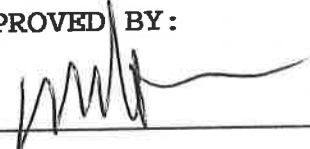


COUNTY OF IMPERIAL
DEPARTMENT OF BEHAVIORAL HEALTH SERVICES
POLICY AND PROCEDURE MANUAL

SUBJECT: Investigation of ICBHS Privacy Rule Violation Complaint	PROCEDURE: 01-20
SECTION: Administration	EFFECTIVE DATE: 6-23-04
REFERENCE: 45 C.F.R. Section 164.530(d) (1)	PAGE: 1 of 7
AUTHORITY: Behavioral Health Director as the Local Mental Health Director and Alcohol and Drug Administrator	SUPERSEDES: 5-21-04
	APPROVED BY: 

PURPOSE: To establish a process for making complaints about violations of the HIPAA Privacy Rule and to guide employees in assisting individuals to register complaints regarding ICBHS' privacy policies and procedures and/or its compliance with those policies and procedures.

SCOPE: The information in this document applies to all members of the workforce which includes employees, contract employees, volunteers, and trainees granted access to protected health information (PHI).

NOTES: Section 164.530 of the HIPAA Privacy Rule requires that ICBHS put into place several administrative measures. Under Section 164.530(d), ICBHS must provide a process for individuals to make complaints about violations of HIPAA Privacy Rule and ICBHS' privacy policies and procedures.

In addition to providing a process for individuals to make complaints, ICBHS must also designate a staff member responsible for receiving complaints and document all complaints received and their disposition. A privacy complaint includes any complaint, whether presented in person, by telephone, in writing, or electronically, made by an individual (including a member of ICBHS' workforce) regarding ICBHS' privacy policies and procedures, compliance with those policies and procedures, or the HIPAA Privacy Rule in general.

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.

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

Individual: Under HIPAA, individual means the person who is the subject of PHI. In this procedure, the term "client" is used to refer to the individual.

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.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity. In this procedure, the term "employee" is used to refer to members of the workforce.

PROCEDURE:

PERSON RESPONSIBLE

ACTION:

Complainant

1. Contacts ICBHS to file a complaint regarding ICBHS' privacy policies, or ICBHS' compliance with those policies and procedures or the HIPAA Privacy Rule.

<p>Note: The complainant is not required to complain first to ICBHS before taking the complaint to DHHS. ICBHS will encourage individuals to complain to ICBHS first so that the complaints can be resolved.</p>
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ICBHS Employee

2. Upon receipt of a complaint, refers complaint or complainant to the privacy officer.

Note: ICBHS staff will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint. (See Policy 01-61, Non-Retaliation)

ICBHS may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility, for payments. (See Policy 01-76, No Waiver of Rights)

Privacy Officer

3. Upon receipt of the complaint, logs the following on the HIPAA Privacy Complaint Status Log:
 - a) Name, if known
 - b) Address, telephone number, email address, if known
 - c) Date complaint received
 - d) Date Privacy Complaint form was sent
4. Reviews the complaint.
 - a. If complaint is not HIPAA related, makes an early dismissal of the complaint and, if appropriate, refers the complainant or complaint to the appropriate staff/department. Documents the decision on the Privacy Complaint Investigation Report.

Privacy Officer (cont.)

b. If the nature of the complaint is HIPAA-related (i.e. concerns ICBHS privacy policies and/or procedures, compliance with those policies and/or procedures, or compliance with the HIPAA Privacy Rule), notifies the individual regarding the status of the complaint (either no action taken or further review is required) within fifteen (15) working days and enters the date of acknowledgment of receipt of the complaint on the HIPAA Privacy Complaint Status Log.

5. If the complaint is HIPAA-related, but can be resolved at the supervisor level (Level 1), no other process is required. (See Policy 01-60, Sanctions for Violation of the Privacy Rule)

6. If the complaint cannot be resolved at the supervisor level, coordinates the investigation of the complaint by convening an investigative team composed of, at minimum, program manager(s) as appropriate, and County Human Resource or County Counsel consultation/representation as appropriate, to reach a resolution.

Investigative Team

7. Reviews any documentation that has been submitted, or prepared in support of the complaint.

8. Initiates an investigation, which may include, but is not limited to:

a. Discussing the complaint with the complainant.

- b. If appropriate, meeting with person(s) accused of the breach.
 - c. If appropriate, interviewing other members of the work-force, or clients.
 - d. Determining whether the alleged breach violated ICBHS privacy policies or procedures, or the HIPAA Privacy Rule.
 - e. Determining if the complaint is a disagreement with an ICBHS privacy policies and/or procedure.
 - f. Determining if the breach was intentional or unintentional.
- 9. Documents any findings of the investigation and any action(s) recommended on the Privacy Complaint Investigation Report.
 - 10. If it is determined that a privacy right was violated, or that a breach of policy and/or procedure resulted in unauthorized use or disclosure of PHI, makes a recommendation for sanctions and, if necessary, mitigation of any harmful effect known, to the department head.
 - 11. If the investigation identifies the need for process improvement, documents the recommendation.
 - 12. Upon conclusion of the investigative team's investigation, does the following:
 - a. Upon determination of the resolution by the department head, documents the

Privacy Officer

Privacy Officer (cont.)

date on the HIPAA Privacy Complaint Status Log.

- b. If process improvement recommendations were made by the investigative team, initiates process improvement(s).
- c. If appropriate and feasible, send the complainant a complaint resolution letter and documents the date the resolution was reported to the complainant on the Privacy Complaint form and the HIPAA Privacy Complaint Status Log.
- d. Files the Privacy Complaint form, the Privacy Complaint Investigation Report, and any other documentation related to the privacy complaint, investigation, or disposition of the complaint and retains for such length of time as required by the ICBHS records retention policy.

ICBHS

- 16. Retains documentation for six (6) years from the date of its creation or the date it was last in effect, whichever is later, or such longer period as required by state or other federal law.

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.

Forms used in this procedure:

Privacy Complaint ICBHS 00-56
HIPAA Privacy Complaint Status Log ICBHS 00-69
Privacy Complaint Investigation Report ICBHS 00-83
Complaint Resolution Letter (no number)