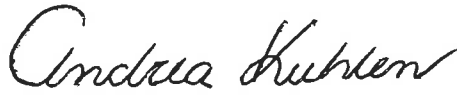


**COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES**

POLICY AND PROCEDURE MANUAL

SUBJECT: HIPAA- Disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services (DHHS)	POLICY NO: 01-71
	EFFECTIVE DATE: 6-8-16
SECTION: Administration	PAGE: 1 of 6
REFERENCE: 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164	SUPERSEDES: 4-14-03
AUTHORITY: Behavioral Health Director as the Local Mental Health Director and Alcohol and Drug Administrator	APPROVED BY: 

PURPOSE: To establish a policy to identify circumstance of when disclosure of an individual's protected health information (PHI) may be required to be provided to the Secretary of the Department of Health and Human Services.

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: None

DEFINITIONS: **Administrative Simplification:** The Health Insurance Portability and Accountability Act (HIPAA) was enacted by the U.S. Congress in 1996. The Act is comprised of five separate Titles. Title II of HIPAA, known as the Administrative Simplification provisions, requires the establishment of national standards for electronic health care transactions and national identifiers for

providers, health insurance plans, and employers. The Administrative Simplification provisions also address the security and privacy of health data. The Administrative Simplification provisions called for the Secretary of Health and Human Services to establish various rules and procedures. These have now been codified in 45 CFR Part 160, 45 CFR Part 162 , and 45 CFR Part 164. Figure 1 in the Appendix illustrates how the statute relates to the regulations. Most of the substantive text is contained in the Code of Federal Regulations (CFR) sections.

Business Associate: A person or organization (or their subcontractor), who is not a member of the covered entity's workforce, who creates, receives, maintains, or transmits protected health information (PHI) or electronic protected health information (EPHI) on behalf of a HIPAA covered component. Services that a Business Associate (BA) provide include: claims processing or administration; data analysis, processing and/or administration; utilization review; quality assurance; billing; benefit management; document destruction; temporary administrative support; legal; actuarial; accounting; consulting; information technology (IT) support; health information organizations; e-prescribing gateways or providers of data transmission services; and certain patient safety activities. A covered entity may be a Business Associate of another covered entity, but is not a health care provider with respect to disclosures by the covered entity concerning treatment of the individual.

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.

Individually Identifiable means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the client's name, address, electronic email address, telephone number, social security number, or other information that alone or in combination with other publicity available information, reveals the individual's identity.

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.

Secretary: Secretary of the Department of Health and Human Services.

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: Disclosure of protected health information to the Secretary of Health and Human Services may be required to determine if Imperial County Behavioral Health Services (ICBHS) is in compliance with the federal privacy

regulations.

ICBHS may become the subject of a DHHS investigation as a result of:

- A complaint filed by a person regarding alleged violations of HIPAA
- A compliance review to determine whether ICBHS is complying with HIPAA

1. **Complaint Investigations** (§ 160.306)

DHHS will investigate complaints filed by a person who believes ICBHS or a business associate is not complying with the administrative simplification provisions when a preliminary review of the facts indicates a possible violation due to willful neglect. Such investigations may include a review of the pertinent policies, procedures, of practices of ICBHS or business associate and of the circumstances regarding any alleged acts or omissions concerning compliance.

2. **Compliance Reviews** (§ 160.308)

The Secretary may conduct a compliance review to determine whether a covered entity or business associate is complying with the applicable administrative simplification provisions when a preliminary review of the facts indicates a possible violation due to willful neglect.

3. **Responsibilities of ICBHS if DHHS Investigates After Receiving a Complaint** (§ 160.310)

ICBHS will take responsibility for the following:

A. **Provide Records and Compliance Reports:**

ICBHS is responsible to keep proper records and, upon request and submit compliance reports in such time and manner and containing such information whereby the Secretary can ascertain whether ICBHS has compiled

with or is complying with the applicable requirements of 45 C.F.R. Part 160 and the applicable standards, requirements and implementation specification of subpart E of 45 C.F.R. Part 164. Any requests from DHHS must be forwarded to the ICBHS privacy officer.

B. Cooperate with Complaint Investigations and Compliance Reviews

ICBHS must cooperate with the Secretary of DHHS if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of the department to determine whether it is complying with applicable requirements of 45 C.F.R. Part 160 and the standards, requirements, and implementation specifications of subpart E of 45 C.F.R. Part 164.

C. Permit Access Information:

ICBHS must permit access by the Secretary of DHHS during normal business hours (8:a.m. to 5 p.m., Monday through Friday, excluding holidays) to its facilities, books, records, accounts, and other sources of information, including protected health information (PHI), that are pertinent to ascertaining compliance with the requirements with applicable requirements of 45 C.F.R. Part 160 and the standards, requirements, and implementation specifications of subpart E of 45 C.F.R. Part 164.

However, if DHHS determines that serious circumstances exist, such as when documents may be destroyed or hidden, then ICBHS will permit access by DHHS at any time and without notice.

Note: The information that will be needed by DHHS will depend on the circumstance and the alleged violations. For example, PHI may be required to review allegations that ICBHS, for example, refused to note a request for correction in an individual's chart, or did not provide complete access to an individual's chart.

ICBHS must try to obtain information required of ICBHS that is in the exclusive possession of any other agency, institution, or person and any other agency. If the agency institution, or person fails to or refuses to furnish the information, ICBHS must certify that it does not have the information and describe the efforts it has made to obtain the information.

4. **DHHS Action Regarding Complaints** (§ 160.312)

If an investigation indicates noncompliance, the Secretary may attempt to reach a resolution of the matter satisfactory to the Secretary by informal means which may include demonstrated compliance or a completed corrective action plan or other agreement. If the matter is resolved by informal means, the Secretary will so inform ICBHS. If the matter arose from a complaint, the complainant will also be informed in writing.

If the matter cannot be resolved by informal means, the Secretary will inform ICBHS or business associate and provide an opportunity to submit written evidence of any mitigating factors or affirmative defenses for consideration ICBHS or business associate must submit the evidence within 30 days of receipt of the notification.

If, after an investigation regarding a complaint or compliance review, the Secretary determines no further action is warranted, the Secretary will inform ICBHS or business associate. If the matter rose from a complaint, the complainant may also receive written notification from DHHS.

5. **Penalties** (§ 160.402)

DHHS has the legal authority to impose a monetary penalty against a covered entity when it determines that the covered entity has violated HIPAA.