

Administrative Policy No.

Subject: **Compliance with RCW 70.02.290
Use and Destruction of Health Care Information**

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Authorizing Source: Chapter 70.02 RCW – Health Care Information Act
Chapter 40.14 RCW
Chapter 434 WAC

Effective Date: December 8, 2014

Revised: New

Approved by: **Original signed by Dana Phelps**
Senior Director, Policy & External Relations

Purpose

This policy describes the Department of Social and Health Services' (DSHS or Department) dedication to vigorous privacy practices for safeguarding Health Care Information to:

- Promote responsible information management practices by administrations;
- Promote public trust and confidence in the use of online services or other services provided by the Department;
- Protect the privacy rights of clients when DSHS obtains or discloses Health Care Information; and
- Maintain the confidentiality, integrity, and availability of Health Care Information while protecting against inappropriate use or disclosure.

Background

This policy is based on the requirements of [70.02.290](#) which requires all state or local agencies obtaining Health Care Information pursuant to RCW [70.02.050](#) and [70.02.200](#) through [70.02.240](#) that are not Health Care Facilities or Health Care Providers to adopt a policy available on the Department's web site which must establish a reasonable notification period and what information

must be included in the notification if Health Care Information is wrongfully disclosed as defined by RCW 70.02.290.

The 2014 Legislature wrote RCW 70.02.290 into the Health Care Information Act to address a very specific scenario. Essentially, the law was written to prevent health care records of one individual from becoming part of the records for another individual by mistake and then being disclosed under a public record act request or other type of record request. The policy is not intended to apply to Health Care Facilities and Health Care Providers. This is because those types of entities already must comply with the notification requirements under HIPAA.

Scope

This policy applies to all non-Health Care Components within the Department and Health Care Components that are not Health Care Facilities or Health Care Providers.

Definitions

Health Care Information: means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

Health Care Component: A component or combination of components of a hybrid covered entity designated by the hybrid covered entity as a health plan, a covered health care provider, or both.

Health Care Facility: means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

Health Care Provider: means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

HIPAA: means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).

Hybrid Covered Entity: A single legal entity:

1. That is a covered entity;
2. Whose business activities include both covered and non-covered functions; and

That designates Health Care Components in accordance with the Privacy Rule.

Policy Requirements

A. Hybrid Covered Entity Status:

DSHS is a covered entity, which has designated programs as Health Care Components within the administrations/divisions. These Health Care Components are provided as an attachment to the DSHS Notice of Privacy Practices. As such, DSHS is a Hybrid Covered Entity with only its [Health Care Components](#) subject to the HIPAA rules. Areas that are not subject to the HIPAA rules are non-Health Care Components or non-HCCs.

B. Treatment of Health Care Information:

Non-Health Care Components within the Department or Health Care Components that are not Health Care Facilities or Health Care Providers that receive Health Care Information pursuant to RCW [70.02.050](#) and [70.02.200](#) through [70.02.240](#) must comply with the requirements below. If the non-HCC or HCC was not authorized to receive the Health Care Information, or if the Health Care Information was not intended for the recipient, the HCC or non-HCC must:

- a. Not use or disclose this information unless permitted under Chapter 70.02 RCW; and
- b. Destroy the information in accordance with Disposition Authority Number (DAN) GS 50004 (below) or return the information to the entity that provided the information if the entity is a Health Care Facility or Health Care Provider and subject to the Health Care Information Act.

DESCRIPTION OF RECORDS	DISPOSITION AUTHORITY NUMBER (DAN)	RETENTION AND DISPOSITION ACTION	DESIGNATION
<p>General Information – External Information received from other agencies, commercial firms, or private institutions, which requires no action and is no longer needed for agency business purposes. Includes, but is not limited to: Catalogs, reports, multi-media presentations (videos, CDs, etc.); Informational copies, notices, bulletins, newsletters, announcements; Unsolicited information (junk mail, spam, advertisements, etc.).</p>	<p>GS 50004 Rev. 0</p>	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>

C. Example scenario of when Policy 5.06 would apply:

Program A receives Health Care Information regarding a client from ABC Clinic. Within the

records are unrelated medical records regarding someone else wholly unaffiliated to the client and program.

Correct Action: Program A realizes ABC Clinic's mistake and either returns the unrelated medical records to the clinic or informs the clinic of the mistake and destroys the records.

Incorrect Action which triggers Notification: Program A does not notice the unrelated records and makes them part of the client's file. Program A then receives a request for the client's file and discloses it to the client, personal representative, etc. Program A becomes aware that the unrelated medical records were disclosed in error. Program A must notify the individual of the breach of their information.

D. Notification:

A person, about whom Health Care Information has been improperly disclosed, must be informed of the disclosure by the non-HCC or HCC improperly making the disclosure.

Notification must be provided within 60 days of discovery, which must include:

1. A brief description of what happened, including the date of the disclosure and the date of the discovery of the disclosure, if known.
2. The name of the entity that originally provided the information to the Department must be included.
3. A description of the types of Health Care Information that were involved in the disclosure (such as whether full name, social security number, date-of-birth, home address, account number, email address, diagnosis, disability code, or other types of information involved including demographics).
4. Any steps individual should take to protect themselves from potential harm resulting from the disclosure.
5. A brief description of what the non-health care component or health care component involved is doing to investigate the disclosure, to mitigate harm to individuals, and to protect against any further disclosures; and
6. Contact procedures for individuals to ask questions or learn additional information, which may include a toll-free telephone number, email address, web site, or postal address.
7. The notification should also meet the plain talk requirements of the Department to the extent possible.

E. Related Policies

Please refer to Administrative Policy 5.01 for additional information regarding notification and reporting breaches within the Department of Social and Health Services.