COALITION FOR THE HOMELESS

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HMIS Privacy Policies and Procedures

The goal of the TX-700 Homeless Management Information Systems (HMIS) Privacy Policies and Procedures is to ensure confidentiality and security of all client data captured in HMIS in conformity with all current regulations related to privacy and data confidentiality rights.

Outlined in this HMIS Privacy Policies and Procedures are the TX-700 Continuum of Care (CoC) standards and parameters to be followed by all HMIS Participating Agencies (PA). The CoC recognizes its participating agencies may have established their own policies that meet HUD privacy requirements and the CoC standards set forth herein. The HMIS Privacy Policies and Procedures is not intended to supplant individual PA privacy policies. If PA privacy policies and practices meet the thresholds established in this policy and do not contradict the practices described, PAs may establish additional or more stringent requirements for HMIS end users. Additionally, this policy serves to describe how the HMIS Lead Agency and the HMIS meet the privacy requirements established in HUD privacy standards.

Policy Access and Amendment

The HMIS Lead Agency may amend its privacy policy and practices at any time, subject to the recommendation of the HMIS Support Committee. The HMIS Lead Agency may bring issues to the CoC Steering Committee as necessary. An amendment may affect data that had been entered in the HMIS before the effective date of any such amendment. This policy is consistent with current privacy standards for HMIS issued by HUD.

The Privacy Policy will be reviewed and amended consistent with the procedure described in the Roles and Responsibilities section of the HMIS Policies and Procedures.

Applicability

The HMIS Privacy Policies and Procedure applies to the HMIS Lead, PAs, and any person accessing HMIS data. PA projects subject to the privacy rules established under the authority of the Health Insurance Portability and Accountability Act (HIPAA) or other more restrictive policies will be honored.

The limitations of the HMIS implementation are described in the Client Informed Consent and Privacy Rights section of the HMIS Policies and Procedures.

The HMIS Lead Agency and PAs will uphold federal and state confidentiality regulations to protect client records and privacy. If a PA is covered by more stringent regulations, such as HIPAA, the more stringent regulations will prevail. Any project not subject to the HMIS Privacy Policies and Procedures will be identified in the PA's HMIS Agency Participation Agreement.

Participating Agency Policy

Each PA is responsible for maintaining a privacy policy and certifying that each participating project complies with the HMIS Privacy Policies and Procedures. PA Administrators are responsible for reviewing privacy policies and ensuring consistency with the HMIS Privacy Policies and Procedures. At times, PAs may require more rigorous privacy standards but they must, at minimum, meet and not contradict the privacy standards set forth herein. In addition, PAs must maintain documentation regarding changes to their privacy policies.

Each PA will adopt the standard policy or their own, as long as the policy meets and does not contradict with the privacy standards set forth in this Policies and Procedures.

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A PA's Privacy Policy will:

- Specify the purpose for collecting the information.
- Specify all potential uses and disclosures of client personal information.
- Specify the time for which the hard copy and electronic data will be retained at the organization and the method for disposing of it or removing identifiers from personal information that is not in current use.
- State the process and applicability of amendments and commit to documenting all amendments.
- Offer reasonable accommodations for persons with disabilities and/or language barriers.
- Allow the client the right to inspect and to have a copy of their client record and offer to explain any information the individual may not understand.
- Include reasons and conditions when an organization would not release information.
- Specify a procedure for accepting and considering questions or complaints about the privacy policy.

Compliance Review

The HMIS Lead Agency is responsible for ensuring HMIS is operated in accordance with HUD standards. PAs are responsible for conducting annual reviews certifying each participating project complies with the HMIS Privacy Policy and HUD standards. The TX-700 CoC, through the HMIS Lead Agency, will conduct site visits to ensure compliance with the HMIS Privacy Policy and Procedures.

Each year, PAs will be required to self-certify that they comply with the Houston/Harris County HMIS Privacy Policy and Procedure. PAs must indicate whether it has:

- Adopted the HMIS Privacy Policies and Procedures, or
- Adopted a different privacy policy that meets the requirements outlined in the HMIS Privacy Policies and Procedures.

In the event the PA adopts a different privacy policy, the PA will be expected to attach a copy of the policy to their HMIS Agency Participation Agreement. If no policy has been adopted at time of execution of the HMIS Agency Participation Agreement, or at the time of the annual certifications thereafter, the PA must establish a date no later than three months from the certification review date by which such a policy will be developed and implemented.

Privacy Policy Notice

The HMIS Lead Agency and PAs must ensure privacy policies are readily accessible to clients and the public.

Public Access Procedure

The HMIS Lead Agency will post the TX-700 HMIS Privacy Policies and Procedures on its official website and provide a copy to any individual upon request.

Informed Client Consent Procedure

The HMIS Lead Agency will maintain HMIS data using lawful and fair means. PA privacy policies will include a provision stating the PA will only collect data with the consent of their clients. Any client seeking assistance from a PA will be notified through a signed consent form that data collection will occur. The HMIS Lead Agency will assume that client information in HMIS has been entered with the consent of the client according to these policies and procedures. All PAs will keep copies of the signed consents on file. Individual PAs may maintain stricter policies relating to client consent to collect and share data with the HMIS Lead Agency.

At minimum, the HMIS Lead Agency requires PAs to post signs at each intake desk or other appropriate locations where data collection occurs explaining the reasons for HMIS data collection. The sign will include the following language:

> *We collect personal information about individuals in a computer system called a Homeless Management Information System (HMIS) for reasons that are discussed in our privacy policy. We may be required to collect some personal information by organizations that fund the operation of this program. Other*

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personal information that we collect is important to run our programs, to improve services for individuals, and to better understand the needs of individuals. In order to provide or coordinate individual referrals, case management, housing or other services, some client records may be shared with other organizations that are required to have privacy policies in place in order to protect your personal information.

We only collect information that we consider appropriate. If you have any questions or would like to see our privacy policy, our staff will provide you with a copy. You have the right as a client to decline to share your information.

Agencies may use the sample privacy notice attached in Appendix G of the HMIS Policies and Procedures.

Accessibility Procedure

Each PA that is a recipient of federal assistance will provide required information in languages other than English that are common in the community, if speakers of these languages are found in significant numbers and come into frequent contact with the organization.

PAs must make reasonable accommodations for persons with disabilities throughout the consent, intake, and data collection processes. This may include, but is not limited to, providing qualified sign language interpreters, readers or materials in accessible formats such as Braille, audio, or large type as needed by the individual with a disability.

HMIS Data Use and Disclosure

The confidentiality of HMIS data will be protected. PAs must collect data by legal and fair means, consistent with the Data Policies and Procedures section of the HMIS Policies and Procedures. The HMIS Lead Agency and PAs may only collect, use, and disclose data for the specific purposes and reasons defined in this section.

The HMIS Lead Agency collects HMIS data from organizations that directly enter data into the TX-700 HMIS System with the knowledge and authority of the CoC Steering Committee. HMIS data may only be collected, used, or disclosed for activities described in this section. The HMIS Lead Agency requires that PAs notify individuals seeking their assistance that data collection, use, and disclosure will occur. By entering data into the HMIS System, the PA verifies that individuals have provided the PA with consent to use and disclose their data for purposes described below and for other uses and disclosures the HMIS Lead Agency determines to be compatible:

- To provide or coordinate individual referrals, case management, housing, or other services. Client records may be shared with other organizations that may have separate privacy policies and that may allow different uses and disclosures of the information;
- For functions related to payment or reimbursement for services;
- To carry out administrative functions, including but not limited to audit, personnel oversight, and management functions;
- To produce aggregate-level reports regarding use of services;
- To produce aggregate-level reports for funders or grant applications;
- To create de-identified (anonymous) information;
- To track system-wide and project-level outcomes;
- To identify unfilled service needs and plan for the provision of new services;
- To conduct a study or research project approved by the CoC
- When required by law (to the extent that use or disclosure complies with and is limited to the requirements of the law);
- To avert a serious threat to health or safety if:
    - The use or disclosure is reasonably believed to be necessary to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public; and
    - The use or disclosure is made to a person reasonably able to prevent or lessen the threat, including the target of the threat.

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- To report about an individual reasonably believed to be a victim of abuse, neglect, or domestic violence to a governmental authority (including a social service or protective services agency) authorized by law to receive reports of abuse, neglect, or domestic violence in any of the following three circumstances:
    - Where the disclosure is required by law and the disclosure complies with and is limited to the requirements of the law;
    - If the individual agrees to the disclosure; or
    - To the extent that the disclosure is expressly authorized by statute or regulation and either of the following are applicable:
        - The PA believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
        - If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the HMIS data for which disclosure is sought is not intended to be]used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure;
    - When such a permitted disclosure about a victim of abuse, neglect, or domestic violence is made, the individual making the disclosure will promptly inform the individual who is the victim that a disclosure has been or will be made, except if:
        - In the exercise of professional judgment, it is believed that informing the individual would place the individual at risk of serious harm; or
        - It would be informing a personal representative (such as a family member or friend), and it is reasonably believed that the personal representative is responsible for the abuse, neglect, or other injury, and that informing the personal representative would not be in the best interests of the individual as determined in the exercise of professional judgment.
- To a law enforcement official for a law enforcement purpose (if consistent with applicable law and standards of ethical conduct) under any of these circumstances:
    - In response to a lawful court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or a grand jury subpoena;
    - If the law enforcement official makes a written request for HMIS data that:
        - Is signed by a supervisory official of the law enforcement agency seeking the HMIS data;
        - States that the information is relevant and material to a legitimate law enforcement investigation;
        - Identifies the HMIS data sought;
        - Is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
        - States that de-identified information could not be used to accomplish the purpose of the disclosure.
    - If it is believed in good faith that the HMIS data constitutes evidence of criminal conduct that occurred on the PA's premises;
    - In response to an oral request for the purpose of identifying or locating a suspect, fugitive, material witness or missing person and the HMIS data disclosed consists only of name, address, date of birth, place of birth, social security number and distinguishing physical characteristics; or
    - If the official is an authorized federal official seeking HMIS data for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879 (threats against the President and others), *and* the information requested is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.
- To comply with government reporting obligations for HMIS and for oversight of compliance with HMIS requirements.
- To third parties for the following purposes:

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- To permit other systems of care to conduct data matches (i.e., to determine if you are also utilizing services from such other systems of care); and
- To permit third party research firms and/or evaluators to perform research and evaluation services, as approved by the CoC, relating to the projects administered by the HMIS Lead and the PAs;

Provided that before client-level HMIS data are disclosed under this subsection, the third party that will receive such client-level HMIS data and use it as permitted above must first execute a Data Use and Security Agreement (found in Appendix H of the Policies and Procedures). The Data Use and Security Agreements requires the third party to comply with all applicable laws and regulations, including the privacy standards and disclosure provisions contained in the current HUD HMIS Data and Technical Standards.

The HMIS Lead may share client level HMIS data with contracted entities as follows:

- The PA originally entering or uploading the data to the Houston/Harris County HMIS.
- Outside organizations under contract with the HMIS Lead Agency or other entities acting on behalf of the Houston/Harris County CoC for research, data matching, and evaluation purposes. The results of this analysis will always be reported in aggregate form; client level data will not be publicly shared under any circumstance.

Entities providing funding to organizations or projects required to use HMIS will not have automatic access to HMIS. Access to HMIS will only be granted by the HMIS Lead Agency when there is a voluntary written agreement in place between the funding entity and the organization or project. In such cases, funder access to HMIS will be limited to data on the funded organization or project. Funding for any organization or project using HMIS cannot be contingent upon establishing a voluntary written agreement allowing the funder HMIS access.

Any requests for reports or information from an individual or group who has not been explicitly granted access to the Houston/Harris County HMIS will be directed to the HMIS Support Committee. No individual client data will be provided to meet these requests without proper authorization.

Before any use or disclosure of Personal Identifying Information (PII) that is not described here is made, the HMIS Lead Agency or PA wishing to make the disclosure will seek the consent of all individuals whose PII may be used or disclosed.

Access and Correction

Clients whose data is collected in HMIS may inspect and receive a copy of their HMIS record by requesting it from the PA that originally collected the information. The HMIS Lead Agency requires the PA to establish a policy to manage such requests and to explain any information a client may not understand.

Each PA privacy policy will describe how requests from clients for correction of inaccurate or incomplete HMIS records are handled. The policy will allow clients to request their HMIS data or request the data be removed from the HMIS. Nothing in this section is intended to indicate that a PA is released from any obligation by any funder to collect required data elements.

If a client requests to have his or her information in the HMIS corrected or removed, and the PA agrees that the information is inaccurate or incomplete, they may delete it or they may choose to mark it as inaccurate or incomplete and to supplement it with additional information. Any such corrections applicable to the data stored in the HMIS system will be corrected within one week of the request date.

In the event that a client requests to view his or her data in the HMIS, the PA HMIS Administrator will keep a record of such requests and any access granted. The PA HMIS Administrator or PA Case Manager will provide a copy of the requested data within a reasonable timeframe to the client.

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PAs are permitted to establish reasons for denying client requests for inspection of HMIS records. These reasons are limited to the following:

- If the information was compiled in reasonable anticipation of litigation or comparable proceedings;
- If the record contains information about another client or individual (other than a healthcare provider or homeless provider) and the denial is limited to the section of the record containing such information;
- If the information was obtained under a promise of confidentiality (other than a promise from a healthcare provider or homeless provider) and if the disclosure would reveal the source of the information; or
- Disclosure of the information would be reasonably likely to endanger the life or physical safety of an individual.

If a PA denies a request for access or correction, the PA will explain the reason for the denial. The PA will also maintain documentation of the request and the reason for the denial.

PAs may reject repeated or harassing requests for access to or correction of an HMIS record.

Data Retrieval and Sharing

HMIS, as implemented in the Houston/Harris/Fort Bend/Montgomery County regions, is a system that will generate reports required by HUD, the CoC, and other stakeholders. This will be at a level that does not identify individuals but can provide accurate statistical data such as numbers served and trend assessments based on data entered by PAs. Data from HMIS will be used to produce CoC and local level statistical reports as well as corresponding reports. These purposes are included in the HMIS Data Use and Disclosure section of the HMIS Privacy Policies and Procedures.

The HMIS Lead Agency staff has access to retrieve all data in the TX-700 HMIS. The HMIS Lead Agency will protect client confidentiality in all reporting.

PAs may share clients' personal information with each other for the purposes of determining eligibility and coordinating client services once an agreed upon Release of Information is in place, as outlined in the Data Policies and Procedures section of the Policies and Procedures.

PAs may also retrieve HMIS data entered to produce statistical reports including number of clients served and trend assessments for internal purposes, grant applications, and other required reports, within the parameters established by the HMIS Lead.

Grievance

Concerns related to the Houston/Harris County HMIS Privacy Policy and Procedure may be raised according to the procedures outlined in the HMIS Client Grievance Policy and Procedure. PAs must establish a policy and regular process for receiving and reviewing complaints from clients about potential violations of the policy.

PAs should report any violation of their privacy policy to the HMIS Lead Agency. In addition to any corrective actions taken by the PA, the HMIS Lead Agency may also report the findings to the CoC Steering Committee or law enforcement, as appropriate, for further action. Such action may include, but is not limited to the following:

- Suspension of system privileges
- Revocation of system privileges

Individuals sanctioned because of HMIS privacy violations, can appeal to the CoC Steering Committee.

All HMIS end-users are required to comply with this privacy policy. PAs must ensure all end-users involved in HMIS data collection and/or entry receive privacy policy training. End-users must receive and acknowledge receipt of this privacy policy.