

DHHS POLICIES AND PROCEDURES

Section VIII: Privacy and Security
Title: Privacy Manual
Chapter: Client Rights Policies, Rights of Clients
Current Effective Date: 11/15/15, 5/1/05
Revision History: 8/12/03, 11/15/15
Original Effective Date: 4/14/03

PURPOSE

The purpose of this policy is to ensure the North Carolina Department of Health and Human Services (NC DHHS) agencies are aware of the rights given to clients by the Health Insurance Portability and Accountability Act (HIPAA), and to provide direction to those agencies for addressing such rights.

POLICY

DHHS agencies shall establish and implement procedures that ensure the following rights of clients as delineated by the HIPAA privacy rule and other federal and state laws.

- Right to Confidential Communications
- Right to Adequate Notice of Use and Disclosure of Individually Identifiable Health Information
- Right to Obtain Paper Copy after Electronic Notice
- Right to Request Access/Inspect/Copies of Individually Identifiable Health Information
- Right to Request Amendment to Individually Identifiable Health Information
- Right to Accounting of Disclosures of Individually Identifiable Health Information
- Right to Request Privacy Restrictions for Individually Identifiable Health Information
- Right to a Contact Person to Whom Client May Lodge Privacy Complaint

The rights that are included in this policy apply to individuals served by DHHS health care providers and health plan recipients, unless otherwise specified. For simplification purposes, this policy shall refer to all such individuals as 'clients', unless there is a difference in policy requirements.

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The personal representative of a client who is acting on behalf of that person is afforded the same rights as the client unless otherwise specified by state or federal law, in accordance with the DHHS Privacy Policies.

Documentation required by the HIPAA privacy rule throughout this policy shall be retained at least six (6) years from the date of its creation.

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

Right to Confidential Communications

Client Right - Each client of a DHHS agency has a right to request confidential communications by requesting that the agency contact him/her at a different location or by a different means when the agency needs to communicate with the client.

Agency Responsibility - Each DHHS covered health care **provider** must establish accommodations for their clients, whose privacy is not assured in their daily lives, to request alternative means of communication about their health information. Such accommodations may include an alternative location and/or method of contact such as mail, e-mail, fax, or telephone. Covered providers must develop procedures for making reasonable efforts to comply with such requests from their clients; however, providers may not require an explanation from their clients regarding the basis for such request.

Each DHHS covered health **plan** must permit plan recipients to request to receive communications regarding health information from the health plan by alternate means or at alternate locations when requested by a plan recipient. The health plan must accommodate such requests by plan recipients if the request is deemed reasonable. The health plan may require plan recipients to clearly state that the disclosure of all or part of their health information, using the current communication method or location, could endanger the plan recipient.

Client Requests

Each DHHS agency may determine whether or not to require such requests from clients to be in writing, or whether the agency will accept verbal requests. Verbal requests must be documented. The client must specify his/her preferred alternative means or location; and the agreement reached by the client and the agency must be documented.

Agency Assurance

Internal procedures must be developed so all workforce members who are engaging in communications with a client who has requested and received an agreement to use alternative means of communication are aware of the need to use other agreed upon channels in order to

protect the client. An agency could face serious liability if a client was harmed due to failure of staff to follow the agency's agreement to use alternative communications.

DHHS agencies must develop procedures that address the following processes for processing confidential communication requests.

- Establishing how the requests will be submitted (orally or writing). Identifying who in the agency is responsible for reviewing the request to decide if it will be accepted.
- Establishing the process to notify the client of the agency's response to the request.
- Establishing the process to document the alternate means of communication.
- Identifying methods to be used to communicate changes to affected staff.
- Ensuring future communications are consistent with the agreement.

Right to Adequate Notice of Use and Disclosure of Individually Identifiable Health Information

Clients of DHHS agencies have a right to be informed about how the agency may use and/or disclose their health information, as well as their rights and the agency's legal duties with respect to protecting the privacy of health information in their possession.

Each DHHS covered health care component must make their *notice of privacy practices* available to their clients, which explains how the component may use and/or disclose their individually identifying health information. This *notice* also describes the rights of clients to take action and the component's legal duties, with regard to the use and/or disclosure of individually identifiable health information created and/or maintained by the agency. The following situations included in each agency's *notice* directly affect client rights.

In an emergency treatment situation, the client has a right for the *notice* to be provided as soon as practicable after the emergency;

- Clients must be assured that whenever there is a material change in the agency's privacy practices, the agency will promptly revise and post their notice of privacy practices. Such changes shall not be implemented prior to the effective date of the revised notice, except as required by law; and
- Health Plan recipients must be assured that whenever a material change has been made to the health plan's notice, the plan will provide a revised notice within 60 days of the revision.

DHHS agencies must establish procedures for ensuring clients' right to adequate notice of the agency's privacy practices. The required procedures listed below directly affect client rights.

- Establish procedures that ensure clients are provided the agency's notice;
- Establish procedures that ensure existing health plan recipients are provided the Plan's notice by April 14, 2003, and thereafter at the time of enrollment;
- Determine who is responsible for ensuring the notice given to clients is current, that revisions are made timely, that the notice is prominently displayed in the agency when required and that the notice is distributed according to the agency's requirements;
- Establish procedures for obtaining written acknowledgement from the client or the client's personal representative of receipt of the covered health care provider's notice, including the agency's good faith efforts if written acknowledgement is not obtained; and
- Establish procedures to follow-up in emergency circumstances wherein the notice was not provided to a client.

Right to Obtain Paper Copy after Electronic Notice

Each client of a DHHS agency may be given the opportunity to receive the agency's *notice of privacy practices* electronically; however, the client further has the right to request that a paper *notice* also be provided.

Each agency may offer to provide its *notice of privacy practices* to agency clients by e-mail, if the client agrees. Any client who receives the *notice* electronically retains the right to obtain a paper copy upon request.

DHHS agencies must develop procedures that address providing clients with a paper copy of the agency's *notice*.

- Establish procedures to ensure clients are provided the agency's notice, including paper and electronic methods.
- Enforce the clients' right to be provided a paper notice, upon request.
- Establish a process for covered health care providers with a direct treatment relationship to clients to obtain written acknowledgement of receipt of the notice, including good faith efforts associated with electronic notice.

Right to Request Access to Individually Identifiable Health Information

Each client of a DHHS agency has the right to request access to inspect and obtain a copy of his/her health information for as long as the information is maintained by the agency in a designated record set. If the agency does not maintain the health information that is the subject of the client's request for access, but knows where the requested information is maintained, the agency must inform the client where to direct his/her request for access.

Each client's request for access to his/her personal health information must be in writing. DHHS agencies may require the requester to:

- Complete agency form for request;
- Submit own written request; or
- Submit electronic request via e-mail.

The client's right to request access to records applies only to those records that have been identified as a `designated record set'. If the same information requested by the client or personal representative is contained in multiple designated record sets, the agency can limit access to a single designated record set.

DHHS agencies must determine the process for addressing a client's request to access, inspect, and copy his/her records. All requests from clients or their personal representative must be in writing and forwarded to the agency's privacy official, or other designee, who is responsible for ensuring the request is processed in a timely manner, not to exceed 30 days (with a one-time 30 day extension if the record cannot be accessed within the original 30 days). The agency is required to notify the requester in writing of any extension outlining the reasons for the delay.

DHHS agencies must grant access to individually identifiable health information in designated record sets unless it is determined there may be grounds for denial. When access is granted, agencies may provide a summary of the client's record in lieu of the entire record, if that is agreeable with the client and the client agrees in advance to any fees imposed by the agency for producing the summary.

Note: DMH/DD/SAS General Statutes require that client access be determined by an attending physician. If there is not an attending physician, access must be determined by the agency director or his/her designee.

A licensed health care professional may deny access to information in certain circumstances:

- If it is believed such access is reasonably likely to endanger the life or physical safety of the client or another person;
- If the information makes reference to another person (other than a health care provider) and access may cause substantial harm to that person; or
- If the access is requested by the client's personal representative and access could cause substantial harm to the client or to another person.

If access to health information is denied in whole or in part, the licensed health care professional is required to comply with the requirements listed below.

- Determine if access to any other requested information in the designated record set should be allowed.

- Provide the client and the agency's privacy official with a written explanation as to the reason for the denial, that includes:
- The basis for the denial;
- If applicable, a statement of the client's review rights; and
- A description of how the client may complain to the agency, including the name or title and telephone number of the person to contact.

If a client requests review of the denial to access individually identifiable health information, the agency must designate a different licensed health care professional who was not directly involved in the original denial, as a reviewing official to review, within a reasonable period of time, the decision to deny access. The agency must promptly provide written notice to the client of the determination made by the reviewing official. Agencies are required to respond to the request in accordance with the reviewing official's decision.

DHHS agencies may deny access to specific health information, as listed below, without providing a client an opportunity for review:

- Psychotherapy notes;
- Information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding;
- Health information maintained by covered health care components that is subject to the Clinical Laboratory Improvements Amendments of 1988;
- Information created or obtained in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided the client was previously informed of the suspension and consents to it;
- Access to records that are subject to the Privacy Act, 5 U.S.C. 552a may be denied if the denial of access would meet the requirements of that Act; and
- Individually identifiable health information that was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

Each client who has been granted access to review his/her health information also has the right to request a copy of all or part of the health information to which access was granted.

If a client requests a copy of his/her health information or agrees to receive a summary or explanation of such information, DHHS agencies may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

- Copying, including the cost of supplies for and labor of copying the information;
- Preparation of an explanation or summary of the health information, if receipt of an explanation or summary is agreed to by the requester; and

- Postage, when the individual has requested that the copy, summary, or explanation be mailed.

Note: DMH/DD/SAS agencies are bound by 10 NCAC 18D.0121 when determining fees for copying health information.

Right to Request Amendment to Individually Identifiable Health Information

Each client of a DHHS agency has the right to request amendment of his/her health information that is contained in a designated record set, for as long as the information is maintained in the designated record set. Amendments may include changing or adding information.

Each client's request for amendment to his/her personal health information must be in writing and must include the reason for requesting amendment. Agencies may require the requester to submit the request as follows:

- Complete agency form for amendment;
- Submit own written request; or
- Submit electronic request via e-mail if e-mail is available to the client.

DHHS agencies must document the titles of the persons or the offices responsible for receiving and processing requests for amendments by clients. Such documentation must be retained for at least six (6) years from the date of creation.

DHHS agencies must act on a client's request for amendment no later than 60 days after receipt of the request. If the agency grants the amendment in whole or in part, the following steps must be taken:

- Identify all documents in the designated record set(s) that need(s) to be amended (Note: If the amended information is contained in multiple designated record sets, the amendment must be documented in each record set);
- Allow insertion of the amendment as an addendum to the contested portion of the designated record set; however, the original portion of the designated record set may not be deleted;
- Inform the requester that the amendment is accepted and obtain the client's identification of, and agreement to have the agency notify the relevant persons with which the amendment needs to be shared; and
- Make reasonable efforts to inform and provide the amendment within a reasonable time to those identified by the client and to any business associates who have copies of the health information being amended.

DHHS agencies may deny a request to amend a client's health information if it determines that the information:

- Was not created by the agency (or that the originator of the information is no longer available to evaluate the request for amendment);
- Is not part of a designated record set;
- Is excluded from the information to which a client may request access; or
- Is accurate and complete.

DHHS agencies must provide a timely, written denial to a client that is written in plain language and contains the following elements:

- The basis for the denial;
- The client's right to submit a written statement disagreeing with the denial and how the client may file such a statement;
- A statement that if the client does not submit a statement of disagreement, the client may request that the agency include the client's request for amendment and the denial with any future disclosures of the health information that is the subject of the amendment; and
- Description of procedures to file a complaint. Such description must include the name or title and telephone number of the contact person or designated office.

DHHS agencies must permit a client to submit to the agency a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The agency may reasonably limit the length of a statement of disagreement.

DHHS agencies may prepare a written rebuttal to the client's statement of disagreement. Whenever such rebuttal is prepared, the agency must provide a copy to the client who submitted the statement of disagreement.

DHHS agencies must, as appropriate, identify the health information in the designated record set that is the subject of the disputed amendment and append or otherwise link the following to the designated record set:

- The client's request for amendment;
- The agency's denial of the request,
- The client's statement of disagreement with the request denial, if any; and
- The agency's rebuttal to a client's statement of disagreement with a request denial,

If a client has submitted a statement of disagreement, the agency must include the appended material in the designated record set in accordance with the record keeping section above, or at

the discretion of the agency, an accurate summary of such information, with any subsequent disclosure of the health information to which the disagreement relates.

If a client has not submitted a written statement of disagreement, the agency must include the client's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of the health information only if the client has requested such action.

When a subsequent disclosure described above is made using a standard transaction that does not permit the additional material to be included with the disclosure, the agency may separately transmit the required material to the recipient of the standard transaction.

DHHS agencies that are informed by other agencies/components of an amendment to a client's health information must also amend the health information in its own designated record sets.

Documentation of requested amendments and the disposition of such requests shall be retained for at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later. Documentation that is maintained in the client record shall be retained in accordance with the General Schedule for State Agency Records.

DHHS agencies must develop the following procedures to address when clients request amendments to their health information.

- Designating the persons or offices responsible for receiving and processing requests for amendment by clients;
- Identifying reviewing official(s);
- Developing a request form, if applicable;
- Developing guidelines for establishing response time;
- Establishing criteria to be used in determining acceptance or non-acceptance of requested amendment;
- Defining methods for processing amendments of paper and electronic records;
- Establishing process for notifying requester of decision;
- Establishing process for making reasonable efforts to provide amendment to persons identified by the client and any other persons, including business associates, that the agency knows has been provided health information that is the subject of an amendment, within 60 days of the date of the amendment; and
- Establishing process so that the billing is reviewed to see if it should be amended or changed to reflect the new information when the amendment affects a service for which billing or charges have already been submitted.

Right to Accounting of Disclosures of Individually Identifiable Health Information

Each client of a DHHS agency has a right to receive an accounting of disclosures of his/her health information made by the agency at any time during the previous six (6) years. Such requests may not include dates prior to April 14, 2003. This includes any disclosures made to or by any business associate of the agency. Disclosures made as follows do not have to be included on an accounting of disclosures:

- Disclosures to the client;
- Disclosures made based upon signed authorization of the client or personal representative; or
- Disclosures for purposes of treatment, payment or health care operations.

Disclosures made to health oversight agencies or law enforcement officials may be temporarily excluded from an accounting if the covered agency has been notified by the oversight agency or law enforcement official that providing an accounting could impede the progress of their activities.

DHHS agencies shall require requests for accounting of disclosures to be in writing and forwarded to designated staff for action. Agencies are required to act on such requests within 60 days after receipt of the request, unless there is good reason to extend the time to reply by another 30 days. Any extension requires the agency to provide a written statement to the requester regarding the reason for the delay and the expected completion date. Only one (1) extension is permitted per request.

The DHHS Privacy Policy, *Client Rights Policies*, *Accounting of Disclosures* provides all the requirements DHHS agencies must follow.

For purposes of this policy, agencies must be familiar with the following basic information for each disclosure that is required to be tracked and would therefore be available to a client upon request:

- Date of disclosure;
- Name of covered entity or individual who received the information (and their address, if known);
- Description of information disclosed; and
- Brief statement of the purpose or reason for the disclosure.

DHHS agencies must provide clients or their personal representatives the first accounting of disclosures free of charge in any 12-month period. Agencies may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the same 12-month period, provided that the agency informs the client in advance of the fee and provides the client with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee. (Refer to DHHS Privacy Policy, *Client Rights Policies*, *Accounting of Disclosures*.)

DHHS agencies must develop the following procedures to ensure their clients' right to an accounting of disclosures of their health information. (Refer to the DHHS Privacy Policy, *Client Rights Policies, Accounting of Disclosures* for detailed requirements for accounting of disclosures.)

- Designating the person(s) or office(s) responsible for receiving and processing requests for accounting of disclosures by clients;
- Identifying reviewing official(s);
- Developing request form, if applicable;
- Developing guidelines for establishing response time;
- Establishing criteria to be used in identifying accountings;
- Establishing process to ensure required disclosures are routinely documented;
- Establishing process for making reasonable efforts to provide accounting to clients within 60 days of request;
- Determining any charges and establishing a basis for making such determinations; and
- Maintaining audit trails that track client requests for accountings.

7. Right to Request Privacy Restrictions for Individually Identifiable Health Information

Each client of a DHHS agency has the right to object to, and request restrictions on, how his/her health information is used or to whom the information is disclosed. Clients can make such requests/objections even if the restriction affects the clients' treatment or payment for that treatment or other health care operation activities. Use and disclosure of health information for treatment, payment, or other health care operations is oftentimes permitted by state and/or federal law without the client's authorization or consent. The client may want to limit the health information that is included in any of the following:

- Agency directories;
- Health information that is provided to family or friends who are involved in the client's care;
- Payment of medical bills; or
- Health information that is provided to authorities involved with disaster relief efforts.

DHHS agencies are not required to agree to any requested restrictions. However, if a restriction is agreed to, it is binding and agencies may not use or disclose information in violation of the agreement, unless otherwise allowed or required under other DHHS policies. For example, an agency may disclose restricted information to permit emergency treatment. An agency is also not bound by restrictions when a disclosure is required by law. DHHS agencies are encouraged to require client request for restrictions to be in writing.

DHHS agencies must establish procedures to address the following processes for ensuring clients' right to request privacy restrictions of their health information.

- Designating the person(s) or office(s) responsible for receiving and processing requests for privacy restriction;
- Determining the acceptable method(s) for requesting restriction(s);
- Developing process for taking action on request; and
- Establishing documentation requirements.

Agreement or Denial of a Request for Restriction

DHHS agencies must establish procedures for processing clients' requests for restricting the use and/or disclosure of their health information, including the agency's process when request is agreed to and when request is denied. Procedures must ensure client's request is processed within 60 days of the request and client is fully informed of the decision.

If the restriction is agreed to, the following procedure must be implemented:

- The agency must honor the restriction;
- The restriction must be communicated to the agency staff in an approved manner; and
- Documentation of the approved request must be provided to the client.

If the request for restriction is denied, the following procedure must be implemented:

- The agency's denial of the request shall be documented according to agency requirements and
- Documentation of the denied request must be provided to the client.

DHHS agencies may terminate an agreement to a restriction at any time. If the client agrees to the termination by the agency, previously restricted information may be used or disclosed as if a restriction never existed. If a client objects to the termination, the termination is still in effect, but only with respect to the health information created or received after the client is informed of the termination of the restriction.

DHHS agencies must develop procedures that address the following processes for terminating a client-requested privacy restriction.

- Documentation of written or oral agreement must be maintained;
- The agency must inform the client that it is terminating its agreement to a restriction and that such termination is only effective with respect to health information created or received after it has so informed the client;
- Subsequently, the restriction shall be removed, and such action shall be documented; and

- Any documentation that alerted staff to the restriction must be removed (e.g., any "flag" in records/forms, etc).

If a DHHS agency has agreed to a restriction but the client who requested the restriction is in need of emergency treatment and the restricted health information is needed to provide the emergency treatment, the agency may disclose the health information to a health care provider to provide such treatment.

If such health information is disclosed in an emergency situation, the agency must inform the health care provider to whom the information was disclosed not to further use or disclose that health information.

DHHS agencies must address the following processes when allowing clients to request restrictions on the use and/or disclosure of their health information.

- Designating the person or office responsible for receiving and processing requests for restricting use/disclosures by clients;
- Developing restriction request form, if applicable;
- Developing guidelines for establishing response time;
- Establishing criteria to be used in approving/denying restrictions;
- Establishing process to ensure all restrictions are documented timely;
- Establishing procedures to inform agency staff of approved restrictions, as well as termination of restrictions; and
- Identifying documentation requirements to support all the above decisions.

Each client of a DHHS agency has the right to submit a complaint if he/she believes that an agency within DHHS has improperly used or disclosed his/her individually identifiable health information, or if a client has concerns about the privacy policies of DHHS or concerns about DHHS compliance with such policies.

Each agency is required to identify a person or office in the agency that clients may contact if they have questions or concerns about the agency's privacy policies and procedures, or if clients would like to submit a complaint regarding the use and disclosure of their health information.

DHHS agencies must provide a process for clients to submit a complaint for any of the following reasons:

- If they feel their privacy rights have been violated;
- If they want to file complaints about the agency's privacy policies and procedures; and/or
- If they want to file a complaint about the agency's compliance with their privacy policies and procedures.

Such process shall ensure no retaliation may be taken against a client for filing a complaint against the agency.

DHHS agencies are also required to inform clients of a contact in the U.S. Department of Health and Human Services should they wish to submit a complaint to that level. Agencies are required to include this information in their *Notice of Privacy Practices*.

DHHS agencies must develop procedures that address the following processes when ensuring clients' right to submit complaints about the agency's privacy policies and procedures or about the agency's use and disclosure of their health information.

Designating the person(s) or offices(s) responsible for receiving and processing complaints submitted by clients;

- Identifying agency contact person;
- Determining acceptable method(s) for receiving complaints;
- Developing complaint form, if applicable;
- Developing guidelines for establishing response time;
- Establishing criteria to be used in reviewing complaints;
- Establishing protocols for addressing complaints;
- Identifying persons involved in disposition of complaint;
- Establish procedures for resolving complaints; and
- Identifying documentation requirements to support all decisions.

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