

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

AUG 26 2013

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 557183	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 11/21/2012
NAME OF PROVIDER OR SUPPLIER ACCENTCARE HOME HEALTH OF CALIFORNIA, INC.		STREET ADDRESS, CITY, STATE, ZIP CODE 1065 E Hillsdale Blvd Suite 100, Foster City, CA 94404-1688 SAN MATEO COUNTY		
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	<p>The following reflects the findings of the Department of Public Health during a complaint/breach event visit:</p> <p>Complaint Intake Number: CA00330806 - Substantiated</p> <p>Representing the Department of Public Health: Surveyor ID # 23106, HFEN</p> <p>The inspection was limited to the specific facility event investigated and does not represent the findings of a full inspection of the facility.</p> <p>Health and Safety Code Section 1280.15(a) A clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code and consistent with Section 130203. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars (\$25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars (\$17,500) per subsequent occurrence of unlawful or unauthorized access, use, or disclosure of that patients' medical information.</p> <p>Violation of Health & Safety Code 1280(a) for failure to prevent unauthorized disclosure of patients' medical information: substantiated.</p>		<p>To ensure the agency shall safeguard the information in the record against loss, defacement, tampering or use by unauthorized persons the ED/DPCS or designee will maintain the following process:</p> <p><u>Immediate:</u></p> <p>A letter was sent to all patients involved notifying them of the unauthorized disclosure along with a letter from the California Office of Privacy Protection on recommendations for protecting their privacy in the event their personal protection is compromised.</p> <p>The Rehab Director contacted the patients by phone to inform them of the unauthorized disclosure with instruction on privacy protection recommendation.</p> <p>Staff was educated on the importance of safeguarding patients PHI and the following agency policy regarding protection of PHI in the field.</p> <ol style="list-style-type: none"> Clinicians will only carry patient records needed for that day. All records are to be kept in a closed folder at all times in the clinician's physical control or locked out of sight in the clinician's vehicle. PHI that does not jeopardize the safety of the patient will be removed or obscured in the paper record. 	<p>10/25/12</p> <p>10/25/12</p> <p>11/7/12</p>

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LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

[Signature] PT

Administrator

8-23-13

By signing this document, I am acknowledging receipt of the entire citation packet, Page(s) 1 thru 8

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. Except for nursing homes, the findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

POC accepted Gary King acting supervisor 8-26-13

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	<p>Health & Safety Code (b)(2), "A clinic, health facility, agency, or hospice shall also report any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to the affected patient or the patient's representative at the last known address, no later than five days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, agency, or hospice."</p> <p>The CDPH verified that the agency informed the affected patients or patients' representatives in a timely manner of the unlawful or unauthorized access, use, or disclosure of the patients' medical information.</p> <p>1280.15(a) Health & Safety Code 1280</p> <p>(a) A clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code and consistent with Section 130203. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars (\$25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars (\$17,500) per subsequent occurrence of unlawful or unauthorized access, use, or disclosure of that patients' medical information. For purposes of the</p>		<p>To ensure the agency shall safeguard the information in the record against loss, defacement, tampering or use by unauthorized persons the ED/DPCS or designee will maintain the following process:</p> <p><u>Long Term:</u></p> <ol style="list-style-type: none"> 1) IT system modified the software system to ensure that face sheets with patient information are printed with the patient's social security number and Medicare number masked. 2) Annual in-service will be provided to the staff regarding protection of our patient's PHI 3) All staff will be required to view a training video on PHI and pass a test to demonstrate competency 4) Audit 10% sample of clinicians every 4 weeks regarding PHI taken into the field at the IDCC meetings until the clinicians report 100% compliance in safeguarding patient's PHI. <p><u>Monitoring Process:</u></p> <p>The Clinical Supervisor will monitor through annual joint visits each clinician's process for protecting each patient's PHI. The results of these findings will be reported to the QAPI committee and reporting to PAC on a quarterly basis. Clinicians not complying with the actions necessary to protect PHI will be disciplined up to and including termination</p>	<p>11/5/2012</p> <p>Ongoing</p> <p>Ongoing</p> <p>Ongoing</p> <p>Ongoing</p>

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	<p>investigation, the department shall consider the clinic's, health facility's, agency's, or hospice's history of compliance with this section and other related state and federal statutes and regulations, the extent to which the facility detected violations and took preventative action to immediately correct and prevent past violations from recurring, and factors outside its control that restricted the facility's ability to comply with this section. The department shall have full discretion to consider all factors when determining the amount of an administrative penalty pursuant to this section.</p> <p>CCR Title 22 DIV 5 CH6 ART 4 - 74731(b) Patients' Health Records Availability</p> <p>(b) The agency shall safeguard the information in the record against loss, defacement, tampering or use by unauthorized persons.</p> <p>CCR Title 22 DIV 5 CH6 ART4 - 74743(d) (1)(2) Patient Rights</p> <p>(d) Confidentiality of medical records. (1) The patient has the right to confidentiality of the clinical records maintained by the home health agency. (2) The home health agency must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.</p> <p>These regulations were not as evidenced by:</p> <p>Based on interview and record review, the agency failed to safeguard six patients' (Patients 1, 2, 3, 4,</p>				

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	<p>5, and 6) Protected Health Information (information about a patient's past or present medical condition, plans for future medical care, or payment information for that care that could be used to identify the patient) when a clinician (Clinician 1) left these six patients' records unattended and unsecured in her personal vehicle which was then burglarized. The information stolen from her vehicle included patients' names, diagnoses, medications, and treatments that they were to receive from the agency or had received from other health care providers.</p> <p>In addition, these records contained patients' Social Security Numbers, dates of birth, addresses, phone numbers, names and phone numbers of relatives or other emergency contacts, and insurance information. This information can be used in identity theft. Identity theft is using someone's name, Social Security Number, or account number to obtain credit, medical services, or commit crimes. In 2011 there were 11.6 million victims of identity theft in the U.S. and over one million in California. (State of California, Department of Justice, Office of the Attorney General, http://oag.ca.gov/idtheft accessed on 1/17/13).</p> <p>Findings:</p> <p>During an interview with Clinician 1 on 11/28/12 at 4:05 p.m., she said she was at a local restaurant watching a football game with a friend when restaurant employees approached her table giving a description (of her vehicle) and telling her another customer reported that his vehicle and (hers) had</p>				

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	<p>smashed windows.</p> <p>Clinician 1 further stated the tinted rear windshield of her SUV (Sport Utility Vehicle) was broken over the rear cargo area (there is no trunk) where the following items had been stored: her cloth bag with patients' paper medical records; her friend's laptop computer; a bag used on a recent hiking trip. She added that her dog (a Golden Retriever) was in the vehicle at the time and was unharmed.</p> <p>Clinician 1 said she put the bag with the patients' medical records in her vehicle because she was going to spend the night at a friend's home which was near where she would be working the next day.</p> <p>The San Mateo Police Department report of 10/22/12 indicated that on 10/22/12 at approximately 8:37 p.m., Clinician 1 and her friend approached the police officer investigating the other auto burglary in the restaurant parking lot and told him the following. On 10/22/12 at approximately 5:15 p.m., Clinician 1 parked and locked her vehicle in the restaurant parking lot. She and her friend then entered the restaurant. At approximately 7:15 p.m., while they were inside the restaurant, the victim of the other auto burglary informed them their rear window had been smashed out. They went outside to check their vehicle and noticed three bags in the rear cargo area had been stolen. One of these bags contained patients' personal information and a GPS (Global Positioning System, satellite based navigation system that calculates a user's exact location and gives directions).</p>				

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	<p>On 12/21/12, the patients' information stolen from Clinician 1's vehicle was received from the agency. This information included the following:</p> <p>Patient 1: Name; date of birth; home address and phone number; medical diagnoses including psychiatric diagnoses; medications, including psychotropic medications; allergies; height and weight; Social Security Number.</p> <p>Patient 2: Name; date of birth; home address and phone number; names of relatives and phone number; medical diagnoses; medical records from an acute care hospital and a skilled nursing facility which included medications taken, treatments received from physical and occupational therapists, insurance information, and a Social Security Number.</p> <p>Patient 3: Name; date of birth; home address and phone number; relative's name and phone number; medical diagnoses; weight; insurance information; Social Security Number.</p> <p>Patient 4: Name; date of birth; home address and phone number; relative's name and phone number; medical diagnoses; medical records from a clinic that were faxed to a skilled nursing facility including medical history and examination, extensive lists of medications, laboratory test results; medical records from a skilled nursing facility which included occupational therapy evaluations, physical therapy evaluations and treatments, allergies, insurance information; Social Security Number.</p>		<p style="text-align: center;">AUG 26 2013</p>		

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	<p>Patient 5: Name; date of birth; home address and phone number; relative's name and phone numbers; medical diagnoses; records from a hospital which included, medical history and examination, family history, medications, laboratory test results, bladder function status, allergies, x-ray results, height and weight; records from a specialty pharmacy; insurance information; Social Security Number.</p> <p>Patient 6: Name; date of birth; home address and phone number; relative's name and phone numbers; medical diagnoses; outpatient records from a medical center including a medical history, physical examination, medications; records from a skilled nursing facility including diagnoses, allergies, dietary restrictions, medications, physical and occupational therapy evaluations, insurance information; Social Security Number.</p> <p>On 11/28/12 at 4:05 p.m., Clinician 1 stated that the instructions she was given from the agency before patients' medical records were stolen from her vehicle were to keep her bag in the trunk and to always make sure the bag is zipped so names and information cannot be seen. She stated there was no locking mechanism on the bag she was given by the agency. She added, she understood it was okay to leave the bag with patients' records in her vehicle when she went to lunch or to dinner. She said it was her practice to take the bag with patients' records into her residence at night.</p> <p>Clinician 1 further stated that after the burglary, she was instructed by the agency to take her bag with</p>		<p>AUG 26 2013</p>		

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	<p>patients' records with her if she runs in somewhere from her vehicle. She also said the agency was planning to modify the amount of patient information they give to clinicians.</p> <p>The agency's "HIPAA (Health Insurance Portability and Accountability Act, includes regulations about health information privacy) Education Privacy and Security Practices" slides, revised in April 2012, indicated under the "Safeguarding PHI (Protected Health Information) is Our Responsibility" section, to "Keep medical records locked or attended."</p> <p>The agency's Organizational Policies Manual, Chapter 3, HIPAA Policies, Number H-001, effective 4/5/12, "Administrative Overview," 11. indicated, "AccentCare will have in place appropriate administrative, technical and physical safeguards to protect the privacy of its Patients' PHI (Protected Health Information) and to reasonably attempt to prevent any intentional or unintentional Use or Disclosure of PHI in violation of AccentCare's privacy and security policies and procedures or other applicable state or federal law."</p> <p>The agency's Organizational Policies Manual, Chapter 3, HIPAA Policies, Number H-010, effective 4/5/12, "Notice of Information Privacy Practices," Attachment 10.1, "AccentCare Notice of Privacy Practices," indicated under the "How do we protect Protected Health Information?" section, third sentence, "We also maintain physical, electronic, and procedural safeguards to guard your Protected Health Information."</p>				

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