



COMMISSIONER
Jon Weizenbaum

November 27, 2012

To: Adult Foster Care Providers
Area Agencies on Aging
Assisted Living/Residential Care Providers
Community Attendant Services Providers
Community Based Alternatives Providers
Community Living Assistance and Support Services Providers
Consumer Directed Services Providers
Client Managed Personal Attendant Services Providers
Day Activity Services Providers
Deaf Blind with Multiple Disabilities Providers
Emergency Response Services Providers
Family Care Providers
Home and Community-based Services Providers
Home Delivered Meals Providers
Hospice Providers
Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition
Local Authorities
Medically Dependent Children Program Providers
Nursing Facility Providers
Primary Home Care Providers
Program of All-inclusive Care for the Elderly Providers
Special Services to Persons with Disabilities Providers
Relocation Services Providers
Texas Home Living Providers
Transition Assistance Services Providers

Subject: Information Letter No. 12-86
Handling of Sensitive Personal Information and Breach Notification

The purpose of this letter is to inform the above listed providers and agencies of their responsibilities and requirements relating to protecting sensitive personal information received from the Department of Aging and Disability services (DADS) and notifying DADS of a breach of sensitive personal information.

As part of its contract with DADS, a provider or agency may receive or create sensitive personal information, as section 521.002 of the Business and Commerce Code defines that phrase. The provider or agency must use appropriate safeguards to protect this sensitive personal information from unauthorized acquisition. These safeguards must include maintaining the sensitive personal information in a form that is unusable, unreadable, or indecipherable to unauthorized persons. The provider or agency may consult the ["Guidance to Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals"](#) issued by the U.S. Department of Health and Human Services to determine ways to meet this standard.

The provider or agency must notify DADS of any confirmed or suspected unauthorized acquisition, access, use or disclosure of sensitive personal information related to its contract with DADS, including any breach of system security, as section 521.053 of the Business and Commerce Code defines that phrase. The provider or agency must submit Form 0400, Privacy Incident Report, to DADS as soon as possible but no later than 10 business days after discovering the unauthorized acquisition, access, use or disclosure. The provider or agency must include on the form the identity of each individual whose sensitive personal information has been or is reasonably believed to have been compromised.

The provider or agency must disclose the unauthorized acquisition, access, use or disclosure to each individual whose sensitive personal information has been or is reasonably believed to have been compromised or pay the expenses associated with DADS doing the disclosure if:

- the provider or agency experiences a breach of system security involving information owned by DADS for which disclosure is required under section 521.053 of the Business and Commerce Code; or
- the provider or agency experiences a breach of unsecured protected health information, as 45 CFR §164.402 defines that phrase, and DADS becomes responsible for doing the notification required by 45 CFR §164.404.

DADS may, at its discretion, waive the provider's or agency's payment of expenses associated with DADS doing the disclosure.

To report an unauthorized acquisition of sensitive personal information, e-mail a completed Form 0400 to DADS HIPAA Privacy Office at HIPAA@dads.state.tx.us. Form 0400 is available online at DADS forms site at <http://www.dads.state.tx.us/forms/>.

For questions regarding the content of this letter, please contact Royce Bennett at royce.bennett@dads.state.tx.us.

Sincerely,

[Signature on file]

Tom Phillips
DADS Chief Operating Officer