
Title:	DPH Privacy and Security Manual
Chapter:	III. Use and Disclosure Policies, Accounting of Disclosures
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Purpose

The purpose of the Division of Public Health (DPH) accounting of disclosures policy is to establish the DPH requirements regarding a client's right to request an accounting of disclosures of his/her individually identifying health information (IIHI) in accordance with the Health Insurance Portability and Accountability Act (HIPAA). This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#) that specifies the NC Department of Health and Human Services (DHHS) disclosures to be included and excluded from the accounting and stipulates the accounting content and delivery requirements.

Policy Scope: This policy and procedure applies to all DPH workgroups that serve clients, including:

***Covered health care components
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 Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, a client or a client's personal representative has the right to request a written accounting of disclosures of individually identifying health information (IIHI) made by a covered health care component and the component's internal and external business associates. All disclosures of IIHI do not have to be accounted for. Disclosures that do not have to be accounted for are specified in the HIPAA Privacy Rule and are identified in this policy.

Policy

Division covered health care components shall, upon written request, provide clients or their personal representative with an accounting of disclosures of the client's IIHI made by the component, including disclosures made by any of the Division's internal or external business associates, as appropriate. See the [DPH Privacy Policy, Client Rights Policies, Rights of Clients](#) for additional information about how the Accounting of Disclosures client right applies within the Division.

The accounting of disclosures 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. DPH 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. DPH 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 IIHI outside of the covered health care component holding the information, and shall include disclosures made in *written, oral, or electronic* form.

Implementation

DPH Applicability

As the only designated covered health care provider within the Division, the State Laboratory for Public Health is required by HIPAA to follow the [DPH Privacy, Rights of Clients](#) policy for an Accounting of Disclosures.

For the DPH internal business associate, HSIS Business Liaison, a client's right to an accounting of disclosures is governed by Business Associate Agreements between the local health departments, contract addenda with the community-based organizations, and procedures developed between the Division of Information Management Resources (DIRM), CDSAs, and State Laboratory.

For the DPH internal business associate, Children's Special Health Services, a client's right to an accounting of disclosures is governed by a Memorandum of Understanding among the Division of Public Health, Office of the Controller, Purchase of Medical Care Services, and the Division of Medical Assistance.

The Children's Development Services Agencies (CDSAs) are exempted from the requirements of the HIPAA Privacy Regulation. However, the federal IDEA and FERPA requirements define the requirements for clients' right to request an accounting of disclosures of health information. The procedures for clients' rights are documented in the *ITP Program Manual* and in special instructions issued to the CDSAs.

DPH workgroups and programs not required to follow this policy should follow their program's statutory and regulatory requirements for granting a client's right to an accounting of disclosures.

Covered entities (e.g., clinics, private providers, local health departments) who make disclosure of IIHI to the Division for required by law reporting, program reporting (non-treatment or payment related), and for public health activities should follow their procedures for tracking these disclosures and for providing an accounting of them.

Except as required by federal or state statute, program regulation, or other requirements, DPH non-covered workgroups are not required to account for disclosures, or (re-disclosures) of IIHI made to, or from the Division in its role as a Public Health Authority.

DPH Implementation Procedures

DPH covered health care components and internal business associates shall designate a staff member who is responsible for receiving requests for accounting of disclosures. This designated staff member works with the DPH Agency Privacy Official to coordinate documentation of disclosures and to review and coordinate requests for accounting of disclosures. Documentation related to the designation of the staff member must be maintained for at least six years.

Disclosure Exclusions/Inclusions

The following types of disclosures **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)

Provision of IIHI to the Attorney General's Office 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; and are required to be included in an Accounting of Disclosures.

- Disclosures made directly to the client who is the subject of the IIHI or to the client's personal representative
- Disclosures 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
- For the facility's directory or to persons involved in the client's care or other permissible notification purposes as described in the [DPH Privacy Policy, Client Rights Policies, Personal Representatives](#)
- For national security or intelligence purposes
- To correctional institutions or law enforcement officials with lawful custody of an inmate if the IIHI 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
 - Administration and maintenance of the safety, security, and good order of the correctional institution.
- For de-identified data or IIHI 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 IIHI **must** be included in the accounting and may include any of the following:

Public Health Authorities

- Surveillance
- Investigations
- Interventions
- Foreign governments collaborating with US 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:

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

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:

accreditation, certification, peer review, licensing, or credentialing activities;

conducting or arranging for medical review, such as death review;

legal services;

auditing functions, including fraud and abuse detection and compliance programs;

and

resolution of internal grievances.

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, Department of Homeland Security

Judicial and Administrative Proceedings (when disclosed without authorization)

Court order

Subpoena

Search warrant

Administrative hearing

Disclosures to Attorney General's Office (representing the state – not the institution), 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: Court Order 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 IIHI 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)
- Complying 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., IIHI 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

The Division has developed a process by which each DPH covered health care component documents their accounting of disclosures. For those types of disclosures that must be tracked, the process includes 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 are tracked manually using a series of tracking logs (worksheets) that are based on the DHHS [Accounting of Disclosures of Individually Identifying Health Information](#) templates to ensure accurate and complete accounting of disclosures. The worksheets on which these tracking logs are based are available at <http://www.schs.state.nc.us/hipaa/>.

Each DPH covered component required to track disclosures maintains their own tracking logs. The DPH Privacy Office periodically reviews these logs for accuracy and completeness.

Within the DPH covered components, the designated staff member works with the DPH Privacy Office to 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 IIHI to which the subject has access
- The purpose for the disclosure
- When access was provided.

DPH covered components use the [DPH Accounting of Disclosures of Individually Identifying Health Information Made to a Single Source for Multiple Clients](#), which is based on the DHHS template, to track these types of disclosures.

Using this log, it is sufficient 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.

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).

Request for Accounting of Disclosures

A client or personal representative's request for an accounting of disclosures must be made in writing. Requests to the DPH covered components for an accounting is made on the [DPH Request for Accounting of Disclosures of Health Information](#) form, which is based on the DHHS template. Upon request, the DPH covered components and the DPH Privacy Office can provide the client or personal representative with assistance in completing the written request for an accounting.

Requests can be mailed to the DPH HIPAA Privacy Office:

NC Division of Public Health
DPH HIPAA Privacy Office
1330 St. Mary's Street
MSC 1915
Raleigh, NC 27659
919 715-0411

Requests can also be included as an email attachment and sent to:

HIPAA.DPH@ncmail.net.

The DPH Privacy Office will coordinate all requests for an accounting of disclosures with the DPH covered components.

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 ten 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 [NC DHHS Authorization to Disclose Health Information](#) form. Refer to [DPH 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 IIHI made after April 14, 2003 by the component. Such accounting may include any period of time within the six years prior to the date on which the accounting is requested.

DPH 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.

DPH covered components must provide the client or personal representative's first request for an accounting at no charge to the client or personal representative. DPH 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.

DPH 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.

Note: Refer to the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, Accounting of Disclosures](#) for information about when an accounting can be temporarily suspended for disclosures to health oversight agencies or law enforcement officials.

The DPH covered components shall retain the following documentation for no less than six 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.

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 IIHI and, if known, the address of such entity or person
- A brief description of the IIHI disclosed
- 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; or
 - 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 IIHI for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required (refer to *DPH Privacy Policies, Use and Disclosure Policies, Use and Disclosures*).

[The DPH Disclosures of IIHI \(Non-Routine\) Log](#) is used to track the disclosures described above.

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 *DPH 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.

Research Disclosures

Disclosures for research purposes wherein authorization for use and disclosure of IIHI 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 IIHI 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
- An indication that the IIHI 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 [NC DPH Accounting of Disclosures Made for Research Purposes](#) tracking log is used to track research disclosures described above.

For relevant forms:

The DPH Request for an Accounting of Disclosures form and the DPH Accounting of Disclosures tracking logs are available at <http://www.schs.state.nc.us/hipaa/>.

References: DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH HIPAA Compliance Statement, DPH Client Rights Privacy Policies, Rights of Clients, 45 CFR 164.528; 10A NCAC 26B .0105 and .0303, 10A NCAC42A0.105; Clinical Laboratory Improvements Amendment (CLIA) of 1988, 42 CFR 493.

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