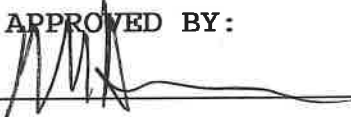


COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES
POLICY AND PROCEDURE MANUAL

SUBJECT: Denial of a Request for an Amendment of Protected Health Information	POLICY: 01-91
	EFFECTIVE DATE: 4-14-03
SECTION: Administration	PAGE: 1 of 6
REFERENCE: 45 C.F.R. Section 164.526	SUPERSEDES: New Policy
AUTHORITY: 45 C.F.R. Part 164	APPROVED BY: 

PURPOSE: To establish a policy regarding the denial of an individual's request to amend information in their designated record set.

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: HIPAA provides individuals with new right 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 to request amendments to the information contained in their records. State laws that govern patient access to records may remain in force if they are "more stringent" than HIPAA.

California law does not give an individual the right to request an amendment to PHI. However, California law does have a similar provision, which is the right to have a written addendum included in the record. Under California law, an adult client who inspects his or her record has the right to provide a written addendum if the individual believes that an item or statement is incomplete or incorrect. The addendum is limited to 250 words per alleged incomplete or incorrect item. The addendum must clearly state that the individual wishes it to be a part of his or her record. [Health and Safety Code 123111]

DEFINITIONS: Amendment: The request by an individual to make an addendum, alteration, or attachment to a designated record containing their protected health information. [45 C.F.R. 164.526]

Designated Record Set: A group of records maintained by or for ICBHS that includes medical, billing, enrollment, payment, claims adjudication, and other records used to make a decision about an individual.

Covered Entity: Health plans, health care clearing-houses, and health care providers who conduct any standard electronic transactions. The standard electronic transactions are those provided in the Transactions and Code Sets Rule. [45 C.F.R. 160.103]

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.

HIPAA: Health Insurance Portability and Accountability Act. The federal law passed in 1994 that provides national standards for health care.

Individual: Under HIPAA, individual means the person who is the subject of PHI. [45 C.F.R. 164.501]

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 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): 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: ICBHS may deny an individual's request for amendment, if it is determined that the PHI or record that the individual wants amended:

1. Was not created by ICBHS or a business associate, unless the individual provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the request;
2. Is not part of the designated record set;
3. Is not available for inspection under the provisions of HIPAA discussed in Policy 01-61 Access to Protected Health Information (PHI); or
4. Is accurate and complete.

[45 C.F.R. Section 164.526(a)(2)]

Timeline

ICBHS must act on an individual's request for an amendment no later than sixty (60) days of receipt of the request. If ICBHS is unable to act on the amendment within 60 days, ICBHS may extend the time for such action by no more than 30 days if ICBHS notifies the individual in writing of the delay, explains the delay, and the date by which action will be completed. The written notification must be given to the individual within the first 60 day time period.

[45 C.F.R. Section 164.526(b)(2)]

Denying a Request

If the requested amendment is denied, in whole or in part, ICBHS must provide the individual with a timely, written

denial, pursuant to Section 164.526(d), on a Request to Amend Protected Health Information form indicating the following:

1. The reasons for the denial. The provider should indicate which of the four reasons for the denial listed above apply;
2. A statement regarding the individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
3. A statement that, if the individual does not submit a statement of disagreement, the individual may request ICBHS provide the individual's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment; and
4. A description of how the individual may complain to ICBHS or the Secretary of the Department of Health and Human Services (DHHS) in accordance with the ICBHS Notice of Privacy Practices.

Statement of Disagreement with Denials

An individual whose request for amendment is denied, has the right to submit a statement of disagreement to ICBHS in writing on a Statement of Disagreement/Request to Include Amendment Request and Denial With Future Disclosures form when all or part of the requested amendment is denied. The statement must include the basis for the disagreement. ICBHS may reasonably limit the length of a statement of disagreement. The Statement of Disagreement must be appended to the PHI in question or linked to the designated record sets.

Rebuttal Statement

ICBHS may prepare a written rebuttal to the individual's statement of disagreement. Whenever a rebuttal is prepared, a copy of the rebuttal must be provided to the individual who submitted the statement of disagreement.

Rebuttal statements must be appended to the PHI or linked to it in the designated record set. [45 C.F.R. Section 164.526(d)(3)].

Record keeping

ICBHS must, as appropriate, identify the record or PHI in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the denial of request, the individual's statement of disagreement, if any, and the rebuttal, if any, to the designated record set.

Future Disclosures of Information Related to a Denial of a Request to Amend

If the individual submits a statement of disagreement, ICBHS must include the following with any subsequent disclosure of the PHI to which the disagreement relates:

1. The individual's request for an amendment;
2. The denial of the request;
3. The individual's statement of disagreement and the rebuttal, if any, or at the election of ICBHS;
4. An accurate summary of any such information.

If the individual does not submit a written statement of disagreement, ICBHS must include the following, if requested by the individual, with any subsequent disclosure of the PHI:

1. The individual's request for amendment and its denial; or at the election of ICBHS
2. An accurate summary of such information with any subsequent disclosure of PHI, but only if the individual has requested such action.

When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included with the disclosure, ICBHS may separately transmit the material required to the recipient of the standard transaction.

Documentation

Under HIPAA, ICBHS must document the titles of the persons or offices responsible for receiving and processing requests for amendments and maintain documentation as required by section 164.530(j) for a minimum of six years

from the date of creation or the date it last was in effect.

All requests for amendments and all correspondence and forms, etc., including, but not limited to, a request for an amendment, a written denial to a request for an amendment, written statements establishing an extension to a response deadline, a statement of disagreement submitted by an individual, and a statement of rebuttal, if any, submitted by ICBHS are maintained in the medical record.

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.