
Title:	DPH Privacy and Security Manual
Chapter:	IV. Client Rights Policies, Rights of Clients
Current Effective Date:	November 1, 2004
Original Effective Date:	April 14, 2003
Revision History:	October 15, 2004

Purpose

The purpose of the Division of Public Health (DPH) client rights policy is to ensure that the Division workgroups 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. 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) privacy rights of clients Set requirements.

Policy Scope:

- HIPAA covered health care components
- Internal Business Associates

Background

In the past, the principle that individuals have rights to control or access their health information has not typically been part of the privacy concept. Health care providers and health plans have recognized the need for clients to authorize release of their health information in certain situations.

In recent years, individuals have become better educated on health-related issues and tend to play a greater role in their health care delivery. As a result, individuals have demanded more control over their health information and state and federal laws have been adopted that address this demand. Individuals concerned about privacy rights had significant influence over inclusion of various client rights in the HIPAA Privacy regulations.

Allowing clients the right to access and amend their personal health information facilitates an open and cooperative relationship between clients, their health care providers, health plans, and provides clients the opportunity to know what health information may be used to make decisions about them.

Policy

DPH covered health care components and internal business associates that serve clients directly must establish and implement procedures to 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 IIIHI
- Right to Obtain Paper Copy after Electronic Notice
- Right to Request Access/Inspect/Copies of IIIHI
- Right to Request Amendment to IIIHI
- Right to Accounting of Disclosures of IIIHI
- Right to Request Privacy Restrictions for IIIHI
- 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 DPH covered health care components, unless otherwise specified. For simplification purposes, this policy shall refer to all such individuals as ‘clients’, unless there is a difference in policy requirements.

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 and DPH Privacy Policies, [Client Rights Policies, Personal Representatives](#).

Documentation required by the HIPAA Privacy Rule throughout this policy shall be retained at least six years from the date of its creation.

Implementation

Applicability of Rights of Clients within the Division of Public Health

The following describes the applicability of the Rights of Clients within the Division:

- The client right to a contact person to whom a client may lodge a privacy complaint is the only category of client rights that applies across the Division to all workgroups. This policy and its implementing procedures are explained in the [DPH Privacy Policy, Privacy Complaints/Privacy Questions](#).
- As the only designated covered health care provider within the Division, the State Laboratory for Public Health is required by HIPAA to follow the Rights of Clients policy for an Accounting of Disclosures. However, as an indirect provider, a client's right to request access to and request amendment of their health information is governed by the Clinical Laboratory Improvements Amendment (CLIA) and by NC Administrative Rule. State statutes govern clients' rights to request restrictions on the use and disclosure of their information and clients' rights to request confidential communications. The State Laboratory is required to make available its Notice of Privacy Practices, which defines client rights to laboratory information.
-
- Within the State Laboratory for Public Health, questions regarding client rights are addressed by either the Assistant Director of Operations and Management or the State Laboratory HIPAA Coordinator.
- For the DPH internal business associate, HSIS Business Liaison, clients rights are 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, client rights are governed in 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.
-
- Except for the right to file a complaint, this client rights in this policy does not apply to the DPH internal associates the State Center of Health Statistics or Medical Reimbursement, as they do not have direct client contact.
-
- For the Children's Development Services Agencies, client rights are defined under Individuals with Disabilities Act (IDEA) and Federal Education Rights Privacy Act (FERPA) and are described in the Infant Toddler Program manual.

- All workgroups within the Division of Public Health that have been designated as Covered Health Care Components and “internal business associates,” must their define their categories of records that are “Designated Record Sets,” which are considered the only personal health information records to which clients have a right to request access, amendment, and copies. A client’s rights to request access, amendment, and copies of his/her personal health information are limited to that information that is maintained in Designated Record Sets, as determined by the Division. The Division’s Designated Record Sets and client access procedures are defined in the [DPH Privacy Policy, Client Rights, Designated Record Sets](#).
- For all other DPH program areas and workgroups, the rights of clients are governed by specific program rules and procedures as defined by federal and state laws and program requirements. For example, for the CDSAs, the federal IDEA and FERPA requirements define the requirements for parents right to request access to and amendment of their child’s health information. The procedures for clients’ rights are documented in the ITP Program Manual and in special instructions issued to the CDSAs.
- Questions regarding client rights from Division workgroups should be directed first to the appropriate program area supervisor. If necessary, the DPH HIPAA Office and Office of Legal and Regulatory Affairs can help address client rights issues.

Client Right to Confidential Communications

Each client of a DHSS covered health care component 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.

DPH Applicability and Program Responsibility

For all DPH programs, this client right is governed by and defined by program-specific procedures, which follow the program’s legal and regulatory requirements.

Each DPH program whose staff has direct client contact should establish accommodations for their clients 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 DPH program that provides program-benefit related information to clients should permit plan recipients to request to receive communications regarding health information from the benefit program by alternate means or at alternate locations when requested by a plan recipient. DPH

programs should accommodate such requests by benefit recipients if the request is deemed reasonable.

Client Requests

DPH programs should require that such requests from clients to be in writing whenever possible. Situations can be defined where staff can document a client's verbal request for confidential communications. The client must specify his/her preferred alternative means or location; and the agreement reached by the client and the agency must be documented.

DPH Program Assurance

Each DPH program should develop internal procedures to ensure that 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. The Division could face serious liability if a client was harmed due to failure of staff to follow the Division's agreement to use alternative communications.

DPH Program Implementation Procedures

Each DPH program should develop procedures that address the following processes for processing confidential communication requests. The procedures should define the following:

- Establishing how the requests will be submitted (orally or writing). The [Request for Alternate Means of Communication of Health Information](#) form can be used to document the request.
- Identifying whom in the program is responsible for reviewing the request to decide if it will be accepted.
- Establishing the process to notify the client of the program'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 covered health care components 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.

DPH Applicability

The State Laboratory of Public Health as a Division covered health care component must make their [Notice of Privacy Practices](#) available to their clients, which explains how the lab may use and/or disclose their IIHI. 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 IIHI created and/or maintained by the agency. The [DPH Privacy Policy, Client Rights Policies, Notice of Privacy Practices](#) contains complete policy requirements for the Notice.

For all other DPH programs, this client right is governed by and defined by program-specific procedures, which follow the program's legal and regulatory requirements regarding how to inform clients about how their information is used and disclosed and about their rights.

Right to Request Access to Individually Identifiable Health Information

Each client of a DHHS covered health care component 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. (Refer to [DPH Privacy Policy, Client Rights, Designated Record Sets](#).) 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.

DPH Applicability

The DPH covered components that are required to comply with the clients' access rights are identified in the [DPH Privacy Policy, Client Rights, Designated Record Sets](#), which requires agencies to identify records that are used to make decisions about clients. The client's right to request access to records applies only to those records that have been identified as a 'designated record set'. DPH workgroups and programs not required to follow this policy should follow their program's statutory and regulatory requirements for granting client access.

Right to Request Amendment to Individually Identifiable Health Information

Each client of a DPH covered health care component 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.

DPH Applicability

The DPH covered components that are required to comply with the clients' access rights are identified in the [DPH Privacy Policy, Client Rights, Designated Record Sets](#), which requires agencies to identify records that are used to make decisions about clients. The client's right to request access to records applies only to those records that have been identified as a 'designated record set'. DPH workgroups and programs not required to follow this policy should follow their program's statutory and regulatory requirements for granting client access.

Right to Accounting of Disclosures of Individually Identifiable Health Information

Each client of a DHHS covered health care component 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 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
- Disclosures for purposes of treatment, payment or health care operations.

DPH Applicability

The DPH covered components that are required to comply with the clients' rights to an accounting of disclosures are identified in the [DPH Privacy Policy, Client Rights Policies, Accounting of Disclosures](#). DPH workgroups and programs not required to follow this policy should follow their program's statutory and regulatory requirements for granting client access.

Right to Request Privacy Restrictions for Individually Identifiable Health Information

Each client of a DPH covered health care component 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:

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

DPH covered health care components 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 policies, or required or permitted by State or Federal law. For example, a covered health care component may disclose restricted information to permit emergency treatment.

A covered health care component 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.

DPH Applicability and Program Responsibility

For all DPH programs, this client right is governed by and defined by program-specific procedures, which follow the program's legal and regulatory requirements.

Each DPH program whose staff has direct client contact should establish accommodations for their clients to request privacy restrictions on the use and disclosure of their health information.

Each DPH program that provides program-benefit related information to clients should permit plan recipients to request restrictions on the use and disclosure of the health information. DPH programs should accommodate such requests by benefit recipients if the request is deemed reasonable.

Client Requests

DPH programs should require that such requests from clients to be in writing whenever possible. Situations can be defined where staff can document a client's verbal request for confidential communications. The client must specify his/her preferred alternative means or location; and the agreement reached by the client and the agency must be documented.

DPH Program Assurance

Each DPH program should develop internal procedures to ensure that all workforce members engaged in communication of health information regarding who has requested and received an agreement to restrict uses and disclosures, are aware of the need to use other agreed upon channels in order to protect the client. The Division could face serious liability if a client was harmed due to failure of staff to follow the Division's agreement to restrict the use and disclosure of a client's health information.

DPH Program Implementation Procedures

Each DPH program should develop procedures for processing requests for privacy restrictions. The procedures should define the following:

- Defining how the request for privacy restrictions will be submitted [The Request for Restrictions on Use and Disclosure of Health Information](#) and the [Instructions to Request Restrictions on Disclosures](#) can be used to document the request.
- Identifying whom in the program is responsible for reviewing the request to decide if it will be accepted.
- Establishing the process to notify the client of the program'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 uses and restrictions are consistent with the agreement.
- Ensuring that all agreements regarding uses and restrictions conform to federal and state laws and program requirements.

Right to Contact Person to Whom Client May Lodge Complaint

Each Division client has the right to submit a complaint if he/she believes that the Division has improperly used or disclosed his/her IIHI, or if a client has concerns about the Divisions privacy policies or concerns about the Divisions compliance with such policies.

DPH Applicability

This client right applies across the Division. DPH has identified its Privacy Official as the person who clients may contact if they have questions or concerns about the Divisions privacy policies and procedures, or if clients would like to submit a complaint regarding the use and disclosure of their health information.

- Information about the DPH Privacy Office and the DPH Privacy Complaints and contact procedures are described in the [DPH Privacy Policy, Privacy Complaints/Privacy Questions](#)

For relevant documents:

The following forms are available for clients to make requests regarding their rights and for DPH workgroups to document the actions taken regarding these requests:

- [DPH Request for Alternate Means of Communication of Health Information](#)
- [DPH Request for Accessing/Inspecting/Copying Health Information](#)
- [DPH Request for Amendment of Health Information](#)
- [DPH Request for Accounting of Disclosures of Health Information](#)
- [DPH Request for Restrictions on Use and Disclosure of Health Information](#)
- [Instructions to Request Restrictions on Disclosures](#)

These documents can be accessed on the DPH HIPAA web site 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 Policy, 45CFR 164-520, 164-522, 164-524, 164-526, 164-528; NC General Statutes 130A; 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 <mailto:HIPAA.DPH@ncmail.net>.