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<b>Title:</b>	<b>DPH Privacy and Security Manual</b>
<b>Chapter:</b>	<b>IV. Client Rights Policies, Notice of Privacy Practices</b>
<b>Current Effective Date:</b>	<b>January 27, 2004</b>
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## **Purpose**

The purpose of the Division of Public Health (DPH) notice of privacy practices policy is to specify the DPH privacy requirements for the Notice of Privacy Practices and how it is made available to clients. The notice of privacy practices policy also specifies how the Division uses the standard DHHS notice template to develop any required Division notices. This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#), that establishes the NC Department of Health and Human Services (DHHS) privacy Designated Record Set requirements.

*Policy Scope: HIPAA covered health care components only*

## **Background**

Individuals served by a DHHS HIPAA covered agency must be informed of their privacy rights and the agency's responsibilities with respect to protected health information. Each DHHS HIPAA covered agency, or component is required to provide the Notice of Privacy Practices in accordance with the HIPAA Privacy regulations, 45 CFR Subtitle A, Subchapter C, Part 164.

## **Policy**

DPH covered health care components shall provide a Notice of Privacy Practices to individuals receiving services from the covered health care component. Additionally, the Division shall make covered health care components' Notice of Privacy Practices available to any individual(s) upon request, whether or not the individual is a client. DPH covered health care components shall provide such Notice in a manner consistent with all requirements specified within this policy.

The Notice of Privacy Practices shall outline the uses and disclosures of protected health information that may be made, and notify individuals of their rights and the covered health care component's legal duties with respect to protected health information. DPH covered health care components that must comply with this policy shall use or disclose health information in a manner consistent with their Notice of Privacy Practices.

## Implementation

### Applicability of Notices of Privacy Practices within DPH

The following DPH workgroups have been designated as Covered Health Care Components:

- State Laboratory of Public Health
- Children's Development Service Agencies (state operated).

The NC Attorney General's Office has determined the state-operated CDSA (formally DEC's) are exempt from the HIPAA Privacy Regulation and are governed by the Family Education Rights Privacy Act requirements. FERPA and the Individuals with Disabilities Education Act (IDEA) specify the notices of family rights that the CDSAs must provide their clients. The CDSA notice is defined in the *ITP*.

As a covered health care component, the State Laboratory for Public Health is an indirect health care services provider, which does not have direct contact with the clients it serves. The HIPAA Privacy Regulation standard and the DHHS Notice of Privacy Practices privacy policy specify the requirements for an indirect service provider's Notice of Privacy Practices.

**Note:** Providers who contract with the Division (e.g., local health departments, private practices, community-based organizations, clinics) and covered health plans that provide benefits to DPH clients (e.g., Medicaid, HealthChoice) are required to provide their clients with a Notice of Privacy Practices according to the requirements specified by the Privacy Regulation as guided by their legal counsel.

### Notice of Privacy Practices Requirements DPH

The following requirements apply to all DPH covered health care components that are required to provide a HIPAA Notice of Privacy Practices.

#### Development of Notices

The covered healthcare components shall use the standard [NC DHHS Notice of Privacy Practices template](#) to develop a Notice that is specific to the privacy practices of the covered component. Using the standard template ensures that the customized Notice contains all the required elements. The standard DHHS Notice template contains the general notice requirements specified by HIPAA. State law preemptions and requirements that the Division must follow are not included in this template.

Notices of Privacy Practices shall be written in plain and simple language that a client, employee, or personal representative can easily read and understand. Notices shall be made available in languages understood by a substantial number of clients served by each agency. At a minimum, each agency shall ensure the Notice is available in English and Spanish. DHHS agencies can request Braille Notices from the Division of Services for the Blind for clients who request such format. Notices

shall contain the elements described in the *Notice of Privacy Practices Elements* section of this policy.

DPH covered health care components shall promptly revise their privacy Notice whenever there is a material change to the uses or disclosures, the client's rights, the agency's legal duties, or other privacy practices described in the Notice. A revised Notice shall be available upon request on or after the effective date of the revision.

Except when required by law, a DPH covered health care component shall not implement a material change to any term of the Notice prior to the effective date of the Notice in which such change is reflected. Prior versions of an covered health care components Notice shall be retained for a period of at least six years from the date of the last Notice delivery.

### **Provision of Notice**

DPH covered health care components agencies shall provide a written copy of their Notice of Privacy Practices to any individual requesting a copy, regardless of whether or not the individual is a Division client.

When providing individuals a Notice of Privacy Practices as required in this policy, the Notice can be provided to an individual by electronic mail (hereafter referred to as "e-mail") with a return receipt requested, if the individual agrees to an electronic Notice and such agreement has not been withdrawn. If the covered component knows that the e-mail transmission failed, a paper copy of the Notice shall be provided to the individual. When a Notice is provided electronically, it shall meet the applicable delivery time requirements specified in this policy.

Any DPH covered health care component agency that maintains a web site that provides information to the public about the agency's services or benefits shall prominently post its Notice on the web site and make the Notice available electronically from the web site. The Notice on the web site shall reflect the most recent version.

### **Approval Process**

All Notices and revisions to Notices must be submitted to the DHHS Privacy Officer for final approval prior to public distribution. The DHHS Privacy Officer will obtain Attorney General Office approval for agency Notices and revisions to Notices when necessary.

## Critical Elements Required for Notice

The following are the critical elements that must be included in all Notices. The standard DHHS Notice template includes these elements.

- This statement shall be in the header of the Notice, or otherwise prominently displayed:  
"THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."
- The Notice shall contain a description of the types of uses and disclosures that the agency is permitted to make for treatment, payment, and health care operations. At least one pertinent agency example shall also be included.
- A description of all other purposes for which the agency is permitted or required to use or disclose protected health information without the individual's written authorization.
- If a use or disclosure for any purpose is prohibited or significantly limited by another applicable law, the description of such use or disclosure shall reflect the more stringent law.
- For each purpose described, the description shall include sufficient detail to inform the individual of the uses and disclosures that are permitted or required by federal regulations as well as state and federal law.
- A statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such an authorization.
- If the agency intends to engage in any of the following activities, the activity description shall include a separate statement accordingly:
  1. The agency may contact the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the individual; or
  2. The agency may contact the individual to raise funds for the agency.
- The Notice shall contain a statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights, as follows:
  1. The right to request restrictions on certain uses and disclosures of protected health information, including a statement that the agency is not required to agree to a requested restriction
  2. The right to receive communications of protected health information confidentially, as applicable
  3. The right to inspect and copy protected health information
  4. The right to request amendment to protected health information

5. The right to receive an accounting of applicable disclosures of protected health information
  6. The right of an individual, including an individual who has agreed to receive the Notice electronically, to obtain a paper copy of the Notice from the agency upon request.
- The Notice shall contain the agency's duties, as follows:
    1. A statement that the agency is required by law to maintain the privacy of protected health information and to provide individuals with notice of its legal duties and privacy practices with respect to protected health information
    2. A statement that the agency is required to abide by the terms of the Notice currently in effect
    3. A statement that the agency reserves the right to change the terms of its Notice and to make the new Notice provisions effective for all protected health information that it maintains prior to issuing a revised Notice. The statement shall also describe how it will provide individuals with a revised Notice.
  - The Notice shall contain a statement that individuals may complain to the agency and to the Secretary of the United States Department of Health and Human Services if they believe their privacy rights have been violated. A brief description of how the individual may file a complaint with the agency and a statement that the individual will not be retaliated against for filing a complaint shall also be included in the Notice. This statement shall conform to the DHHS Privacy Complaints policy.
  - The Notice shall contain the name, or title, and telephone number of a person or office to contact for further information.
  - The Notice shall contain the date on which the Notice is first in effect, which shall not be earlier than the date on which the Notice is printed or published.
  - The Notice may also contain the following optional elements:

If an agency elects to limit the uses or disclosures that it is permitted to make, the agency may describe these limitations in its Notice, provided that the agency may not include in its Notice a limitation affecting its right to make a use or disclosure that is:

    1. Required by law or
    2. If the agency, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person(s).

## DPH Implementation Procedures for Notices

The following process describes how the Notice of Practices policy is implemented within the Division of Public Health.

1. The DPH Privacy Office reviews the DPH covered entity designations to determine which DPH workgroups are covered health care components.
2. The DPH Privacy Office reviews other regulatory requirements and HIPAA exceptions to the Notice requirements with the covered health care components HIPAA coordinator, DPH management, DPH Legal and Regulatory Affairs, and the DHHS HIPAA Privacy Officer, as appropriate, to determine any exclusions, inclusions, and other specific requirements that apply to the DPH covered health care component.
3. The DPH Privacy Officer works with the DPH covered component HIPAA coordinator and others to draft the Notice, which is based on the standard DHHS Notice of Privacy Practices Template and also includes all specific requirements for the covered component. This process has been followed for the State Laboratory for Public Health, which is the only DPH covered health care component required to provide a Notice of Privacy Practices.
4. The DPH Privacy Office ensures that the covered DPH health care components specific Notice is reviewed and approved by the DHHS Privacy Official.
5. The DPH Privacy Office works with the covered component to translate the Notice into Spanish and works with the DHHS Privacy Officer to ensure that the translation is reviewed and approved by the DHHS Office of Citizen Affairs.
6. The covered health care component works with the appropriate staff within the component to post the Notice on the component's web site. The State Laboratory Notice of Privacy Practices is posted at <http://slph.state.nc.us/>.
7. The DPH Privacy Office retains a copy of the Notice for six years from the effective, as required by the HIPAA record retention requirements.
8. The Notice describes how clients and others can contact the DPH Privacy Office to receive a printed copy of the Notice. Upon request, the DPH Privacy Office makes the Notice available to the requestor.
9. The covered health care component HIPAA coordinator notifies the DPH Privacy Office if the Notice requires any changes. If so, the DPH Privacy Officer works with the HIPAA coordinator to update the notice, as described in the steps above. Approval by the DHHS Privacy Officer is required only when there are substantial material changes to the Notice. The revised notice with the new effective date will then be posted on the web site and made available. The DPH Privacy Office retains all revisions to the Notice for six years from the effective date, as required by the HIPAA record retention requirements.

**For relevant documents:**

[State Lab Notice of Privacy Practices](#)

[NC DHHS Notice of Privacy Practices Template](#)

These documents can be accessed from the DPH HIPAA website at <http://www.schs.state.nc.us/hipaa/>.

**References:** DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH HIPAA Compliance Statement, DPH Client Rights Privacy Policy, Rights of Clients, NC General Statutes 130A, 45 CFR 164.520, 10A NCAC42A0.105; Clinical Laboratory Improvements Amendment (CLIA) of 1988, 42 CFR 493.

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at [HIPAA.DPH@ncmail.net](mailto:HIPAA.DPH@ncmail.net).