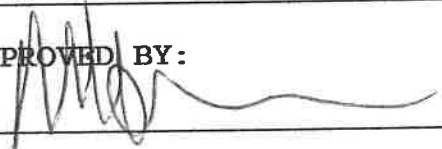


COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES
POLICY AND PROCEDURE MANUAL

SUBJECT: HIPAA - Authorization for the Use or Disclosure of Protected Health Information - Mental Health	POLICY: 01-22
SECTION: Administration	EFFECTIVE DATE: 7-21-10
REFERENCE: 45 C.F.R. Sections 160.508 & 160.530(j)	PAGE: 1 of 10
AUTHORITY: 45 C.F.R. Part 164	SUPERSEDES: 9-3-05
	APPROVED BY: 

PURPOSE: To establish a policy regarding use or disclosure of protected health information based on an individual's authorization.

SCOPE: The information in this document applies to all members of the workforce which includes employees, contract employees, volunteers, trainees, etc., granted access to protected health information (PHI).

NOTES: Lanterman-Petris Short Act (LPS) requires that, where patient "consent" is required for the release of information under Section 5328(a) and (d), then a signed consent must be obtained for each separate use or disclosure. All "consents" under LPS must meet HIPAA requirements for valid authorization. HIPAA compliant authorizations must be obtained whenever required by HIPAA or whenever "consent for release is required by LPS.

DEFINITIONS: Authorization: Permission by an individual or his or her personal representative for the release or use of information. An "authorization" is a written document that gives ICBHS permission to obtain, use and disclose information to a third party specified by the individual. An "authorization" allows for the use and disclosure of PHI for purposes other than treatment, payment, or health care operations (TPO).

Authorizations may come from three sources:

1. **The individual** - The individual initiates the authorization because he or she wants ICBHS to disclose his or her record.
2. **The covered entity** - A covered entity (ICBHS) asks an individual to authorize disclosure or use of information for purposes other than treatment, payment, or health care operations. The authorization request may also come from an ICBHS business associate.
3. **A third party** - A third-party may have an individual complete an authorization and then forward the authorization to the covered entity authorizing the disclosure.

Disclosure: The release, transfer, provision of access to, or divulgence in any other manner, of information to any organization external to ICBHS.

Health Care Operations: Activities related to covered functions that include: quality assessment and improvement activities; insurance-related activities; administrative functions including legal service; auditing functions; fraud investigations; business planning and development; and business management and general; administrative activities.

Health Information: Any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health clearinghouse; and relates to the past, present, or future health care of the individual. [45 C.F.R. Section 160.103]

HIPAA: Health Insurance Portability and Accountability Act. The federal law passed in 1996 that provides national standards for health information

Individual: Under HIPAA, individual means the person who is the subject of PHI. (45 C.F.R. Section 164.501). Individuals may also include the parents of minor children. The parents' roles with regard to HIPAA depends on state law. Minors may become individuals when they meet the requirements and conditions set in state law.

IRB: Institutional Review Board. A committee composed of ICBHS personnel and community representatives with varying backgrounds and professional experience that review and approve research protocol on human subjects.

Lanterman-Petris Short Act (LPS): The California law providing confidentiality for information and records pertaining to treatment for mental health and developmental disabilities.

Payment: Activities undertaken by a provider to obtain reimbursement for the provision of health care.

Personal Representative: A person who has authority under applicable law to make decisions related to health care on behalf of an adult or an emancipated minor, or the parent, guardian, or other person acting in loco parentis who is authorized under law to make health care decisions on behalf of an unemancipated minor, except where the minor is authorized by law to consent, on his/her own via court approval, to a health care service, or where the parent, guardian or person acting in loco parentis has assented to an agreement of confidentiality between the provider and the minor.

Protected Health Information (PHI): Individually identifiable information relating to past, present, or future physical or mental health condition of an individual, provision of health care to an individual, or the past, present, or future payment for health care provided to an individual transmitted or maintained in any form or medium including oral, written, or electronic communication.

Treatment: The provision, coordination, or management of an individual's health care or related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party consultation between health care providers relating to the individual; or the referral of an individual for health care from one health care provider to another.

Use: With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within ICBHS.

Verification: The process of confirming the identity and authority of any person who requests protected

health information and of obtaining any required documentation regarding the request.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the department, is under the direct control of the department, whether or not they are paid by the department.

POLICY: Authorization is required to use or disclose protected health information (PHI) for purposes other than treatment, payment, and health care operations. Use and disclosure of PHI based on an individual's authorization shall be done only after completion of a valid authorization and obtaining the individual's/personal representative's signature. HIPAA does not require ICBHS to disclose information pursuant to an individual initiated authorization.

When PHI is used or disclosed using an authorization, the use and disclosure must be consistent with the purposes allowed by the authorization and only by personnel listed in the authorization. Members of the workforce must use and disclose only the minimum necessary to complete the desired task.

ICBHS, in compliance with the HIPAA Privacy Rule and the Lanterman-Petris Short Act (LPS), requires that an authorization have specific core elements and notification statements to be valid. The authorization may contain elements or information in addition to the required elements provided that such elements or information are not inconsistent with the required elements.

Exceptions to the Requirement for Authorizations for Uses and Disclosures

ICBHS is not required to obtain an individual's authorization to use and disclose PHI for the following:

1. Treatment, payment, and healthcare operations;
2. Disclosures to the individual who is the subject of the information;
3. Uses and disclosures permitted under Section 164.510 (See Policy 01-95. Uses and Disclosures Requiring an Opportunity for the Individual to Agree or Object)

4. Uses and disclosure of PHI permitted under Section 164.512. (See Policy 01-89, Uses and Disclosure of Protected Health Information Not Requiring Authorization or the Opportunity to Agree or Object).
5. Required disclosures to the Secretary of Health and Human Services (See Policy 01-71, Use and Disclosure of Protected Health Information to Health and Human Service (DHHS)).

Requirements For Valid Authorizations

A valid authorization to release information must be written in "plain language" and must contain the following core elements and required statements.

Core Elements:

The authorization form must be written and include at least the following core elements:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful way [45 C.F.R. Section 164.508(c)(i)];
2. The name of the person or organization that will provide the information [45 C.F.R. Section 164.508(c)(ii)];
3. The name of the person or organization that will receive the information [45 C.F.R. Section 164.508(c)(iii)];
4. A description of each purpose of the use or disclosure. A statement "At the request of the individual" is adequate description when an individual initiates the authorization and does not, or elects not to, provide a statement of purpose [45 C.F.R. Section 164.508(c)(iv)];
5. The specific date or event after which ICBHS is no longer authorized to disclose the information [45 C.F.R. Section 164.508(c)(v)];

Note: For authorizations for use or disclosure for a research study, the event may be defined as "end of research study"; or "none";

6. The signature of the individual and the date. If signed by the personal representative, a description of the authority of the representative to act for the individual is required [45 C.F.R. Section 164.508(c)(vi)];

The authorization may contain elements or information in addition to the required elements, provided that such additional elements are not inconsistent with the required elements.

Notification Statements

In addition to the core elements, the authorization must contain statements adequate to inform the individual of the following:

1. A statement regarding the individual's right to revoke the authorization in writing, the exceptions to the right to revoke and a description of how the individual may revoke the authorization or a reference to the Notice of Privacy Practice where such information is contained [45 C.F.R. Section 164.508(c)(ii)];
2. A statement that the individual has a right to receive a copy of the authorization. [45 C.F.R. Section 164.508(c)(4)];

Note: HIPAA requires that the individual be given a copy of the covered entity's Notice of Privacy Practices where such information is contained;

3. A statement as to the ability or inability of the covered entity to condition treatment, payment, or enrollment upon the provision of an authorization, including the consequences of refusal to sign the authorization; [45 C.F.R. Section 164.508(c)(2)(ii)];
4. A statement that the information may be subject to re-disclosure by the recipient and may no longer be protected by the federal privacy law. [45 C.F.R. Section 164.508(c)(iii)];
5. A statement that a third party will remunerate the covered entity, if applicable, if the authorization is for the use or disclosure of PHI for marketing purposes [45 C.F.R. Section 164.508(a)(3)];
6. The individual may refuse to sign the authorization

ICBHS may not reject as invalid an authorization containing all the core elements and required statements, as long as any additional elements are not inconsistent with HIPAA.

All requests for disclosure of health information that are not on an ICBHS authorization form must be reviewed by

members of the workforce trained confirm the validity of an authorization. If the authorization does not meet the requirements, it will be forwarded to Medical Records and returned to requestor with a cover letter advising the requestor to resubmit the request on a HIPAA compliant form or use the attached ICBHS Authorization For The Use Or Disclosure of Information on a HIPAA compliant form.

Copy to the Individual

If ICBHS seeks an authorization for its own purposes, a copy of the signed authorization must be made available to the individual.

Additional Requirements for Certain Types of Disclosures

1. Authorizations for Marketing - HIPAA requires covered entities to obtain an authorization for any use or disclosure of PHI for purposes of marketing, except if the communication is in the form of a face-to-face communication made by ICBHS to an individual or is in the form of a promotional gift of nominal value provided by ICBHS. If marketing involves direct or indirect remuneration from a third party, the authorization must state that such remuneration is involved.
2. Fundraising Purposes - HIPAA requires an authorization for fundraising unless the information is limited to demographic information and dates of health care provided to the individual. If a covered entity uses or discloses PHI for fundraising purposes, the entity's Notice of Privacy must say so. In addition, the fundraising materials sent to the individual must describe how the individual can opt out of receiving further fundraising communications.
3. Research Authorization - HIPAA requires an authorization for any use or disclosure of PHI for research purposes unless the research obtains an IRB or Privacy Board approval, a Data Use Agreement is entered into, or the data is de-identified.

Defective Authorizations

An authorization is considered defective and invalid if any of the following exists:

1. The expiration date has passed or the expiration event has occurred;

2. The required elements of the form are not completed;
3. The authorization is known to have been revoked;
4. The authorization lacks one of the core elements described above;
5. The authorization violates any of the requirements regarding compound authorizations or conditioning of authorizations;
6. The authorization contains material information known by the covered entity to be false.

Compound Authorizations:

An authorization for use or disclosure of PHI must be a separate form and may not be combined with any other document to create a compound authorization except as follows:

1. An authorization for uses and disclosures of PHI for research may be combined with other types of written permission relate to the research study, including another authorization for the use or disclosure of such research.
2. An authorization may be combined with any other such authorization provided that ICBHS has not conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on obtaining the authorization.

Conditioning of Authorizations

ICBHS may not condition provision of treatment, payment, enrollment or eligibility for benefits on receipt of an authorization. Exceptions to this include:

1. If PHI is created for treatment-related research, a research authorization may be required; and
2. If PHI is created solely for disclosure to a third-party, authorization for disclosure to that third party may be required.

Existing Authorizations

ICBHS can use or disclose PHI that it created or received prior to April 14, 2003, pursuant to an authorization or

other express legal permission obtained from an individual prior to April 14, 2003, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction on the use or disclosure of that PHI.

Revocation of an Authorization

An individual may revoke an authorization provided at any time. The revocation must be in writing and signed by the individual. For specific rules governing the revocation of authorizations see Policy 01-64, Revocation of Authorization to Use and Disclose Information.

Personal Representatives

For information guidance regarding who the proper person is to sign authorizations for the release of information about incapacitated individuals, minors, and deceased individuals, See Policy 01-98, Personal Representatives.

Verification

Prior to any disclosure permitted by HIPAA, ICBHS staff must verify the identity of any person unknown to the department to have access to PHI. See Policy 01-78, Verification of Identity and Authority.

Minimum Necessary

When using or disclosing PHI or when or when requesting PHI from another health care provider or health organization, ICBHS must limit PHI to the minimum necessary to accomplish the purpose of the use, disclosure, or request (See Policy 01-72, Minimum Necessary Standard). Minimum necessary does not apply in the following circumstances:

1. Disclosures by a health care provider for treatment,
2. Uses and disclosures based on a valid consent to use and disclose PHI for treatment, payment, or health care operations, or a valid authorization to use and disclose PHI;
3. Disclosures made to the Secretary of Health and Human Services;
4. Uses and disclosures required by law; and,

5. Uses and disclosures required by other sections of the HIPAA privacy regulations.

Billing

ICBHS Medical Records Unit shall be responsible for billing the individual or organization for copying costs associated with preparing the record for release to third parties at the individual's request. (See Procedure 01-11, Authorization For The Use Or Disclosure of Information - Processing and Billing.

Documentation and Retention

ICBHS is required to document and retain a copy of the signed authorization and revocation for a period of six years from the date of its creation or the date when it was last in effect, or such longer period that may be required under federal or state law. All Authorizations For The Use Or Disclosure Of Information are maintained in the medical record in accordance with Policy 02.1-65 and 03.1-75, Outpatient Chart Organization.

It is ICBHS' records retention policy that all records be kept a minimum of seven (7) years from the date of discharge, except for minors, whose records shall be kept at least one (1) year after the minor has reached the age of eighteen (18), but in no case less than seven (7) years.

Enforcement

Management and supervisors are responsible for enforcing this policy and associated procedure(s). Members of the workforce who violate this policy or associated policies or procedures are subject to disciplinary actions appropriate to the nature of the violation in accordance with the ICBHS sanction policy.