

Policy #: DHHS-07-14

Issue Date: 9/10/14

I. SUBJECT

HIPAA Complaint Policy

II. POLICY STATEMENT

The Maine Department of Health and Human Services (“the Department”) receives and processes consumer complaints regarding Department practices and services. This complies with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which requires HIPAA-covered entities to have a process for accepting complaints about how the Department’s covered entities use and disclose a consumer’s Protected Health Information (PHI). Additionally, since the Department is a hybrid entity, and not all of its confidential information is HIPAA-covered, the Department will also adhere to Maine law regarding confidential or protected information (“PI”), and follow up on non-HIPAA-related privacy and security complaints or alleged violations of PI pursuant to this policy.

If the Director of Constituent Services receives a privacy or security complaint, the concern shall be logged and then forwarded to the appropriate office Privacy/Security Liaison or the Director of Healthcare Privacy for resolution.

III. RATIONALE

The purpose of this policy is to describe the procedure for receiving, documenting, and taking appropriate action on complaints from patients at the Department about the uses and disclosures of their PHI. While this policy required under HIPAA and applies to our HIPAA covered entities, including our hospitals, the Office of MaineCare Services, and our other HIPAA covered programs, the process of addressing complaints by consumers regarding the use of confidential information applies to the entire Department.

IV. PROCEDURE STATEMENT

A. Complaint Process

A consumer has the right to submit a complaint in writing about the use or disclosure of his/her PHI either to the Department, to the Division of Licensing and Regulatory Services, and/or to the Secretary of the United States Department of Health and Human Services (HHS) Office for Civil Rights (OCR). All workforce members who become aware of, or are informed of, a privacy or security issue, question or complaint should contact the Director of Healthcare Privacy or the Privacy/Security Liaison for their office or program.

1. If the consumer chooses to file a formal complaint regarding the alleged misuse of PHI by the Department, s/he may submit to the Privacy/Security Liaison of the office or program where s/he received services. Alternatively, the consumer may contact DLRS via phone or email.
2. If the consumer asks to file a complaint regarding PHI with the Secretary of HHS, s/he should be directed to the Office for Civil Rights website (<http://www.hhs.gov/ocr/privacy/psa/complaint/index.html>.) Again, the consumer should be encouraged to contact the appropriate Privacy/Security Liaison or the Director of Healthcare Privacy first to address his or her concern.

B. Responsibilities of the Privacy/Security Liaison upon receipt of a patient complaint

1. **Documentation:** The recipient of the complaint (Privacy/Security Liaison or Director of Healthcare Privacy,) will document each privacy complaint received, including a brief description of the complaint, along with complete contact information of the complainant.
2. **Investigation:** The Privacy/Security Liaison, together with the Director of Healthcare Privacy, will conduct an investigation to determine, among other things:
 - a. Whether any PHI or PI was used, accessed or improperly disclosed;
 - b. If so, whether the use, access or improper disclosure violates the Department's policies and procedures or any legal requirements;
 - c. Whether any of the Department's privacy practices or policies require modification; and/or
 - d. Whether additional training is required to avoid a repeat violation.

3. **Resolution**

- a. After the Director of Healthcare Privacy develops a report on the issue, the Commissioner, General Counsel, and others, at the Commissioner's request, will meet to determine whether a breach has occurred and what steps will be taken, including whether the matter should be referred to Human Resources for review of employee actions and possible disciplinary sanctions.
 - b. The investigative report will be supplemented to include any actions taken in response to the complaint.
 - c. All documentation relating to a patient's complaint will be maintained for a minimum of six (6) years.
 - d. If the PHI or PI related to the complaint was created or maintained by a Department business associate, the Privacy/Security Liaison, the Director of Healthcare Privacy, and the General Counsel will work collaboratively to notify the business associate of the concern, the results of the investigation and any required action on the part of the business associate.
4. **Notification:** The Privacy/Security Liaison will notify the consumer submitting the complaint of the results of the investigation.
5. **Non-retaliation for filing a complaint:** The Department will not intimidate, threaten, coerce, discriminate, penalize, or take other retaliatory action against a consumer who exercises his/her privacy rights under HIPAA.
6. **No waiver:** No consumer will be asked to waive his/her HIPAA rights, including the right to file a complaint about the use or disclosure of his/her PHI.
7. **Questions:** Questions about filing a complaint with the Department or the Secretary of HHS/OCR should be directed to the appropriate office Privacy/Security Liaison or the Director of Healthcare Privacy.

V. **DISTRIBUTION**

All Staff via e-mail and posting on the DHHS Intranet.

September 10, 2014

Date



Mary C. Mayhew
Commissioner