

Sanctions

Where Is The Policy in the Privacy Rule (Title 45, Part 164)?

45 C.F.R. §164.530(e)

(e)(1) Standard: sanctions. A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart. This standard does not apply to a member of the covered entity's workforce with respect to actions that are covered by and that meet the conditions of §164.502(j) or paragraph (g)(2) of this section.

(2) Implementation specification: documentation. As required by paragraph (j) of this section, a covered entity must document the sanctions that are applied, if any.

Department:

Title: Sanctions

No.

Effective Date: April 14, 2003

Authorized By: _____ Karen Ralicke _____

Sanctioning of Employees, Agents, and Contractors **45 C.F.R. §164.530(e)**

Why Do We Need This Policy?

The Privacy rule requires that sanctions be imposed against members of a Covered Entity's workforce. The rule also requires Covered Entities to have written policies and procedures for the application of appropriate sanctions for violations of this subpart and to document those sanctions. These sanctions do not apply to whistleblower activities that meet the provisions of 45 C.F.R. §164.502(j) or complaints, investigations, or opposition that meet the provisions of 45 C.F.R. §164.530(g)(2).

Additionally, the DHHS Office of Inspector General believes that one of the key elements of an effective compliance program is the consistent enforcement of policies and procedures to

prevent and detect violations of law. An important facilitator of such enforcement is the imposition of fair and consistent disciplinary mechanisms.

Organizations should include compliance enforcement and discipline as a core theme of their Standards of Conduct, and should also elaborate on such enforcement and discipline through the development and implementation of compliance program policies and procedures.

Purpose

Department has established and will apply appropriate sanctions against members of its workforce, as well as other agents and contractors, who fail to comply with its policies and procedures. This policy is designed to give guidance and ensure compliance with all applicable laws and regulations related to sanctioning for violating Department's policies and procedures. Under the Health Insurance Portability and Accountability Act, penalties for misuse or misappropriation of health information include both civil monetary penalties and criminal penalties. Civil penalties range from \$100 for each violation to a maximum of \$25,000 per year for the same violations. Criminal penalties vary from \$50,000 and/or one year imprisonment to \$250,000 and/or ten years imprisonment (42 U.S.C. §§ 1320d-5 and 1320d-6).

Policy

1. CDHS will apply appropriate sanctions against members of its workforce who fail to comply with the CDHS policies and procedures.
2. The type of sanction applied shall vary depending on the severity of the violation, whether the violation was intentional or unintentional, whether the violation indicates a pattern or practice of improper access, use or disclosure of health information, and similar factors.
3. Employees, agents, and other contractors should be aware that violations of a severe nature may result in notification to law enforcement officials as well as regulatory, accreditation, and/or licensure organizations.
4. The policy and procedures contained herein do not apply specifically when members of Department's workforce exercise their right to:
 - (a) file a complaint with DHHS;
 - (b) testify, assist, or participate in an investigation, compliance review, proceeding, or hearing under Part C of Title XI; or
 - (c) oppose any act made unlawful by the HIPAA Privacy rule; provided the individual or person has a good faith belief that the act opposed is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of the HIPAA Privacy rule;
 - (d) disclose Protected Health Information as a whistleblower and the disclosure is to a health oversight agency; public health authority; or an attorney retained by the individual for purposes of determining the individual's legal options with regard to the whistleblower activity; or
 - (E) an employee who is a victim of a crime and discloses Protected Health Information to a law enforcement official, provided that the Protected Health Information is about a suspected perpetrator of the criminal act; and is limited to the information listed in the

“DISCLOSING PROTECTED HEALTH INFORMATION FOR LAW ENFORCEMENT
RELEASE” POLICY.

Procedures

1. The following sanctions apply for failure to comply with the CDHS policies and / or procedures, or with the requirements of HIPAA regulations:
 - i. first offense of noncompliance – letter of reprimand to employee file;
 - ii. second offense of noncompliance – letter of reprimand to employee file and appropriate corrective action;
 - iii. third offense of noncompliance – R6-10 meeting before the appointing authority, outcome either corrective or disciplinary action which could result in termination of employment.
2. The employee’s supervisor, Privacy Liaison, and Compliance Officer, in conjunction with the Administrator, are responsible for determining the severity of sanctions necessary.
3. All sanctioning of employees will be documented and retained in CDHS Human Resources Division for a period of at least six (6) years or more from the date of its creation.