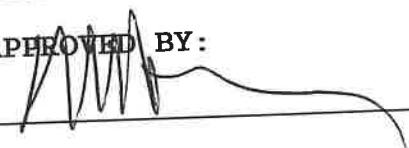


COUNTY OF IMPERIAL  
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES  
POLICY AND PROCEDURE MANUAL

<b>SUBJECT:</b> Mitigation After Improper Use or Disclosure of Protected Health Information	<b>POLICY:</b> 01-87
<b>SECTION:</b> Administration	<b>EFFECTIVE DATE:</b> 4-14-03
<b>REFERENCE:</b> 45 C.F.R. Section 164.530(f)	<b>PAGE:</b> 1 of 4
<b>AUTHORITY:</b> 45 C.F.R Part 164	<b>SUPERSEDES:</b> New Policy
	<b>APPROVED BY:</b> 

**PURPOSE:** To establish a policy that addresses Imperial County Behavioral Health Services' duty to mitigate any harmful effect due to uses or disclosures of protected health information in violation of the federal regulations or its own policies.

**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:** The Privacy Rule does not specify what reasonable steps the department must take to mitigate harm from privacy breach. Instead, the Privacy Rule allows for flexibility by relying upon the judgement of those familiar with the circumstance in the department to dictate the best approach for mitigating the harm from improper use or disclosure of PHI. The privacy officer and the department will act based on knowledge of where the PHI was disclosed, how it might be used to cause harm to the individual, and what steps can actually have a mitigating effect in that specific situation.

**DEFINITIONS:** Mitigate: To lessen or alleviate

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.

**POLICY:** ICBHS shall ensure the proper use and/or disclosure of PHI and will mitigate, to the extent practicable and required by the Privacy Rule, any harmful effect that becomes known to ICBHS as a result of a use or disclosure of PHI in violation of ICBHS policies and procedures or the Privacy Rule.

Any workforce member of ICBHS who knows of a harmful effect of a use or disclosure of PHI by ICBHS or a business associate of ICBHS that is believed to violate either ICBHS' policies and procedures or the federal privacy regulations shall report the use or disclosure, and any relevant facts surrounding the use and disclosure to the privacy officer.

If the privacy officer's investigation does not substantiate the breach of privacy policies and procedures and there is no indication that the report was issued in other than good faith, no further action is required. If the report was intended to cause harm to a co-worker, or business associate, the person filing the report shall be subject to disciplinary action.

If the privacy officer determines that ICBHS knows of a harmful effect of a use or disclosure of PHI that is in violation of ICBHS policies or procedures or the Privacy Rule, ICBHS shall take reasonable steps to mitigate, to the extent practical, the harmful effect.

Mitigation may include, but is not limited to, the following actions as appropriate to the circumstances:

1. An apology to the client, or additional action directly with the client intended to mitigate the harm to the client;
2. Retrieval of the information, where possible, to prevent future use or disclosure by others;
3. Adoption of policies and procedures to avoid similar breach, or incorporating mitigation solutions into ICBHS existing policies and procedures as appropriate.
4. Addressing and investigating employee violations; taking employment action to re-train, reprimand, or discipline employees as necessary, up to and including termination.

5. Addressing problems with business associates once ICBHS is aware of the breach of privacy.

#### Business Associates

ICBHS is not required to monitor the activities of its business associates. However, if ICBHS knows of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the business associates obligation under the business associates agreement or other arrangement, ICBHS shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful terminates the business associates agreement or arrangement, if feasible; or, if termination is not feasible, report the problem to the DHHS.

#### Documentation

The privacy officer will maintain a log to record the circumstances of each complaint or report of breach of ICBHS policies or procedures of the Privacy Rule that result in mitigation and a file containing the following items with respect to each logged complaint or report of privacy breach:

1. A copy of the written complaint or report, or written summary of a verbal report;
2. Copies of letters of inquiry and other steps taken in the inquiry;
3. A written statement of the privacy officer's findings and recommendations; and,
4. A report by the privacy officer of mitigation actions undertaken, if any.

The privacy officer shall retain the log of complaints and reports of breaches of privacy and the related documents files, for six years from the date of ICBHS' final disposition of the specific complaint or report.

#### 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.