


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

**POLICY AND PROCEDURE MANUAL**

<b>SUBJECT:</b> HIPAA - Request for Special Restriction on the Uses and Disclosures of Protected Health Information	<b>POLICY NO:</b> 01-69
	<b>EFFECTIVE DATE:</b> 6-8-16
<b>SECTION:</b> Administration	<b>PAGE:</b> 1 of 8
	<b>SUPERSEDES:</b> 7-29-04
<b>REFERENCE:</b> 45 C.F.R Subtitle A, Subchapter C, Parts 160 and 164.	<b>APPROVED BY:</b> 

**PURPOSE:** To establish a policy regarding the right of an individual to request restriction of uses and disclosures of protected health information (PHI).

**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:** HIPAA provides individuals with new rights regarding how their health information is maintained and communicated. These patient rights provisions are mandatory and Mental Health and Alcohol & Drug programs as covered entities under HIPAA, must assure that individuals are allowed, for example, the opportunity to request that the program restrict certain uses and disclosures of the individuals protected health information to carry out treatment, or health care operations. [45 CFR Section 164.222 (a)]

HIPAA generally allows a provider to use or disclose PHI to carry out treatment, payment, or health care operations

without the individual's authorization. An individual, however, has the right to request that ICBHS restrict their use or disclosure of PHI to carry out treatment, payment, or health care operations. That is, an individual may request that ICBHS voluntarily agree not to use or disclose PHI in a way that the law would otherwise allow. [45 CFR Section 164.222] For example, an individual may request that ICBHS not bill private insurance and opt to pay for services. Or, an individual may request that we not inform their doctor that he or she is seeking a second opinion.

Although the individual has the right to request a special restriction, ICBHS is not required to agree. HIPAA excludes a number of specific uses and disclosures from those on which an individual may request a restriction. For example, even if a covered entity agrees to a restriction, the restriction is "not effective" to prevent uses and disclosures required by Department of Health and Human Services DHHS to determine the programs compliance with HIPAA or any of the uses and disclosures permitted under 45 CFR Section 164.512. Accordingly, ICBHS does not have to agree to a request not to report child abuse because of the child abuse mandatory reporting requirement.

Because 42 CFR Part 2 requires written patient consent for most uses and disclosures of information, payment and health care operations, in effect patients in drug and alcohol and drug programs already have the right to request restrictions similar to those now provided by HIPAA. The new right provided by HIPAA will only affect those few uses and disclosures which 42 CFR Part 2 now permits without patient consent, namely internal communications, Qualified Service Organization/Business Associate Agreements, audits and evaluations, disclosures for research, law enforcement, judicial or administrative proceedings, reporting abuse and neglect, and medical emergencies are excepted under HIPAA).

**DEFINITIONS: 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.

**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; staff evaluations; insurance-related activities; administrative functions including legal services, auditing functions, fraud investigations, etc.; business planning and development; and business management and general administrative activities.

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

**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.

**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):** 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.

**Restriction:** An agreed upon limitation on uses and disclosure of PHI about an individual to carry out treatment, payment, or health care operations (TPO) and disclosures for involvement in the individual's care.

**TPO:** Treatment, payment, or health care operations.

**Treatment:** Providing, coordinating, or managing an individual's care, including consultations between providers and referrals.

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

**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 to request special restriction on how ICBHS will use and disclose his or her PHI to carry out treatment, payment and health care operations and how his or her information will be disclosed or not disclosed to family members or others involved in his or her care as permitted under Section 164.510 (b).

Although an individual has the right to make a request, ICBHS is not required to agree to a restriction. The one exception to this rule is that ICBHS **must** agree to the individual's request to restrict disclosure of PHI to the individual's health plan if:

- The disclosure is for the purpose of carrying out payment or health care operations and not otherwise required by law; and
- The PHI pertains solely to a health care item or services for which the individual, or someone on behalf of the individual, has paid ICBHS in full.

The request for special restriction on the use and disclosure of PHI shall be made in writing using the Request for Special Restriction On Use Or Disclosure of Protected Health Information/Solicitud De Restricción Especial Para El Uso O Divulgación De Información Medica Protegida form.

ICBHS' decision to accommodate the individual's request for special restrictions on the use and disclosure of PHI will be made by the Privacy Officer in consultation with the program manager. ICBHS encourages discussion with the individual in order to prevent restrictions that would not be in the best interest of the individual. ICBHS cannot agree to a restriction that would limit or prevent ICBHS from making or obtaining payment for services. ICBHS' ability to manage specific accommodations will be considered.

The decision shall be final and is not subject to appeal by the individual.

If a request for restriction is denied, the individual may, however, modify his or her request to the extent that it is acceptable to ICBHS. If ICBHS does agree to the requested special restrictions, it shall be bound by them.

The Privacy Officer will respond to the individual's request in writing within fifteen (15) working days of receipt of the request using the Response to a Request for Special Restriction on Use or Disclosure of Protected Health Information/Repuesta A La Solicitud De Restricciones Especiales En El Uso O Divulgación De Información Medica Protegida form.

#### **Exceptions for Emergencies**

If ICBHS agrees to a restriction, ICBHS and ICBHS' business associates must implement the restriction unless the individual who requested the restriction is in need of emergency treatment, and the restricted PHI is needed to provide emergency treatment. ICBHS may use the restricted PHI itself or ICBHS may disclose such restricted PHI to a health care provider to provide treatment to the individual. If restricted PHI is disclosed to another health care provider for emergency treatment, ICBHS must request that the health care provider not further disclose the PHI. Once the emergency situation subsides ICBHS must ask the provider not to further disclose the PHI.

#### **Limitations**

A restriction agreed to by ICBHS is not effective to prevent:

- a. Uses or disclosures from being made to the individual for inspection or copying their own PHI;
- b. The individual from obtaining an accounting of disclosures of PHI;
- c. Uses and disclosure for which consent, authorization or the opportunity to agree or object is not required including:

- 1) Certain public health activities
- 2) Reporting abuse, neglect, domestic violence or other crimes
- 3) Health agency oversight activities
- 4) Law enforcement purposes
- 5) Judicial or administrative proceedings
- 6) For identifying decedents to coroners and medical examiners or determining a cause of death
- 7) Certain research activities
- 8) For workers' compensation programs
- 9) To avert a serious threat to health or safety
- 10) To the Secretary of Health and Human Services
- 11) For specialized government functions
- 12) Uses and disclosures otherwise permitted by law

#### **Terminating a Restriction**

ICBHS may terminate its agreement to a special restriction if:

- a. The individual agrees to or requests the termination in writing; or
- b. The individual orally agrees to the termination and the oral agreement is documented.
- c. ICBHS informs the individual that it is terminating the agreement. Any PHI created and received after the termination will not be restricted. If ICBHS terminates the agreement with the individual's agreement, ICBHS may use and disclose PHI as otherwise permitted under the Privacy Rule. If ICBHS terminates the restriction without the individual's agreement, it may only terminate the restriction with respect to the PHI it creates or receives after the date it informs the individual of the termination.

ICBHS will document the termination of special restrictions using a Termination of Special Restrictions/Cancelación de Limitación Especial form.

#### **Verification**

Prior to agreeing to a request for restriction, ICBHS staff

must verify the identity of any person unknown to the department to verify they have the authority to make the restriction. (Refer to Policy 01-78, Verification of Identity and Authority)

#### **Documentation**

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 and procedures are subject to disciplinary actions appropriate to the nature of the violation in accordance with the ICBHS sanction policy.