

Prohibiting Retaliation Against Employees, Individuals, or Others

Purpose

[ORGANIZATION] will take all necessary steps to refrain from intimidating, threatening, coercing, discriminating against, or taking any other retaliatory action against any employee, individual, or other for the exercise of any right under, or for participation in any process established applicable laws and/or regulations.

Policy

1. It is the responsibility of all [ORGANIZATION] employees to report perceived misconduct, including actual or potential violations of laws, regulations, policies, procedures, or [ORGANIZATION] [CODE OF CONDUCT].
2. [ORGANIZATION] will maintain an “open-door policy” at all levels of management to encourage employees to report problems and concerns.
3. [ORGANIZATION] will follow all necessary procedures to protect against any retaliation toward any employee, individual, or other for exercising their rights or participating in any process pursuant to internal policies, applicable law, and/or regulation.
4. Any employee who commits or condones any form of retaliation will be subject to discipline up to, and including, termination.

Procedures

1. [ORGANIZATION] will not retaliate against employees, individuals, or others for:
 - (a) exercising any right under, or participating in any process established by federal, state, or local, law, regulations, or policy;
 - (b) filing a complaint with [ORGANIZATION] and/or the Department of Health and Human Services;
 - (c) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing;
 - (d) opposing in good faith any act or practice made unlawful by federal, state, or local law, regulation, or policy, provided that the manner of the opposition is reasonable and does not itself violate law.

Regulatory Authority

45 C.F.R. §164.530(g)

Standard: refraining from intimidating or retaliatory acts. A covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:

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(1) Individuals. Any individual for the exercise by the individual of any right under, or for participation by the individual in any process established by this subpart, including the filing of a complaint under this section;

(2) Individuals and others. Any individual or other person for:

(i) Filing of a complaint with the Secretary under subpart C of part 160 of this subchapter;

(ii) Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under Part C of Title XI; or

(iii) Opposing any act or practice made unlawful by this subpart, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of this subpart.

Analysis, Background, and Implications

One of the responsibilities of a covered entity is to refrain from intimidating or retaliatory acts. This is not only a requirement under the HIPAA privacy regulations, but also a significant element of an effective corporate compliance program.

Specifically under the Privacy rule, a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the filing of a complaint under this section, for testifying, assisting, participating in any manner in an investigation, compliance review, proceeding or hearing under Part C of Title XI Social Security Act, or opposing any act or practice made unlawful by 45 C.F.R. Part 164 Subpart E (the Privacy Rule). Note that this provision is applied to the Privacy rule alone rather than to all the HIPAA administrative simplification rules.

The Privacy rule prohibits retaliation against individuals for filing a complaint with the Department of Health and Human Services, but also prohibits retaliation against any other person who files such a complaint. This is the case because the term “individual” is generally limited to the person who is the subject of the information.

The rule prohibits retaliatory actions against any person for opposing any act or practice made unlawful by the rule, only if the person “has a good faith belief that the practice opposed is unlawful, the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of this subpart.”

In addition a covered entity may not require individuals to waive their rights to file a complaint with the Department of Health and Human Services or their other rights under the Privacy rule as a condition of the provision of treatment, payment, enrollment in a health plan or eligibility for benefits. This provision ensures that covered entities do not take away the rights that individuals have been provided in Parts 160 and 164.

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