PURPOSE

DCH is required by the HIPAA Privacy Rule to develop and communicate to individuals a process for making complaints about DCH’s privacy practices or perceived violations of the Privacy Rule standards and implementation specifications. The procedures describe how to file a complaint either directly to DCH or to the Secretary of the U.S. Department of Health and Human Services (HHS).

PROCEDURE:

Individuals have the right to make complaints concerning:
- DCH’s privacy policies and procedures,
- DCH’s compliance with its privacy policies and procedures, or
- DCH’s compliance with the requirements of the HIPAA Privacy Rule.

Designated staff contacts will be responsible for receiving complaints regarding DCH privacy practices. The contacts and their telephone numbers are published in the DCH Notice of Privacy Practices, which is provided to each member of DCH health plans and is posted on the DCH web site under Privacy. DCH will document any complaints and their disposition, if any, and retain these records for six years. DCH will not threaten, intimidate or retaliate against any individual who files a complaint. DCH will document complaints and their disposition, if any, and retain the records for six (6) years.

1. The designated staff contacts will obtain as much of the following information as may be known and available from the member related to the complaint:
- Member name, member’s health plan identification number and date-of-birth
- Current member address and phone number
- Date(s) of Incident(s)
- Name of person or entity that is believed to violated the privacy policies or procedures, laws, or individual rights
- What is believed to have happened and when
- To whom the member’s protected health information was believed to have been disclosed improperly and how
• What harmful affects, if any, were related to the violation
• What steps, if any, are requested to limit any further harm
• Comments, details or descriptions of the incident(s) provided by the member and pertinent for resolution of the complaint

2. For complaints received by facsimile, email or written correspondence, staff will attempt to contact the member or personal representative by phone to obtain the information listed above. In the event that the member cannot be reached by telephone, staff will request the information in writing from the member.

3. Receipt of the complaint and other relevant information will be documented and retained in accordance with the Documentation policy and procedures.

4. Privacy complaints will be forwarded to the DCH Privacy Officer, who will determine what response may be appropriate and will assure that the complaints are documented, in accordance with the HIPAA Privacy Rule.

5. Where it is determined that some investigation is appropriate, the DCH Privacy Officer will either investigate directly or oversee the investigation of the complaint.

6. Following an investigation, the DCH Privacy Officer will respond to the member or their personal representative as to the resolution of the complaint in writing as soon as practicable.

7. Appropriate sanctions will be recommended by the DCH Privacy Officer to the supervisor of any member of the DCH workforce who fails to comply with DCH privacy policies and procedures or the requirements of the HIPAA Privacy Rule. This provision for sanctions does not apply to a member of the DCH workforce with respect to actions that:

   • are covered by and that meet the conditions as whistleblowers or workforce crime victims,
   • who are filing a complaint with the Secretary of HHS about compliance and enforcement under HIPAA privacy provisions,
   • who are testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under HIPAA, or
   • who are opposing any act or practice made unlawful by the HIPAA Privacy Rule, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of the Rule.

8. DCH will mitigate, to the extent practicable, any harmful affect that is known to it of a use or disclosure of protected health information in violation of its policies.
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and procedures or the requirements of the Privacy Rule by DCH or its business associates.

Among other subjects of complaints are the denial of access by an individual to her or his protected health information and the denial of a request to amend such information. For those subjects, among others, specific notices will be provided to the individuals, as follows:

Denial of Access
If DCH denies an individual access to his/her protected health information, the notice of denial will describe how the individual may complain to the Secretary and DCH. The description will include the name or title and telephone number of the appropriate person or work unit to which complaints may be made.

Denial of Amendment
If DCH denies an individual’s request to amend a medical record, the notice of denial will explain how the individual may complain to DCH or to the Secretary of HHS. The description will include the work unit or title and telephone number of the designated staff to whom the complaint may be made.

In the event DCH is investigated by HHS, the following procedures will apply:

Facilitating Investigations Arising From a Complaint
If DCH is investigated as a result of a complaint to the Secretary, DCH must permit access to information during normal business hours (or at anytime and without notice, if the Secretary determines that the circumstances warrant). Additionally, business associates of DCH are also required, pursuant to business associate agreements, to make information available to the Secretary for such investigations.

Complaints filed by individuals directly with the Secretary must be made in writing, must name the entity against whom the complaint is lodged, must describe the acts or omissions and must be filed within 180 days of the time the individual became aware or should have been aware of the violation. However, the Secretary may waive timing requirements, if appropriate. Complaints may include violations of DCH privacy practices and not just violations of the HIPAA Privacy Rule itself. DCH must receive and document complaints to the Secretary of HHS, but no response is required.

LEGAL AUTHORITY:

45 CFR §160.310 Responsibilities of Covered Entities: Provide records and compliance reports; cooperate with complaint investigations and compliance reviews
45 CFR §160.306 Complaints to the Secretary.
45 CFR §160.312 Secretarial action regarding complaints and compliance reviews
REPORTING VIOLATIONS:

Violations of these procedures should be reported to the DCH Privacy Officer.

SANCTIONS:

DCH will apply appropriate sanctions against members of its workforce who fail to comply with the DCH privacy policies and procedures or with the requirements of the regulations. Sanctions taken by HHS in enforcement against DCH are a separate matter.

For additional information, see the DCH Sanctions policy and procedures.