

Kansas Department of Health and Environment

POLICIES AND PROCEDURES

P&P 08: Corrective Action and Grievance Procedures

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Policy:

KDHE shall maintain procedures to receive and act upon complaints regarding approved HIOs, Participants, or Users as required under the Kansas Health Information Technology and Exchange Act. KDHE shall impose an appropriate corrective action plan on an approved HIO that fails to demonstrate continued compliance with the minimum approval standards specified in P&P 09. A person or entity aggrieved by the action or inaction of KDHE shall have the opportunity to pursue a grievance following the procedures set forth herein.

Procedures:

- 1) KDHE shall provide and promote the opportunity for an individual to submit to KDHE a complaint regarding the action or inaction of KDHE, an approved HIO, a Participant, and/or a User "Complaint". At a minimum, KDHE shall maintain on its website an invitation for individuals to submit any Complaint to KDHE's Compliance Officer. KDHE shall not require a Complaint be submitted in a particular manner or using a specific manner of communication. KDHE requires an individual to identify himself/herself in making a Complaint.
- 2) Any KDHE staff who receives or becomes aware of a Complaint (regardless of the manner in which the Complaint is received) shall report the matter and forward all relevant information to the KDHE Compliance Officer as soon as practical.
- 3) KDHE, approved HIOs, Participants, and Users shall not retaliate in any manner against any individual who makes or provides information regarding a Complaint.
- 4) The Compliance Officer shall investigate each Complaint following the procedures specified in KDHE's Governance, Risk Management, and Compliance Program Policy and Procedure, Reports of Possible Compliance-Related Problems. An approved HIO shall cooperate fully with any such investigation by responding to any inquiries or requests in a timely and complete manner and shall require its Participants and Users to do the same.
- 5) The Compliance Officer shall provide regular reports to the KDHE Secretary regarding the status of an ongoing investigation. Upon completion of the investigation of a Complaint, the Compliance Officer shall prepare and present to the KDHE Secretary a written report regarding the Complaint and the findings of the investigation. If the Compliance Officer determines the Complaint (or a related concern) is valid and requires responsive action, the Compliance Officer shall include in the report recommendations regarding appropriate remedial and proactive

measures to be undertaken by KDHE to address the Complaint (“Responsive Measures”). Responsive Measures may include, but are not limited to:

- a) Require the approved HIO to adhere to a specified corrective action plan with appropriate remedial and proactive measures to address the matter raised in the Complaint. Such corrective action may include, but not be limited to, the following:
 - (1) employee discipline;
 - (2) termination of contractor arrangement;
 - (3) staff training;
 - (4) revision of policies and procedures;
 - (5) restrictions placed upon or termination of a Participant or User;
 - (6) restrictions on the addition of new Participants or Users for a specified period of time;
 - (7) notice to an individual aggrieved by the approved HIO’s action or inaction; and
 - (8) regular reports to KDHE regarding the approved HIO’s activities.
 - b) Implement monitoring procedures to detect similar problems.
 - c) If the investigation of a Complaint reveals a possible violation of state or federal law, refer the matter to the appropriate law enforcement agency.
 - d) Develop and undertake a program of education and other corrective action to prevent similar problems in the future.
 - e) Provide notification to the individual submitting the Complaint regarding the investigation and subsequent measures.
- 6) The Compliance Officer shall involve the KDHE Secretary, legal counsel, and/or other individuals as necessary to finalize investigatory findings and make recommendations regarding Responsive Measures.
 - 7) Upon receipt of a report from the Compliance Officer, the KDHE Secretary shall approve, reject, or make modifications to the report, including any Responsive Measures outlined therein. The KDHE Secretary may direct the Compliance Officer and/or other individuals to conduct additional investigation and submit a revised report.
 - 8) Notwithstanding the foregoing, if the Compliance Officer determines a matter reported in a Complaint poses an immediate threat of significant harm (e.g., a threat to the privacy and security of any protected health information), the Compliance Officer shall bring that matter to the attention of the KDHE Secretary immediately. The KDHE Secretary, in consultation with legal counsel, shall take such action necessary to eliminate or reduce such threat. Such action may include directing an approved HIO to take certain action or refrain from engaging in certain activities.
 - 9) If, as a result of KDHE’s ongoing review of approved HIO operations as specified in P&P 10, Approved HIO Certificate of Authority, the KDHE Secretary determines Responsive Action is nec-

essary to bring an approved HIO into full compliance with KDHE-established policies and procedures or in the case of an approved HIO's repeated or egregious violation of KDHE's established policies and procedures and/or repeated or egregious failure to implement Responsive Measures, the KDHE Secretary may order restrictions upon or termination of an approved HIO's Certificate of Authority.

- 10) If an approved HIO submits an application for renewal of the approved HIO's Certificate of Authority pursuant to P&P 10, Approved HIO Certificate of Authority, the Compliance Officer shall prepare a written report to the KDHE Secretary summarizing Complaints made against the approved HIO, the approved HIO's cooperation with investigation of Complaints, and the approved HIO's implementation of any corrective action plan relating to a Complaint. The KDHE Secretary shall give such report due consideration as part of the review and renewal processes for an approved HIO.
- 11) An aggrieved party may pursue an administrative hearing pursuant to and in a manner consistent with the requirements of the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., with respect to the following:
 - a) KDHE's denial of or failure to act in a timely manner on an entity's properly submitted application for a Certificate of Authority to operate an approved HIO in Kansas;
 - b) KDHE's revocation of an approved HIO's Certificate of Authority prior to the Certificate's stated expiration date; and
 - c) KDHE's imposition of a corrective action on an approved HIO that is not supported by substantial evidence and unreasonably interferes with the approved HIO's then-current business operations in the State of Kansas.

No other action or inaction on the part of KDHE shall be subject to such review.