

**Iron County Human Services
Department and Associates
HIPAA Procedures Manual**

Last Updated 5/19/2015

HIPAA Table of Contents

Definitions Page 3

HIPAA Covered Programs Chart..... Page 6

Accounting for Disclosures to Patients..... Page 7

 Timeframe for Accounting..... Page 10

 Documentation for Accounting Page 11

Patient File Organization Policy & Re-Disclosure Prevention... Page 12

 Outgoing Patient File (Incoming request for ICHSD file) Page 12

 Incoming Patient File (Outgoing request for External file)... Page 14

Psychotherapy Notes..... Page 17

 Authorization for Release of Psychotherapy Notes..... Page 18

 Compound Authorizations..... Page 18

 Prohibition on Conditioning of Authorizations..... Page 19

Amending PHI..... Page 21

 Requests for Amendment..... Page 21

 Timeframe for Action..... Page 22

 Decisions on Amendments..... Page 23

 Recordkeeping..... Page 29

 Future Disclosures..... Page 29

 Documentation in Patient File..... Page 30

 Process for Amendment Decision..... Page 31

Protocol for Breach of PHI Page 33

 Notifications..... Page 34

 Burden of Proof..... Page 34

 Method of Notice..... Page 34

 Content of Notification..... Page 35

 Tiered Increase in Amount of Civil Monetary Penalties..... Page 37

Authorization/Release Specialist..... Page 39

Privacy Official Document..... Page 40

FORMS

1. HIPAA Authorization
2. HIPAA Compliant Checklist
3. Denial of Authorization Request Letter
4. HIPAA Disclosures
5. Fax Cover
6. Amendment Request Form & Instructions
7. Amendment Acceptance Letter
8. Amendment Partial Acceptance Letter/Signature
9. Amendment Denial Letter
10. HIPAA Poster – legal length
11. Privacy Policy Brochure
12. Department of Health and Human Services OCR
 Complaint Consent Form..... Page 41
 Department of Health and Human Services OCR
 Patient Safety Confidentiality Complaint Filing Form..... Page 41

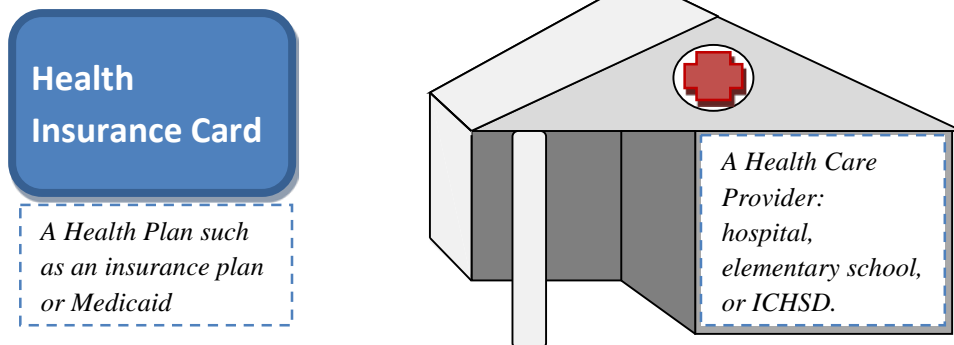
Definitions

Iron County Human Services Department & Iron County Human Services and Associates & ICHSD are used interchangeably in this procedures manual and are names for the same hybrid, covered entity.

Hybrid entity means a single legal entity: (1) that is a covered entity; (2) whose business activities include both covered and non-covered functions; and (3) That designates health care components. In ICHSD's case, we have covered functions which include our programs such as our mental health clinic, AODA clinic, psychiatric services, and other therapeutic services. We also offer non-covered services such as economic support services, WHEAP, and protective services. See **Iron County Human Services HIPAA Covered Programs Chart.**

Covered entity means: Any of the following: (1) A health plan. (2) A health care clearinghouse. (3) A health care provider who transmits any health information in electronic or any other format.

For examples:



Disclosure means the release, transfer, provision of access to, or divulging in any manner of information outside the entity, holding the information. *For psychotherapy notes, it also can mean between providers—anything non-healthcare related.*

Protected health information means individually identifiable health information:

1. That is:
 - a. Transmitted by electronic media
 - b. Maintained in electronic media; or
 - c. Transmitted or maintained in any other form or medium.
2. Protected health information *excludes* individually identifiable health information:
 - a. In education records covered by the Family Educational Rights and Privacy Act,
 - b. In patient records described at 20 U.S.C. 1232g(a)(4)(B)(iv)
 - c. In employment records held by a covered entity in its role as employer; &
 - d. Regarding a person who has been deceased for more than 50 years.

Health care means care, services, or supplies related to the health of an individual. *Health care* information includes, but is not limited to, the following:

1. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
2. Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription. *Healthcare information does not include the psychotherapy notes. See the section **Psychotherapy Notes on page 17.***

Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes *excludes* medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity. At ICHSD, it is the combination of our Mental Health Clinic, and its interaction with our services case managers.

Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. [65 FR 82802, Dec. 28, 2000, as amended at 67 FR 53266, Aug. 14, 2002; 68 FR 8381, Feb. 20, 2003; 74 FR 42769, Aug. 24, 2009; 78 FR 5695, Jan. 25, 2013]

User means a person or entity with authorized access.

Health care operations means any of the following activities of ICHSD to the extent that the activities are related to covered functions:

- A. Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of general knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
- B. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
- C. Except as prohibited under § 164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;
- D. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
- E. Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
- F. Business management and general administrative activities of the entity, including, but not limited to:
 - i. Management activities relating to implementation of and compliance with the requirements of this subchapter;
 - ii. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer.
 - iii. Resolution of internal grievances;
 - iv. The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and
 - v. Consistent with the applicable requirements of § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

Iron County Human Services HIPAA Covered Programs Chart

ICHSD is a <u>Hybrid</u> entity which means it is composed of services that are both <i>covered</i> and <i>not covered</i> under HIPAA law	
HIPAA Programs Covered	Non-HIPAA Programs Not Covered
Intoxicated Driver Program Alzheimer Caregiver Support Program Mental Health Block Grant Children’s Long-Term Care Services Youth Mentoring Program Alcohol and Other Drugs Psychiatry/ Telehealth Comprehensive Community Services Aging Disability Resource Center Patient Portability and Affordable Care Act	Adult at Risk/ Adult Protective Services Elder Abuse Income Maintenance/ Economic Support Wisconsin Heating Energy Assistance Program Child Care Certification/ Child Care Administration Kinship Care Coordinated Services Teams Family Support Youth Aids Community Options Program

**Iron County Human Services
Policy for Accounting for disclosures
to Patients.
§ 164.528**

Client's right to an accounting of disclosures of protected health information:

An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the *six years prior* to the date on which the accounting is requested, except for disclosures:

1. To carry out treatment, payment, and health care operations. § 164.506
2. To individuals of protected health information about them. § 164.502
3. Incidental to a use or disclosure otherwise permitted or required by ICHSD Privacy Policy. 164.502
4. To fulfill an authorization. § 164.508
5. For the ICHSD's patient directory or to persons involved in the individual's care or other notification purposes. § 164.510
6. For national security or intelligence purposes. § 164.512(k)(2)
7. To correctional institutions or law enforcement officials. § 164.512(k)(5)
8. As part of a limited data set in accordance with § 164.514(e).
9. That occurred prior to the compliance date for the covered entity.

Temporary Suspension of Right to Disclosure

Iron County Human Services Department must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, as provided in § 164.512(d) or (f), respectively, for the time specified by such ICHSD or official, if ICHSD provides the requestor with a written statement that such an accounting to the individual or representation would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required. If the agency or official statement is made orally, ICHSD must:

- A. Document the statement, including ICHSD's identity or representative official making the statement;
- B. Temporarily suspend the individual's right to an accounting of disclosures subject to the statement; and
- C. Limit the temporary suspension to no longer than **30 days** from the date of the oral statement, unless a written statement is submitted during that time.

3. An individual may request an accounting of disclosures for a period of time less than six years from the date of the request.

Content of the Accounting.

Iron County Human Services must provide the individual with a written accounting that meets the following requirements. The accounting must include disclosures of protected health information that occurred during the six years (or such shorter time period at the request of the individual) prior to the date of the request for an accounting, including disclosures to or by business associates of the covered entity).

1. The accounting for an individual's PHI, for a non-research request, must include for each disclosure:

1. The date of the disclosure;
2. The name of the entity or person who received the protected health information
3. If known, the address of such entity or person
4. A brief description of the protected health information disclosed (The checklist on the included request)
5. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure, if any.

Example 1:

Marion requested an accounting of disclosures for the last 12 months. There were two disclosures, one was a signed authorization from Marion, and the other was a request from law enforcement during an active response for an emergency detention.

1/18/2015 to Dr. Viesca at Marshfield Clinic 201 Peach Ave Marshfield, WI 54449. Authorization enclosed.

4/1/2015 to Wood County Sheriff's Department, 400 Market St PO Box 8095 Wisconsin Rapids WI 54495-8095. Crisis plan released from Crisis Call Center during emergency response.

Example 2:

Josephine requests an account for disclosures for the last six years in person. She has had more than 45 releases of PHI over the last 6 years in a combination of emergency responses, self authorizations, healthcare power of attorney requests, and social security administration requests.

Iron County Human Services and Associates first, in person, verbally explains to Josephine that her request will not be completed in the required 30 days due to the size and complexity of her file. ICHSD then mails her a written statement with the director's expected completion date within the initial requirement of 30 days. In this case, ICHSD determines it will need 50 calendar days.

ICHSD is allowed to extend the period if they do so in writing, and they give the individual an expected completion time. This is called a "suspension" of the individual's right to a timely accounting of their disclosures. ICHSD can *suspend* an individual's right if it will unreasonably affect ICHSD's ability to complete its work.

2. If, during the period covered by the accounting, ICHSD discloses health information to the same person or entity for a single purpose (on the same authorization), the accounting may, with respect to such multiple disclosures, provide:
1. The information required above for the first disclosure during the accounting period;
 2. The frequency, periodicity, or number of the disclosures made during the accounting period, and
 3. The date of the last such disclosure during the accounting period

For example:

Amaya requests an accounting for disclosures for the last 6 months. She has had 3 disclosures to a single doctor at the University of Wisconsin—Madison Hospital. She signed only one release with expiration 12 months after signing (setting up single purpose, multiple disclosures).

First disclosure 1/15/2015, to Dr. Mason at University of Wisconsin—Madison Hospital, 600 Highland Ave, Madison WI 53792. Authorization enclosed—Expiration 1/15/2016.

Additional disclosure dates to Dr. Mason: 2/20/2015 & 4/1/2015

3. If, during the period covered by the accounting, the ICHSD has made disclosures of protected health information for a particular research purpose in accordance with § 164.512(i) for 50 or more individuals, the accounting may, with respect to such disclosures for which the protected health information about the individual may have been included, provide:
- A. The name of the protocol or other research activity
 - B. A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records
 - C. A brief description of the type of protected health information that was disclosed
 - D. The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period
 - E. The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
 - F. A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity

If the covered entity provides an accounting for research disclosures, in accordance with paragraph (b)(4) of this section, and if it is reasonably likely that the protected health information of the individual was disclosed for such research protocol or activity, the covered entity shall, at the request of the individual, assist in contacting the entity that sponsored the research and the researcher.

Timeframe for the Accounting.

Iron County Human Services and Associates must act on the individual's request for an accounting, **no later than 60 days after receipt** of such a request, as follows:

1. ICHSD must provide the individual with the accounting requested; or

For example:

Haneul requests an accounting for disclosures for the last 7 months on 4/1/2015. The request must be completed by May 30th 2015.

May 30th falls on a Saturday, therefore, the ICHSD must complete the request on the business day prior to the due date: May 29, 2015.

2. If unable to provide the accounting within the 60 days, ICHSD may extend the time to provide the accounting by no more than 30 days, provided that:
 - a. The ICHSD, within the first 60 day time limit, provides the individual with a written statement of the reasons for the delay and the date by which ICHSD will provide the accounting; and
 - b. The ICHSD may have only one such extension of time for action on a request for an accounting.
 - c. The ICHSD must provide the first accounting to an individual in any 12 month period without charge. After the first accounting, ICHSD may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that ICHSD informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

For example:

Haneul requests an accounting for disclosures for the last 7 months on 4/1/2015. The request must be completed by May 30th 2015 (*May 29, 2015 due to the Saturday due date*). If ICHSD is unable to complete the request by the due date, ICHSD must send a written statement, within the initial due date timeframe, of the cause for the delay including the expected timeframe which the request will be fulfilled.

In this case, the request can be extended no longer than an additional 30 calendar days making the request extension due June 29, 2015.

Documentation.

Iron County Human Services Department must document the following and retain the documentation:

1. The information required to be included in an accounting for disclosures of protected health information that are subject to an accounting on the “HIPAA Disclosures Cover” of a patient file and kept for a minimum of **six years after the disclosure.**

HIPAA Disclosures Include <u>Authorizations</u> and / or <u>Incoming Records</u> in <u>Date Order</u> behind this cover				
Incoming Record?	From / To	Date	HIPAA Compliant?	Checklist Included?
<input type="checkbox"/>	TO: ABC Hospital 55555 LongName Ave. CityVille, WI 55544	01/01/2000	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

2. The written accounting that is provided to the individual. This will be included in the “HIPAA Disclosures Cover” of the patient file and added to the disclosures; and

HIPAA Disclosures Include <u>Authorizations</u> and / or <u>Incoming Records</u> in <u>Date Order</u> behind this cover				
Incoming Record?	From / To	Date	HIPAA Compliant?	Checklist Included?
<input type="checkbox"/>	TO: ABC Hospital 55555 LongName Ave. CityVille, WI 55544	01/01/2000	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	TO: Individual Patient Disclosure: Address, CityVille WI 55544	1/01/2000-02/1/2000	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

3. The titles of the person(s) or offices responsible for receiving and processing requests for an accounting by individuals. This is made available in the “HIPAA Designated Staff” section of the **Iron County Human Services HIPAA Procedures Manual.**

Iron County Human Services Patient File Organization Policy and Re-Disclosure Prevention

1. Every paper patient file will have a **Cover** which will utilize the ICHSD Form “*HIPAA Disclosures*.”
 - a. The procedure for adding a **Cover** to existing clients’ files will be to add the cover at the first appointment or annual review of a client with their provider.
2. The “*HIPAA Disclosures*” **Cover** will have the following header to be completed for patient identification:

Patient Name _____ Birth Date _____ ID # _____

This header must be completed prior to being added to the patient file to protect confidentiality regarding the file and its disclosures.

3. The “*HIPAA Disclosures*” **Cover** will have the following five sections that require completion:

HIPAA Disclosures				
Include <u>Authorizations</u> and / or <u>Incoming Records</u> in <u>Date Order</u> behind this cover				
Incoming	From / To	Date	HIPAA Compliant?	Checklist Included?
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>

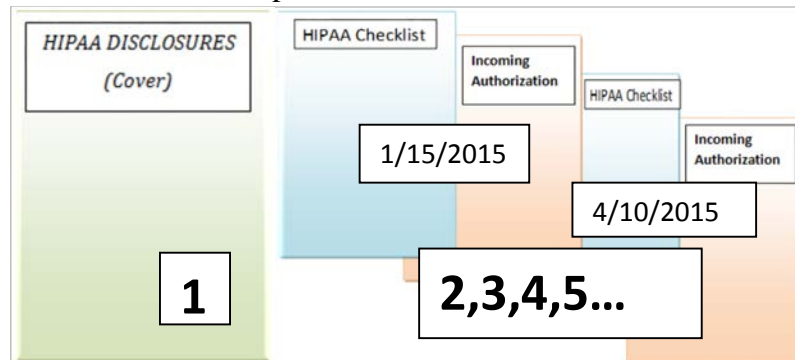
If the disclosure in an OUTGOING PATIENT FILE (incoming request from other entity), follow this checklist:

- A. Submit the received incoming authorization form to the Authorization/Release Specialist for review against HIPAA requirements to get acceptance or denial. A signature is **required** from either the primary or secondary Authorization/Release Specialist (see HIPAA Designated Staff) to move forward with disclosure.
- B. Authorization/Release Specialist will review the incoming authorization form against the ICHSD “*HIPAA Compliant Checklist*” to ensure request is in compliance.
 - i. If the incoming authorization is compliant, the checklist will be signed and returned to the provider for completion.
 - ii. If the incoming authorization is non-compliant, a denial letter will be either mailed or faxed to the requester with our “*HIPAA Authorization*” form for completion as well as our “*HIPAA Denial of Authorization Letter*” and cause for denial. If there is a denial, **no disclosure is to be made** until a compliant authorization is received. The denial is **not to be made a part** of the patients’ permanent file nor added to the disclosures.

- C. Once a provider has received an approved incoming authorization, review the timeframe of the disclosure and be sure to include only the patient file for that timeframe authorized.
- D. Also, *be aware of the expiration date* of the authorization as any additional requests for disclosures should be honored until the expiration date.
- E. Be **sure** that the only information released to the requestor is that of Iron County Human Services and Associates, and that we **do not disclose any records received from any other entities within the patient file**. This is called a re-disclosure and ICHSD is *not permitted* to do so with another entity’s records. If the individual would like the records released from another entity, they will need to request those records directly from that entity.
- F. When sending patient files by mail, be sure to double and triple check your address to prevent unauthorized disclosure to the wrong entity or individuals. Also, mark the file properly on the outside with either *confidential records*, or *confidential*. When sending by fax, be sure to use the “*HIPAA Fax Cover*” with the proper statement regarding re-disclosure and misuse. This will minimize the risk of an unauthorized disclosure or breach of the patient’s health information.
 - i. Also, when faxing PHI, do not walk away from the fax machine until your receipt has printed.
 - ii. Include fax receipt with the authorization in the patient’s permanent file.
- G. Once the release of information/disclosure has been finished, fill out a line on the “*HIPAA Disclosures*” **Cover**. For example:

HIPAA Disclosures				
Include <u>Authorizations</u> and / or <u>Incoming Records</u> in <u>Date Order</u> behind this cover				
Incoming Record	From / To	Date	HIPAA Compliant?	Checklist Included?
<input type="checkbox"/>	TO: <u>Aspirus</u> Grand View Clinic, James Hubbard, Grand View Lane Ironwood MI	4/2/2015	✓	✓

- H. Then, use the HIPAA Compliant check list as the first page of the incoming authorization and add the group immediately behind the cover in date-order, oldest first. For example:



- I. Denied requests should not be added to the “*HIPAA Disclosures*” list as they were not fulfilled.
- J. Finally, this section of the patient file (requests and checklists) should not be disclosed when releasing information. This is why the disclosures section is separated from the rest of the patient file.

If the disclosure is an incoming PATIENT FILE (outgoing request from Iron County HSD), follow this checklist:

- A. When submitting a request for a patient file, be sure to complete the “HIPAA Authorization” completely, including the Doctor/Provider, department, and address for the request. For example:

AUTHORIZATION TO RELEASE REQUEST or DISCUSS AN INDIVIDUAL'S HEALTH INFORMATION and TREATMENT RECORDS

I request and authorize: Dr. Jim Leaf, Aspirus Eye Clinic, 404 East Sharon Ave Houghton MI 49931 to release healthcare information of the patient named above to:

Name: Jane Smith M.S., Iron County Human Services and Associates

Address: 300 Taconite St Suite 201 City: Hurley State: WI Zip: 54534

This request and authorization applies FROM THE DATE: 4/1/2015 TO DATE: 4/30/2015

- B. When submitting a request for both healthcare information and psychotherapy/behavior therapy services, be sure to include two separate authorization forms for your requests. **This may seem redundant, but it is required by HIPAA.** Requesting both healthcare and psychotherapy information on a single form is called a compound request and it is explicitly prohibited due to different requirements for each. Our “HIPAA Authorization” covers the requirements for both, so you can use the single form twice, but be sure to fill it out for the different information, for example:

<p>I request and authorize: <u>Dr. Jim Leaf, Aspirus Eye Clinic, 404 East Sharon Ave Houghton MI 49931</u> to release healthcare information of the patient named above to:</p> <p>Name: <u>Jane Smith M.S., Iron County Human Services and Associates</u></p> <p>Address: <u>300 Taconite St Suite 201</u> City: <u>Hurley</u> State: <u>WI</u> Zip: <u>54534</u></p> <p>This request and authorization applies FROM THE DATE: <u>4/1/2015</u> TO DATE: <u>4/30/2015</u></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Healthcare information relating to the following treatment or conditions:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input type="checkbox"/></td><td>Psychiatric Evaluations and/or Assessments</td><td>Initial</td><td><input type="checkbox"/></td><td>Crisis Action Taken</td><td>Initial</td></tr> <tr> <td><input type="checkbox"/></td><td>Psychiatric Notes</td><td></td><td><input type="checkbox"/></td><td>In-Patient Facility Evaluation and/or Assessments</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Psychotropic Medication History</td><td></td><td><input type="checkbox"/></td><td>In-Patient Facility Treatment Notes</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Psychotherapy Evaluations and/or Assessments</td><td></td><td><input type="checkbox"/></td><td>Behavioral Evaluations and/or Assessments</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Psychotherapy Notes</td><td></td><td><input type="checkbox"/></td><td>Behavioral Therapy Treatment Notes</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Alcohol Evaluations and/or Assessments</td><td></td><td><input type="checkbox"/></td><td>Drug Evaluations and/or Assessments</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Alcohol Treatment Notes</td><td></td><td><input type="checkbox"/></td><td>Drug Treatment Notes</td><td></td></tr> <tr> <td colspan="6" style="text-align: center;"><input type="checkbox"/> ANY and ALL of my above checked information</td> </tr> </table> </td> <td style="width: 50%; 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- C. The prohibited compound request will also be prohibited from educational institutions—they are hybrid entities (as is the Iron County Human Services Department because we offer both healthcare/psychotherapy services AND services that are not under HIPAA law like heating assistance). When you request both educational records and psychotherapy records from an educational

institution (for example Hurley High School or the Gogebic Ontonagon Intermediate School District) you will also need two forms; one for psychotherapy information and one with the box “other” checked and a written-in request for the educational records you are requesting. For example:

Other specific information:	X	Any and all assessment with regard to IEPs, grades for previous three years, and teacher/student incident reports.	Initial
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- D. Remember there is a place for a client to identify their expiration date; be sure to update the number of months expiration at the bottom of the authorization’s page 1 (as discussed during initial group meetings). The bottom is highlighted **YELLOW** for a reminder:

Address: 300 Taconite St Suite 201 City: Hurley State: WI Zip: 54534

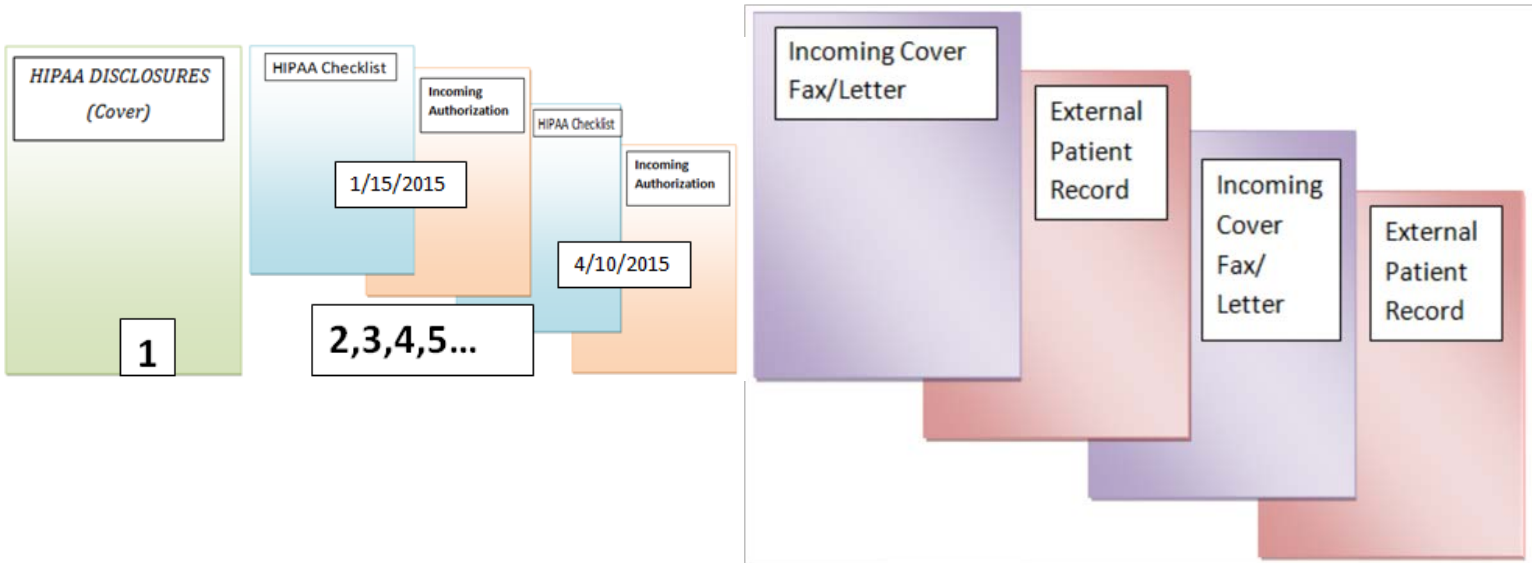
This request and authorization applies FROM THE DATE: 4/1/2015 TO DATE: 4/30/2015

THIS AUTHORIZATION EXPIRES 12 MONTHS AFTER IT IS SIGNED.

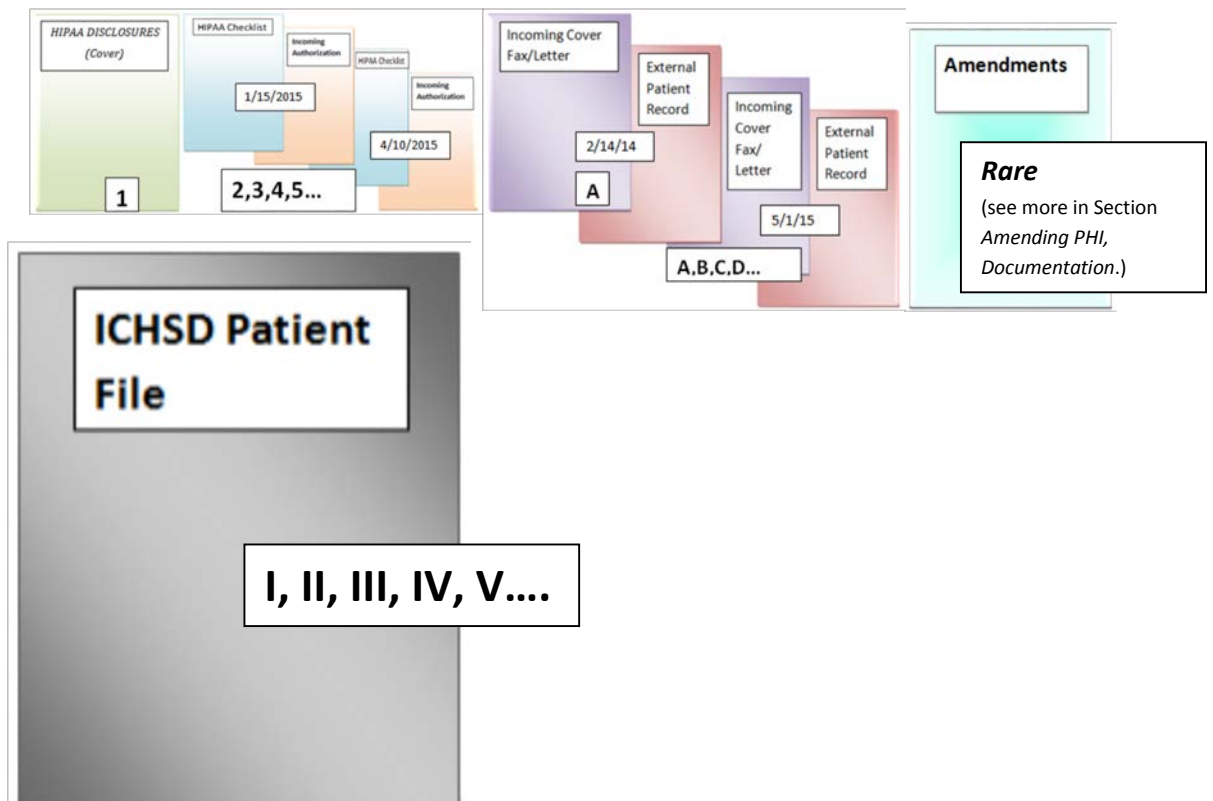
- E. Keep in mind, some institutions require their form to be completed and will not accept any other form to maintain uniformity across all records (also often due to scanner codes for electronic documents at larger institutions such as Marshfield Clinic). If your Authorization is initially declined, first review the cause: did you forget the institution’s address, or doctor’s name? Did you forget to update the expiration at the bottom of the page to match the client’s desired expirations they filled out? Troubleshoot the issue prior to re-sending. **If they simply do not accept external authorization forms, complete theirs with the client and re-submit.**
- F. **When you receive an external patient file, it must be maintained, organizationally, separately from the Iron County Human Services Patient File to prevent re-disclosures!**
- G. Complete a line on the “HIPAA Disclosures” Cover when receiving a new incoming file:

HIPAA Disclosures				
Include <u>Authorizations</u> and / or <u>Incoming Records in Date Order</u> behind this cover				
Incoming Record	From / To	Date	HIPAA Compliant?	Checklist Included?
<input type="checkbox"/>	TO: Aspirus Grand View Clinic, James Hubbard, Grand View Lane Ironwood MI	4/2/2015	X	X
X	FROM: Hayward Community School District 10320 N. Greenwood Lane WI	4/3/2015	<input type="checkbox"/>	<input type="checkbox"/>

- H. Use the incoming cover fax/letter from the sending entity as the first page of the new record with the new patient file immediately following. This new file will go into the Iron County Human Services Department Patient File immediately following the outgoing disclosure section:



- I. **External patient records are not to be re-disclosed to other entities, or back to the client under any circumstances!** This is called a re-disclosure and ICHSD is *not permitted* to do so with another entity's records. If the individual would like the records released from another entity, they will need to request those records directly from that entity.
- J. Finally, our Iron County Human Services Department patient records will look like this (in date-order) :



Iron County Human Services Policy Regarding Psychotherapy Notes

Psychotherapy notes

Notes recorded in any medium (*text, sound, video, or otherwise*) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

They exclude medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

For example:

Paulo discussed the events of the last two years of his life during the first three sessions of his therapy which including multiple physical altercations with his fiancé, conversations with his parents over how much he's changed in the past year regarding his mood and how often he calls them, as well as the intense anger he feels when he is asked to leave his home. His therapist diagnosed him with depression and suggested he get a referral from his primary care physician to the clinic's psychiatrist for an evaluation for possible intervention with medication to work as a supplement to the therapy he'll receive. The psychiatrist suggested two medications, one for daily use, and one for use only during significant triggers or events of aggression and anger. The therapist expects weekly therapy for at least 6-12 months and additional, possibly less frequent therapy after a re-evaluation at 6 and 12 months.

The Diagnosis: depression, the medications: 2 (and the exact names)

Functional Status: If assessed and a report has been generated after only three sessions, this can be determined healthcare information.

The Symptoms: sadness, anger and aggressive outbursts, and significant changes in behavior

The Treatment Plan: Including the initial plan to get a referral, and then the plan to continue supplemental medication and therapy

The Prognosis: Including the length and frequency of therapy as well as the plan for re-evaluations

The Progress-to-date: Getting diagnosed, beginning supplemental medication, and setting up therapy are progress points that can be disclosed.

All of the above can be considered *healthcare information* due to the lack of conversational, psychotherapy material present. For example, you could not report on the summary "Progress-to-date: So far, he has been diagnosed with depression due to the frequent physical altercations with his fiancé and the multiple interventions his family has staged and discussed with him." This version of the progress holds psychotherapy material and cannot be considered "healthcare" information.

Authorization required: psychotherapy notes

Iron County Human Services and Associates must obtain an authorization for any use or disclosure of psychotherapy notes, except to carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment
2. Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners *in mental health learn under supervision* to practice or improve their skills in group, joint, family, or individual counseling; or
 - a. It is Iron County Human Services and Associates' policy to require any and all student trainees be covered under their university liability policy and any other coverage as required by law to practice with clients during training, internships, for-credit hours, and/or other training purposes prior to licensing or employment by ICHSD.
 - b. It is Iron County Human Services and Associates' policy not to share any client files with trainees that discloses any identifying information or other information that may lead to identification of present or past clients that are not currently under the trainee's care.
3. Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual;
 - a. It is Iron County Human Services and Associates Policy to confer with Corporation Counsel and other State or Federal contacts in the event of legal action. [(ii) A use or disclosure that is required by § 164.502(a)(2)(ii) or permitted by § 164.512(a); § 164.512(d) with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1); or § 164.512(j)(1)(i).]
4. And other than the transition provisions in § 164.532

Compound authorizations:

An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:

1. An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

2. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes;

For example:

Jasmine wants her new therapist to have her records from Aspirus for her long-term illness including her time spent with the therapist from Aspirus. She will need to send one Authorization for *healthcare records* and one Authorization for *psychotherapy records*.

The psychotherapy records will likely exclude the psychotherapy notes unless she explicitly requests them, *and* the organization (Aspirus in this example), and therapist who originated them, allows it.

HIPAA allows strict policy restricting patient access to the therapist's psychotherapy notes. **It is Iron County Human Services current policy to not allow patient access to the therapist's psychotherapy notes and can only be accessed as stated in the Privacy Policy.**

3. **An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under paragraph (b)(4) of this section on the provision of one of the authorizations.**

Prohibition on conditioning of authorizations:

Iron County Human Services Department may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization except:

1. A covered health care provider may condition the provision of research- related treatment on provision of an authorization for the use or disclosure of protected health information for such research under this section;

For example:

Iron County received research grant funding from the National Institutes for Health. This grant funds three-per-week therapy sessions for adults which would be provided for free to the participants for 12 months. To participate, the adults must meet the eligibility requirements of a diagnosis of Post-Traumatic Stress Disorder and have been deployed in the last 20 years to an active conflict-zone.

The provider can condition the free treatment on the signing of a release to the grantor due to the research nature of the funding. NIH is likely conducting research on the difference between three-per-week sessions to another form of therapy and would need the records of the treatment to do their research.

There is research involved, therefore, conditioning treatment is allowed.

2. A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:
 - a. The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and
 - b. The authorization is not for a use or disclosure of psychotherapy notes under paragraph (a)(2) of this section; and

For example:

James applies for health insurance coverage through Aetna. The insurance company may condition enrollment into the plan on the release of healthcare information, however, it may not condition enrollment based on the release of psychotherapy notes.

3. A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

For example:

ABC Aeronautics requires a physical screening, a mental health screening, a drug screening, and an eye examination prior to employment.

ABC Aeronautics is allowed to "condition the provision of healthcare," or condition the offer of payment or access to the healthcare they provide to the new employee, based on the signed Authorization of release. If the employee were to deny the authorization, the healthcare screenings would no longer be necessary as employment would no longer be offered.

In this example, the healthcare information, the screenings, were created for the sole purpose *to release them*.

Iron County Human Services Policy for Amending Protected Health Information

§ 164.526 Amendment of Protected Health Information.

The Client's Right to Amend

Right to amend.

An individual has the right to request that Iron County Human Services and Associates amend protected health information (PHI) or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record.

A signature is required to process a request for an amendment.

Iron County Human Services will stamp-date the incoming requests which will determine the due date for the decision.

Requests for Amendment

Individual's request for amendment must include:

The Iron County Human Services and Associates *must* permit an individual to request to amend PHI maintained in the designated record. Iron County Human Services and Associates requires that client's make requests for amendments in writing. *It is our responsibility to notify the client that the amendment must be requested in writing—this is a HIPAA requirement.* However, ICHSD staff will provide assistance in doing so completing the "HIPAA Form Request for Amendment" with the client. This can be done by:

1. If a client calls to request an amendment and asks for assistance, the ICHSD staff can offer to fill the form in with the client over the phone and mail the partially completed form to the client for review and their signature prior to the client submitting it back.
2. If a client prefers to complete the form with us in person, we can set up a time for them to come in with either their provider or our staff to assist the client in completing the required "*HIPAA Form Request for Amendment.*" This can be done by either the client relaying the information while the staff types it into the document, or assisting the client in completing the form by hand.

3. Or, if a client determines they do not need assistance and does not want to complete our form, the staff would provide a list of the following items required for an amendment:
 - a. Full Name
 - b. Birth Date
 - c. SSN or Patient ID if available
 - d. Address
 - e. The provider or providers seen at our clinic
 - f. The last visit if available
 - g. If the patient receives any other services here (to determine if any disclosures or other case management issues may arise)
 - h. Timeframes or dates in which the error occurred)
 - i. An explanation, in detail, of the error and why the client believes the error occurred.

The letter that is the cover of the “HIPAA Form Request for Amendment” should still be mailed to the client informing them of the procedures, however the form on pages 3 & 4 can be omitted for clients who decide not to use our form.

Timely Action

Iron County Human Services will stamp-date the incoming requests which will determine the due date for the decision. A signature is required to process a request for an amendment.

Maximum Time Allowed

Iron County Human Services and Associates must act on the individual’s request for an amendment no later than 60 days after receipt of the request, as follows:

1. If Iron County Human Services and Associates grants the requested amendment, in whole or in part, it must take the actions required by “*Accepting the Amendment*”.
2. If Iron County Human Services and Associates denies the requested amendment, in whole or in part, it must provide the individual with a written denial, in accordance with “*Denying the Amendment.*”

For example:

Lanrong requested an amendment be made to her birthdate on 7/1/2015. Iron County Human Services and Associates is required to respond in either of the above options by 60 calendar days (not working days) therefore, on or before 8/29/2015.

Any response later than this date would be in violation of HIPAA requirements. However, if the agency knows that a timely response cannot be made, then an extension can be applied as described below.

One Extension Maximum

If Iron County Human Services and Associates is unable to act on the amendment within 60 days as required under “*Maximum Time Allowed*,” Iron County Human Services and Associates may extend the time for such action by no more than 30 days, provided that:

1. Iron County Human Services and Associates, within the 60 days of receipt, provides the individual with a written statement of the reasons for the delay and the date by which Iron County Human Services and Associates will complete its action on the request; and
2. Iron County Human Services and Associates may only have a **maximum of one** such extension of 30 days’ time for action on a request for an amendment.

For example:

In the above example with Lanrong, Iron County Human Services and Associates could extend the request to the date 9/28/2015 but no later, and no other extensions for this request can be given.

However, the notification of the extension must be sent prior to the end of the initial 60 day period. Any final response later than 9/28/2015 date would be in violation of HIPAA requirements.

Decision on Amendment

Wholly Accepting the Amendment

If Iron County Human Services and Associates accepts a request for an amendment wholly, and require no changes to the amendment, they must notify the patient in writing using the “*Acceptance of Amendment Request Letter*.” The client must also receive a copy of the patient file documents that have been updated.

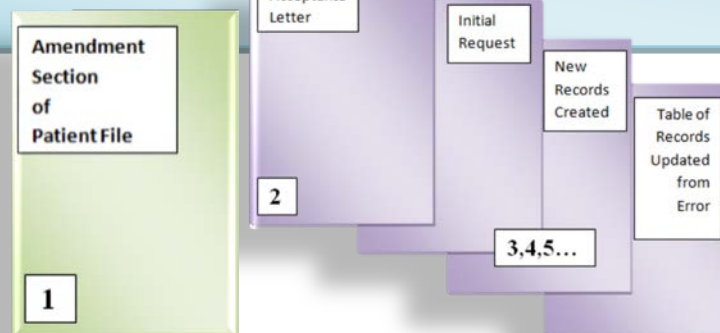
The Amendment must be added to the patient file as follows:

1. The first document of the Amendment documents would be the agency signed “*Acceptance of Amendment Request Letter*.”
2. The second document would be the initial request made by the client.
3. Finally, the newly created documents would follow.

For example:

Lanrong submitted for, and was accepted, a change to her treatment plan with the error regarding the number of appointments required per month. Her record showed 2 per month, but Lanrong and her therapist agreed to four. She was approved, to have this information corrected.

The Amendment section of her record would be: The Acceptance Letter, the Initial Request, the New Records created, and the Table of Contents/List with the locations of the documents that have been corrected.



Also, if the record is not readily changeable at the location of the error, there should be:

1. A flagged note/highlight or other noticeable link (if electronic) to the amendment.
2. In instances of demographic or permanent information, supplying the information in the front of the amendment documents the correct information would be sufficient so long as the attention is drawn to the amendment and new correct information at the front of the patient file.

This process allows for a minimally invasive change of the patient file, while still making a noticeable change in the record that would be seen if the file was pulled, needed to be released, or was supplied to the client.

Partially Accepting the Amendment

If Iron County Human Services and Associates only partially accepts a request for an amendment and requires changes to the amendment, they must notify the patient in writing using the “*Partial of Amendment Request Letter*.”

This letter does the following:

1. Notifies the client of the accepted portion of their amendment request
2. Notifies the client of the denied portion of their request
3. Notifies the client of the cause and findings for the denial
4. Explains the three options for the client’s next steps:
 - A. The client can accept the partial amendment findings
 - B. The client can deny the partial amendment findings and submit a Statement of Disagreement
 - C. The client can decide to do no further action
5. Offers the client the ability to accept, ***without further alteration to***, the partial amendment by signing and returning the letter finalizing the partial amendment.

For example:

If Ramakrishna’s amendment was partially accepted because his birth date was in error. But the amendment to the treatment plan was not accepted because it was found that his treatment plan on his records was accurate and correct contrary to what his amendment indicated.

A letter of decision was sent out which required an additional signature from Ramakrishna. The additional acceptance signature would finalize the partial amendment.

This letter would need to be signed and returned, *without any additional changes*, in order to complete the amendment as in “Accepting the Amendment” where the letter will now act as the amendment and not the initial request.

Ramakrishna LastName
 [Company Address]
 [Company Address]
 [Company Phone] [Company Fax]

Ramakrishna LastName:

We have reviewed your request for amendment to your patient file thoroughly. After review, we have found that the information you submitted with your amendment request was partially correct.

We cannot fulfill your amendment in full regarding your request to amend Ramakrishna LastName's file due to the following findings:

Incorrect findings would be entered in this section: Your therapist reviewed your psychotherapy records carefully including conversations about your treatment plan with you, our billing

However, the following amendment information was correct and can be accepted with your approval:

Correct findings would be entered in this section: After reviewing several databases regarding your birthdate, we found that your birthdate was in error and can update your records as requested upon the acceptance of this partial amendment.

No changes have been made to your patient file at this time. If you accept the above findings, you can sign this letter and return it, unchanged and we will process the above changes as written.

However, if you do not accept the above changes as is, *do not sign this form*. Instead, you may continue this process: you have the right to submit a *Statement of disagreement*. Iron County Human Services and Associates will make the written statement, disagreeing with the denial of all or part of your requested amendment and the basis of such disagreement, a part of your permanent patient file. **We will limit your statement to 2,000 words.** You may use this opportunity to explain why you are in disagreement with our agency's decision and it will become part of your permanent patient file and will be included with all future disclosures. You can submit your statement to our address at: Iron County Human Services and Associates, 300 Taconite St – Suite 201, Hurley WI 54534. If you need assistance, please contact our office at 715-561-3636.

Sincerely,

Iron County Human Services and Associates

Iron County Human Services and Associates

I, Ramakrishna LastName, agree to the above partial acceptance of the amendment to my health information as written and I have made no additional changes.

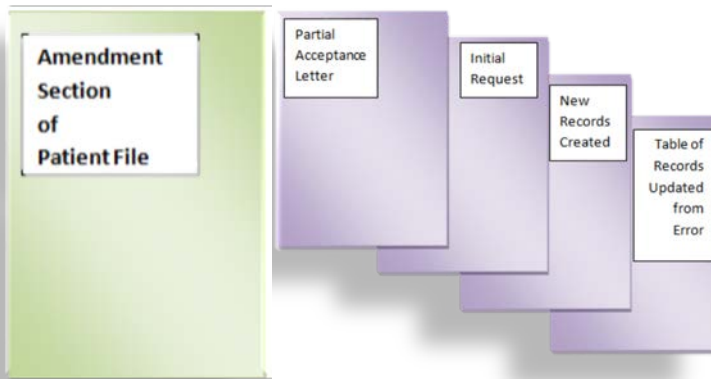
Ramakrishna LastName _____ Date _____
 Carolyn Kolson-Janov, Director _____ Date _____

Again, if you do not agree with this partial acceptance, do not sign or return this letter. You can either decide to ignore this letter, or move forward with writing a statement of disagreement.

The Amendment must be added to the patient file as follows:

1. The first document of the Amendment documents would be the **client & agency** signed “*Partial Acceptance of Amendment Request Letter.*”
2. The second document would be the initial request made by the client.
3. Finally, the newly created documents would follow.

The Amendment section of Ramakrishna’s record would be: The Partial Acceptance Letter (signed by Ramakrishna & ICHSD), the Initial Request, the New Records created, and the Table of Contents/List with the locations of the documents that have been corrected.



Also, if the record is not readily changeable at the location of the error, there should be:

1. A flagged note/highlight or other noticeable link (if electronic) to the amendment.
2. In instances of demographic or permanent information, supplying the information in the front of the amendment documents the correct information would be sufficient so long as the attention is drawn to the amendment and new correct information at the front of the patient file.

This process allows for a minimally invasive change of the patient file, while still making a noticeable change in the record that would be seen if the file was pulled, needed to be released, or was supplied to the client.

After Acceptance

If Iron County Human Services and Associates accepts the requested amendment, in whole or in part, the covered entity must comply with the following requirements:

1. *Making the amendment:* Iron County Human Services and Associates must make the appropriate changes or updates to the patient's record that was accepted. At a minimum, by identifying the records in the patient file that are affected by the amendment and following the procedures as required in "Documentation" and for each type of decision in "Decision on Amendment"; wholly, partially, or a denial .
2. *Informing the individual.* In accordance with "Timely Action," ICHSD must timely inform the individual that the amendment has been accepted. We also must obtain the individual's agreement to have Iron County Human Services and Associates notify the relevant persons with which the amendment needs to be shared in accordance with "Accepting the Amendment; Informing others."
 - a. It is ICHSD's policy to send a copy of a blank authorization with the letter of Acceptance to the client.
 - b. No information will be sent to other new entities without an indication by the client (through a new authorization), unless an authorization is already on file for that information **and** it has not yet expired.
3. *Informing others.* Iron County Human Services and Associates must make reasonable efforts to obtain additional authorizations from the client *if necessary* in order to inform and provide the amendment within a reasonable time to:
 - a. Persons identified by the individual as having received PHI about the individual and needing the amendment; and
 - b. Persons, including business associates, that Iron County Human Services and Associates know have the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual. (For example, ICHSD billing specialist within healthcare operations)

For example:

For example, Iron County Human Services and Associates just completed an amendment for Natalie. The amendment documents are visible in Amendment section of the patient file, there is a table of contents, and the error locations have either been corrected or are noticeably highlighted to direct the viewer to the updated locations. In an electronic file, they are linked to the updated record.

However, now that an accepted amendment is completed, Iron County Human Services and Associates is now required to review the HIPAA compliant list of disclosures we've completed in the last six years—or relevant time period in relation to the amendment (if the error was new six months ago, you only need to look back six months).

Alisa submitted an amendment regarding her referral to Dr. Harolda Lan (rather than Dr. Harold Alan) at Mayo Clinic and Iron County Human Services and Associates Accepted and completed it on 6/1/2015. The error was made in her patient file 4/15/2015. Now that the amendment to her patient file is complete, the proper people need to be notified. First, Alisa needs to be notified and provided the amended documents to review. Second, the HIPAA compliant list of disclosures over the relevant period need to be sent (or “re-released”) the amendment *if it is within the parameters* of the original release. The authorization/release specialist reviews the list and finds that two releases were made with Alisa's file since 4/15/2015—once with only the referral and summary of the cause for referral, and once to her primary care physician which included her records and the information about the referral. Each of these disclosures will need a correction disclosure. Dr Harold Alan will need a correction summary of the error referral and the request for their record of her be disposed and a request for a receipt of disposal of her record. Her primary care physician will need the amendment only, not the entire record again as he already has them. Finally, the patient will need a new referral made to the correct Dr. Harolda Lan at Mayo Clinic.

Denial of Amendment.

Iron County Human Services and Associates may deny an individual's request for amendment, if we determine that the PHI or record that is the subject of the request was any of the following:

1. Was not created by ICHSD, unless the individual provides a reasonable basis to believe that the originator is no longer available to act on the request
2. Is not part of the designated record
3. Would not be available for inspection, or
4. The information on the record is accurate and complete.

Denying the amendment.

If Iron County Human Services and Associates denies the requested amendment, in whole or in part, Iron County Human Services and Associates must comply with the following requirements.

1. *Denial.* Iron County Human Services and Associates must provide the individual with a timely, written denial, in accordance with "*Timely Action.*" The denial must use plain language and contain:
 - a. The basis for the denial
 - b. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
 - c. A statement that, if the individual does not submit a statement of disagreement, the individual may request that Iron County Human Services and Associates 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
 - d. A description of how the individual may complain to Iron County Human Services and Associates pursuant to the complaint procedures established in "*Filing a HIPAA Complaint.*" Any description given to a client by ICHSD must include the name, or title, and telephone number of the privacy Official/Officer as described in "*HIPAA Designated Staff.*"

Statement of disagreement.

Iron County Human Services and Associates must permit the individual to submit to Iron County Human Services and Associates a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.

1. ICHSD will then make the written statement, disagreeing with the denial of all or part of the requested amendment and the basis of such disagreement, a part of the client's permanent patient file.
2. ICHSD limits statements of disagreement to 2,000 words. Clients may use a statement of disagreement to explain why they are in disagreement with our agency's decision.
3. ICHSD will include the statement with all future disclosures.

4. Clients can submit statements to our address at:
Iron County Human Services and Associates, 300 Taconite St – Suite 201, Hurley WI 54534. If you need assistance, please contact our office at 715-561-3636 ext 0.
5. This information is included on both the “Partial Acceptance” and “Denial” of Amendment letters.

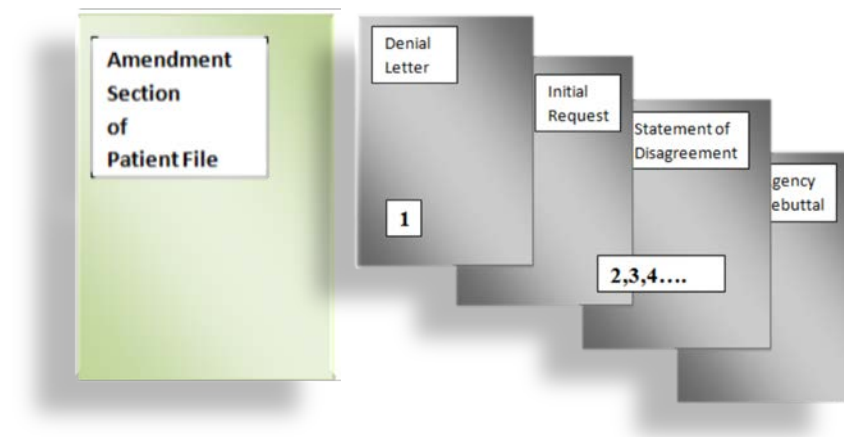
Rebuttal statement.

Iron County Human Services and Associates will prepare a written rebuttal to the individual’s statement of disagreement.

1. Whenever such a rebuttal is prepared, Iron County Human Services and Associates must provide a copy to the individual who submitted the statement of disagreement.
2. ICHSD rebuttal will include the findings that lead to the denial of the decision (however, excluding the content of psychotherapy notes)
3. ICHSD will also make the rebuttal a permanent part of the client’s patient file and all future disclosures.

Recordkeeping.

Iron County Human Services and Associates must, as appropriate, identify the disputed record in the patient file and identify or link the individual’s denied request for an amendment—including any statements and/or rebuttals.



Future disclosures.

If a *statement of disagreement* has been submitted by an individual, Iron County Human Services and Associates **must** include all of the material from the denial (as shown above), with all future disclosures.

If the individual has not submitted a written statement of disagreement, **but has requested the following**, then Iron County Human Services and Associates must include the individual’s request for amendment and its denial with any subsequent disclosure of the PHI.

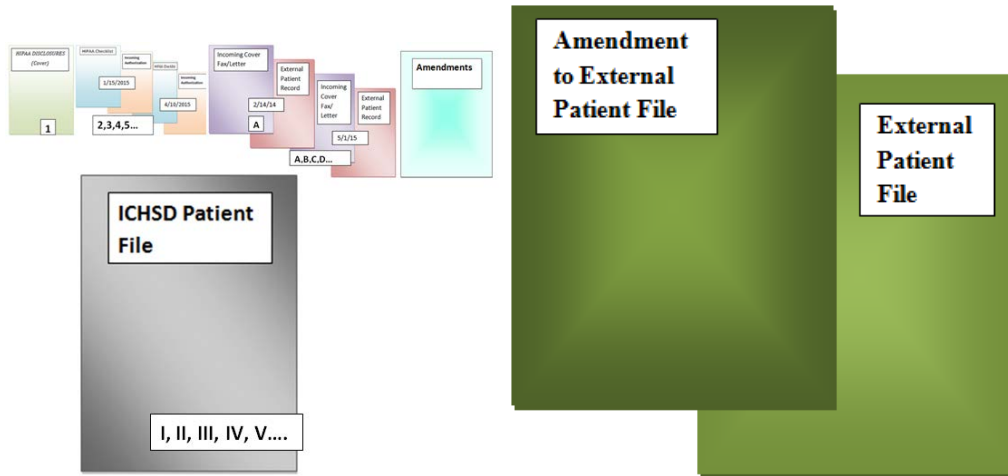
- Iron County Human Services and Associates reserves the right to disclose an accurate summary of the above at the discretion of leadership. (*Part 162 of subchapter 164.52*)

Actions on notices of amendment.

Iron County Human Services and Associates, when informed by another entity/agency of an amendment to an individual's external PHI, must update our external patient file.

ICHSD has different procedures for holding external patient files within ICHSD patient files for different programs. ***However, all external files are to be clearly differentiated from internal files so as not to be re-disclosed.***

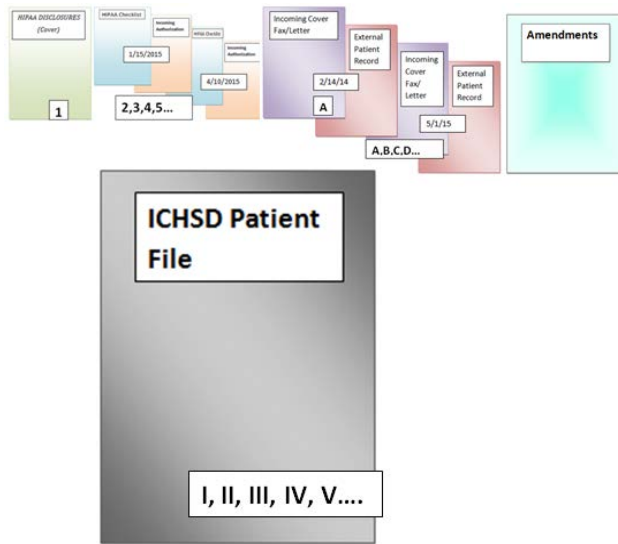
ICHSD would update our file as follows:

***Documentation.***

Iron County Human Services and Associates must document the titles of the persons or offices responsible for receiving and processing requests for amendments in the “*HIPAA Designated Staff*” section of this procedure manual.

1. **All documents**, including denied requests, regarding amendments must be kept as a part of the **permanent patient record**.

- In the paper patient record file, all documents pertaining to amendments are to enter the patient file organization as follows:



All Amendment requests will be organized in date-order regardless of decision or additional documents.

However, documents pertaining to the *initial request* will be grouped together based on the initial request date.

Refer back to “Decision on Amendment” in each the Acceptance section, and the Denial section for a full description of *what entities* to disclose the new amendment information to and for how long.

- The only time an amendment does not need to be disclosed for future disclosures, is when it was requested, denied, *and* the client moved no further action.

For example, a client requested we have their diagnosis removed from their record and ICHSD denied the request and the client did not call, meet with the HIPAA privacy officer, or respond to the denial letter with their own letter.

***If there is even one follow up document, meeting, or statement of disagreement, then all future disclosures for that time period (the dates in the patient record that the amendment was requested for) **MUST** include the amendment documents—even if it was denied and all avenues were exhausted.

Process for Amendment Decisions

Iron County Human Services Department will consider amendment requests as follows:

- The client’s case manager will review documentation from initial intake & previous 12 months regarding the case and any documentation submitted.

2. The case manager will review any available databases, if applicable, for information including, but not limited to, demographics, driver's license, SSN, and other information available to Iron County Human Services and Associates.
3. The provider or applicable user will review the psychotherapy notes for diagnostic codes, supportive statements, and cause for any contested diagnoses or treatments regarding the amendment request.
4. The program manager or billing clerk will review the billing code history for client regarding amendment request to determine any recent changes or variability in billing.
5. Finally, all amendment requests will be reviewed by the clinical supervisor/director prior to a decision being made and processed.

Iron County Protocol for Breach of PHI

(HITECH Act)

Breach of Client PHI

An individual maintains the right to notification of a breach of their PHI if it may potentially cause damage to the individual's security or privacy. This can be due to Iron County Human Services and Associates access, maintenance, retention, modification, recordings, storage, destruction, or otherwise holding, usage, or disclosures of the individual's unsecured PHI.

Breach— means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

Exceptions—the term “breach” does not include—

- a) any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of a covered entity or business associate if—
 - a. such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and
 - b. such information is not further acquired, accessed, used, or disclosed by any person; or
- b) any inadvertent disclosure from an individual who is otherwise authorized to access PHI within Iron county Human Services and Associates to another similarly situated individual within our agency; and
- c) Any such information received as a result of such disclosure is not further acquired or accessed.

For Example:

Iron County Human Services and Associates front office staff received a fax from Aspirus Grand View regarding PHI on a client our agency does not currently see. Our front office staff member calls the Aspirus staff listed on the faxed material. Aspirus confirms that the fax was in error and asks our front office to destroy the records *and* fax an acknowledgment of their destruction.

Potential Breach 1:

Aspirus's initial fax error. However, they corrected the error by requesting that the faxed records be destroyed, therefore, there is no breach.

Potential Breach 2:

ICHSD receiving of the faxed records. However, we destroyed the records, so again, there is no breach.

Notification in Case of a Breach

Breaches Discovered

A breach should be treated as discovered by Iron County Human Services Department or its business associates as of the first day on which the breach becomes known. Including the first day by which any an employee, officer, or other agent of ICHSD knew, or should reasonably have been known, the breach to have occurred.

Timeliness of Notification

All notifications required for breaches shall be made without unreasonable delay and **in no case later than 60 calendar days** after the discovery of a breach.

Burden of Proof

Iron County Human Services and Associates holds the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay. It is ICHSD policy that:

1. ALL breach procedures are handled by the Privacy Official and the individual(s) responsible for the breach. In cases of server, network, or other IT related breaches, it will be handled between the Privacy Official and the current Network Providers for ICHSD.
2. **The Privacy Official will utilize Corporation Counsel FIRST in all cases of breaches prior to notification— as well as any state and/or federal HIPAA contacts to gain a complete understanding of the breach.**
3. If/When the breach moves forward, the notification to the client must be sent from the Privacy Official not later than 60 days from the date the breach became first known to the agency.
4. The Privacy Official will document all actions, communications with the client, and notifications to the client in the permanent patient file. This information is not to be disclosed to other entities except back to the client. It should be well marked as such within the patient file. These notifications must be kept indefinitely as they are proof that the notifications were sent.
5. The Privacy Official will mail all notifications via Registered Receipt, or another form of certified mail in which a signature must be obtained for proof of client receipt. This original proof must also be kept in the permanent patient file and only copies should be released back to the patient when requested for disclosures.

HITECH ACT Methods of Notice

1. **Individual Notice** – required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:
 - a. Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.
 - b. In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct written (or, if specified by the individual

electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the ICHSD Website or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured PHI is possibly included in the breach.

- c. In any case deemed by ICHSD involved to require urgency because of possible imminent misuse of unsecured PHI, ICHSD, in addition to notice provided under subparagraph may provide information to individuals by telephone or other means, as appropriate.
2. **Media Notice** – Notice shall be provided to prominent media outlets serving a State or region, following the discovery of a breach, if the unsecured PHI of more than 500 residents of such State or region is, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach.
3. **Notice to Secretary** – Notice shall be provided to the Secretary by ICHSD of unsecured PHI that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, ICHSD may maintain a log of such breaches occurring and *annually submit* such a log to the Secretary documenting such breaches occurring during the year involved.
4. **Posting on the Public Website** – The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described above in which the unsecured PHI of more than 500 individuals is acquired or disclosed.

Content of Notification

Regardless of the method by which notice is provided to individuals, notice of a breach shall include the following:

- a. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
- b. A description of the types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
- c. The steps individuals should take to protect themselves from potential harm resulting from the breach.
- d. A brief description of what the ICHSD is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
- e. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, Web site, or postal address.

Delay of Notification Authorization for Law Enforcement Purposes.

If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section

164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

Unsecured Protected Health Information

For purposes of this section, the term “unsecured protected health information” means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph.

Guidance and the Exception in Case Timely Guidance Not Issued see full HITECH Act

Report to Congress on Breaches

Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

Information

The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

- A. the number and nature of such breaches; and
- B. Actions taken in response to such breaches.

Regulations; Effective Date

To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 13409. Clarification of Application of Wrongful Disclosures Criminal Penalties

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d– 6(a)) is amended by adding at the end the following new sentence: “For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.”

Noncompliance Due to Willful Neglect

A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

Required Investigation

The Secretary will formally investigate *any* complaint received of a violation of a provision of HIPAA if preliminary investigations of the facts of the complaint indicate such a possible violation due to willful neglect.

Enforcement Under Social Security Act

Any violation by a covered entity under HIPAA and the HITECH ACT is subject to enforcement and penalties under section 1176 and 1177 of the Social Security Act.

Distribution of Certain Civil Monetary Penalties Collected

Any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d-5) insofar as such section relates to privacy or security shall be transferred to the Office for Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.

Tiered Increase in Amount of Civil Monetary Penalties	
TIERS OF PENALTIES DESCRIBED:	
<p>A. In the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described</p>	<p>A. The amount described in this subparagraph is \$100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000</p>
<p>B. In the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described</p>	<p>B. The amount described in this subparagraph is \$1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000;</p>
<p>C. In the case of a violation of such provision in which it is established that the violation was due to willful neglect—</p> <ul style="list-style-type: none"> • if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described 	<p>C. The amount described in this subparagraph is \$10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000; and</p>
<p>D. In the case of a violation of such provision in which it is established that the violation was due to willful neglect—</p> <ul style="list-style-type: none"> • if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described 	<p>D. The amount described in this subparagraph is \$50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000</p>
<p>In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.</p>	

SEC. 13411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

HIPAA Designated Staff

Iron County Human Services Authorization/Release Specialist

Iron County Human Services Department appoints two individuals, a primary and secondary, to complete a review of all incoming requests for release of information to protect our client's protected health information. The individual (s) complete the review by first reviewing all incoming authorization forms to ensure that they are HIPAA compliant per our "*HIPAA Checklist*."

All incoming requests for Authorizations must be signed by either the primary or secondary Authorization/Release Specialist PRIOR to processing a request.

Exceptions can be made for Authorizations for the following conditions:

1. There is a public health threat
2. There is an immediate threat to the client
3. There is a matter of national security

AND

The client's case manager acts in good-faith to get authorization from the client or the authorized representative as soon as possible after the release.

Iron County Human Service Department's Primary Authorization/Release Specialist is:

Becky Rein, primary Authorization/Release Specialist

Date

Approved by Carolyn Kolson-Janov, Director

Date

Iron County Human Service Department's Secondary Authorization/Release Specialist is:

Jessie Knipp, Secondary Authorization/Release Specialist

Date

Approved by Carolyn Kolson-Janov, Director

Date

Iron County Human Services Privacy Official

It is Iron County Human Services Department's Policy to appoint the director the HIPAA Privacy Official. The Privacy Official is responsible for handling all HIPAA complaints, agency response, and resolutions if possible. If not possible, the Privacy Official will then submit the HIPAA complaint to officials.

Carolyn Kolson-Janov

Director & HIPAA Privacy Official

300 Taconite Street, Suite 201

Hurley, WI 54534

(715) 561-3636

ICHSD acknowledges that any and all staff is required to accept a HIPAA complaint regardless of their position within the agency. The complaint is required to be submitted directly to the HIPAA Privacy Official for further response and resolution. ICHSD also acknowledges that the client has the right to deny the Privacy Official's response and to submit the complaint directly to HIPAA officials.

It is the Privacy Official's additional responsibility to handle internal investigations into HIPAA complaints, breach's, and misconduct.

***Iron County Human Service Department's
Privacy Officer is:***

Carolyn Kolson-Janov, Director

Date

Filing a HIPAA Complaint

Client's Right to file a HIPAA complaint:

You have the right to file a complaint if you feel that your private health information has been violated. Your complaint can be handed to Iron County Human Services staff working during regular business hours, mailed to our office at 300 Taconite Street – Suite 201 Hurley WI 54534, or faxed to 715-561-2128 to begin the resolution process with the Privacy Official included with this form.

1. **Be filed in writing: sent by mail, fax, email, or in-person**
2. Describe your complaint and individuals believed to be in violation of the Patient Safety Act and/or HIPAA requirements; and,
3. Be filed within 180 days of when you knew or should have known that the act described occurred.

Iron County Human Services Department may waive the 180-day time limit if "good cause" is shown.

Complaint Requirements:

Your complaint must contain the following:

1. Your name
2. Address
3. Telephone numbers
4. Email address (if you have one)
5. A description of what was disclosed
6. A list of individuals or the individual, you believe were involved
7. Your signature
8. The date of the complaint
9. **Optional:** Do you need assistance?
10. **Optional:** Is there anyone else we can contact if we cannot reach you?
11. **Optional:** Have you filed this complaint with any other resources or agencies?

Complaint Consent Form:

<http://www.hhs.gov/ocr/privacy/psa/complaint/psaconsentpackage.pdf>

Paper Complaint Form:

<http://www.hhs.gov/ocr/privacy/psa/complaint/pscomplaintform.pdf>

You may also file a complaint online at:

Health Information Complaint: https://ocrportal.hhs.gov/ocr/cp/wizard_cp.jsf

Security Rule Complaint (Computer/Server/Software): https://ocrportal.hhs.gov/ocr/cp/wizard_cp.jsf