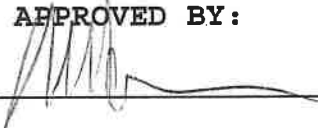


COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES
POLICY AND PROCEDURE MANUAL

SUBJECT: Denial of a Request for Access to Protected Health Information	POLICY: 01-66
SECTION: Administration	EFFECTIVE DATE: 4-14-03
REFERENCE: 45 C.F.R. Section 164.524	PAGE: 1 of 6
AUTHORITY: 45 C.F.R. Part 164	SUPERSEDES: New Policy
	APPROVED BY: 

PURPOSE: To establish a policy regarding the denial of a request by an individual to access protected health information (PHI).

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: None

DEFINITIONS: 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.

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 appointed by the courts under applicable law or persons with power of attorney. A person is a personal representative of a living individual if, under applicable law, such person has authority to act on behalf of the individual in

making health decisions related to health care. [45 C.F.R. Section 164.540(a)]

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. [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]

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.

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) may deny an individual's or that person's personal representative's request to access his or her information for "unreviewable" and "reviewable" grounds.

Unreviewable Grounds for Denial

ICBHS may deny an individual access to or copies of the following types of PHI without providing the individual an opportunity for review in the following circumstances:

- a. A covered entity that is a correctional institution or covered health care provided acting under the direction of a correctional institution may deny, in whole or in part, an inmates request to obtain a copy of PHI if obtaining a copy would

jeopardize either:

- 1) The health, safety, security, custody, or rehabilitation of the individual or of other inmates; or
 - 2) The safety of any officer, employee, or other person at the correctional institution or responsible for transporting of the inmate.
- b. PHI created or obtained by a provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided the following:
- 1) The denial is only temporary;
 - 2) The individual agreed to temporary denial of access when consenting to participate in research that includes treatment,
 - 3) The program or researcher informs the individual that the right to access will be reinstated upon completion of the research; [45 C.F.R. Section 164.524(a)(2)(iii)]
- c. Access is requested to PHI obtained from someone other than a health care provider under the promise of confidentiality and access would likely reveal the source of the information. [45 C.F.R. Section 164.524(a)(2)(v)]

Reviewable Grounds for Denial

ICBHS may deny the individual access to PHI provided that the individual is given a right to have the denial reviewed, in the following circumstances:

a. Likely to Endanger

A licensed health care provider has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual [45 C.F.R. Section 164.524(a)(3)(1)]

Under California law, if ICBHS refuses the permit inspection by, or provide copies of the record to the individual, the health care provider must:

- 1) Make a written record in the medical record that includes the date of the request and the reason for refusing to permit inspection or provide copies of the records, including a description of the scientific adverse or detrimental consequences to the individual that the provider anticipates would occur of inspection or copying were permitted.
- 2) Inform the individual he or she has the right, at his or her expense, to designate a licensed physician, a licensed psychologist, a licensed marriage and family therapist, a licensed clinical social worker who may inspect or have a copy of the records. ICBHS must permit inspection by or give a copy of the record to any such person designated by the individual. Such designated persons may not permit inspection or copying of them by the individual.
- 3) Indicate in the mental health records of the individual whether the individual made or did not make the request.

b. Reference to Another Person

The PHI makes reference to another person (other than the health care provider) and a licensed health care provider has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such a person. [45 C.F.R. Section 164.524 (a) (3) (1)]

c. Personal Representative

The request for access is made by the individual's personal representative and the PHI makes a reference to another person (not a health care provider), and a licensed health care provider has determined, in the exercise of professional judgment, that access is reasonably likely to cause substantial harm to the individual or another person. [45 C.F.R. Section 164.524(a) (3) (iii)]

ICBHS, in accordance with 45 C.F.R. Section 164.502 (g) (5) may elect not to treat a person as a personal representative if the following two criteria are satisfied:

a. ICBHS has a reasonable belief that:

- 1) The individual has been or may be subjected to domestic violence, abuse, or neglect by such a person; or
- 2) Treating such a person as the personal representative could endanger the individual; and

b. ICBHS, in the exercise of professional judgement, decides that it is not in the best interest of the individual to treat the person as the individual's representative.

Review of a Denial of Access

If ICBHS denies access on any of the above three reviewable grounds pursuant to 45 C.F.R. Section 164.524(a)(3), the individual has the right to request to have the denial reviewed by a licensed health care professional who is designated by ICBHS to act as the reviewing official and who did not participate in the original decision to deny.

ICBHS must promptly refer a request for review to the designated licensed health care professional. The licensed health care professional will review the case and determine, within a reasonable time, whether or not to deny or grant the access requested and promptly notify the privacy officer. ICBHS must provide or deny access, in whole or in part, in accordance with the determination of the reviewing health care professional. No further review of the denial is required.

The privacy officer is responsible for providing written notice to the individual of the reviewing official's determination. [45 C.F.R. Section 164.524(a)(4)]

Denying Access

If ICBHS denies a request for access, in whole or in part, it must comply with the requirements of 45 C.F.R. Section 164.524(d) which include:

1. Making accessible any other requested information in the designated record set that ICBHS does not feel there are grounds to deny access.
2. Providing a written denial within five (5) working

days to the individual in plain language that, must contain:

- a. The basis for the denial;
 - b. If the denial is based on one of the grounds that is reviewable, a statement of the individual's review rights, if any, including a description of how the individual may exercise such review rights; and
 - c. A description of how the individual may complain to ICBHS, or to the Secretary of the Department of Health and Human Services pursuant to Section 164.306. The description must include the name, title, and telephone number of the contact person designated in Section 164.530(a)(1)(ii).
3. Identifying other sources of PHI. If ICBHS does not maintain the requested information, but knows where the information is maintained, it must inform the individual where to direct his or her request for access.

least Documentation

Under HIPAA, ICBHS must document the following and retain for at six 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 including any requests for access, any written denials to access, any written statements to individuals establishing an extension to the response deadline must be retained for at least six 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.