

DHHS POLICIES AND PROCEDURES

Section VIII:	Privacy and Security
Title:	Privacy Manual
Chapter:	Use and Disclosure, Accounting of Disclosures
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Purpose

The purpose of this policy is to provide the North Carolina Department of Health and Human Services (NC DHHS) agencies with the department's requirements regarding a client's right to request an accounting of disclosures of his/her individually identifying health information in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This policy specifies the disclosures to be included and excluded from the accounting, and stipulates the accounting content and delivery requirements.

This policy shall apply to any of the following DHHS agencies:

- *HIPAA covered health care components and*
- *Internal business associates.*

Background

In accordance with the federal Standards for Privacy of Individually Identifiable Health Information (hereinafter referred to as the HIPAA Privacy Rule), promulgated to implement the HIPAA, Public Law 104-191, a client or a client's personal representative has the right to receive a written accounting of disclosures of individually identifying health information made by a covered health care component and the component's internal and external business associates. **All** disclosures of individually identifiable health information do not have to be included in the accounting. Disclosures that do not have to be accounted for are specified in the HIPAA Privacy Rule and are identified in this policy.

Policy

DHHS covered health care components shall, upon written request, provide clients or their personal representative with an accounting of disclosures of the client's individually identifying health information made by the component, including disclosures made by any of the agency's internal or external business associates, as appropriate (see DHHS Privacy Policy [Client Rights Policies, Rights of Clients](#)).

Such accounting shall be for the time period requested up to six years prior to the request date, except as otherwise specified within this policy. Requests for accountings of disclosures shall include only those disclosures made after April 14, 2003. The elements in the accounting and the provision of the accounting shall be consistent with all stipulations within this policy. DHHS covered health care components and internal business associates shall develop procedures for responding to requests by clients or their personal representatives for an accounting of the disclosures made about the client, and for ensuring the accountings are provided in a timely manner. Business associate agreements with external business associates shall include the requirement for providing the covered health care component with a listing of disclosures made by external business associates, upon request of the component.

DHHS covered health care components shall determine those work units within the component and within their internal and external business associates that disclose individually identifying health information that must be included in the accounting. (**NOTE:** The Business Information Flow Assessment completed by each DHHS agency during the HIPAA assessment phase may help satisfy this requirement.) DHHS covered health care components shall develop a process for documenting the accounting of disclosures made by the work units and the component's internal and external business associates, as appropriate.

DHHS covered health care components shall coordinate the procedures for complying with this policy with their internal and external business associates.

For the purposes of this policy, "disclosure" shall mean the release, transfer, provision of access to, or otherwise divulging of individually identifiable health information outside of the agency holding the information, and shall include disclosures made in *written, oral, or electronic* form.

Implementation

DHHS covered health care components and internal business associates shall designate a staff member who is responsible for receiving requests for accounting of disclosures. It is strongly recommended that this responsibility be limited to one (1) person in the agency. Agencies are encouraged to designate a privacy official as the designated staff member. Each agency shall document the title of the staff member responsible for receiving and processing requests for an accounting. Documentation related to the designation of the staff member must be maintained for at least six (6) years.

Disclosure Exclusions/Inclusions

The types of disclosures listed below **do not** have to be included in the Accounting of Disclosures:

- Disclosures necessary to carry out treatment, payment, and health care operations such as:
 - Disclosures to other health care providers (treatment);
 - Eligibility, billing, claims management, medical necessity, and utilization review (payment); and
 - Provision of individually identifiable health information to the NC Office of the Attorney General when representing the interests of a covered component (health care operations).

NOTE: The definition of “health care operations” is designed to identify those activities of a covered component that support the component’s ability to provide treatment to individuals or to pay or be paid for such health care. Many disclosures that are required by law do not significantly further a covered entity’s health care operations; rather, they further other important public purposes such as reporting child abuse, injuries due to violence, domestic violence or elder abuse, or responding to court orders.

- Disclosures made directly to the client who is the subject of the individually identifying health information or to the client’s personal representative.
- Disclosures that are incidental to a use or disclosure that is otherwise permitted or required when covered components and business associates have implemented reasonable and appropriate administrative, technical, and physical safeguards to limit incidental, and avoid prohibited, uses and disclosures.
- Disclosures made pursuant to an authorization signed by the client or personal representative.
- Disclosures made to the facility’s directory, to persons involved in the client’s care, or for other permissible notification purposes as described in the DHHS Privacy Policy [Client Rights Policies, Personal Representatives](#).
- Disclosures made for national security or intelligence purposes.
- Disclosures made to correctional institutions or law enforcement officials with lawful custody of an inmate if the individually identifying health information is necessary for:
 - The provision of health care to such clients;
 - Health and safety of the inmate or other inmates, officers, or other employees at the correctional institution;
 - Health and safety of clients and officers or others responsible for the transportation of inmates;
 - The enforcement of law within the correctional institution; and
 - The administration and maintenance of the safety, security, and good order of the correctional institution.

NOTE: Disclosures made to law enforcement officers who bring or pick up clients from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS) facilities do not have to be included in the accounting.

- Disclosures of de-identified data or individually identifying health information that is part of a limited data set in accordance with DHHS Privacy Policy [Use and Disclosure Policies, De-Identification of Health Information and Limited Data Sets](#).
- Disclosures that occurred prior to April 14, 2003.

Other than the exceptions noted above, all other disclosures of individually identifiable health information **must** be included in the accounting and may include any of the types of disclosures listed below.

- Public Health Authorities
 - Surveillance
 - Investigations
 - Interventions
 - Foreign governments collaborating with federal public health authorities
 - Reporting vital events such as births and deaths
 - Required reporting of diseases or injuries such as communicable diseases or registries such as cancer and immunization registries
- Social Services
 - Child abuse, neglect, or exploitation
 - Disabled adult abuse or neglect

NOTE: In accordance with 45 CFR Part 164.502(g)(5), the personal representative can be denied access to the accounting if the covered health care component has a reasonable belief that:

- a. The client has been or may be subjected to domestic violence, abuse, or neglect by the personal representative; or treating the personal representative as such could endanger the client and
- b. The covered health care component in the exercise of professional judgment decides that it is not in the best interest of the client to treat the person in question as the individual's personal representative.

- Food and Drug Administration
 - Adverse events, product defects, or biological product deviations
 - Track products
 - Enable product recalls repairs or replacements
 - Conduct post marketing surveillance
 - Manufacturers of defective products
 - Review of oxygen tanks

- Employers
 - To employer requesting health care be provided to their employee for medical surveillance, work-related injury or illness, or Occupational Safety and Health Administration (OSHA) or similar state law

- Health Oversight (when not considered as health care operations)

NOTE: The definition of health care operations includes:

- a. Accreditation, certification, peer review, licensing, or credentialing activities;
 - b. Conducting or arranging for medical review, such as death review;
 - c. Legal services;
 - d. Auditing functions, including fraud and abuse detection and compliance programs; and
 - e. Resolution of internal grievances.
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- Civil Rights Laws
 - Health Care Personnel Registry
 - Nurses' Aide Registry
 - Oversight activities of federal agencies such as the Centers for Disease Control and Prevention, Drug Enforcement Agency, OSHA, Federal Emergency Management Agency, Department of Justice, Environmental Protection Agency, and the Department of Homeland Security
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- Judicial and Administrative Proceedings (when disclosed without authorization)
 - Court order
 - Subpoena
 - Search warrant
 - Administrative hearing

- Disclosures to the Office of the Attorney General (representing the state – not the facility), special counsel, or private counsel prior to commitment hearings
- Filing a petition for involuntary commitment
- Filing a petition for adjudication of incompetency and appointment of a guardian

- Law Enforcement
 - As required by law such as reporting of wounds or injuries
 - Court order, court ordered warrant, subpoena, or summons
 - Grand jury subpoena or lawful administrative request
 - Locating a suspect, fugitive, material witness, or missing person (**NOTE:** A court order is required for DMH/DD/SAS facilities)
 - Emergency treatment, crime is elsewhere
 - Victims of crime
 - Crimes on premises
 - Suspicious deaths
 - Avert a serious threat to health or safety

- Deceased Persons
 - Coroner or medical examiner
 - Funeral directors
 - Organ procurement

- Research (when authorization is not required or waived)
 - Reviews preparatory to research
 - Research on decedents
 - Multiple research disclosures can be accounted for by documenting a list and a description of all the research studies for which an client's individually identifying health information may have been disclosed and contact information for each study

- Specialized Government Functions
 - Military and veterans' activities
 - Protective services
 - Department of state: medical suitability
 - Government programs providing public benefits
 - Foreign military personnel
 - Secret service when related to a threat against a public official

- Worker’s Compensation (when disclosed without authorization and not considered treatment, payment, or health care operations)
 - Comply with existing state laws
- US Embassies
- Contractors/business associates/vendors (when not for treatment, payment, or health care operations)
- Blood bank (when not for treatment, payment, or health care operations)
- Accidental disclosures (e.g., individually identifying health information is sent to the wrong client or wrong address)
- Unlawful disclosures of which the component or business associate has knowledge
- Disclosures to other DHHS agencies/components (when not for treatment, payment, or health care operations)

Tracking Disclosures

Each DHHS covered health care component shall develop a process for documenting the accounting of disclosures. For those types of disclosures that must be tracked, such process must include tracking disclosures made by the component and their internal and external business associates of individually identifying health information that are disclosed either orally, on paper, or electronically. Disclosures may be tracked manually or in electronic form ensuring accurate and complete accounting of disclosures. Such process could include computerized tracking systems that have the ability to sort by individual and/or date or manual logs with one (1) log per client maintained in the client’s medical record or other file. Each component shall ensure that appropriate staff and business associates receive training on the tracking process. The [*Accounting of Disclosures of Individually Identifying Health Information*](#) (form DHHS-0018) may be used for developing the agency’s tracking log.

Each covered component shall determine if documentation of disclosures will be maintained in a centralized (e.g., all accountings maintained in a single database accessible to appropriate agency staff and business associates) or de-centralized fashion (e.g., each location that discloses information maintains an accounting for their location only). Such determination should be based upon complexity of the component and their internal and external business associates and the number of locations disclosing information that would have to be tracked.

If documentation of accounting of disclosures is de-centralized, the designated staff member shall identify all possible locations where disclosures may be made and where such accountings should be maintained; and shall ascertain if information about the client whose accounting is requested has been disclosed by any of the possible locations. It is the responsibility of the designated staff person to collect de-centralized accountings which may remain as many separate documents or be compiled into a single document.

When disclosures are made to a single source for multiple clients, it is not necessary to track each disclosure by making a notation in each medical record that has been accessed. The covered component need only document the following:

- The identity (and address if known) of the person/agency to which access was provided;
- A description of the records and individually identifiable health information to which the subject has access;
- The purpose for the disclosure; and
- When access was provided.

It would be sufficient, for instance, for the covered component to maintain a separate notation of such disclosures, applicable to all records so accessed. Then, if an individual requests an accounting, the covered entity need only determine whether the individual's records were among the universe of records to which the person/agency was granted access. All individuals whose records were accessed in this fashion would receive the same accounting for the disclosure. For example, retrospective review of medical records for all clients treated by a health care provider may be required to identify cases of new or previously unknown infectious agents. If a client requesting an accounting was treated by the health care provider during the period covered by the retrospective review, then the retrospective review should be included as part of the client's accounting. The [*Accounting of Disclosures of Individually Identifying Health Information Made to a Single Source for Multiple Clients*](#) (form DHHS-0019) may be used for developing the agency's log for tracking these types of disclosures.

If access to a universe of records is provided for a discrete period of time, the accounting can include the range of dates (e.g., access was provided from August 1 to August 3, 2003; or during the week of August 10, 2003). If the disclosure is routinely made within a set period from an event, the component is permitted to provide the date of the event and the normal interval (e.g., hospital discharges reported on 15th of the following month for all discharges during the month of June 2003).

Key features of an accounting of disclosures tracking system should include:

- Allowing data entry from anywhere in the component;
- Securing the information;
- Tracking usage and compliance throughout the component;
- Providing full auditing and reporting functionality;
- Ability to track all disclosures that must be accounted;
- Ability to track and report based on reason for disclosure;
- Providing for temporary suspension of accountings for disclosures to law enforcement officials or oversight agencies;
- Simplicity in using and understanding the process;
- Cost effective mechanisms; and

- The ability to provide on-demand accounting of disclosure reporting to the client or personal representative.

The [Accounting of Disclosures of Individually Identifying Health Information](#) (form DHHS-0018) may be used for developing the agency's log for tracking disclosures.

Request for Accounting of Disclosures

A client or personal representative's request for an accounting of disclosures must be made in writing. Each agency shall designate the person within the agency who will be responsible for receiving and processing all requests for an accounting. Agencies shall forward such requests to the designated person for action.

DHHS covered health care components shall develop and implement procedures for clients or their personal representatives to request an accounting of disclosures; and shall negotiate procedures with their internal and external business associates to coordinate requests for accountings disclosed by the separate agencies/work units.

- Agencies shall develop a form for clients or personal representatives to use when requesting an accounting of disclosures. DHHS agencies may use the [Request for Accounting of Disclosures of Health Information](#) (form DHHS-0020) to fulfill this requirement. Upon request, agencies shall provide the client or personal representative with assistance in completing the written request for an accounting.
- If a request is received with insufficient information to verify the client's identity, a response requesting additional information shall be forwarded to the individual who requested the accounting within 10 days of receipt of the initial request.

If a client or personal representative requests that an accounting of disclosures be released to another individual or entity, the client, or personal representative must also sign the standard [DHHS Authorization to Disclose Health Information](#) (form DHHS-1000) (refer to DHHS Privacy Policy, [Use and Disclosure Policies, Authorizations](#) for detailed information).

Providing Accounting of Disclosures to Client or Personal Representative

Upon request, a client or personal representative shall be provided a written accounting of all disclosures of individually identifying health information made after April 14, 2003 by the covered health care component. Such accounting may include any period of time within the six (6) years prior to the date on which the accounting is requested.

Covered health care components are required to act on a request for an accounting of disclosures within 60 days after receipt of the request. If the component cannot provide the accounting within 60 days, the component may extend the time to provide the accounting; however, only one 30-day extension is permitted per request. Any extension requires the

component to provide a written statement to the requester regarding the reason for the delay and the expected completion date.

DHHS agencies shall provide the client or personal representative's first request for an accounting at no charge to the client or personal representative. Agencies may charge the client or personal representative a reasonable, cost-based fee for any subsequent accountings within 12 months from the time the first request is received, provided that the fee includes only the cost of:

- Copying, including the cost of supplies for and labor of assembling and copying the information; and
- Postage, when the client has requested that the copy be mailed.

Exception: DMH/DD/SAS agencies are bound by 10A North Carolina Administrative Code (NCAC) 26B .0105 when determining fees for copying health information, including accountings of disclosure.

Agencies must inform the client or personal representative in advance of the fee and provide the client or personal representative with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee. Adequate time shall be allowed for the client or personal representative to withdraw the request before incurring any costs.

Disclosures made to health oversight agencies or law enforcement officials shall be temporarily excluded from an accounting if the covered component has been notified by the oversight agency or law enforcement official that providing a client or personal representative with an accounting of the disclosures made to them could impede the progress of their activities (e.g., fraud investigation or investigation of possible criminal activities when a client should not be aware of such scrutiny). Such request from a health oversight agency or law enforcement official should be in writing; however an oral request may be accepted with stipulations, as noted below. Suspensions requested in writing shall remain in effect for the duration specified in the written request, unless the request for suspension is rescinded earlier by the health oversight agency or law enforcement official.

If a health oversight organization or law enforcement official requests this temporary suspension orally, the component shall perform the following:

- Document the statement, including the identity of the agency or official making the statement;
- Temporarily exclude from the accounting of disclosures those disclosures made to an oversight agency or law enforcement official based upon the oral information in the statement; and

- Limit the temporary exclusion to no more than 30 days from the date of the oral statement unless a written statement is submitted during that time specifying the duration.

Each component shall retain the following documentation for no less than six (6) years from the date the accounting request was received:

- Client or personal representative's request for an accounting;
- Copy of the accounting provided to the client or personal representative; and
- Title of the person or office responsible for receiving and processing accounting requests.

In the facilities operated by DMH/DD/SAS, the request for accounting and copy of the accounting provided to the client shall be maintained in the client's medical record. All other covered components shall determine the most appropriate location for maintaining the documentation.

Contents of the Accounting of Disclosures to Clients or Their Personal Representatives

Standard Requirement

Each accounting of a disclosure shall contain the following elements:

- The date of the disclosure;
- The name of the entity or person who received the individually identifying health information and, if known, the address of such entity or person;
- A brief description of the individually identifying health information disclosed; and
- Either:
 - A brief statement of the purpose of or reason for the disclosure that reasonably informs the client or personal representative of the basis for the disclosure;
 - A copy of any written request for disclosure by US DHHS for compliance purposes; or
 - A copy of a written request for a disclosure by a person or entity authorized to receive individually identifying health information for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required (refer to DHHS Privacy Policy, *Use and Disclosure Policies, Use and Disclosures*).

The [Accounting of Disclosures of Individually Identifying Health Information](#) (form DHHS-0019) may be used for developing the agency's log for tracking standard disclosures.

Multiple Disclosures

If multiple disclosures are made to the same person or entity for a single purpose, either to the US DHHS for compliance purposes or for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required (refer to DHHS Privacy Policy, Use and Disclosure Policies, Use and Disclosures), the accounting should include the following:

- The elements listed in the ‘Contents of the Accounting’ shall be provided;
- The frequency, periodicity, or number of disclosures made to the common person or entity during the requested accounting period; and
- The date of the first and last disclosure made during the requested accounting period.

The [*Accounting of Disclosures of Individually Identifying Health Information*](#) (form DHHS-0019) may also be used for developing the agency’s log for tracking multiple disclosures.

Research Disclosures

Disclosures for research purposes wherein authorization for use and disclosure of individually identifiable health information for research purposes has been waived or is not required must be included in the accounting of disclosures; however, disclosures for research purposes wherein authorization has been obtained for use and disclosure of such information do not have to be included in the accounting of disclosures.

If disclosures are made for 50 or more clients for research purposes, the accounting must include:

- The name of the research protocol activity;
- A plainly written description of the research protocol or activity, including:
 - Purpose for the research and
 - Criteria for selecting particular records to be disclosed for the research.
- A brief description of the type of individually identifying health information that was disclosed;
- The date or period of time during which the disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
- The name, address, and telephone number of the entity that sponsored the research, including the name of a contact person;
- The name, address, and telephone number of the researcher to whom the information was disclosed; and

- An indication that the individually identifying health information of the client may or may not have been disclosed for the particular research protocol or activity.

If the component provides the modified content described above (in lieu of the standard content for an accounting), upon request by the client or personal representative, the component shall assist the client or personal representative in contacting the researcher if disclosures for research purposes were made by the component.

The [*Accounting of Disclosures Made for Research Purposes*](#) (form DHHS-0021) may be used by agencies when developing the agency's accounting request form to be used for tracing research disclosures described above.

Monitoring Compliance

Due to the complexity of this policy and the involvement of numerous clinical, professional, clerical, and administrative staff, as well as business associates who must ensure disclosures are accounted for, each agency will need to develop a system for routinely monitoring compliance with this policy.

Implementation Procedures

DHHS covered health care components must develop procedures that address the following processes for ensuring their clients' right to an accounting of disclosures of their health information. Procedures need to be coordinated between covered health care components and internal and external business associates.

- Designate the person(s) or office(s) responsible for receiving and processing requests for accounting of disclosures by clients or personal representatives.
- Develop training materials that ensure staff can differentiate disclosures that must be accounted for, from disclosures that do not have to be accounted for.
- Determine the acceptable method(s) for requesting and receiving an accounting.
- Develop an accounting request form.
- Identify all areas within the component and their business associates where disclosures that must be tracked would be made.
- Establish process to ensure required disclosures and accidental disclosures are routinely documented.
- Establish process for making reasonable efforts to provide accounting to clients or personal representatives within 60 days of request and process for one 30-day extension, if needed.
- Establish process for temporary suspension of certain accountings.
- Determine if agency will handle multiple disclosures or research disclosures differently from standard accountings.

- Ensure established process for accountings is correctly reflected in component's *Notice of Privacy Practices*.
- Determine any fees and a process for informing clients of the fee.
- Maintain audit trails that track client or personal representative requests for accountings.
- Develop process for monitoring compliance with policy.
- Maintain required documentation.

Reference

DHHS Directive Number III-11; 45 CFR 164.528; 10A NCAC 26B .0105 and .0303

For relevant forms:

[DHHS Authorization to Disclose Health Information](#) (form DHHS-1000)

[DHHS Authorization to Disclose Health Information](#) (form DHHS-1000sp)

[Accounting of Disclosures of Individually Identifying Health Information Made to a Single Source for Multiple Clients](#) (form DHHS-0018)

[Accounting of Disclosures of Individually Identifying Health Information](#)

[Accounting of Disclosures Made for Research Purposes](#) (form DHHS-0021)

[Request for Accounting of Disclosures of Health Information](#) (form DHHS-0020)

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 [DHHS Policy Coordinator](#)