

## New HIPAA Sample Policies

By: *Kristi Harshbarger*  
ISAC General Counsel



The Health Insurance Portability and Accountability Act (HIPAA) was first enacted in 1996, but changes and additions to the law combined with changes to county programs that deal with protected health information (PHI) means HIPAA policies are still something county officials and employees need to be updating and checking for current compliance.

The recent HIPAA law changes started in 2009, when the American Recovery and Reinvestment Act included the Health Information Technology for Economic Clinical Health Act (HITECH Act). The HITECH Act impacted HIPAA covered entities and required revisions to the HIPAA regulations. On January 25, 2013, these new HIPAA regulations were published and made changes or additions to rules on breach notification, the marketing and sale of PHI, right to access of electronic copies of PHI, additional restrictions on disclosures, updates to the requirements for Notice of Privacy Practices, and changes to the applicability of HIPAA rules to business associates of covered entities.

In addition to these HIPAA-regulation changes at the federal level, state law changes meant the restructure and regionalization of county mental health and disability service (MHDS) programs. While certainly not the only county department that deals with HIPAA and PHI, county MHDS programs are often the county department that deals with HIPAA and PHI most frequently. As a result of regionalization, county MHDS programs are transitioning to 28E entities. By being a separate legal entity from the county, MHDS regions will be considered separate covered entities for purposes of HIPAA. This means that MHDS regions and counties will each need their own HIPAA policies and procedures. These policies may look very similar, but counties will have to consider what remaining county departments are still subject to HIPAA and how those departments function and operate within the HIPAA policies. The regions will have to consider how to merge various HIPAA practices of the counties in their region into one set of policies and procedures that work with their particular regional structure and will also need to assign persons to serve as HIPAA compliance officers for the region.

In light of all these changes, the ISAC Board of Directors determined it was an appropriate time for ISAC to prepare updated sample HIPAA policies and procedures to assist the counties and regions in their on-going HIPAA compliance. The ISAC Board retained Alissa Smith, an attorney with the Dorsey & Whitney law firm in Des Moines, to prepare these policies. At the same time, the ISAC Board retained Ms. Smith to prepare updated HIPAA policies and procedures for the departments of ISAC that are covered entities under HIPAA – the ISAC Group Health Program and the staff that work on the ETC/CSN program. The

board initially reviewed these policies at its December 2013 board meeting and approved the policies at its January 2014 board meeting.

The new sample HIPAA policies and procedures are now available on ISAC's website. The sample was started from the current HIPAA policies used by Franklin County. Russell Wood, the community services coordinator in Franklin County, had initially started with the original sample policies distributed by ISAC when HIPAA was first enacted, and had taken great care since then to keep them current. In addition, policies similar to Franklin County's policies are used by several other counties, so this should allow many counties and regions to be familiar with the format and use of these sample policies.

Sample policies are just that – samples – something to use as a reference and to get you started in maintaining your HIPAA compliance. If you understand and are comfortable with your current policies and do not wish to adopt the sample policies as a whole, we also have a memo on our website that highlights the 2013 regulation changes and directs you to the specific sample policies on these topics. You could use the memo and those particular policies as a starting point to update your county's current set of HIPAA policies and procedures. Great care needs to be exercised to review and tailor HIPAA policies and procedures to your own county or region's structure and processes, regardless of whether you are updating your current policies or adopting the new sample policies. Also, the policies can only be effective in compliance if the staff that deals with PHI and HIPAA have a basic understanding of the policies and have knowledgeable compliance officers to which they can direct questions.

ISAC understands that HIPAA compliance is an important task for counties and regions, and we want to help you in this process. In addition to the sample policies and memo on our website, Alissa Smith, the attorney that prepared the new sample policies, will be speaking at ISAC's Spring School of Instruction on Thursday, March 13, 2014 from 9:00 am - 10:15 am. This presentation will be a general presentation on select federal and state health privacy laws that are applicable to counties and regions. I would encourage anyone that deals with PHI and HIPAA as a part of their job to attend this presentation. We will have an additional training, perhaps as a webinar, sometime following the Spring School that will be more specific on the sample HIPAA policies and will be best suited for county and MHDS region HIPAA compliance officers. Finally, I would welcome comments or ideas on how ISAC can assist counties and MHDS regions with HIPAA compliance in the future – please feel free to contact me at [kharsbarger@iowacounties.org](mailto:kharsbarger@iowacounties.org) or 515.369.7014.