

UTMB HANDBOOK OF OPERATING PROCEDURES

Section 6	Compliance Policies	07/17/13 -Originated -Reviewed w/ changes -Reviewed w/o changes
Subject 6.1	General Compliance	
Policy 6.1.12	Government and Outside Investigations	07/17/13 -Effective Office of Institutional Compliance -Author

Government and Outside Investigations

Definitions

Civil investigation: An investigation by a local, state or federal authority regarding a potential civil legal matter that could result in the imposition of monetary penalties or other remedies.

Criminal Investigation: An investigation by a local, state or federal law enforcement agency regarding an allegation that a crime may have occurred.

Government Agent: A government official, representative, investigator, or other individual acting on behalf of a federal, state or local entity with jurisdiction over the matter under investigation. This may also include UTMB police when acting in the capacity of a law enforcement agency.

Government Investigation: An investigation conducted by a local, state or federal governmental entity.

Search Warrant: A court order directing the search of and seizure of, specific evidence or instruments of a crime set forth in the warrant. A judge must sign the warrant after law enforcement officers have established probable cause to believe evidence of a crime exists at a specific location.

Subpoena: An order issued by a court of law, government agencies (ex. the Office of Inspector General or the Department of Justice) which requests documentary information and/or testimonial information for use in a criminal, civil or administrative investigation

UTMB personnel: Any faculty, staff, student, volunteer or any other contractors or agents of UTMB.

Policy

This policy establishes procedures for UTMB personnel to respond to inquiries, investigations and audits from government agencies. Government agencies who may contact UTMB personnel may include, but are not limited to, the U.S. Department of Justice, the Office of Inspector General, the Federal Bureau of Investigation, the Centers for Medicare & Medicaid Services, U.S. Immigration and Customs Enforcement, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Office of Laboratory Animal Welfare, the Office for Human Research Protections, Association for the Accreditation of

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Human Research Protection Programs, the Centers for Disease Control, the Food and Drug Administration, the U.S. Department of Agriculture, the Office for Civil Rights, Texas Department of Public Safety, U.S. Marshalls, and local law enforcement agencies. Inquiries made by any professional healthcare licensing board (ex. Texas Medical Board) should be referred to Legal Affairs.

UTMB personnel may be approached by government agents to provide documents and/or information related to a government investigation, inquiry, or audit. UTMB will cooperate with any legally authorized government investigation, inquiry, or audit; however, UTMB will assert all protections afforded it by law in any such inquiry, investigation, or audit. Information should not be disclosed until authorization is obtained from the Office of Institutional Compliance (OIC) in accordance with the procedures in this policy. This policy applies to the following situations:

1. Telephone calls, emails, or letters from a government agent(s);
2. Presentation of demand letters, subpoenas, or search warrants;
3. On-site visits to, or inspections of, UTMB facility premises, whether owned or leased, by a government agent;
4. Visits to the homes or other locations of current employees by a government agent; and
5. Any other contact with a government agent.

All instances of contact with government agents must be reported to the OIC in accordance with this policy and the reporting requirements of IHOP 6.1.4 *Significant Events Reporting*.

Procedure

In the event of a government inquiry, UTMB personnel must first attempt to contact OIC. If contact occurs after hours or on the weekend, please follow the guidelines below and promptly contact OIC the next business day.

General Guidelines

If a government agent appears on campus, at the home of an employee, or makes any other contact with UTMB personnel requesting interviews or to examine/remove UTMB documents in connection with a government inquiry, investigation, or audit of UTMB operations, employees should take the following steps:

1. Request identification from the government agent. Photocopy the identification and any other documents presented (i.e. subpoenas or warrants).
 2. Escort the government agent to a location outside the main areas
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**Procedures,
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of the Department (i.e. conference room) if possible.

3. Notify the department administrator of the government agent’s presence and requests. The department administrator or his/her designee should contact the OIC.
4. The department administrator or his/her designee should inform the government agent of the institutional policies and procedures applicable to their request and that the OIC has been contacted as required.
5. OIC will meet the government agent, verify their identity and the contents of the legal documents before questions are answered or documents provided. OIC will instruct the department and employees on how to proceed with the request.

**Requests for
Interviews**

When a government agent requests to interview a UTMB employee, whether on campus or at the employee’s home, the General Guidelines and the following guidelines apply:

1. OIC must be informed before the interview takes place.
 2. All UTMB personnel have the right to determine the time and place of the interview, but should not attempt to deter or obstruct a governmental investigation.
 3. UTMB personnel may forgo any discussions with government agents until securing legal counsel. If the employee desires to have an attorney present at any meeting, the employee may request to consult with a private attorney or an attorney from the Legal Affairs Department (“Legal”).
 4. An employee who gives an interview to a government agent without an attorney from Legal or OIC present may be liable for any of the information provided regardless of whether the information harms the employee or UTMB as an entity.
 5. If a government agent appears at the private residence of an employee requesting an interview, the employee is not required to immediately grant the interview. Employees may choose when and where an interview will take place. Employees should not be intimidated into talking with a government agent. Even when the government agent appears at a private residence, employees have the right to request that a representative from OIC, Legal, or a private attorney be present during an interview.
 6. During the course of an interview, questions should be answered truthfully and completely. If an employee doesn’t know an answer, it should be simply stated that they do not know. Employees should
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Requests for Interviews, continued

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- never repeat hearsay or make assumptions. If possible, note specifics of the content provided to the government agent during an interview.
7. This information can be used in later administrative, civil or criminal proceedings. Additionally, an employee may be subpoenaed to testify in a court proceeding regarding the subject matter of the interview.
 8. Remember, an employee has the right to stop an interview at any time.
 9. Never allow a government agent to view or remove UTMB documents or medical records unless they have been authorized by OIC or Legal to do so in accordance with a valid subpoena, warrant, or court order.

Subpoenas and Search Warrants

When a government agent requests to search UTMB premises pursuant to a valid subpoena or search warrant, the agent has legal authority to enter the premises and seize documents listed in the warrant. UTMB personnel do not have to speak with government agents, but the documents must be provided in a manner consistent with this policy.

In addition to 1-4 of the General Guidelines above, the following guidelines apply when a government agent presents a subpoena or a search warrant authorizing access to UTMB premises and/or documents: Cooperate with the government agent, but do not respond independently or consent to the search without permission from OIC.

When presented with a subpoena or search warrant, request that the government agent wait until a legal officer from OIC or Legal Affairs arrives to determine the validity of the warrant or subpoena. Upon determination of the validity the search may proceed or documents may be turned over.

Avoid altering, removing, or destroying documents or records. All records are subject to the UTMB records retention schedule.

If the government agent asks for copies of medical records (including patient, billing, financial, or quality assurance data) explain that such requests will be honored in response to a lawfully issued subpoena and search warrant after such documents are verified by OIC or Legal.

The confidentiality of medical records and other sensitive information must be maintained when responding to a subpoena, search warrant, or other authorized request for document production. See, [IHOP 6.2.16 Permitted Uses and Disclosures of PHI in Special Situations](#).

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Subpoenas and Search Warrants, continued

When possible, employees should document the nature and types of records turned over to any government agent and report that information to the OIC.

The General Counsel, and in cases where UTMB has requested assistance from an outside law enforcement agency, the University Police must coordinate assistance provided to state, federal, and local law enforcement agencies. The Office of General Counsel shall direct the collection and transfer of records, ensure the confidentiality of the records, and verify the response to the warrant is appropriate.

Inquiries Related to Billing

UTMB departments may receive a written communication from a government agency related to billing issues including the following:

1. Overpayment of funds;
2. Medicare/Medicaid Fraud and Abuse.

When a government agent requests information or records related to billing compliance for healthcare services the following procedure should be followed prior to providing any documents or information to any individual:

1. The written communication should be provided to the department administrator for his/her review.
2. Department administrators are responsible for contacting the OIC and providing a copy of the communication.
3. The OIC will identify the person or entity making the request, verify the authority, and provide guidance to the department on how to proceed.
4. The OIC should be the point of contact for any fraudulent billing questions, investigations, or any other communications.

Research Related Inquiries

When a government agent requests information or records related to UTMB's compliance with federal laws, regulations and guidelines, the University of Texas rules and guidelines, University of Texas System and UTMB policies, as applicable to the conduct of research, the following procedures apply:

1. Any employee who is contacted by a government agent conducting an investigation or audit of research related activities at UTMB should not answer any questions or provide any documents before notifying OIC.
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**Research Related
Inquiries,
continued**

2. If an employee receives a written communication, the written communication should be provided to the department administrator for his/her review.
3. If an employee receives an oral communication, either in person or on the phone, they should direct the person or the call to their department administrator.
4. Department administrators are responsible for contacting OIC and providing a copy of the writing or communicating the content of verbal discussions.
5. OIC staff will identify the person or entity making the request, verify the authority and provide guidance to the department on how to proceed.
6. OIC should be the point of contact in any investigation, audit, or other inquiries into research activities.

**Inquiries from
Non-
Governmental
Agents**

If an employee receives an oral request from a non-governmental agent for information related to any UTMB operation, the requesting party should be provided [IHOP Policy 2.1.3 Release of Information under the Texas Public Information Act.](#)

Any requests from news or media for interviews or information should be referred to Public Affairs division of Marketing and Communications.

**Relevant U.T.
System Policies**

UTS118 Statement of Operating Policy Pertaining to Dishonest or Fraudulent Activities

**Relevant State
Laws**

Civil Practice and Remedy Code, Title 2, Ch. 22.
Code of Criminal Procedures, Title 1, Ch. 18.
Code of Criminal Procedures Title 1 Ch. 24.
Health and Safety Code, Title 4 Sec. 222.026.
Penal Code Title 7, Sec. 35A.02.
Texas Administrative Code, Title 25, §133.101.
Texas Rules of Civil Procedures, Rule 176

**Relevant Federal
Laws**

42 C.F.R. Part 50
45 C.F.R. §160.314
Patient Protection and Affordable Care Act, 42 U.S.C. 18001

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Relevant UTMB Policies

IHOP Policy 2.1.3 *Release of Information under the Texas Public Information Act.*
IHOP Policy 6.3.1 *Billing Compliance Plan.*
IHOP Policy 6.4.1 *Significant Events Reporting*
IHOP Policy 6.5.0 *Research Compliance Plan.*
