHS Health Information Privacy Complaint Form](#) and any accompanying documentation shall be forwarded to the DHHS Privacy Officer. Likewise, if the DHHS Privacy Officer obtains resolution, a copy of those files shall be returned to the agency named in the complaint. Official complaint files shall be maintained for at least six (6) years.

Reference

DHHS Directive Number III-11; 45 CFR 164.530

For Relevant Forms:

[DHHS Health Information Privacy Complaint](#)
[DHHS Privacy Complaints Tracking](#)

For questions or clarification on any of the information contained in this policy, please contact [DHHS Privacy Officer](#) For general questions about department-wide policies and procedures, contact the [Office of Policy & Planning](#).

