



**Administrative Policies and Procedures: 32.8**

<b>Subject:</b>	<b>Enforcement, Sanctions, and Penalties for Violations of Privacy Rights</b>
<b>Authority:</b>	Health Insurance Portability and Accountability Act (HIPAA) of 1996; TCA 37-5-105, 37-5-106.
<b>Standards:</b>	<b>DCS Practice Model Standard:</b> 7-102A, 7-120C
<b>Application:</b>	To All Department of Children's Services Employees

**Policy Statement:**

DCS employees shall comply with all DCS policies and procedures and the requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules regarding protected health information (PHI) of clients.

**Purpose:**

To outline procedures and ensure compliance with the HIPAA Privacy Rule to establish policy regarding penalties and sanctions for violations of the HIPAA Privacy Rules and Regulations.

**Procedures:**

<p><b>A. General Requirements and Responsibilities</b></p>	<ol style="list-style-type: none"> <li>1. All DCS employees must use appropriate safeguards to prevent improper uses or disclosures of a client's PHI.</li> <li>2. All DCS employees shall be made aware of their responsibilities regarding client privacy and shall receive training on DCS privacy policies specific to their job responsibilities. See DCS policy, <a href="#">32.1. General Privacy Requirements</a>.</li> <li>3. All new DCS employees will sign the <b>CS-0731, Employee Acknowledgement - HIPAA</b> upon completion of required training or review of <i>HIPAA Fast Facts</i> Information.</li> <li>4. Supervisors shall be responsible for ensuring that all employees who have access to PHI, whether electronic, paper/hard copy, or verbal, have been made aware and are trained on the DCS HIPAA privacy policies specific to their job responsibilities.</li> <li>5. All DCS employees who are uncertain whether a disclosure is permitted are advised to consult with their supervisor, regional or facility privacy official and/or the DCS Departmental Privacy Officer.</li> <li>6. DCS employees who knowingly and willfully violate DCS policies and procedures regarding the safeguarding of a client's PHI are subject to appropriate disciplinary action up to and including immediate dismissal from</li> </ol>
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	<p>employment, and/or legal action by the individual, who may want to pursue a tort claim against the State of Tennessee or a lawsuit against the state and the employee.</p> <p>7. For persons who are “non-State” employees (including, but not limited to: foster parents, contract employees, local government contractors, IT Pro contractors, sole source contractors, interns, trainees and volunteers) who knowingly and willfully violate DCS policies and procedures regarding the safeguarding of a client’s PHI shall be handled in accordance with established disciplinary sanctions within their own organizations. All decisions regarding disciplinary actions shall be shared between organizations.</p> <p>8. All DCS employees who knowingly and willfully violate state or federal law for improper use or disclosure of an client's PHI are subject to criminal investigation and prosecution or civil monetary penalties that may be enforced by the federal Department of Health and Human Services (DHHS).</p> <p>9. If DCS, as a state agency, fails to enforce privacy safeguards, DCS may be subject to administrative penalties by DHHS including federal funding penalties.</p>
<b>B. Retaliation prohibited</b>	<p>Neither DCS as an entity, nor any DCS employee will intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against:</p> <p>1. Any individual for exercising any right established under DCS policy, or for participating in any process established under DCS policy, including filing a complaint with DCS or with DHHS.</p> <p>2. Any individual or other person for:</p> <ul style="list-style-type: none"><li>a) Filing a complaint with DCS or with DHHS as provided in DCS privacy policies;</li><li>b) Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing relating to HIPAA and DCS Policies and Procedures; or</li><li>c) Opposing any unlawful act or practice, provided that:<ul style="list-style-type: none"><li>◆ The individual or other person (including a DCS employees) has a good faith belief that the act or practice being opposed is unlawful; and</li><li>◆ The manner of such opposition is reasonable and does not involve a use or disclosure of an individual's PHI in violation of DCS policy.</li></ul></li></ul>
<b>C. Disclosures by Whistleblowers and crime victims</b>	<p>1. A DCS employees may disclose limited PHI about an individual to a law enforcement official if that employee is the victim of a criminal act and the disclosure is:</p> <ul style="list-style-type: none"><li>a) Only regarding the suspected perpetrator of the criminal act; and</li><li>b) Limited to the following information about the suspected perpetrator:<ul style="list-style-type: none"><li>◆ Name and address;</li><li>◆ Date and place of birth;</li></ul></li></ul>

	<ul style="list-style-type: none"> <li>◆ Social security number;</li> <li>◆ Blood type and Rh factor;</li> <li>◆ Type of any injury;</li> <li>◆ Date and time of any treatment; and</li> <li>◆ If applicable, date and time of death;</li> </ul> <p>2. A DCS employee or business associate may disclose an individual's PHI if:</p> <p>a) The employee or business associate believes, in good faith, that DCS has engaged in conduct that is unlawful or that otherwise violates professional standards or DCS policy, or that the care, services, or conditions provided by DCS could endanger DCS staff, persons in DCS care, or the public; and</p> <p>b) The disclosure is to:</p> <ul style="list-style-type: none"> <li>◆ An oversight agency or public authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of DCS;</li> <li>◆ An appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or of misconduct by DCS; or</li> <li>◆ An attorney retained by or on behalf of an employee or business associate for the purpose of determining the legal options of the employee or business associate with regard to <i>this</i> DCS policy.</li> </ul>
<p><b>D. General grievance and complaint procedures</b></p>	<ol style="list-style-type: none"> <li>1. DCS employees will be given every opportunity to resolve bona fide complaints or grievances relative to HIPAA and every reasonable effort will be made to resolve complaints at the lowest possible step of the grievance procedures established under <i>DOP Rule 1120-11</i>.</li> <li>2. DCS employees using this procedure will be entitled to process their complaints without fear, interference, discrimination, or reprisal.</li> <li>3. DCS employees will file HIPAA grievances and complaints on form <b>CS-0517, Employee Grievance</b>.</li> <li>4. All persons who are “non-State” employees (i.e., foster parents, contract employees, local government contractors, IT Pro contractors, sole source contractors, interns and volunteers) shall initiate complaints and grievances in accordance with established grievance processes within their own organizations.</li> </ol>
<p><b>E. Enforcement of HIPAA Violations</b></p>	<p>State Attorney Generals may bring a civil action in federal court on behalf of state residents in any case in which an AG has reason to believe that an interest of one or more State residents has been or is threatened or adversely affected by any person who violates the HIPAA privacy and security rules, to enjoin the</p>

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	violation and for damages (up to \$100 per violation, up to \$25,000 per calendar year), and attorney fees.
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<b>Forms:</b>	<a href="#"><u>CS-0731, Employee Acknowledgement – Health Insurance Portability and Accountability Act 1996 - (HIPAA)</u></a> <a href="#"><u>CS-0517, Employee Grievance</u></a>
<b>Collateral documents:</b>	<i>None</i>