

Notification of Privacy Rights and Grievance Procedures

APPLICATION: Directors, Officers, Full-time and part-time classified, "at will", hourly employees, student interns, and volunteers

Background

The Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) requires that service providers create and implement policies and procedures to ensure that prior to the beginning of treatment, Clients are made aware of their privacy rights, the limitations of those rights, the service provider's legal obligations to protecting and disclosing protected health information, and their rights to file a grievance if they feel their privacy rights are violated.

Policy

It is the policy of The Children's Home Society of New Jersey that prior to engaging in any program service all Clients will receive, in writing, a notice of CHSofNJ's HIPAA privacy practices, a statement of the Client's Rights and Responsibilities in taking part in program services, and an opportunity to consent to engage in program services. Each of these notices will contain information as to how the Client can file a grievance if they feel that their rights as outlined in these documents have been violated. Each of these documents will be reviewed with the Client by the Direct Service Staff to best ensure that the Client understands his or her privacy protections, the limits of these protections, and his or her rights and responsibilities in engaging in program services. Should the Client decline to sign any of these statements, he or she cannot be offered program services. The Children's Home Society of New Jersey will post both its HIPAA Notice of Privacy Practices and Notice of Client's Rights and Responsibilities forms on its website and in its facilities where Clients receive services.

Definition

This procedure makes a distinction between a *Person Referred* and a *Client*. These terms refer to the same person but at different stages in the service delivery process. The following are the definitions of these terms:

Person Referred – A person who has been referred for services but who has not acknowledged their rights and responsibilities in taking part in the services, indicated an understanding of their privacy rights under HIPAA, nor consented take part in the services of the program.

Client – A person who has not only been referred for services, but who has also acknowledged their rights and responsibilities in taking part in the services, indicated an understanding of their privacy rights under HIPAA, and consented to take part in the services of the program.

Procedures

Notices Provided to Persons Referred Before They Become Clients

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On or before the first face-to-face meeting with the Person Referred for the purposes of providing services, including completing a program intake assessment, the Direct Service Staff will review with the Person Referred the “HIPAA Notice of Privacy Practices” and “Notice of Client’s Rights and Responsibilities” forms. The Direct Service Staff will also explain the overall purpose of the program, the general objectives that the program is intended to achieve, and the methods used by the program.

After making all reasonable efforts to ensure that the Person Referred understands all content of the HIPAA notice of Privacy Practices and Notice of Client’s Rights and Responsibilities, and has made reasonable efforts to explain the purpose, objectives, and methods of the program, the Direct Service Staff will ask the Person Referred to sign the following statements:

1. Acknowledgment of Receipt - Notice of Privacy Practices
2. Acknowledgment of Receipt - Notice of Client’s Rights and Responsibilities
3. Statement of Consent for Services

All three of these statements must be signed before the Person Referred can be treated as a Client allowing his or her services to begin. If the Person Referred declines to sign any of the three statements listed above, services cannot be provided.

Grievance Procedures Not Related to Privacy Rights

Grievance procedures not related to privacy rights shall be made in accordance with the CHSofNJ policy on Client complaint procedures.

Grievance Procedures Related to Privacy Rights

Determining if a Breach Occurred

As described in the HIPAA Notice of Privacy Practices, a Client who believe that his or her privacy rights have been violated should contact the CHSofNJ HIPAA Privacy Officer (who is the Chief Program Officer). This contact need not be in writing. If the Client makes this complaint to a member of the CHSofNJ staff other than the HIPAA Privacy Officer, that staff member must contact the HIPAA Privacy Officer on the same day that he or she receives the information and not attempt to handle this complaint within the program. Should the HIPAA Privacy Officer be unavailable, the complaint will be reported to one of the following people in this order of attempt:

1. The Director of Quality Assurance and Professional Development
2. The Vice President of CHSofNJ
3. The President and Chief Executive Officer of CHSofNJ

At the first possible opportunity after receiving a complaint, the HIPPA Privacy Officer will meet with the Client and will ascertain the following:

1. The circumstances that lead the Client to believe that his or her privacy rights have been violated

2. The nature of the Client's protected health information that was allegedly provided in violation of privacy practices
3. The name of the person or people who received the Client's protected health information allegedly in violation of privacy practices
4. The Client's perception of current and future harm that has or could occur as a result of the alleged violation of privacy practices

The HIPAA Privacy Officer will also research the Client's allegation by reviewing the Client's record, interviewing all CHSofNJ Staff associated with the Client's care, and speaking with any other person or persons identified by the Client as being associated with the alleged violation of privacy rights, both within CHSofNJ and external to it. Based on this information, the HIPAA Privacy Officer will determine if the Client's protected health information was managed as per CHSofNJ's policy "Use and Disclosure of Protected Health Information" or constituted a breach as per § 164.402 of HIPAA and CHSofNJ's policy "Privacy Breach Notification Policy." From the date that the initial complaint was filed by the Client to the date that HIPAA Privacy Officer notifies the Client in writing of the result of the investigation cannot exceed 60 days.

Managing Complaint if a Violation or Breach Did Not Occur

If it is determined that the Client's protected health information was handled as required by CHSofNJ's Use and Disclosure of Protected Health Information policy and did not constitute a breach under § 164.402 of HIPAA, the HIPPA Privacy Officer will provide a written explanation to the Client detailing why the circumstances that he or she described does not constitute a violation of his or her privacy rights or a breach of his or her protected health information. Should the Client not be satisfied with this explanation, he or she can file a grievance with the President and Chief Executive Officer who must meet with the Client, review all work done by the HIPAA Privacy Officer, complete his or her investigation, and provide the Client a written explanation of his or her findings within 30 days of the Client's grievance. If the Client is not satisfied with the results of his or her grievance with the Chief Executive Officer, he or she will be given instructions as to how to file a complaint through the Federal Department of Health and Human Services, Office of Civil Rights.

Managing Complaint if a Violation or Breach Did Occur

If it is determined that the Client's protected health information was handled in such a way that its use and/or disclosure violated CHSofNJ's Use and Disclosure of Protected Health Information policy, and/or did constitute a breach under § 164.402 of HIPAA, the HIPPA Privacy Officer will provide a written explanation to the Client detailing the nature of the privacy violation and/or breach. The HIPAA Privacy Officer will also take the following actions:

1. File a Critical Incident Report with the Quality Assurance Department documenting privacy violation or breach

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2. Work with the Client help him or her take action to reduce the possibility of further harm that could reasonably be caused by the privacy violation or breach
3. If any of these actions require a financial cost to the Client, CHSofNJ will pay for any reasonable costs to help re-secure the Client's privacy. If there are ongoing expenses, CHSofNJ will pay these expenses for up to one year
4. Work with the CHSofNJ staff that were involved in the violation or breach, and complete an investigation to determine the exact reason that the violation or breach occurred
5. If it is determined that the violation or breach was unintentional, create a performance improvement plan to prevent a similar occurrence from reoccurring
6. If it is determined that the violation or breach was intentional, take action against the employee or employees who willfully committed the violation or breach to terminate his, her, or their employment

Should the Client not be satisfied with the results of the actions taken by the HIPAA Privacy Officer, he or she can file a grievance with the Chief Executive Officer who must meet with the Client, review all work done by the HIPAA Privacy Officer, complete his or her investigation, and provide the Client a written explanation of his or her findings within 30 days of the Client's grievance. If the Client is not satisfied with the results of his or her grievance with the Chief Executive Officer, he or she will be given instructions as to how to file a complaint through the Federal Department of Health and Human Services, Office of Civil Rights.

As per § 164.408 (c) of HIPAA the HIPAA Privacy Officer will keep a list of this and any other individual violation of privacy rights and will provide this list to the Federal Department of Health and Human Services, Office of Civil Rights within 60 days of the next calendar year.

Information to be provided will include:

- A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known
- A description of the types of unsecured protected health information that was involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved)
- Any steps that CHSofNJ advised the Client to take to protect themselves from potential harm resulting from the breach
- A brief description of what CHSofNJ is doing to investigate the breach, to mitigate harm to the client, and to protect against any further breaches

Instructions to Make a Report to the Federal Department of Health and Human Services, Office of Civil Rights

By mail: Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.

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Washington, D.C. 20201

Or by encrypted e-mail: OCRComplaint@hhs.gov

Or by OCR Complaint Portal: <http://www.hhs.gov/hipaa/filing-a-complaint/complaint-process>