

Policy & Procedure

SUBJECT: HIPAA Privacy Complaints	POLICY NO.:	EFFECTIVE DATE: 06/21/2006	PAGE: 1 of 7
APPROVED BY: Executive Director	SUPERCEDES:	ORIGINAL ISSUE DATE:	RESPONSIBLE PARTIES: Privacy Officer Director of Operations

PURPOSE

- 1.1 To ensure that privacy complaints regarding the use or disclosure of Protected Health Information (PHI) are addressed and resolved effectively and promptly in accordance with the HIPAA Privacy Rule.

POLICY

- 2.1 It is Tri-City Mental Health Center's (TCMHC) policy to protect the privacy of PHI in compliance with applicable law, as well as TCMHC's policies and business practices. All complaints related to privacy will be investigated and resolved either internally or through the Privacy Officer.
- 2.2 It is TCMHC's policy to communicate (in accordance with this Policy) with individuals who report privacy-related complaints to both help ensure that such individuals understand TCMHC's privacy-related complaint process, and to periodically inform these individuals as to the status of the complaint through the investigation and resolution process.
- 2.3 It is TCMHC's goal that complaints will be internally resolved and closed within thirty (30) business days of the opening of the investigation by the assigned Privacy Officer investigating the complaint.
- 2.4 The objectives of the HIPAA Privacy Complaint Policy are to:
 - 2.4.1 Respond to the complainant's (or the complainant's personal representative's) concerns regarding use or disclosure of PHI in a timely, effective, sensitive and confidential manner.
 - 2.4.2 Provide a process to resolve the complaints regarding privacy of PHI in accordance with the HIPAA Privacy Rule.

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- 2.4.3 Provide a mechanism for monitoring, tracking and evaluating HIPAA privacy complaints.
- 2.5 Any person, regardless of whether TCMHC maintains their PHI, may file complaints regarding suspected violations of the HIPAA Privacy Rule by TCMHC. Complaints may be filed against members of the TCMHC workforce and members of TCMHC's Business Associates' workforce.
- 2.6 Members of the TCMHC workforce or Business Associates may file a complaint regarding a suspected violation of the HIPAA Privacy Rule by another member of the TCMHC workforce. *(See Paragraph 15. Disclosures by Whistleblowers.)*
- 2.7 Anonymous complaints will be permitted; however, insufficient detail may delay, hinder or prevent a full investigation.
- 2.8 The HIPAA Privacy Complaint Form *(Attachment A)* shall be made available to anyone who requests the form.
- 2.9 The complainant may exercise the right to have a representative intervene on his/her behalf and/or assist during the complaint processes.
- 2.10 The complainant may file a complaint with the Office of Civil Rights, U.S. Department of Health and Human Services, at any time before, during or after initiating the complaint process.
- 2.11 The complainant shall not be prevented from accessing the complaint process solely on the grounds of having filed the complaint form incorrectly. In circumstances in which the complaint form is incomplete, the Privacy Officer shall contact the complainant and assist in completing the HIPAA Privacy Complaint Form.
- 2.12 At any time during the complaint process, if a delay in response is experienced due to unexpected circumstances, the complainant shall be made aware of the nature of the delay. Reasons for the delay shall be documented on the HIPAA Privacy Complaint Status Log. *(Attachment B)*
- 2.13 Individuals may file complaints concerning:
- 2.13.1 Disagreement with TCMHC's privacy policies and procedures;
 - 2.13.2 Suspected violations in the use, disclosure or disposal of their PHI;

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- 2.13.3 Denials of access to their PHI;
- 2.13.4 Denials of amendments to their PHI; or
- 2.13.5 Retaliatory or intimidating actions.
- 2.14 **Disclosures by Whistleblowers.** TCMHC would not be considered to have violated privacy requirements if a member of its workforce or a business associate discloses PHI, provided that:
 - 2.15.1 The workforce member or business associate believes in good faith that TCMHC has not engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services or conditions provided by TCMHC potentially endangers one or more patients, workers, or the public; and
 - 2.15.2 The disclosure is to:
 - 2.15.2.1 A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of TCMHC, or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by TCMHC; or
 - 2.15.2.2 An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in this section.
- 2.15 TCMHC may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against its workforce, including whistleblowers and clients, for filing complaints.

PROCEDURE

- 3.1 All privacy complaints must abide by the following Complaint procedures:

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- 3.1.1 The complainant completes and submits the HIPAA Privacy Complaint Form to the Privacy Officer.
- 3.1.2 If the HIPAA Privacy Complaint Form is incomplete or completed incorrectly, the Privacy Officer shall notify the individual filing the complaint and assist in the completion of the complaint.
- 3.1.3 Upon receipt of a completed HIPAA Privacy Complaint Form, the Privacy Officer shall log the information into the HIPAA Privacy Complaint Tracking Log (*Attachment B*) and contact the complainant by telephone, or in writing if no phone number is available, within five (5) working days.
- 3.2 The Privacy Officer shall contact the Program Chief within one (1) working day to inform receipt of the complaint and the nature of the complaint.
- 3.3 The Privacy Officer shall assess the nature of the complaint, identify individual(s) named in the complaint, and identify with the complainant possible courses of action to resolve the problem.
- 3.4 The Privacy Officer shall maintain the HIPAA Privacy Complaint Tracking Form and any relevant documentation submitted or prepared during the investigative process.
- 3.5 The Privacy Officer shall attempt to investigate and resolve the complaint within thirty (30) business days of receipt of the complaint.
 - 3.5.1 If the complaint meets one of the categories of a valid HIPAA Privacy Complaint, the notification shall state that an investigation has been initiated and that the complainant will be contacted by the individual investigating the complaint within fifteen (15) business days.
 - 3.5.2 If the complaint does not meet one of the categories of a valid HIPAA Privacy Complaint, the complainant will be informed that their complaint falls outside the scope of HIPAA Privacy and the complaint will be processed through TCMHC's Complaint & Grievance process, or referred to the proper entity, as appropriate.
- 3.6 The Privacy Officer shall provide to the complainant and the TCMHC staff member or Covered Entity (CE) named in the complaint written notice of the determination via first-class mail. Copies of the determination letter will be sent to the immediate supervisor, the individual(s) named in the complaint (if applicable), and the Program Chief, as indicated.

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- 3.7 In the event that the Privacy Officer determines a violation has occurred which has resulted in a harmful effect to the individual, the Privacy Officer, in conjunction with the Human Resources Department, shall take steps to mitigate such harmful effect pursuant to the *Tri-City Mental Health Center Policy for Enforcement, Sanctions, Penalties and Mitigation for Violations of Individual Privacy Mitigation*.
- 3.8 If the complainant does not agree with the findings and actions presented in the determination letter, the Privacy Officer will escalate the complaint to the Chief Executive Director for second-level review. The Privacy Officer shall consult with the Program Chief for second-level review if the TCMHC staff member named in the complaint is a direct report.
- 3.9 The Privacy Officer will also contact the complainant to inform him or her of the escalation.
- 3.10 If the Chief Executive Officer requests a complainant's file for review, the Privacy Officer shall record the request on the log and forward the materials to the Chief Executive Director. The Chief Executive Director shall return complaint files, including all documentation, to the Privacy Officer upon closure of a complaint.
- 3.11 The Privacy Officer shall conduct any additional investigation deemed necessary or appropriate, in his/her discretion, and will also consult with Agency Counsel as needed.
- 3.12 The Chief Executive Officer shall coordinate with the Privacy Officer in the final resolution of the complaint and will ensure that the Privacy Officer is notified of all correspondence.
- 3.13 The Privacy Officer shall submit a quarterly report, that excludes any PHI, to the Chief Executive Director that summarizes:
- 3.13.1 Number of HIPAA Complaints received;
 - 3.13.2 Number of Valid Complaints;
 - 3.13.3 Number of Invalid Complaints;
 - 3.13.4 Average Resolution Time (Business Days); *and*
 - 3.13.5 Identification of any trends.

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ADMINISTRATIVE REVIEW OF ADVERSE DETERMINATIONS

- 4.1 In the event that the Privacy Officer determines that TCMHC's HIPAA policies and procedures have been violated, appropriate administrative review and action shall be initiated.
- 4.2 It shall be the responsibility of the immediate supervisor of the person(s) who have violated HIPAA procedures to take appropriate administrative action in accordance with all applicable personnel policies and procedures.
- 4.3 The immediate supervisor shall consult with the Program Chief of the facility, as appropriate. The immediate supervisor will also consult with the TCMHC HIPAA Privacy Officer and TCMHC executive team in the process of determining the proper administrative action.
- 4.4 The immediate supervisor shall provide a written report to the TCMHC HIPAA Privacy Officer regarding the action taken.

DOCUMENTATION RETENTION

- 5.1 The TCMHC HIPAA Privacy Officer shall be the custodian for TCMHC records related to personnel resolutions concerning HIPAA violations.
- 5.2 The Privacy Officer shall be the custodian for TCMHC records related to investigations of HIPAA complaints.
- 5.3 All documents created or completed under this policy and procedure will be retained for a period of at least six (6) years from the date of its creation, or the date when it was last in effect, whichever is later.

DEFINITIONS

- 6.1 **"Workforce"** means employees, volunteers, trainees and other persons whose conduct, in the performance of work, is under the direct control of TCMHC, whether or not they are paid by TCMHC.
- 6.2 **"Whistleblower Disclosure"** means a disclosure of PHI by a workforce member or business associate that meets the following requirements:

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- 6.2.1 A workforce member or business associate believes in good faith that TCMHC engaged in unlawful conduct or otherwise violated professional or clinical standards; *and*
- 6.2.2 The disclosure is to an agency responsible for overseeing health care programs, or to a public health authority, or to a health care accreditation organization, or to an attorney.
- 6.3 **“HIPAA Privacy Complaint Status Log”** is a computerized database that serves as a tracking and monitoring tool. (*See Attachment B*)

LEGAL/REGULATORY REFERENCES

- 7.1 HIPAA Privacy Rule, 45 CFR, Section 164.530(d)

ATTACHMENTS

- 8.1 HIPAA Privacy Complaint Form (*Attachment A*)
- 8.2 HIPAA Privacy Complaint Status Log (*Attachment B*)



HIPPA PRIVACY COMPLAINT STATUS TRACKING LOG

Month / Year of: _____

Log Number	<input type="text"/>	Date of Complaint <i>(oral or written)</i>	<input type="text"/>	Date Referred to Privacy Officer	<input type="text"/>	Problem Resolved to Beneficiary's Satisfaction	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Problem Solved Within 30 Calendar Days	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Complaint /Description of PHI Disclosed

Purpose of Disclosure

Action Taken

Log Number	<input type="text"/>	Date of Complaint <i>(oral or written)</i>	<input type="text"/>	Date Referred to Privacy Officer	<input type="text"/>	Problem Resolved to Beneficiary's Satisfaction	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Problem Solved Within 30 Calendar Days	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Complaint /Description of PHI disclosed

Purpose of Disclosure

Action Taken