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## **Individuals' Right under HIPAA to Access their Health Information (10/12/22)**

The regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy Rule, with limited exceptions, provides individuals with a legal, enforceable right to see and receive copies upon request of the information in their medical and other health records maintained by their health care providers and health plans.

### **General Right**

The Privacy Rule generally requires HIPAA covered entities (health plans and most health care providers) to provide individuals, upon request, with access to the protected health information (PHI) about them in one or more "designated record sets" maintained by or for the covered entity. This includes the right to inspect or obtain a copy, or both, of the PHI, as well as to direct the covered entity to transmit a copy to a designated person or entity of the individual's choice. Individuals have a right to access this PHI for as long as the information is maintained by a covered entity, or by a business associate on behalf of a covered entity, regardless of the date the information was created; whether the information is maintained in paper or electronic systems onsite, remotely, or is archived; or where the PHI originated.

### **Information Included in the Right of Access: The "Designated Record Set"**

- Medical records and billing records about individuals maintained by or for a covered health care provider;
- Enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- Other records that are used, in whole or in part, by or for the covered entity to make decisions about individuals.

### **Information Excluded from the Right of Access:**

An individual does not have a right to access PHI that is not part of a designated record set because the information is not used to make decisions about individuals. In addition, two categories of information are expressly excluded from the right of access:

- Psychotherapy notes, which are the personal notes of a mental health care provider documenting or analyzing the contents of a counseling session, that are maintained separate from the rest of the patient's medical record.



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- Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

## Personal Representatives

An individual's personal representative (generally, a person with authority under State law to make health care decisions for the individual) also has the right to access PHI about the individual in a designated record set (as well as to direct the covered entity to transmit a copy of the PHI to a designated person or entity of the individual's choice), upon request, consistent with the scope of such representation and the requirements discussed below.

## Individual's Right to Direct the PHI to Another Person

An individual also has a right to direct us to transmit the PHI about the individual directly to another person or entity designated by the individual. The individual's request to direct the PHI to another person must be in writing, signed by the individual, and clearly identify the designated person and where to send the PHI. We will accept an electronic copy of a signed request (e.g., PDF), as well as an electronically executed request (e.g., via a secure web portal) that includes an electronic signature. The same requirements for providing the PHI to the individual, such as the fee limitations and requirements for providing the PHI in the form and format and manner requested by the individual, apply when an individual directs that the PHI be sent to another person. See 45 CFR 164.524(c)(3)(ii).

## Requests for Access

Steven L. Hardy DDS, or the office staff under his direction and supervision, will be responsible for receiving and processing requests for access by individuals for record sets. He can be reached at the contact information at the top of this page.

### Requires a Written Request

A covered entity **may** require individuals to request access in writing, provided the covered entity informs individuals of this requirement. See 45 CFR 164.524(b)(1). Covered entities also may offer individuals the option of using electronic means (e.g., e-mail, secure web portal) to make requests for access. In addition, a covered entity may require individuals to use the entity's own supplied form, provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to his PHI, as described below.

### Verification

The Privacy Rule requires a covered entity to take reasonable steps to verify the identity of an individual making a request for access. See 45 CFR 164.514(h). The Rule does not



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mandate any particular form of verification (such as obtaining a copy of a driver's license), but rather generally leaves the type and manner of the verification to the discretion and professional judgment of the covered entity, provided the verification processes and measures do not create barriers to or unreasonably delay the individual from obtaining access to his/her PHI, as described below. Verification may be done orally or in writing and, in many cases, the type of verification may depend on how the individual is requesting and/or receiving access – whether in person, by phone (if permitted by the covered entity), by faxing or e-mailing the request on the covered entity's supplied form, by secure web portal, or by other means. For example, if the covered entity requires that access requests be made on its own supplied form, the form could ask for basic information about the individual that would enable the covered entity to verify that the person requesting access is the subject of the information requested or is the individual's personal representative.

## Unreasonable Measures

While the Privacy Rule allows covered entities to require that individuals request access in writing and requires verification of the identity of the person requesting access, a covered entity may not impose unreasonable measures on an individual requesting access that serve as barriers to or unreasonably delay the individual from obtaining access.

## Providing Access

### Form and Format and Manner of Access

The covered entity will provide the individual with access to the PHI in the form and format requested, if readily producible in that form and format, or if not, in a readable hard copy form or other form and format as agreed to by the covered entity and individual. **Mailed paper records and e-mail are generally considered readily producible by all covered entities and the form and format should be specified by the requestor.**

- Requests for Paper Copies
  - Where an individual requests a paper copy of PHI maintained by the covered entity either electronically or on paper, it is expected that the covered entity will be able to provide the individual with the paper copy requested.
- Requests for Electronic Copies
  - Where an individual requests an electronic copy of PHI that a covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format.



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## Timeliness in Providing Access

The covered entity will provide access as soon as possible but no later than 30 calendar days after receipt of the request in accordance to 45 CFR 164.524(2)(b)(ii).

## Fees for Copies

The Privacy Rule permits a covered entity to impose a reasonable, cost-based fee if the individual requests a copy of the PHI (or agrees to receive a summary or explanation of the information). The fee may include **only** the cost of: (1) labor for copying the PHI requested by the individual, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive) if the individual requests that the electronic copy be provided on portable media; (3) postage, when the individual requests that the copy, or the summary or explanation, be mailed; and (4) preparation of an explanation or summary of the PHI, if agreed to by the individual. See 45 CFR 164.524(c)(4). The fee may not include costs associated with verification; documentation; searching for and retrieving the PHI; maintaining systems; recouping capital for data access, storage, or infrastructure; or other costs not listed above **even if such costs are authorized by State law.**

## Denial of Access

### Grounds for Denial

Under certain **limited** circumstances, the covered entity may deny an individual's request for access to all or a portion of the PHI requested. In some of these circumstances, an individual has a right to have the denial reviewed by a licensed health care professional designated by the covered entity who did not participate in the original decision to deny.

*Unreviewable* grounds for denial (45 CFR 164.524(a)(2)):

- The request is for psychotherapy notes, or information compiled in reasonable anticipation of, or for use in, a legal proceeding.
- An inmate requests a copy of her PHI held by a covered entity that is a correctional institution, or health care provider acting under the direction of the institution, and providing the copy would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or other inmates, or the safety of correctional officers, employees, or other person at the institution or responsible for the transporting of the inmate. However, in these cases, an inmate retains the right to inspect her PHI.
- The requested PHI is in a designated record set that is part of a research study that includes treatment (e.g., clinical trial) and is still in progress, provided the individual agreed to the temporary suspension of access when consenting to participate in the



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research. The individual's right of access is reinstated upon completion of the research.

- The requested PHI is in Privacy Act protected records (i.e., certain records under the control of a federal agency, which may be maintained by a federal agency or a contractor to a federal agency), if the denial of access is consistent with the requirements of the Act.
- The requested PHI was obtained by someone other than a health care provider (e.g., a family member of the individual) under a promise of confidentiality, and providing access to the information would be reasonably likely to reveal the source of the information.
- If the [covered entity](#) does not maintain the [protected health information](#) that is the subject of the [individual](#)'s request for access, and the [covered entity](#) knows where the requested information is maintained, the [covered entity](#) must inform the [individual](#) where to direct the request for access. See 45 CFR 164.524(d)(3).

*Reviewable* grounds for denial (45 CFR 164.524(a)(3)). If access is denied on a ground permitted under [paragraph \(a\)\(3\)](#) of this section, the [individual](#) has the right to have the denial reviewed by a licensed [health care](#) professional who is designated by the [covered entity](#) to [act](#) as a reviewing official and who did not participate in the original decision to deny. The [covered entity](#) must provide or deny access in accordance with the determination of the reviewing official under [paragraph \(d\)\(4\)](#) of this section. A licensed health care professional has determined in the exercise of professional judgment that:

- The access requested is **reasonably likely** to endanger the life or physical safety of the individual or another person. This ground for denial does **not** extend to concerns about psychological or emotional harm (e.g., concerns that the individual will not be able to understand the information or may be upset by it).
- The access requested is **reasonably likely** to cause substantial harm to a person (other than a health care provider) referenced in the PHI.
- The provision of access to a personal representative of the individual that requests such access is **reasonably likely** to cause substantial harm to the individual or another person.



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## Carrying Out the Denial

If the covered entity denies access, in whole or in part, to PHI requested by the individual, the covered entity must provide a denial in writing to the individual no later than within 30 calendar days of the request. The denial must be in plain language and describe the basis for denial; if applicable, the individual's right to have the decision reviewed and how to request such a review; and how the individual may submit a complaint to the covered entity or the HHS Office for Civil Rights.

## Review of Denial

If the denial was based on a reviewable ground for denial and the individual requests review, the covered entity will promptly refer the request to the designated reviewing official.