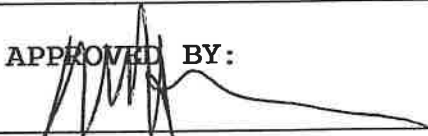


COUNTY OF IMPERIAL  
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES  
POLICY AND PROCEDURE MANUAL

<b>SUBJECT:</b> Access to Protected Health Information	<b>POLICY:</b> 01-65
<b>SECTION:</b> Administration	<b>EFFECTIVE DATE:</b> 4-14-03
<b>REFERENCE:</b> 45 C.F.R. Section 164.524	<b>PAGE:</b> 1 of 9
<b>AUTHORITY:</b> 45 C.F.R. Part 164	<b>SUPERSEDES:</b> New Policy
	<b>APPROVED BY:</b> 

**PURPOSE:** To establish a policy to ensure that individuals and their personal representatives have a right to access to inspect and obtain a copy of the individual's protected health information (PHI) in the designated record set maintained and retained by Imperial County Behavioral Health Services (ICBHS).

**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:** Since 1983 California law has guaranteed that individuals can obtain their medical information from their health care providers, with limited exceptions, HIPAA contains a similar provision and in many cases HIPAA law parallels California requirements. In a number of instances, however, the HIPAA standard [45 C.F.R Section 164.524] provides greater specificity than California law [Cal. Health and Safety Code Section 123110 et seq.].

Under 42 C.F.R Part 2, alcohol and drug programs have the discretion to decide whether to permit individuals to view or obtain copies of their records unless they are governed by state law that established circumstances in which individuals have a right to such access. [42 C.F.R Section 2.23]

HIPAA, however, provides individuals with new rights regarding how their health information is maintained and

communicated. These patient rights provisions are mandatory and ICBHS' mental health and alcohol and drug programs as covered entities under HIPAA, must assure that individuals are allowed access to their own records. State laws that govern patient access to records may remain in force if they are "more stringent" than HIPAA.

**DEFINITIONS:** Access: The right of an individual to inspect and/or obtain a copy of PHI in the designated record set for as long as the information is maintained by the covered entity in the designated record set.

Designated Record Set: A group of records maintained by or for a covered entity that is the medical records and billing records about individuals maintained by or for a health care provider; the enrollment, payments, claims adjudication, and case or management record systems maintained by or for a health care provider; or used, in whole or in part, by or for ICBHS to make decisions about individuals.

DHHS: The United States Department of Health and Human Services. This is the federal agency that is responsible for the implementation of the HIPAA Rule. Within DHHS, the Office of Civil Rights is the office responsible for the HIPAA Privacy Rule and the Centers for Medicare and Medicaid Services (CMS) is the organization responsible for the Transactions and Code Sets Rule.

Duplicative Information: The same information contained in different formats. If the same information is kept in more than one designated record set or at more than one location, providers need only produce the information once per request.

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.

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 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.

**Record:** Any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated.

**Verification:** The process of confirming the identity and authority - whether by pre-existing relationship or current inquiry - of any person who requests PHI 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:** An individual, or that person's personal representative, has the right of access to inspect, and/or receive copies of protected health information (PHI) Imperial County Behavioral Health Services has created, received, or maintains about the individual in the designated record set for as long as the PHI is maintained in the designated record set. ICBHS will also provide access to such information in designated record sets of its business associates, unless the same information is maintained directly by ICBHS.

ICBHS may deny, in whole or in part, an individual access to his or her information under certain circumstances as provided in 45 C.F.R. 164.524. (See Policy 01-66, Denial of a Request to Access to Protected Health Information)

#### **Individual's Access to Protected Health Information**

The individual must make the request for access in writing using the Access to Protected Health Information

(PHI) Request form. ICBHS is not required to acknowledge receipt of the request.

If ICBHS does not maintain the PHI that is the subject of the individual's request for access, and ICBHS knows where the requested information is maintained, ICBHS will inform the individual where to direct the request for access. [45 C.F.R. 164.524(d)]

If ICBHS grants the request for access, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, as provided for in 164.524(c). (See Procedure 01-29, Granting a Request to Inspect and Obtain a Copy of Protected Health Information.

If ICBHS denies the request, in whole or in part, it must provide the individual with a written denial, as provided for in 164.524(d), including the following information:

1. An explanation of the basis for the denial;
2. A description of how the individual may complain to the provider or to the Secretary of DHHS; and,
3. If applicable, an explanation of the individual's review rights and how to pursue those rights. [45 C.F.R. Section 164.524(d)(2)]

See Policy 01-66, Denial of a Request for Access to Protected Health Information.

#### Timeline for Responding to an Individual's Request to Inspect

Following California law, ICBHS must provide access to inspect during business hours within five (5) working days of receiving an individual's or personal representative's written request.

#### Timeline for Responding to an Individual's Request for a Summary

<p>Note: California law allows a provider, at its election, to give an individual a summary of his or her information in lieu of a copy of the record. HIPAA, however, gives the individual, not the provider, this choice.</p>
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Following HIPAA, ICBHS may provide the individual a summary of the PHI requested, in lieu of providing access to the PHI or may provide a verbal explanation of the PHI to which access has been provided, if:

1. The individual agrees in advance to such a summary or verbal explanation; and
2. The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

Following California law, ICBHS must provide the summary of the information requested within ten (10) working days of receiving an individual's or personal representative's request for a summary, or within a maximum of 30 days if the provider notifies the individual that more time is necessary. [Cal. Health and Safety Code Section 123130]

Note: If, after inspection of a record, an individual requests a summary of the information, ICBHS may consider this a new request and start a new 10-day period in which to provide a new summary unless the provider notifies the individual that more time is necessary; in which case a 30 day maximum applies.

### Copies

ICBHS must ensure that copies are transmitted within fifteen (15) days after receiving a written request. [Cal. Health & Safety Code Section 123110(a) and (b), 123130(a); 45 C.F.R. Section 164.524(b) & (c)]

### Information to Provide Access to

If the access is granted, in whole or in part, ICBHS must provide the access requested by the individual, including inspection, receiving a copy, or both, of his or her protected health information in designated record sets as follows:

1. ICBHS must provide the access to information even if it did not create the information. Accordingly, if ICBHS has copies of records created by another provider, these must be given to the individual.

**Note:** This requirement is not clearly specified in California law. Under HIPAA, however, it is clear that an individual does not have to make a separate request to each provider if the records can be found in a single location. If ICBHS knows where the requested information is maintained, it must inform the individual where to direct the request [C.F.R. Section 164.524(d)]

2. ICBHS must provide access only to non-duplicative information. If the same information is kept in more than one designated record set or in more than one location, ICBHS need only produce the PHI once in response to the request for access.
3. Individuals may access their information regardless of when it was created. Therefore, ICBHS must provide access to the information for as long as it keeps the records.
4. ICBHS must provide the individual with access to the PHI in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or such other form or format agreed upon with the individual.

#### Manner of Access

ICBHS must provide the access as requested by the individual in a timely manner, including arranging with the individual for a convenient time and place to inspect or receive a copy of the PHI, or mail a copy of the PHI at the individual's request.

ICBHS may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.

An ICBHS employee must stay with the individual reviewing his or her records to ensure integrity of the information contained in the record. If copies are requested, an ICBHS employee shall make the copies on behalf of the individual.

#### Fees

California law is more specific than HIPAA in allowing

ICBHS to impose a reasonable, cost-based fee. Accordingly, if an individual or personal representative requests a copy of the PHI or agrees to a summary or explanation of such information, following California law, ICBHS may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

1. Copying: 25 cents per page for copies or 50 cents per page for copies from microfilm and an additional reasonable clerical costs incurred in making the records available. [Cal. Health & Safety Code Section 123110(b)] Accordingly, the ICBHS records processing fee is as follows:

<u>PAGES</u>	<u>FEE</u>
1-20	\$14.05
21-25	15.40
26-30	16.75
31-35	18.10
36-40	19.45
41-45	20.80
46 & OVER	21.60

**Note:** After April 14, 2003, ICBHS may not bill the individual for the clerical cost incurred in locating and making the records available (i.e. retrieval of charts kept in storage). However, this fee may be billed to other providers, attorneys, insurance companies, etc, as desired.

In addition, under certain circumstances California law provides that an individual or personal representative shall be entitled to a copy, at no charge, of the relevant portion of the individual's records, upon presenting to the provider (ICBHS) a written request and proof that the records are needed to support an appeal regarding eligibility for a public benefit program (e.g., Medi-Cal, social security disability insurance benefits, and Supplemental Security Income/State Supplemental Program for the Aged, Blind, Disabled (SSI/SSP) benefits. [Cal. Health & Safety Code Section 123110(d)]

2. Postage; and
3. Preparing an explanation or summary of the PHI, if agreed to by the individual, for a charge that is

no more than a reasonable fee, based on actual time and the cost for the preparation of the summary.

#### Personal Representative

ICBHS must treat a personal representative as the individual, with respect to PHI relevant to such personal representation. For purposes of inspecting and copying an individual's PHI, a representative may include:

1. The guardian or conservator of an adult patient;
2. The beneficiary or personal representative of a deceased patient;
3. A person authorized to make health care decisions under a patient's advance health care directive; or
4. The parent or guardian of a minor who is a client (except that a health care provider may not permit a minor's representative to inspect or obtain that minor's records if the minor has that right).

ICBHS may rely on its professional judgment not to treat a person as a personal representative, based upon the reasonable belief that it would not be in the best interest of the individual (i.e., the individual had been or may be the victim of the representative's domestic violence, abuse, neglect, or other endangerment) or, in the case of minor's records, based on a good faith determination that access would be detrimental to its professional relationship with the minor, or the minor's physical safety or psychological well-being would be harmed as a result.

Under HIPAA and California law, ICBHS has discretion to prevent a parent or guardian's access to minor's PHI where such access would be detrimental to the minor's physical safety or psychological well-being or would harm the provider's professional relationship with the minor. If a minor has the right of inspection, a provider may not grant a representative access to that minor's PHI. [Cal Civil Code Section 56.10(b)(7); Health and Safety Code Sections 123105(3), 123115(a), and 123100 et seq.; 45 C.F.R. Sections 164.502(a)(2)(i), 164.502(g) and 164.524]

#### Verification of Identity

ICBHS must verify the identity of persons requesting



PHI and the authority of the person to have access to the PHI, if ICBHS does not know the identity of the person. (See Policy 01-78, Verification of Identity and Authority)

ICBHS is required to obtain any documentation, statements, or representations, orally or in writing, from the person requesting the PHI when such documentation, statement or representation is a condition of disclosure. [Cal. Health & Safety Code Section 123110(d); 45 C.F.R. Section 164.514 (h)(1)]

#### Documentation

Under HIPAA, ICBHS must document the following and retain for at least six (6) years the designated record sets that are subject to access by the individuals and the titles of the persons or offices responsible for receiving requests for access by the individuals.

In addition, copies of all correspondence and forms related to requests for access including, but not limited to, the written request for access, and any written statements to individuals establishing an extension to the response deadline should be retained for at least six (6) years.

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.