

## Policy Statement

**TITLE:** Data Practices and Records Management Handbook      **CODE:** 1301

**PURPOSE:** To delineate the Department's policies and procedures regarding the management of data.

**REFERENCE:** MS 13 Data Practices Act  
MS 15.17 Official Records Act  
MS 138.17 Records Management Statute  
MS 325L.12 and 325L.17 Uniform Electronic Transaction Act  
MCAR 1205.1500 et seq

**PERSONNEL RESPONSIBLE:** All Employees

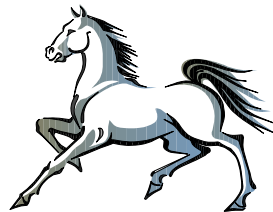
**EFFECTIVE:** 1-1-02

**POLICY:** See attached document.

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**DATE:** 11-30-01

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**DATE:** 12-26-01

**Data Practices  
and  
Records Management  
Handbook**



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## **700 Health Insurance Portability and Accountability Act (HIPAA)**

### **710 Appointment And Duties Of Data Privacy Officer**

The Human Services Director is the designated Privacy Officer for HIPAA purposes. This person is responsible for the development and implementation of the policies and procedures required by HIPAA Standards for Privacy of Individually Identifiable Health Information (IIHI), hereafter referred to as the "privacy regulation." The Privacy Officer also serves as the person to receive complaints and who should provide further information about matters covered by the privacy notice. The Privacy Officer needs to be familiar with the privacy regulation. Delegation of some of these duties may be given to the Financial Assistance Supervisor and the Social Service Supervisor of the Department.

### **720 Minimum Necessary Policies**

The Department will make reasonable efforts to limit the use and disclosure of IIHI to a minimum. Release will be to accomplish the intended purpose of the use or disclosure. In general, release policies do not apply in the following circumstances:

- Disclosures for treatment.
- Use or disclosures made to the individual subject of the data.
- Disclosures made to DHS, Office of Civil Rights.
- Use or disclosure as required by law or court order.
- Use or disclosure required for compliance with the privacy regulation.

**721 Uses** - For appropriate uses, the Department will provide access to IIHI only to those employees on a "need to know" basis. Employees will only be given information that the employee needs to have in order to accomplish a given function and only for proper administration of an appropriate health-related program and HIPAA.

**722 Routine Disclosures** - For appropriate uses, the Department will limit the amount of IIHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure on a case-by-case basis.

**723 Non-routine Disclosures** - For appropriate uses, the Department will release non-routine IIHI when it is determined that the request constitutes a valid request and IIHI to be disclosed will be limited to the amount reasonably necessary to accomplish the purpose of the disclosure.

**724 Limit Request to Minimum Necessary** - The Department will limit its requests for disclosure of IIHI to the amount necessary to accomplish the purpose for which the request is made.

**725 Ability to Rely On Request For Minimum Necessary** - The Department may rely on a reasonable request as the minimum necessary for the stated purpose(s) when:

- The disclosure is to a public official as allowed in the social responsibility

reporting found in section 45 CFR 164.512.

- The information is requested by another covered entity.
- The information is requested by an employee or business associate of the Department.
- The disclosure is for research purposes and the HIPAA Privacy Board has documented a waiver approval as required by 45 CFR 164.512 (1).

### **730 Access To Designated Record Set**

**731 Individual Rights** - Individuals have a right to access any protected health information that is used to make decisions about the individual subject of the data, including information used to make health care decisions or information used to determine whether a claim will be paid. The individual has a right to access their "designated record set." The right of access also applies to health care clearinghouses, health care providers that create or receive protected I I HI other than as a business associate of the Department.

**732 Designated Record Set** - For the Department's purposes, the following is defined as a "designated record set."

- A group of records maintained by the Department that is: a) the medical records and billing records about individuals; b) the enrollment, payment, claims adjudication, and case management record systems maintained by the Department; c) used, in whole or in part, by or for the Department to make decisions about individuals.
- The term "record" means any item, collection, or grouping of information that includes protected I I HI data and is maintained, collected, used or disseminated by the Department.

**733 Access Limitation Exceptions** - The Department will permit any individual to request access to inspect or copy the designated record set for as long as it is maintained by the Department, with the following exceptions:

- Psychotherapy notes.
- Information compiled in reasonable anticipation of a civil, criminal or administrative action or proceeding.
- Information held by clinical laboratories if access is prohibited by the Clinical Laboratory Improvements Amendment of 1988 (42 USC 263a).
- Any data determined by Minnesota State Law to be determined to be "confidential."

**734 Written Request Required** - The Department will require that any individual requesting access to put that request in writing. This is in conformity with the Department's basic data practices protocol. A **Request For Disclosure Of Information** document should be completed.

**735 Receiving and Processing Requests** - Requests for access to IHHI will be handled by the Director, Swift County Human Services, 410-21st Street South, Benson, MN 56215. Written requests may be also directed via fax at 320-843-4582 to the attention of the Director. The Director will maintain a **Master Data Practices Request Log** indicating requests for IHHI data.

**736 Providing Access** - If the Department provides access to IHHI, it will act on the request within 30 calendar days. One 30-day extension will be allowed. The Department will charge a reasonable, cost-based fee that will only include the cost of copying, postage and preparation of an agreed-upon summary or explanation of the IHHI. Charges will be limited, where applicable, by M.S. 144.335, subd. 5 and 13.03 subd. 3. No fees can be charged to recipients of public assistance.

**737 Denying Access** - If the Department denies access to IHHI, the Department will provide a timely, written denial that states the basis for the denial and the procedures for making a complaint to the Director. The individual has a right to a review of the denial of access by a Department-designated licensed health professional who did not participate in the original decision to deny access. Reviewable reasons for denial include but are not limited to the following:

- A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.
- The protected IHHI makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person.
- The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

**738 Access To Management Information System Data** - Some information maintained by the Department is not used to make health care decisions such as management information systems that are used for quality control or peer review analysis. In accordance with the privacy regulations, the Department is not required to grant an individual access to protected IHHI maintained in these types of information systems.

#### **740 Accounting of Disclosures**

The Department will provide, upon request, a 6-year accounting of disclosures made of the individual's IHHI, except for disclosures:

- To carry out treatment, payment or health care operations.
- To the individual data subject.
- To facility directories or to person's involved in the individual's care or other

- notification purposes (45 CFR 164.510 (b)).
- For national security or intelligence purposes.
- To corrections officials or law enforcement personnel when the individual is in custody (45 CFR 164.512 (k)(5)).
- Which were made before the compliance date.

In certain circumstances involving health oversight agencies or law enforcement agencies, the Department may temporarily suspend the individual's right to receive an accounting of disclosures.

### **750 Amendment Requests**

The Department will permit an individual to request that the Department amend I I H I . The Department will require that the request be in writing and that a reason be stated for the amendment. The Department will so inform any individual of this expectation. All requests to amend I I H I data should be sent to the Director, Swift County Human Services, 410-21st Street South, Benson, Minnesota 56215. The Department will have up to 60 calendar days to act on the request. One 30 day extension is allowed. The subject of the data's written request will become a part of any case file maintained on the subject. The document will be retained in accordance with the County's General Record Retention Schedule.

**751 Accepting An Amendment** - If the Department decides to accept an amendment, the Department will:

- Make the appropriate amendment to the protected I I H I or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
- Timely informing the individual that the amendment is accepted. The Department will obtain agreement from the individual to allow the Department to share the amendment with individuals or entities identified by the individual and the Department.
- Make reasonable efforts to inform and provide the amendment within a reasonable time to: a) persons identified by the individual as having received protected I I H I about the individual and needing the amendment; and b) persons, including business associates, that the Department knows have the protected I I H I that is the subject of the amendment and that may have relied, or could foreseeable rely, on such information to the detriment of the individual.

**752 Denying An Amendment** - If the Department denies all or a part of the requested amendment, the Department will:

- Provide the individual with a timely, written denial. The denial will use plain language and contain: a) the basis for the denial; b) the individual's right to submit a written statement disagreeing with the denial and how the individual

may file such a statement; c) a statement that, if the individual does not submit a statement of disagreement, the individual may request that the Department provide the individual's request for amendment and the denial with any future disclosures of the protected I I H I that is the subject of the amendment; and d) a description of how the individual may complain to the Department or to DHS, Office for Civil Rights.

- Permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such agreement.
- Prepare a written rebuttal to the individual's statement of disagreement.
- Identify the record or protected I I H I in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the Department's denial of the request, the individual's statement of disagreement, if any, and the Department's rebuttal, if any, to the designated record set.
- If the individual has submitted a statement of disagreement, the Department must include the material appended, or an accurate summary of any such information, with any subsequent disclosure of the protected I I H I to which the disagreement relates.

**753 Actions On Notice Of An Amendment** - If the Department is informed by another covered entity of an amendment to an individual's I I H I , the Department will amend the protected I I H I in designated record sets. Amendments will be made in a reasonable time period, as expeditiously as possible.

**754 Documentation** - All requests to amend I I H I data should be sent to the Director, Swift County Human Services, 410-21st Street South, Benson, Minnesota 56215. All requests to amend documentation will be retained in accordance with the County's approved **General Records Retention Schedule**.

## **760 Business Associate Relationships and Amending Business Associate Contracts or Agreements**

A "business associate" is a person or entity who is not a member of the Department workforce and who performs a function for the Department which requires it to use, disclose, create or receive I I H I . The Department may disclose I I H I to another entity if it receives satisfactory assurances, provided in a written contract, that the business associate will appropriately safeguard the I I H I . If the Department and business associate are both governmental entities, a memorandum of agreement will provide satisfactory assurances.

The requirement for business associates does not apply to:

- Disclosures made to a provider for treatment.
- Disclosures made to a health plan sponsor.
- Use or disclosures by a health plan that is a government program providing public benefits, if eligibility for, or enrollment in, the health plan is determined

by an agency other than the agency administering the health plan, or if the protected I I H I used to determine enrollment or eligibility in the health plan is collected by an agency other than the agency administering the health plan, and such activity is authorized by law, with respect to the collection and sharing of I I H I for the performance of such functions by the health plan and the agency other than the agency administering the health plan.

**761 Obtaining Satisfactory Assurances In Contracts** - The contract or other written arrangement will provide satisfactory assurances to the Department that the business associate will comply with HIPAA requirements necessary to protect the protected I I H I shared by the Department. The contract or other written arrangement will establish permitted and required uses and disclosures and will also require the business associate to:

- Appropriately safeguard the I I H I .
- Report any misuse of I I H I .
- Secure satisfactory assurances from any subcontractor.
- Grant individuals access and ability to amend their I I H I .
- Make available an accounting of disclosures.
- Release applicable records to the Department or Department of Human Services if requested.
- Upon termination, return or destroy all I I H I .

**762 Documenting Sanctions For Non-Compliance** - The contract or other written arrangement will authorize termination if the business associate violates its terms. If the Department knows of a pattern of non-compliance with HIPAA by the business associates, the Department realizes it will be found to be non-compliant unless the Department took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful:

- Terminated the contract or arrangement, if feasible; or
- If termination is not feasible, reported the problem to the Department of Human Services.

## **770 Verification Policies**

Before disclosing I I H I , the Department will verify the identity of the person requesting the I I H I and the authority of that person to have access. The Department may rely on written statements, if such reliance is reasonable. For public officials, the Department may rely on an identification badge or a letter written on government letterhead. The Department will treat a personal representative as the individual for purposes of the privacy regulations:

- A personal representative is someone who has, under applicable law, the authority to act on behalf of an individual in making decisions related to health care.
- The Department will abide by special provisions for unemancipated minors, deceased individuals, and abuse-neglect and endangerment situations.

## **780 Alternative Means of Communication Request**

The Department will accommodate all reasonable requests from individuals to receive communication of protected I I HI by alternative means or at an alternative location, provided the individual clearly states that disclosure of all or part of that information could endanger the individual.

## **790 Miscellaneous**

**791 Restricted Use Request** -The Department will allow an individual to request that the Department restricts its use and disclosure of I I HI for treatment, payment or health care operations. The Department is not required to agree to the restriction. However, if the Department agrees to the restriction, it will not violate that agreement, except for emergency treatment.

**792 Limit Use Disclosures To Those Authorized By the Client** - I I HI will be provided to the individual and to the Office of Civil Rights. Disclosure of I I HI will be allowed under the following circumstances: 1) if the client has authorized a use or disclosure; 2) if the disclosure is for health care operations, payment or treatment and the client has signed a consent form for the provider, or a consent form is not required; 3) if the client has agreed to the disclosure for a facility directory or to an individual necessary for the care of the individual; or 4) if the disclosure is one of the social responsibility disclosures and all conditions for such disclosure are met. Social responsibility disclosures include: a) uses and disclosures required by law; b) use and disclosures for public health activities; c) disclosures about victims of abuse, neglect or domestic violence; d) uses and disclosures for health oversight activities; e) disclosures for judicial and administrative hearings; f) disclosures for law enforcement purposes; g) uses and disclosures about decedents; h) uses and disclosures for cadaveric organ, eye or tissue donation purposes; i) uses and disclosures for research purposes; j) uses and disclosures to avert a serious threat to health or safety; k) uses and disclosures for specialized government functions; and l) disclosures for workers' compensation.

**793 Complaints Policy** - The Department will provide a process for individuals to make complaints to the Department concerning its HIPAA privacy regulations policies and procedures, its compliance with those policies or procedures or its compliance with the privacy regulations itself. The notice provided to individuals will include a brief description of how individuals may file a complaint, including the title, phone number and address to contact for further information on the policies for filing a complaint. For purposes of satisfying this component, the Department will use its current **Complaint Intake Log**. The Department will document all complaints received and their disposition. At least annually, the Swift County Community Social Service Board will be informed of all complaints and their disposition.

**794 Anti-Retaliation Policy** - The Department will not retaliate against any person for exercising a right under the HIPAA privacy regulations, or for filing a complaint,

participating in an investigation, or opposing any lawful act relation to the privacy regulations.

**795 Appropriate Administrative, Technical And Physical Safeguards** - The Department will reasonably safeguard protected I IHI from any intentional or unintentional use or disclosure that is in violation of the HIPAA privacy standards. Records stored in the Department will be kept secure at all times. Employees who are handling I IHI information during the course of the day will protect the privacy of the material. This will be done by putting working documents away at the end of the day, the fax machine will be in a secure area and information about clients will not be left sitting in the fax machine, staff will not e-mail I IHI data unless it is over a secure, encrypted line, and the like. On an annual basis, all Department employees will receive training on proper data practices procedures.

**796 Training** - The Department will train all members of its workforce in the policies and procedures adopted by the Department necessary to comply with the HIPAA privacy regulations. Department staff will receive initial training at the time of implementation of the privacy regulations. Additional training will be provided to each new member of the Department's work force at the time of hire, and each member of the workforce whose functions are affected by a material change in the required policies or procedures. The Department will apply appropriate disciplinary sanctions to employees who fail to comply with the Department's privacy policies or procedures or who fail to comply with the HIPAA privacy regulations. Such disciplinary actions shall be consistent with the progressive discipline policy of the Department's **Labor Agreement**.

**797 Dissemination of HIPAA Policies and Procedures** - The Department will place a copy of its HIPAA Policies and Procedures for public consumption on its main public bulletin board.