


 <p><b>HAWAII HEALTH SYSTEMS CORPORATION</b> <i>Quality Healthcare for All</i></p> <p><b>PROCEDURE</b></p>	<p><b>Department:</b></p> <p><b>COMPLIANCE</b></p>	<p><b>Procedure No.</b></p> <p><b>ADM 0008B</b></p>
		<p><b>Supersedes Procedure No.</b></p>
<p><b>Subject:</b></p> <p><b>Corporate Procedure on Responding to Government Agencies</b></p>	<p><b>Approved By:</b></p>  <p>By: Edward N. Chu Its: HHSC President &amp; CEO</p>	<p><b>Approved Date:</b></p> <p>July 27, 2023</p> <p><b>Last Reviewed:</b></p> <p>March 8, 2023</p>

I. **PURPOSE:** To provide guidance to HHSC employees when responding to government investigations.

II. **DEFINITIONS:**

“Search warrant” is a court order, signed by a judge, directing law enforcement agents to enter a specified property, search that property and seize items described in the warrant and accompanying document(s).

III. **PROCEDURE:**

**A. Facility Investigational Response Team:**

1. Facility Investigational Response Team: All HHSC facilities should designate a Facility Investigational Response Team comprised of employees from various shifts that would be available to respond in the event of unexpected contact by a government agency. These individuals would be responsible for dealing with the government agents until contact is made with the HHSC’s Office of the General Counsel or designee and to work with the General Counsel or designee in responding to the government’s request. Attachment 1 may be used to list the job titles and numbers of the Facility Investigational Response Team at the facility.

The Facility Investigational Response Team members should be specifically trained on:

- Appropriate responses to government agency investigations, including awareness of the guidelines set forth in Policy ADM 0008A and this procedure;
- Assessment of a search warrant to determine if it is valid; and
- Appropriate resource personnel, such as various ways to reach the HHSC General Counsel, etc.

Education and training for the Facility Investigational Response Team should be conducted when new members join the team and at regular intervals as appropriate, to ensure that everyone on the team is apprised of their duties.

**B. General Guidelines for Employees if Approached by Government Agents:**

1. Initial Response: Employees approached by an individual representing himself/herself as a government agent and requesting information regarding HHSC or any HHSC-affiliated health care entity, or any other entity with which HHSC does business, must:
  - Be courteous.
  - Seek identification and determine which government agency the agent is from. If the individual has no official identification, call the government agency to verify credentials. If there are several agents, determine which agent(s) is in supervising and verify their credentials.
  - Determine what the government agent is requesting (for example, is the agent interested in conducting a search, interview or audit).
  - Notify the HHSC General Counsel and the Administrator/CEO/Regional Compliance Officer immediately. If these individuals cannot be successfully contacted immediately, notify a member of the Facility Investigational Response Team.
  - Do not destroy or alter any documents sought in an investigation.
  - Do not provide any false information.
  - Do not create any new documents before speaking with the HHSC General Counsel.
  - Make sure that all communication, written and oral, regarding the matter being investigated, is prepared at the direction of the HHSC General Counsel or designee, and if in writing, labeled as an attorney-client privileged document.
  - If any employees are observed engaging in any questionable conduct or attempting to interfere with the investigation in any way, contact the HHSC General Counsel immediately.
2. Interviews:
  - If the government agent requests an interview with an employee, the employee should try to determine the topic for discussion. Employees are not obligated to immediately speak to the agent and can request to schedule an appointment for a later time. If an appointment is scheduled for a later time, the employee shall notify HHSC General Counsel immediately.

- If an employee opts to immediately speak with the government agent, the employee:
  - ✓ May bring someone with them into the interview of their own choosing, including a lawyer.
  - ✓ May take notes.
  - ✓ Shall respond honestly.
  - ✓ Shall seek to listen carefully to the agent's questions and try to respond without speculating.
- After any interview with a government agent, the employee shall contact the HHSC General Counsel as soon as possible.

### 3. Searches:

- If the government agent requests to search an HHSC facility, this constitutes a search.
- The employee shall ask the agent for a search warrant and any accompanying affidavits.
- The employee must immediately notify the HHSC General Counsel and the Administrator/CEO, if not already done.
  - ✓ **IF THERE IS A SEARCH WARRANT, the determination of the validity of the search warrant is of utmost importance. If the search warrant is determined to be valid, the employee shall not obstruct the government agents in any way. To determine validity of the search warrant, the employee shall:**
    - Make a copy of the search warrant and any accompanying documents.
    - Electronically scan or fax any information received to the HHSC General Counsel or designee and call the corporate legal department to alert the office of the incoming transmission.
    - Tell the agent that they would like to have the HHSC General Counsel determine the validity of the search warrant. Request that the government agent delay executing the search until after the employee has spoken directly with the HHSC General Counsel or designee. Although government agents do not need to comply, in some instances they may cooperate.
    - If counsel is not available, the employee shall seek to determine if the search warrant is valid and determine what the contents of the warrant are. A warrant must:
      - Be signed by a judge or magistrate;

- Describe the areas that may be searched, as well as any items which may be taken. Determine if this is consistent with what the government agent stated. Search warrants may include computer hardware, software, and files.
  - The search date and time on the warrant should be consistent with the date and time that the government agent is requesting to search.
  - **If the warrant is valid – government agents do not need permission to conduct a search and seizure. Do not interfere with such a search – interference may constitute an obstruction of justice.**
  - A search warrant does not give the agents the authority to interview employees.
  - The General Counsel and the Administrator may decide to send home nonessential personnel in the area of the search.
- ✓ **IF THERE IS NO SEARCH WARRANT:**
- If there is no search warrant and the agent is seeking documents, the employee shall ask the agent to discuss the proposed search with the HHSC General Counsel. If the agent refuses, the employee shall ask for his/her supervisor's name and phone number and provide this information to the HHSC General Counsel.
  - If there is no search warrant and the agent is seeking a person, the employee should not obstruct any agent who is in direct pursuit of any individual who may be a suspect on hospital property. (For example, they may be looking for an individual who runs through hospital property after stealing a purse.) However, if the individual sought is a patient, the employee shall ask the agent to speak to the HHSC General Counsel.
  - Some government agencies can assess penalties if you do not provide them immediate access. So, if in doubt, the employee should offer to cooperate and try to reach the HHSC General Counsel as soon as possible.
- ✓ **ONCE ANY SEARCH IS UNDERWAY, the employee shall:**
- Try to keep employees and staff calm. Employees should pick up their personal belongings, if possible, and move away from the area(s) being searched.
  - Closely monitor any search to determine what is examined, and make a list of any items taken and areas searched. Take notes of all actions of the agents.

- If there are any documents that seem to be outside the scope of the search warrant, do not prevent the agent from examining them or taking them, but tell the agent that you believe they may not be within the scope of the search warrant and make a notation.
- If there are any attorney-client privileged documents (e.g. letters from legal counsel), tell the agent you believe the documents are privileged documents and make a notation if the agent reviews or takes any such documents.
- If the agent is interested in reviewing or copying medical records, inform the agent that the records may be subject to confidentiality protections under law and make a notation.
- If the agent wants to take any documents or computer files, offer to make copies of all requested documents. This way you can determine precisely what is taken. Additionally, certain information may be essential to the operations of the HHSC facility or needed for patient care. If the agent refuses to allow you to make copies, do not interfere, but make a notation.
- Ask the agent for a list all documents and items taken from the facility. The agent is required to provide a receipt for all items seized. This inventory should be in addition to your own notes.
- Do not make or sign statements indicating that you consent to the search.

✓ **AFTER THE SEARCH:**

- Discuss the search process and documents/items taken with the HHSC General Counsel or designee.
- As authorized by the HHSC General Counsel, interview employees where property was seized.
- If the facility receives any calls from newspapers or other media sources, please refer the calls to the HHSC General Counsel, the RCEO, or the PCEO.

4. Request for Documents or Subpoena for Testimony: If you receive a request in the mail from a government agency for documents or a subpoena for your testimony as a witness, contact the HHSC General Counsel for instructions.
5. Audits: If government agencies are conducting any audits at an HHSC facility, it is essential that the facility administrator be notified of the type and scope of the audit. This includes routine billing audits. The facility administrator should notify the Regional and Corporate Compliance Officer of the audits. If during the course of any government audit, the agent informs you of any other problems or inquires about other policies and practices, notify the facility administrator and the Regional Compliance Officer.

**C. Communications with Government Agencies Initiated by HHSC Employees on Behalf of HHSC:**

1. Reporting of Information: HHSC desires to ensure that certain communications with State or federal government agencies on behalf of HHSC, which are outside the normal course of daily business, are made in a consistent manner which discourages individuals from communicating inaccurate or incomplete information. Accordingly, HHSC requires the following:
  - Any communications with State or federal government agencies on behalf of HHSC outside of normal day-to-day communications with agencies shall be approved by the facility administrator or RCEO with input from the HHSC General Counsel.
  - If there is any uncertainty regarding what information can be communicated without HHSC approval, HHSC employees shall consult with the RCEO or PCEO for Corporate Office.

**D. Documenting Advice from Government Agencies:** Any advice, guidance, or direction received from a government agency should be put in writing, and maintained in a manner that makes it easily retrievable. A copy of the memo should be sent to other employees who need the information in order to properly perform job duties, including management.

- For example, a copy of any memo pertaining to billing, coding, or reimbursement rules should be sent to the Regional Compliance Officer (RCO) and the Administrator and departments which impact those areas. The Administrator or RCEO may determine that other facilities may benefit from the communication, resulting in further publication.
- In documenting conversations with government agents, include the name of the individual who provided the information, the department, the time and date and a summary of the information provided.
- If the advice is controversial, the advice should be verified with HHSC General Counsel, RCEO, or PCEO prior to dissemination.

**IV. ATTACHMENT:** Contact Sheet for Facility Investigational Response Team Members

FACILITY INVESTIGATIONAL RESPONSE TEAM MEMBERS

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