


**COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES**

POLICY AND PROCEDURE MANUAL

SUBJECT: HIPAA - Notice of Privacy Practices	POLICY NO: 01-63
SECTION: Administration	EFFECTIVE DATE: 6-8-16
REFERENCE: 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164	PAGE: 1 of 10
	SUPERSEDES: 9-23-13
AUTHORITY: Behavioral Health Director as the Local Mental Health Director and Alcohol and Drug Administrator	APPROVED BY: 

PURPOSE: To establish a policy regarding the provision of a Notice of Privacy Practices (NPP) which describes ICBHS' uses and disclosures of protected health information, an individual's rights with regard to his or her own protected health information, and Imperial County Behavioral Health Services (ICBHS) legal duties with regard to the protected health information.

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

NOTES: The HIPAA Privacy Rule gives individuals a fundamental new right to be informed of the privacy practices of their health plans and of most of their health care providers, as well as to be informed of their privacy rights with respect to their personal health information. Health plans and covered health care providers are required to develop and distribute a notice that provides a clear explanation of these rights and practices. The notice is intended to focus individuals on privacy issues and concerns, and to prompt them to have discussions with their health plans and health care providers and exercise their rights

On Jan. 17, 2013, the Department of Health and Human Services (HHS) released the Omnibus Final Rule pursuant to the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and the Genetic Information Nondiscrimination Act of 2008 (GINA). The Final Rule modifies and expands the statements that covered entities must include in the Notice of Privacy Practices. This policy has been updated to include the required changes.

Both HIPAA and 42 CFR Part 2 require programs to notify individuals of the existence of their requirements and give them a written summary of each law's privacy protections. 42 CFR Part 2 requires the notice to be provided at admission or "as soon thereafter as the patient is capable of rational communication." [42 CFR Section 2.22 (a)]. HIPAA permits programs to provide the notice as soon as reasonably practicable. [45 CFR Section 164.520 (c) (2)]. To comply with HIPAA, programs should begin providing the notice upon their first contact with the patient, and not wait until admission as allowed by 42 CFR Part 2.

The current version of the Notice of Privacy Practices in English is included as Attachment I. The Notice of Privacy Practices in Spanish is included as Attachment II.

DEFINITIONS: Covered Entity: means a provider, a health plan, or a health clearinghouse.

Designated Record Set: A group of records maintained by or for a covered entity that:

- a. Are the medical records and billing records about individuals maintained for or by a covered health care provider;
- b. Are the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- c. Are used, in whole or in part by or for the covered entity to make decisions about individuals.

For purposes of this definition, the term record means any item, collection or grouping of information that includes PHI and is maintained, used, collected or disseminated by or for a covered entity.

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 protected health information (PHI).

Individually Identifiable Health Information: Information, whether oral or recorded in any form or medium, that is created or received by ICBHS, identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

Protected Health Information (PHI): PHI is health information that a covered entity creates or receives, that identifies an individual, and relates to:

- The individual's past, present, or future physical or mental health or condition;
- The provision of health care to the individual; or
- The past, present, or future payment for the provision of health care to the individual.

PHI includes written, spoken and electronic forms. PHI is "individually identifiable information". PHI excludes individually identifiable information in education records, school health records covered by FERPA (Family Educational Rights and Privacy Act), employment records held by a covered entity in its role as employer, or records regarding a person who has been deceased for more than 50 years.

Treatment: The provision, coordination, or management of health care and related services, consultation

between providers relating to an individual, or referral of an individual to another provider for health care.

Payment: Activities undertaken to obtain or provide reimbursement for health care, including determinations of eligibility or coverage, billing, collection activities, medical necessity determinations, and utilization reviews.

Health Care Operations: Activities such as: quality improvement activities, reviewing competence of health care professionals, conducting or arranging for medical review, legal services and auditing functions, business planning and development, and general business and administrative activities.

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: Imperial County Behavioral Health Services (ICBHS) is responsible to provide a Notice of Privacy Practices (NPP) to all clients, as well as other individuals requesting a copy, to ensure that the individual has adequate notice of the uses and disclosures of his or her protected health information (PHI) that may be made by or on behalf of ICBHS, and of the individual's rights and the department's legal responsibilities with respect to the PHI.

Distribution and Maintenance

ICBHS shall provide all individual's a NPP no later than the date of the first service delivery, including services delivered electronically.

If ICBHS is treating an individual during an emergency situation, ICBHS may delay the requirement for provision of notice and good faith evidence of written acknowledgment until practicable after the emergency situation has ended.

The NPP in effect must be posted in a clear and prominent location where it is reasonable to expect individuals seeking service from ICBHS to be able to read the NPP. Copies must be made available at any service delivery site for individuals to take with them.

The NPP shall be posted on the ICBHS website and made electronically available through the website.

The NPP may be provided to an individual by email if the individual has agreed to electronic notice and has not withdrawn his or her agreement. Any individual who is the recipient of electronic NPP retains the right to obtain a paper copy of the NPP upon request. If the transmission fails and the failure is known to ICBHS, then a paper copy of the NPP must be provided to the individual. If the initial delivery of health care services occurs electronically, the NPP must be provided automatically and contemporaneously in response to the individual's first request for service. An individual who is the recipient of an electronic NPP retains the right to obtain a paper copy of the notice upon request.

Acknowledgment of Notice of Privacy Practices

ICBHS shall provide all individuals with a NPP, and obtain the individual's written acknowledgment of receipt. The receipt of acknowledgment will be maintained in the individual's chart.

If a signed or initialed acknowledgment cannot be obtained, ICBHS must document that good faith efforts were made to obtain the acknowledgment and the reason that the acknowledgment could not be obtained.

Revisions to the Notice

ICBHS will promptly revise and distribute the NPP whenever it is determined that there is a material change to the uses or disclosures, the individual's rights, ICBHS' legal duties, or other privacy practices state in the notice.

ICBHS will revise the NPP, date it with the effective date of the revision and post the revised notice in a clear and prominent location where it is reasonable to expect

individuals seeking service from ICBHS to be able to read the NPP, and provide the revised NPP pursuant to this policy. Except when required by law, a material change to any term may not be implemented prior to the effective date of the notice reflecting the change. No acknowledgement is necessary for providing a revised NPP to a patient who has received a prior version of our NPP.

Content Requirements

The NPP must be written in plain language and must contain the following elements:

1. Header

The following statement in a header or otherwise prominently displayed:

"THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY".

2. Uses and Disclosures

The NPP must contain the following regarding uses and disclosures of PHI:

- a. A description, including at least one (1) example, of the types of uses and disclosures that the ICBHS is permitted to make for the purposes of treatment, payment and health care operations, with sufficient detail to place an individual on notice of the uses and disclosures permitted or required by state and federal law;
- b. A description of each of the other purposes (other than treatment, payment or health care operations) for which ICBHS is permitted or required to use or disclose PHI *without* an individual's written authorization, with sufficient detail to place the individual on notice of the uses and required uses and disclosures permitted or required by state and federal law;

- c. A statement that other uses and disclosures will be made only with the individual's written authorization, and that the authorization may be revoked at any time in writing in accordance with the agency policy on authorizations;
- d. If ICBHS intends to do so, separate statements that the provider may contact the individual to:
 - Provide appointment reminders;
 - Provide information about treatment alternatives or other health-related services that may be of interest to the individual.
- e. If ICBHS uses PHI for fundraising, its notice must inform individuals that they have the right to opt out of fundraising solicitations and explain the process for the opt-out right;
- f. A statement indicating that uses and disclosures of PHI for marketing purposes require an individual's written authorization;
- g. A statement indicating that disclosures that constitute a sale of PHI require an individual's written authorization;
- h. A statement that informs the individual that an authorization is required if the covered entity intends to use or disclose psychotherapy notes;
- i. A statement that other uses and disclosures not included in NPP require an individual's written authorization;
- j. A statement that ICBHS must inform individual following a breach of their unsecured protected health information.

3. **Individual Rights**

A statement of the individual's rights with respect to

his or her PHI, and a brief description of how the individual may exercise those rights, including:

- a. The right to request restrictions on certain uses or disclosure of PHI for treatment, payment or healthcare operation, including a statement that ICBHS is not required to agree to such restrictions, unless an individual has paid for services out-of-pocket, in full, and the individual requests in writing that the healthcare provider not disclose PHI related solely to those services to a health plan, except where ICBHS is required by law to make a disclosure;
- b. The right to request communication of health information by alternative means or at alternative locations;
- c. The right to inspect and receive a copy of his or her PHI as provided for by Policy 01-65, Access to Protected Health Information (PHI);
- d. The right to request an amendment to PHI as provided for by Policy 01-67, Amendments to Protected Health Information Clients Right to Amend PHI;
- e. The right to receive an accounting of disclosures of PHI as provided by Policy 01-68, Accounting of Disclosures of Protected Health Information (PHI);
- f. The right of an individual, including an individual who has agreed to receive the NPP electronically, to obtain a paper copy of the NPP from ICBHS upon request;
- g. The right to obtain an electronic copy of PHI stored electronically in a designated record set. If ICBHS cannot readily produce the requested form and format, it must provide an electronic copy as a default. For example, if an individual requests to receive a copy of the medical record through a secure patient portal, but the covered entity does not offer such a patient portal, then a covered entity must provide the individual an electronic copy as a default (e.g.,

an electronic copy in PDF format provided on a CD or USB drive rather than a hard copy.

4. **ICBHS' Duties**

The NPP must contain a statement that ICBHS:

- a. Is required by law to maintain the privacy of PHI and to provide individuals with notice of its legal duties and privacy policies;
- b. Is required to abide by the terms of the currently effective NPP; and
- c. Reserves the right to change the terms of the NPP and make the new notice provisions effective for all PHI maintained, along with a description of how the department will provide individuals with the revised NPP in accordance with the Privacy Rule requirement.

5. **Complaints**

The NPP must contain a statement that individuals may complain to ICBHS, and/or to the Secretary of the U.S. Department of Health and Human Services about privacy violations, including a statement that an individual will not be retaliated against for filing a complaint.

6. **Contact Information**

The NPP must contain the name, or title, and telephone number of the person, or office to contact for further information.

7. **Effective Date**

The NPP must contain an effective date of the notice which may not be earlier than the date printed or published.

8. **Documentation**

The department must document compliance with the notice requirements by retaining copies of the NPP

issued by ICBHS. The ICBHS Privacy Officer is responsible for retaining copies of the NPPs issued. Copies of the acknowledgment of receipt and good faith efforts are retained in the medical record.

The department will retain copies of NPPs issued, written acknowledgment of receipt of the NPP, and written documentation of the good faith efforts that failed to obtain written acknowledgments for a period of at least six (6) years from the date of the creation or the last effective date.

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.