

Operational Policy

Policy title:	Report and Response to Privacy Incidents		
Policy number:	ODHS OHA 100-014		
Original date:	7/22/2014 OHA Only	Last update:	(Joint ODHS OHA) 12/5/2022
Approved:	Kris Kautz, OHA Deputy Director Don Erickson, ODHS Chief Administrative Officer		

Purpose

This policy is one of a series that describes the Oregon Department of Human Services (ODHS) and the Oregon Health Authority (OHA) privacy guidelines and expectations for the necessary collection, storage, protection, use, and disclosure of confidential information about individuals in order to provide services and benefits to individuals, while maintaining reasonable safeguards to protect the privacy of information.

Description

This policy describes the responsibility of ODHS and OHA staff to report known or suspected incidents of privacy; the rights of an individual to file complaints related to known or suspected privacy incidents; and presents an overview of the responsibilities of the agency related to investigation and reporting of incidents.

Applicability

This policy applies to all ODHS and OHA staff including employees, volunteers, and interns as well as contractors and partners.

As keepers of the public trust, agency workforce has a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Individuals who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. ODHS and OHA shall not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any individual for exercising their legal rights to file a complaint, report an incident, or participate in an investigation.
2. A privacy incident is a concern that information has been accessed, used, or disclosed without permission.
3. When staff discover an issue that could lead to a privacy incident, staff shall take any immediate corrective action to mitigate.
4. Staff shall immediately report the following to the Information Security and Privacy Office (ISPO):
 - a. Privacy complaints made by an individual, including those related to the Health and Insurance Portability and Accountability Act (HIPAA).
 - b. Suspected or known privacy incidents relating to an individual's identifiable or protected information and ODHS and OHA policies.
5. Staff shall work with ISPO to:
 - a. Complete a risk assessment to determine the probability that protected health information (PHI) has been acquired, accessed, used, or disclosed, as soon as possible, and in no case more than 30 calendar days from the discovery.
 - b. Mitigate, to the extent practicable, any known cause of the breach.
 - c. Document all incidents and complaints, and their resulting dispositions.
6. In accordance with HIPAA regulations and OHA policy, when ISPO determines that a breach has occurred and PHI may have been acquired, accessed, used, or disclosed without appropriate authorization, the responsible ODHS and OHA program, in consultation with ISPO, shall:
 - a. Provide written notice of the breach to the affected individual or individuals no more than 60 days after the discovery of the breach; and
 - b. Provide ISPO with documentation that notice has been provided.
7. The written notice shall be in plain language and comply with applicable requirements.
 - a. If the written notice can't be provided because of insufficient contact information, ODHS and OHA shall provide secondary notice in a way reasonably calculated to reach individuals whose information may be included in the breach.
 - b. If notice can't be provided to 10 or more individuals, the secondary notice form shall include a toll free number that remains active for at least 90 days and allows individuals to determine if their protected information was included in the breach.
8. If ISPO determines there is the potential for imminent misuse of protected information in connection with an incident, ODHS and OHA may provide information to individuals by telephone or other means, as appropriate, in addition to providing the required written notice as described above.

9. ISPO shall notify United States Department of Health and Human Services (DHHS) Office of Civil Rights (OCR) of the privacy breach in accordance with HIPAA and other federal and state statute and rule and ODHS and OHA policy.
 - a. ODHS and OHA considers any reports generated in response to a complaint to be prepared in anticipation of litigation.
 - b. These records are not discoverable or part of the individual's record of client and patient care.
10. Individuals who have concerns that ODHS and OHA has failed to comply with federal and state statute and rule, including the HIPAA Privacy Rule or agency privacy policies and procedures, may file a complaint with ODHS and OHA Privacy Office or DHHS.

References

[45 CFR 160 General Administrative Requirements](#)

[45 CFR 164 Security and Privacy](#)

[OAR 125-055-0100 to 125-055-0130 HIPAA Privacy and Security Rule Implementation; HITECH Act Implementation](#)

[OAR 943-014-0400 to 943-014-0465 Privacy and Confidentiality](#)

Contact

Information Security and Privacy Office (ISPO)

Phone: 503-945-5780 (Privacy)

Email: dhs.privacyhelp@dhsoha.oregon.gov

U. S. Department of Health and Human Services, Office for Civil Rights
Medical Privacy, Complaint Division

200 Independence Avenue, SW

Washington, D.C. 20201

Toll free Phone: 877-696-6775

Phone: 866-627-7748

TTY: 886-788-4989

Email: OCRComplaint@hhs.gov

Policy history

Version 1 OHA 100-014 established 07/22/2014

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Version 2 ODHS|OHA 100-014 established 12/05/2022

Keywords

Breach, privacy, release, incident, notice, protect, privacy incident, report

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