

HIPAA-04: Investigations Policy

Effective Date:	12-01-2015	Last Revised:	7-17-2017
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Scope of Policy

This policy governs HIPAA Investigations for **TCS**. All personnel of **TCS** must comply with this policy. Demonstrated competence in the requirements of this policy is an important part of the responsibilities of every member of the workforce.

Assumptions

- ☐ **TCS** recognizes that the U.S. Department of Health and Human Services ("HHS"), its Office for Civil Rights ("OCR") and other designees, as well as State Attorneys General, are all authorized and empowered to investigate Covered Entities and Business Associates in matters of HIPAA compliance and enforcement.
- ☐ **TCS** recognizes that timely and full cooperation with such investigative bodies is mandatory under HIPAA law; and that failure to cooperate with any HIPAA investigation is itself a violation of HIPAA Rules.

Policy Statement

- ☐ It is the Policy of **TCS** to fully comply with HIPAA law and with all HIPAA-related investigations conducted by HHS.
- ☐ It is the Policy of **TCS** to not impede or obstruct any HIPAA-related investigations conducted by HHS.
- ☐ It is the Policy of **TCS** to provide all documentation or assistance required by law in connection with any HIPAA-related investigations conducted by HHS.

Procedures

Workforce members who are designated to assist with HIPAA-related investigations conducted by HHS must adhere to the following procedures:

- ☐ Whenever a HHS investigation is discovered, the following contacts must be immediately notified:
 - Executive Director
 - Privacy Officer
 - Security Officer
 - Compliance Officer
 - Legal counsel
- ☐ Cooperate, but do not volunteer information or records that are not requested.
- ☐ Ask for the official government agency-issued identification of the investigators (Business cards are NOT official identification); write down their names, office addresses, telephone numbers, fax numbers and e-mail addresses. If investigators cannot produce acceptable I.D., call legal counsel immediately and defer the provision of any PHI until after you confer with counsel or until the investigators produce acceptable I.D. BE SURE that you've made appropriate requests for I.D. and that they've been unreasonably refused before you do.)
- ☐ Have at least one, if not two witnesses available to testify as to your requests and their responses.
- ☐ Permit the investigators to have access to protected health information ("PHI"), in accordance with our notice of privacy practices ("NPP"), and Federal and State law. Once investigators have verified their identities and have also verified their authority to access PHI, it is a violation of HIPAA to withhold PHI from them, if the PHI sought is the subject matter of the investigation, or reasonably related to the investigation. Again, ask investigators to verify that they are seeking

access to the information because it is directly related to their legitimate investigatory purposes; and document their responses in your own written records.

- ☐ Have a witness with you when you ask about their authority to access PHI, and the use that they will make of the PHI they are seeking access to, who can later testify as to what they told you. Two witnesses are even better. All witnesses should also prepare a written summary of the conduct and communications they observed as soon as possible after the incident; these summaries should be annotated with the time and date of the event, the time and date that the summaries were completed, and the witnesses signature.
- ☐ Send staff employees elsewhere, if possible, during this first investigation encounter. There is no requirement that we provide witnesses to be questioned during the initial phase of an investigation.
- ☐ Do NOT instruct employees to hide or conceal facts, or otherwise mislead investigators.
- ☐ Ask the investigators for documents related to the investigation. For example, request:
 - copies of any search warrants and/or entry and inspection orders
 - copies of any complaints
 - a list of patients they are interested in
 - a list of documents/items seized
- ☐ Do NOT expect that investigators will provide any of the above, except for the search warrant and a list of documents/items seized (if any).
- ☐ Do not leave the investigators alone, if possible. Assign someone to "assist" each investigator present.
- ☐ Do not offer food (coffee, if already prepared, and water, if already available, is ok). Don't do anything that could be construed as a "bribe" or a "kickback" to induce favorable treatment, such as offering to buy the investigators lunch.
- ☐ Tell investigators what you are required by law to tell them. Answer direct questions fully and to the best of your ability. Always defer to the advice of legal counsel if you are unsure of what or how much to say.