



# POLICIES AND PROCEDURES

**SUBJECT:** DISCLOSURES OF PROTECTED HEALTH INFORMATION (PHI) BY WHISTLEBLOWERS AND WORKFORCE CRIME VICTIMS

**POLICY NO:** 361.25

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**PURPOSE:** The purpose of this statement is to outline the policy of the Department of Health Services (DHS) on disclosures of Protected Health Information (PHI) by Workforce Members (and in certain cases, its Business Associates) under the circumstances where such Workforce Member or Business Associate makes the disclosure as a whistleblower (“Whistleblower Disclosure”) or the Workforce Member discloses PHI as the victim of a crime.

**POLICY:** It is the policy of DHS that its Workforce Members and Business Associates may make Whistleblower Disclosures in accordance with the requirements of this policy and Workforce Members may make disclosures as crime victims in accordance with the requirements of this policy.

**DEFINITIONS:** Authorization means the signed authorization language used by DHS to obtain an individual’s permission to use or disclose that individual’s PHI for purposes that do not fall within the definitions of Treatment, Payment or Health Care Operations activities.

Business Associate means a person or entity who is not a member of DHS’ workforce and who, on behalf of DHS, performs or assists in the performance of:

- (a) A function or activity involving the use or disclosure of PHI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or
- (b) Any other function or activity regulated by the Health Insurance Portability and Accountability Act (HIPAA); or

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**APPROVED BY:**

**EFFECTIVE DATE:** January 1, 2006

**SUPERSEDES:** April 14, 2003

**PAGE 1 OF 4**

# DEPARTMENT OF HEALTH SERVICES COUNTY OF LOS ANGELES

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WHISTLEBLOWERS AND WORKFORCE CRIME VICTIMS

**POLICY NO.:** 361.25

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- (c) Provides legal, actuarial, accounting, consulting, data aggregation (as defined in HIPAA), management, administrative, accreditation, or financial services to or for DHS.

Protected Health Information (PHI) means information that is created or received by a Health Care Provider, Health Plan, employer or Health Care Clearinghouse; relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual).

Whistleblower Disclosure shall mean a disclosure of PHI by a Workforce Member or Business Associate of DHS that meets the following requirements:

- (a) The Workforce Member or Business Associate believes in good faith that DHS engaged in unlawful conduct or otherwise violated professional or clinical standards, or that the care provided by DHS may potentially endanger patients, other Workforce Members or the public; and
- (b) The disclosure is to an agency responsible for overseeing health care programs, or to a public health authority or to a health care accreditation organization or to an attorney.

Workforce or Workforce Member means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for DHS, is under the direct control of such entity, whether or not they are paid by DHS.

## PROCEDURE:

### I. WHISTLEBLOWER DISCLOSURES

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**EFFECTIVE  
DATE:**

January 1, 2006

**SUPERSEDES:** April 14, 2003

**PAGE 2 OF 4**

# DEPARTMENT OF HEALTH SERVICES COUNTY OF LOS ANGELES

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WHISTLEBLOWERS AND WORKFORCE CRIME VICTIMS

**POLICY NO.:** 361.25

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- A. Members of DHS' Workforce and Business Associates of DHS are permitted to make Whistleblower Disclosures, without authorization.
- B. Members of DHS' Workforce will not be subject to disciplinary actions by DHS for making Whistleblower Disclosures.
- C. DHS will not take any intimidating or retaliatory actions against members of DHS' Workforce and DHS' Business Associates who make Whistleblower Disclosures related to DHS' handling of PHI and compliance with HIPAA.
- D. DHS shall not be considered to have violated HIPAA if a member of its Workforce or its Business Associates makes a Whistleblower Disclosure in compliance with the requirements of this policy.

## II. CRIME VICTIM DISCLOSURE

- A. Members of DHS' Workforce are permitted to make disclosures of PHI to a law enforcement official if the Workforce Member is the victim of a crime and the PHI to be disclosed is about the suspect who allegedly committed the crime against the Workforce Member.
- B. Under this policy, the Workforce Member may only disclose the following PHI to law enforcement.
  - 1. Name and address of suspect;
  - 2. Date and place of birth;
  - 3. Social Security Number;
  - 4. A B O blood type and rh factor;
  - 5. Type of injury suspect has;
  - 6. Date and time of treatment;

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**EFFECTIVE**

**DATE:** January 1, 2006

**SUPERSEDES:** April 14, 2003

**PAGE 3 OF 4**

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WHISTLEBLOWERS AND WORKFORCE CRIME VICTIMS

**POLICY NO.:** 361.25

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7. Date and time of death, if applicable; and
  8. A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars and tattoos.
- C. Workforce Members making disclosures of PHI that meet the requirements of this Section will not be subject to disciplinary action.
- D. DHS shall not be considered to have violated HIPAA if a Workforce Member who is the victim of a crime discloses PHI to law enforcement in compliance with the requirements of this policy.

### III. DISCLOSURES NOT IN COMPLIANCE WITH THIS POLICY

- A. If a Workforce Member reasonably believes that another Workforce Member or Business Associate, as applicable, has made a Whistleblower Disclosure or disclosure as a crime victim that does not comply with the requirements of this policy, such Workforce Member shall contact the Privacy Officer and make a report of such suspected non-compliance.
- B. The Privacy Officer, with advice from County Counsel, shall investigate all such reports and take steps necessary to mitigate the harmful effects of any violations of this policy or other privacy-related policies.

### IV. DOCUMENTATION RETENTION

All documentation completed under this policy shall be placed in the individual's medical record or retained for at least six (6) years.

**REFERENCES:** 45 Code of Regulations, § 164.502(j)  
DHS Policy Nos.:

361.7	Right of an Individual to Agree or Object to the Use and Disclosure of Protected Health Information (PHI)
361.10	Disciplinary Actions for Failure to Comply with Privacy Policies and Procedures
361.13	Non-Retaliation
361.20	Business Associate Agreement

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**EFFECTIVE DATE:** January 1, 2006

**SUPERSEDES:** April 14, 2003

**PAGE 4 OF 4**