

 <p>GEORGIA DEPARTMENT OF COMMUNITY HEALTH</p>	<p><b>Policy Number: 911</b></p> <p><b>Effective Date: April 14, 2003</b></p> <p><b>Revision Date:</b></p>
<p><b>Privacy Policy</b></p>	<p><b>Sanctions</b></p>
<p><b>Originating Department:</b> Privacy Office</p>	<p><b>Category:</b> Legal Compliance / Human Resources</p>

**SCOPE:**

This policy applies to all DCH employees, agents and contractors that perform duties in conjunction with the access, distribution, dissemination, modification, and management of protected health information.

**POLICY:**

It is DCH's policy to ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule by establishing sanctions for breaches of confidentiality. All employees are required to be aware of their responsibilities under DCH privacy policies.

Supervisors are responsible for assuring that employees who have access to confidential information, whether it be electronic, hard copy, or orally, are informed of their responsibilities.

DCH employees who violate DCH policies and procedures regarding the safeguarding of an individual's information are subject to disciplinary action, up to and including dismissal from employment.

DCH employees who knowingly and willfully violate state or federal law for improper use or disclosure of an individual's information are subject to civil monetary penalties, as well as possible criminal investigation and prosecution.

Sanctions under this policy do not apply to a member of the DCH workforce with respect to actions that constitute disclosures by whistle blowers or victims of crime or disclosures in pursuit of HIPAA enforcement, as set out in the attached procedures.

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### **REPORTING VIOLATIONS:**

Violation of this policy or any other DCH Privacy Policy is to be communicated to the DCH Privacy Officer.

### **LEGAL AUTHORITY:**

**45 C.F.R. §164.502(j)(1)** – Disclosures by Whistleblowers

**45 C.F.R. §164.502(j)(2)** – Disclosures by Workforce Members who are Crime Victims

**45 C.F.R. §164.530(e)(1)** – Administrative Requirements. Standard: Sanctions

**45 C.F.R. §164.530(e)(2)** – Implementation Specifications: Documentation

**45 C.F.R. §164.530(g)** – Standard: Refraining from Intimidating or Retaliatory Acts

**45 C.F.R. §164.530(j)** – Standard: Documentation

**Final Privacy Rule, 65 Federal Register 82461, 82802 (December 28, 2000):**

**Preamble**, pg. 82501 – 82502 and 82636 – Disclosures by Whistleblowers and Crime Victims

**Preamble**, pg. 82562 and 82747 - Sanctions

### **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.

Sanctions will be appropriate to the nature of the violation. For example, the type of sanction will vary depending on factors such as the severity of the violation, whether the violation was intentional or unintentional, and whether the violation indicated a pattern of improper use or disclosure of protected health information. Sanctions could range from warning to termination of employment with DCH.

Training for employees will be provided and expectations will be clear so individuals are not sanctioned for doing things that they did not know were inappropriate or wrong.

DCH will not impose sanctions for disclosures by whistleblowers or workforce member crime victims, where a disclosure is provided for by the privacy standards. In addition, complaints and cooperation in investigations under the privacy standards are not subject to sanctions.

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<p><b>Privacy Procedures</b></p>	<p><b>Sanctions</b></p>
<p><b>Originating Department: Privacy Office</b></p>	<p><b>Category: Legal Compliance / Human Resources</b></p>

## **PURPOSE**

The HIPAA Privacy Rule requires sanctions against members of DCH's workforce who do not comply with its privacy policies and procedures. DCH will publish its sanction policies so that employees are aware of consequences for violations of privacy policies.

## **PROCEDURE:**

The procedure provides for sanctions for breaches of confidentiality, violations of the Privacy Rule and violations of DCH's privacy policies and procedures. DCH will apply appropriate sanctions against members of its workforce who fail to comply with DCH privacy policies and procedures or with legal requirements relating to the privacy of individually identifiable health information.

Sanctions will be appropriate to the nature of the violation. The workforce sanctions will be comparable to the Georgia Merit System principle of discipline without punishment, as practicable. For example, the type of sanction will vary depending on factors such as the severity of the violation, whether the violation was intentional or unintentional, and whether the violation indicated a pattern of improper use or disclosure of protected health information. Sanctions could range from warning and retraining, to reassignment, suspension without pay, demotion or other adverse action, up to and including termination from employment with DCH. Appropriate notice and opportunity to respond will be provided to the employee whose conduct is to be sanctioned.

Where a DCH employee has violated DCH privacy policy or procedures, or violation of the HIPAA Privacy Rule, the violation will be reported to the DCH Privacy Officer and to the employee's supervisor. The Privacy Officer will make a recommendation to the supervisor about appropriate sanction, if any, and will confer with the supervisor to determine appropriate action. Among other considerations, the supervisor and the Privacy Officer will weigh the responsibility for training and management of the employee's job performance and the severity of the incident. Not every violation will be identical and not every sanction will be identical; however, to the extent reasonable, consistency and evenhanded application of sanctions will govern.

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### Exceptions:

DCH may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against individuals and others who:

- File a complaint with the secretary of HHS under subpart C of part 160;
- Testify, assist, or participate in an investigation, compliance review, proceeding, or hearing under Part C of Title XI of HIPAA; or
- Oppose any act or practice made unlawful by the Privacy Rule, provided the individual or person has a good faith belief that the practice is unlawful, and the manner of the opposition is reasonable and does not involve disclosure of protected health information in violation of the Privacy Rule.

Sanctions do not apply to **whistleblowers**, provided that:

- a. The workforce member or business associate believes in good faith that DCH has engaged in conduct that is unlawful or otherwise violates applicable professional, ethical or clinical standards
- b. The services, or practices provided by DCH potentially endangers one or more individuals, workers, or the public.
- c. Disclosure must be to:
  1. An appropriate oversight agency or public health authority,
  2. An appropriate healthcare accreditation organization, or
  3. An attorney for the purposes of determining the legal options with regard to the conduct of the workforce member or business associate

Sanctions do not apply to workforce members who are victims of a criminal act who disclose PHI to a law enforcement official. The PHI must be about a suspected perpetrator of the criminal act and is limited to the following information:

- a. Name and address
- b. Date and place of birth
- c. Social Security Number
- d. ABO blood type and Rh factor
- e. Type of injury
- f. Date and time of treatment
- g. Date and time of death, if applicable
- h. Description of distinguishing physical characteristics

**REPORTING VIOLATIONS:** Violations of DCH privacy policy and procedure and violations of the Privacy Rule should be reported to the DCH Privacy Officer.