
| | |
|---------------------------------|--|
| Title: | DPH Privacy and Security Manual |
| Chapter: | II. Administrative Policies, Privacy Complaints/Privacy Questions |
| Current Effective Date: | October 20, 2003 |
| Revision History: | May 11, 2004 |
| Original Effective Date: | April 14, 2003 |

Purpose

The purpose of the Division of Public Health (DPH) privacy complaints policy is to establish the DPH process for providing information and controlling the receipt and disposition of concerns and complaints regarding the Division's practices, policies, and procedures related to the privacy protections of individually identifiable health information (IIHI) within DPH, as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#), that establishes the NC Department of Health and Human Services (DHHS) requirements for privacy complaints.

Policy Scope: The policy applies across the Division to all DPH workgroups who maintain, use, have access to, or come into contact with IIHI.

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)
- By telephone.

Policy

DHHS has determined that this communications process for privacy should be extended to all agencies within this Department that maintain IIHI. The Division has applied this policy to all workgroups within the Division that use, maintain, have access to, or come into contact with IIHI.

The Division 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.

DPH has developed the procedures described in this policy for responding to individuals who wish to file a privacy complaint against the Division whenever there is reason for an individual to believe that an the Division'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 Division is committed to protecting the health information that it creates, receives, and maintains.

DPH has designated 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. To ensure control of investigative activities, resolution, and follow-up as required, DPH has assigned this responsibility be limited to one person in the Division.

The Division has workgroups that are to comply with the HIPAA Privacy Rule and has designated a Privacy Officer for the entire Division. The Division has in turn designated the DPH Privacy Official as the primary contact for privacy complaints. The Division has delegated staff in the DPH HIPAA Privacy Office to provide backup for and support to the DPH Privacy Official and the Division requires that this support staff ensure that all privacy complaints are processed according to the Division's requirements and that the facts are discussed with the DPH Privacy Official before final resolution. All complaint documentation collected by an agency's primary contact person shall be forwarded to the DPH Privacy Official who is responsible for maintaining DPH's official file of complaints and resolutions.

The DHHS Privacy Officer is the Department's privacy expert and serves as a resource to CARE-LINE referral specialists, Privacy Officials, and agency primary contact persons. The DHHS Privacy Officer shall be contacted whenever a privacy complaint alleges inappropriate or unauthorized disclosure of IIHI outside of a covered health care component or agency (e.g., disclosure of IIHI 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 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 privacy complaint contact information, as well as the CARE-LINE contact information. (Refer to the DPH Privacy policies, [Client Rights Policies](#), [Notice of Privacy Practices](#) for complete policy requirements.) The State Laboratory for Public Health is the only covered health care component within the Division and its Notice of Privacy Practices includes the required contact information.

Implementation

Regardless of how a complaint is received, the Division 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 IIIHI. 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/E-Mail to the Division of Public Health;

Appearing in person, sending written documents, or telephoning staff in the Division that a complaint is being filed are methods of contact that may be utilized by an individual when filing a privacy complaint directly with DPH. The DPH Privacy Official or DHP HIPAA Office support staff shall manage inquiries or complaints relating to the agency and shall report complaint resolution to the DHHS Privacy Officer. An individual may file a complaint with the DHHS Privacy Officer if, for some reason, the individual does not wish to speak to the Privacy Official or primary contact person. Such communication may be accomplished

in person, in writing, or by telephone. The Division 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.

All complaints to the Division of Public Health shall be submitted to any of the following:

- In Writing:
DPH Privacy Official
North Carolina Division of Public Health
1915 Mail Service Center
Raleigh, NC 27699-1915
- By Telephone:
(919) 715-0411
- By E-Mail
HIPAA.DPH@ncmail.net

- In Person:

Contact the HIPAA Privacy Official at (919) 415-0411 to schedule a time to meet regarding the privacy complaint.

DHHS Health Information Privacy Complaint Form

All privacy complaints shall be documented on the [DHHS Health Information Privacy Complaint form](#). Documentation may be done by DPH HIPAA Office staff or by the individual who is filing the complaint.

Privacy Complaint Agency Tracking Log

Each DHHS agency shall develop and implement a log based on [DPH Privacy Complaints Tracking Form](#) 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

The Privacy Complaints policies requires that 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. The State Laboratory for Public Health is the only covered health care component within the Division and its Notice of Privacy Practices includes the required contact information.

Privacy Complaint 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 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 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 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 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 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.

Division of Public Health

Every staff member within the Division can receive initial queries from callers regarding the Division's HIPAA approach and privacy practices. However, staff should refer the caller to the DPH HIPAA Office for further information. Staff should not attempt to answer HIPAA or privacy questions directly. Staff should determine whether the caller is primarily seeking general information about HIPAA or the caller wishes to file a privacy complaint against the Division. If the caller does not wish to be referred directly to the DPH Privacy Office, staff should take down the caller's information, including call-back information, and forward this the DPH HIPAA Office to address.

Upon referral and direct contact, the DPH Privacy Official will review the situation and concerns. The DPH Privacy Official shall determine whether the issue can be resolved within DPH. If so, the DPH Privacy Official, or DPH HIPAA Office staff, shall be responsible for processing and documenting the concern until the issue is resolved. If the DPH Privacy Official determines that the issue also concerns other agencies in the Department or if the DPH Privacy Official is unable to obtain resolution within DPH, the DPH Privacy Official issue shall be forward this to the DHHS Privacy Officer for resolution. The DPH Privacy Official, or DPH HIPAA Office staff will then work with the DHHS Privacy Officer to resolve the issue and follow it through completion.

After the privacy issue is resolved, either internally within DPH or in concert with the DHHS Privacy Officer, the DPH Privacy Official will coordinate with the DHHS Privacy Officer to notify the individual about the resolution. Depending on the nature of the resolution, other DHHS staff may become involved in notifying the individual and communicating with the public, such as the Attorney General's Office, Office of the Chief Counsel, or Public Affairs.

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 DPH 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

DPH shall use the [DHHS Health Information Privacy Complaint form](#) to document an individual's complaint. DPH shall make every effort to ensure documentation of privacy complaints is accurate and reflects the complainant's concerns.

DPH 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 the DPH Privacy Official, 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 DPH Privacy Official, 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 DPH Privacy Official or DHHS Privacy Officer shall initiate a complaint form and attach the individual's correspondence prior to conducting an investigation.

3. DPH/Department;

The DPH Privacy Official, DPH HIPAA Office staff, 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.

Guidelines for Completing the Privacy Complaint Form (NC DHHS 1040 (8/03))

1. The DPH Privacy Official or designated DPH HIPAA Office staff person is required to complete the [DHHS Health Information Privacy Complaint form](#) whenever an individual files a complaint against DPH, whether the complaint is delivered in person, in writing, or by telephone.
2. The DHHS complaint form may be completed by any of the following:
 - A client, a person acting on behalf of a client, or other individual who wishes to file a complaint against DPH
 - The DPH Privacy Official or designated DPH HIPAA Office staff person
 - The DHHS Privacy Officer.
3. Although someone other than the person who files a complaint may complete the form, the complainant should be requested to sign the form to validate the accuracy of the documented information.

When the complaint form is completed by DPH and the complainant is not present, a copy of the completed complaint form may be mailed or faxed to the complainant for signature. Alternatively, the complainant may come to the DPH Privacy Office to sign the form.

4. Sending the complaint form to the complainant for signature, or requesting that the complainant come to the DPH Privacy Office to sign the form, constitutes a good faith effort on the part of the Division and investigation of the complaint should begin immediately.
5. DPH must maintain documentation of all privacy complaints that are received by the agency. Documentation must include the following elements:
 - Tracking Number
 - Date Complaint is Received
 - Brief Description of Complaint
 - Date Complaint is Resolved
 - Date Complainant is Notified of Disposition
 - Date Information is Sent to DHHS Privacy Officer
 - Comments

This documentation will provide a mechanism for tracking all complaints.

Complaint Form Completed By:

Check the appropriate box to indicate the person who actually completes the form.

Agency/Tracking Number:

Enter Division of Public Health as the agency)

Assigned by the DPH HIPAA Office, with the prefix DPH PrivComplaint and numbered consecutively, starting at DPH PrivComplaint-011

Name of Complainant/Other Complainant Information:

The Complainant may be a client, a personal representative of a client, a relative or friend of a client or someone who has personal knowledge of a possible misuse or inappropriate disclosure regarding individually identifiable health information maintained by the Division or one of DPH's business associate.

Enter the following information about the person who is filing the complaint, as available:

- Name
- Address
- Home and work telephone numbers (if available)
- Fax number (if available)
- E-mail address (if available)
- Enter date the complaint is received.

Name of Client (If Different from Complainant) and Relationship to Client:

If the complainant is the client, enter "Same".

If a complaint involves a specific client, enter the client's name and the complainant's relationship to the client.

If a complaint does not involve a specific client, enter "NA" in this space.

Recorded By:

Enter the name of the person who actually records the information on the form.

Describe the Nature of Complaint:

The information documented in this section will be used to investigate the complaint. Therefore, it is essential to enter as many details as possible regarding the nature of the complaint. Describe the situation as you know it (or as it is told to you), including names of persons involved and any witnesses, place of event, date of event, and time of event. (If additional space is needed use the back side of the form.)

Signatures:

A good faith effort must be shown to obtain the complainant's signature on the form. If the complainant completes the form, the form should be signed at the time of completion.

If a staff member completes the form for the complainant, the staff member must sign the form, after which the form must be presented to the complainant to review for accuracy and for signature to show agreement with the documentation.

All signatures must be dated.

DHHS USE ONLY**DPH PRIVACY OFFICIAL/DPH HIPAA Office OR DHHS PRIVACY OFFICER IS REQUIRED TO COMPLETE THIS SECTION.****Disposition of Complaint:**

Select appropriate statement(s) and enter date to indicate the agency's disposition:

- Date complaint was resolved
- Beginning date of 30 day extension
- Date complaint was referred to DHHS Privacy Officer for resolution
- Date complainant was notified of disposition
- Date complaint disposition was sent to DHHS Privacy Officer

Explanation of Resolution:

Written explanation of what was done to resolve the complaint must be entered in this section and documentation must include any changes in procedures, policies, or staff requirements, as a result of this complaint.

Signature:

The DPH Privacy Official/DPH HIPAA Office staff person or DHHS Privacy Officer must sign the documentation.

Resolution

When the DPH Privacy Official 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.

References: DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH HIPAA Compliance Statement, 42 CFR 164.530

For Relevant Forms:

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

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at HIPAA.DPH@ncmail.net.