



Department of Health, Housing & Human Services (H3S)

POLICY TITLE:	Mitigation Planning		
POLICY ID:	HP-17	EFFECTIVE DATE:	
SECTION:	H3S Directors Office	REVISION DATES:	
CHAPTER:	Privacy HIPAA	NEXT REVIEW:	
CONTACT:	H3S Privacy Coordinator	REVIEWED BY:	County Counsel
APPLIES TO:	All H3S workforce members within the hybrid covered component	REPLACES:	
APPROVED BY:	Rich Swift	DATE APPROVED:	4/9/18

I. PURPOSE: The HIPAA Privacy Rule requires that H3S mitigate the harm from the improper use or disclosure of PHI.

II. POLICY: Clackamas County will mitigate, to the extent practicable, any harmful effect that is known by Clackamas County to have occurred as a result of a use or disclosure of PHI in violation of the requirement of the HIPAA Privacy Rule or Clackamas County policies and procedures by either Clackamas County or its Business Associates.

In cases of an impermissible disclosure by a subcontractor or Business Associate, either a treatment provider or non-covered entity, the Covered Component involved shall determine the mitigation plan. This may involve review of specific contract or agreement language regarding corrective measures or potential termination of a contract or agreement.

Workforce Members and Business Associates must immediately report known or suspected privacy or security Incidents, Breaches or Complaints involving PHI to their Covered Component's Privacy Manager and/or County Privacy Officer. This includes a duty to self-report an Incident or Complaint caused by a Workforce Member.

Clackamas County will not tolerate retaliation against any Workforce Member who reports in good faith in accordance with this Policy or who participates in any investigation. Clackamas County will investigate reports of retaliation. Any Workforce Member who is an employee found to have engaged in retaliation may be subject to discipline, up to and including dismissal. Any Workforce Member who is not an employee found to have engaged in retaliation may be subject to termination of their services to Clackamas County. "Retaliation" does not include appropriate discipline or other sanctions imposed, when necessary, upon a Workforce Member who self-reports a possible violation.



Department of Health, Housing & Human Services (H3S)

Any Workforce Member who is an employee who fails to report known or suspected Incidents, Breaches or Complaints as required by this policy may be subject to discipline. Any Workforce Member who is not an employee who fails to report known or suspected Incidents, Breaches or Complaints as required by this policy may be subject to termination of their services to Clackamas County.

III. DEFINITIONS: See Clackamas County HIPAA Privacy Policy

IV. PROCEDURE: H3S will mitigate, to the extent practicable and required by the HIPAA Privacy Rule, any harmful effect that is known to H3S of a use or disclosure of PHI by a workforce member or its Business Associates in violation of Clackamas County or H3S' privacy policies and procedures or in violation of requirements of the HIPAA Privacy Rule. Any impermissible or unauthorized disclosure by H3S staff or any of its Business Associates shall be immediately reported to the Division Privacy Managers, who will notify the H3S Privacy Coordinator and County Privacy Officer as needed depending on the severity of the disclosure. .

A. Mitigation Plan: The Division Privacy Manager will work with divisions programs to develop and implement a written Mitigation Plan as soon as reasonably practicable to mitigate any known or reasonably anticipated harmful effects from such use or disclosure (the "Mitigation Plan".) The Mitigation Plan shall be tailored to the circumstances of each case, but may include as appropriate, the following elements:

1. Confirmation that a breach of PHI or violation of internal policy pertaining to HIPAA has occurred (using Clackamas County HIPAA Privacy Policy and accompanying Risk Assessment).
2. Identify the source of the impermissible use or disclosure, describe what steps are being taken toward corrective action or to fix the issue.
3. Contact the recipient of the information that was the subject of the impermissible use or disclosure of PHI and document a request of the recipient to return the information to the Division Privacy Manger as appropriate. Or if return from the recipient is not appropriate or feasible, ask recipient to delete it and retain no copies.
4. Depending on the circumstances, determine whether to notify the client whose PHI was the subject of impermissible use or disclosure according to the Clackamas County HIPAA Privacy Policy.
5. Review and revise where appropriate, any H3S or Division or program policy/procedure that may need clarification to lessen the likelihood of re-occurrence.

B. Documentation of Process: The Division Privacy Managers will maintain a detailed record of each privacy complaint, incident, breach, or report resulting in a Mitigation Plan, including a copy of any written documentation (please see H3S HIPAA Policy #HP-04), copies of all letters of inquiry and a list of all such inquires and other steps taken in the investigation; a written statement of the Division Privacy Manager findings and



Department of Health, Housing & Human Services (H3S)

recommendations with respect to matters in the complaint or report; and a report by those involved of mitigation actions undertaken, if any, and the reason for the actions or the reason for no mitigation if none is undertaken. (These elements may be included in the formal Mitigation Plan written by the Division Privacy Manager).

When a complaint, incident, or breach involves an act or omission by a member of H3S workforce, a record of the mitigation actions must be forwarded to the Division Director and the workforce member's direct supervisor to determine, based on Clackamas County HIPAA Privacy Policy Section 25.A.2.b, as to whether Clackamas County Human Resources shall be notified.

C. Impermissible Use or Disclosure Involving a Business Associate: In cases of an impermissible use or disclosure by a subcontractor or Business Associate, the Division Director and the Division Privacy Manager will develop the mitigation plan and shall notify the H3S Privacy Coordinator.. This may involve review of specific contract or agreement language regarding corrective measures or potential termination of a contract or agreement.

V. REGULATIONS:

45 CFR 164.530(f)

VI. REFERENCES: Clackamas County HIPAA Privacy Policy 2017

Clackamas County Records Retention Schedules

VII. LINKS (TITLE & URL):

Clackamas County HIPAA Privacy Policy 2017

VIII. ATTACHMENTS:

HP-17 HIPAA Breach Risk Assessment Form