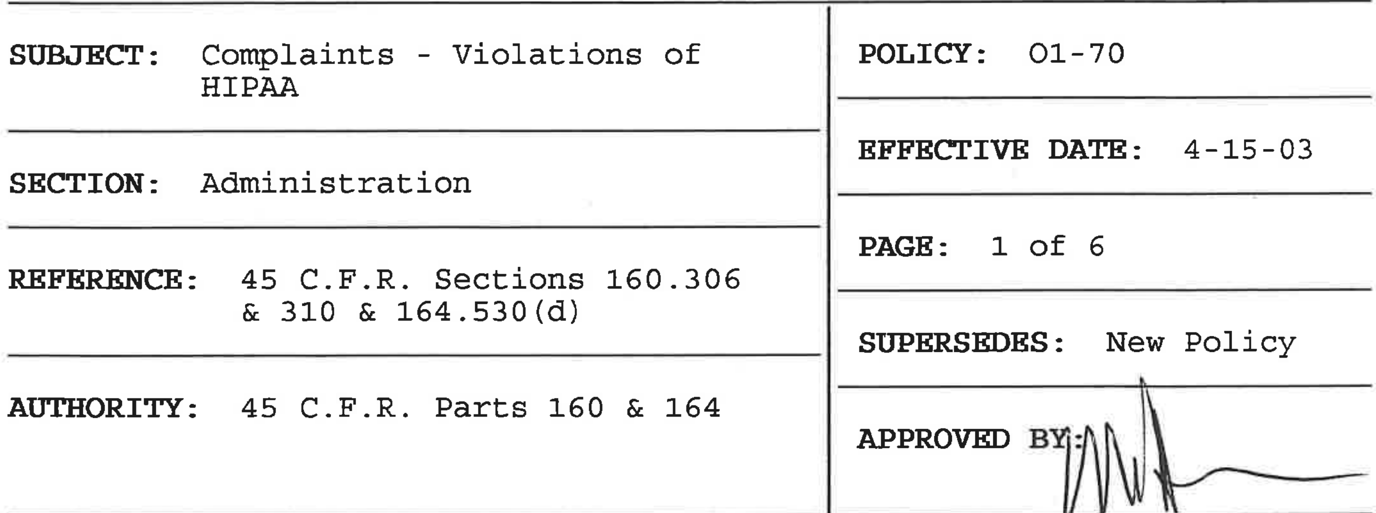
COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES

POLICY AND PROCEDURE MANUAL



SUBJECT: Complaints - Violations of HIPAA	**POLICY:** 01-70
SECTION: Administration	**EFFECTIVE DATE:** 4-15-03
REFERENCE: 45 C.F.R. Sections 160.306 & 310 & 164.530(d)	**PAGE:** 1 of 6
AUTHORITY: 45 C.F.R. Parts 160 & 164	**SUPERSEDES:** New Policy
	APPROVED BY:

PURPOSE: To establish a policy regarding Imperial County Behavioral Health Services' (ICBHS) obligations relating to the Health Insurance Portability Act (HIPAA) requirement that Imperial County Behavioral Health Services receive complaints.

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: Breaching client confidentiality includes, but is not limited to, discussing patient information in a public area,; leaving client information in a public area; leaving unsecured a computer workstation where there is patient information stored or used; attempting to access any type of confidential client information, whether written or paper format, electronic, or verbal, when not required or authorized to do so according to job duties; disclosing client information to an unauthorized individuals or entities; and, using client information inappropriately as described in this policy. Any such breach is grounds for disciplinary action up to and including termination.

The complainant does not need to be the subject of PHI. Therefore, the complainant may include a provider's employees, business associates or clients, as well as accrediting, health oversight or advocacy organization.

DEFINITIONS: <u>HIPAA:</u> Health Insurance Portability and Accountability Act. The federal law passed in 1996 that provides national standards for health care.

<u>DHHS:</u> The United States Department of Health and Human Services. This is the federal agency that is responsible for the implementation of the HIPAA Rule.

<u>Individual:</u> Under HIPAA, individual means the person who is the subject of protected health information (PHI).

<u>Protected Health Information (PHI):</u> 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.

<u>Workforce:</u> 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: Any individual, that person's personal representative, or member of the workforce may make complaints concerning ICBHS privacy policies and procedures, compliance with those policies and procedures, and compliance with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations may file a complaint either directly with ICBHS, or with the Secretary of the Department of Health and Human Services (DHHS). A complainant is not required to use the ICBHS complaint process before filing a complaint with DHHS.

<u>Who Can Complain</u>

<u>Individuals or Other Persons:</u> Individuals whose PHI the department maintains, or other persons may file suspected violations of HIPAA by covered entities.

<u>Whistleblowers</u>: Members of the workforce or business associates may report a suspected violation of the HIPAA rules by another member of the workforce, or against ICBHS' privacy policies and procedures. [45 C.F.R. Section 164.502(j)] (See Policy 01-100, Whistleblowers)

<u>Who Can Complaints be Filed Against</u>

Complaints may be filed against members of the ICBHS work-

force, members of an ICBHS business associates' workforce, or ICBHS privacy policies and procedures.

Types of Complaints

A privacy complaint includes any complaint, including those made anonymously, made by telephone, in writing, or electronically. Privacy complaints may be filed concerning:

1. Disagreements with ICBHS privacy policies [45 C.F.R Section 164.530(d)]

2. Suspected violations in the use, disclosure or disposal of their protected health information [45 C.F.R. Section 164.502]

3. Denials of access to their PHI [45 C.F.R. Section 164.524(d)(2)(iii)]

4. Denial of amendments to their PHI [45 C.F.R. Section 164.526(d)(1)(iv)]

5. Retaliatory or intimidating actions [45 C.F.R. Section 164.530(g)]

Resolution of an Internal Complaint

The privacy officer is responsible for receiving all privacy complaints. Any member of the workforce who is presented with a privacy complaint by any person must refer the individual or the complaint to the privacy officer. After review of the complaint, the privacy officer shall make a determination regarding disposition of the complaint and notify the complainant within fifteen (15) working days.

Disposition of the Complaint

No Action Taken

If it is determined that the complaint is without merit, this disposition will be noted on the complaint form, the individual will be informed and referred to the appropriate staff or department.

Further Investigation Required

If it is determined that a breach of policy or procedure, has occurred or that the complaint has identified a

potential for process improvement, the complainant will be notified that further review of the complaint is required and a final disposition will be delivered at a later date. If a breach of policy or procedure has resulted in an unauthorized use or disclosure of PHI, the privacy officer shall ensure that steps to mitigate a potential harm to the individual are immediately implemented.

The privacy officer is responsible for coordinating the investigation of each complaint. Depending on the nature of the breach the privacy officer will convene an investigative team which may include the program or program manager(s), as appropriate; Human Resources representation or consultation, as appropriate; and legal counsel representation or consultation as appropriate.

The investigation team will conduct an investigation, commensurate with the level of the breach and specific facts. This may include, but is not limited to, interviewing the person who reported the possible breach; interviewing the person accused of the breach, interviewing other members of the workforce or clients, and reviewing any documentation that was prepared.

Upon conclusion of the investigation, the investigation team will prepare a written report including all findings and conclusions regarding complaint.

Implementation of the resolution, depending on the nature of the breach, may be the responsibility of the supervisor when taking employee actions (Level 1); management when making business practice changes; or, depending on the recommendation of the investigation team, the resolution may require department head approval. (See Policy 01-60, Sanctions for Violation of the Privacy Rule)

The ICBHS privacy officer is responsible for informing the individual filing the complaint about the results of the investigation, and what changes, if any, have been made to prevent further violations of the HIPAA privacy requirements within thirty (30) working days.

<u>**Mitigation of Harmful Effects**</u>

If ICBHS learns that there has been a breach of privacy practices or that any HIPAA requirements has not been met, it must mitigate any harmful effects caused to the individual by the breach. (See Policy 01-87, Mitigation

after Improper Use or Disclosure of Protected Health Information)

Retaliatory Actions

Members of the workforce must act cooperatively with individuals who wish to file a complaint. ICBHS may not intimidate, threaten, coerce, or take any retaliatory actions against individuals and others who file a complaint. (See Policy 01-61, Non-Retaliation)

No Waiver

ICBHS will not require and individual to waive his or her rights under the HIPAA Privacy Rule, including the right to make a complaint to DHHS, as a condition of treatment, payment, enrollment in a health plan or eligibility for benefits. (See Policy 01-76, No Waiver of Rights)

Requirements for Filing Complaints with DHHS

A complaint filed directly with the DHHS must be:

1. Filed in writing, either on paper or electronically;

2. Name the provider that is the subject of the complaint and describe the acts or omissions believed to be in violation of the privacy rule; and

3. Be filed within 180 days of when the complainant knew, or should have known, that the act or omission complained of occurred - unless the time limit is waived by the DHHS for good cause.

If, as a result of a complaint to the Secretary of DHHS, ICBHS is investigated, ICBHS must cooperate with investigations by the Secretary, providing access to information requested by the investigator. (See Policy 01-71, Use and Disclosure of Protected Health Information to Health and Human Services (DHHS))

Documentation

ICBHS must document its designation of a contact person to receive complaints. All complaints received and any other documentation related to a privacy compliant, the investigation, or the disposition of the complaint shall be kept in the privacy officer's files and retained for six (6) years per section 164.530(j).

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.