

SUBJECT: HIPAA ACCESS OF INDIVIDUALS TO
PROTECTED HEALTH INFORMATION (PHI)

EFFECTIVE
DATE: 04-30-10 (replaces 10-30-09)

APPROVED BY:

Reviewed (no changes): _____

Executive Director

POLICY

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) an individual has the right to inspect and/or obtain a copy of his/her Protected Health Information (PHI).

PROCEDURE

Access to Protected Health Information (PHI)

A. Individual's Access to One's Own PHI.

1. A request for such access will be made in writing either by use of the form provided by the program for this purpose (on FormDocs) or by a letter duly signed. The request shall be directed to the Privacy Officer or the Service/Center Director, upon notification to the Privacy Officer.
2. A request for access to PHI must be addressed within thirty (30) days of receipt; there may be one (1) extension for an additional thirty (30) days if the individual is provided with a written statement containing the reasons for the delay and the date by which it will permit access.
3. The designated record sets that are subject to access by individuals must be documented. "Designated record set" includes the individual's clinical record and billing records.
4. Parents have the right to access and control health information about their minor children, with the following exceptions:
 - a. The fact that a minor has applied for substance abuse treatment may be disclosed to the parent, guardian, or court-ordered custodian **only** if:
 1. the minor gives written authorization
 - OR**
 2. the clinical director of the program documents his/her finding that the minor child lacks capacity, either due to extreme youth or mental or physical condition, to make a rational decision on whether to authorize disclosure of substance abuse PHI.

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- b. Facts relevant to reducing a threat to the life or physical well-being of a minor applicant for substance abuse services or any other individual may be disclosed to the parent, guardian, or court-ordered legal custodian if, in the written opinion of the clinical director
 1. the minor child lacks capacity to make a rational decision, either due to extreme youth or mental or physical condition, on whether to authorize disclosure of substance abuse PHI to the parent, guardian, or court-ordered legal custodian,
AND
 2. the applicant's situation poses a substantial threat to the life or physical well-being of him/herself or any other person, which may be reduced by communicating relevant facts to the minor's parent, guardian, or court-ordered custodian.
 - c. For a minor who is undergoing substance abuse treatment by consent of his/her parent, guardian, or court-ordered custodian, disclosure of substance abuse PHI requires the consent of both the minor child and the parent/guardian.
 5. All documentation related to requests for access to PHI must be retained in the clinical record for a minimum of six (6) years.
 6. Reasonable fees may be charged for access to PHI based on actual cost, if the recipient agrees to the fees in advance.
- B. Denial of an Individual's Access to His/Her Own PHI
1. Denials of requests for access must be in writing and provided by the Privacy Officer or Service/Center Director, upon notification to the Privacy Officer, using the form located in Formsdoc (Request to Review Clinical Record).
 2. Access to an individual's PHI may be denied without providing the individual an opportunity for review in the following cases:
 - a. Psychotherapy notes. "Psychotherapy notes" for purposes of this protocol and the Privacy Rule, is defined to mean notes recorded in any medium by a mental health professional documenting or analyzing the contents of a 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, the treatment plan, symptoms, prognosis, and progress to date.

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- b. Information compiled in anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - c. Information created or obtained in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress.
3. An individual's access to his/her own PHI may also be denied in the following circumstances, provided the individual is given the right to have the denial reviewed:
- a. The medical director or the individual's treating physician has determined, in the exercise of professional judgment, that the access requested is detrimental to the individual's physical or mental health. This restriction applies only to individuals who are currently being treated by the facility or program from which they are requesting records.
 - b. The PHI makes reference to another person (unless the other person is a health care provider) and the medical director or the individual's treating physician has determined, in the exercise of professional judgment, that the access requested is likely to cause substantial harm to such other person. However, names and PHI of other individuals who are consumers will always be redacted, and this restriction is not subject to review.
 - c. The request for access is made by the parent of a minor, court-ordered custodian of a minor, guardian of an individual or a legal representative of the individual's estate, and the medical director or the individual's treating physician has determined, in the exercise of professional judgment, that the provision of access to the requestor is reasonably likely to cause substantial harm to the individual or another person.

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4. If a request to access PHI is denied, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the organization to act as a reviewing official and who did not participate in the original decision to deny access. The reviewing official must determine, in a reasonable amount of time, whether or not to deny the access requested.
5. If an individual's request to access PHI is denied, the denial must comply with the requirements of the Privacy Rule, which include:
 - a. Making the other information accessible
 - b. Providing a timely, written denial in plain language that must include the basis for the denial, a statement of the individual's right to have the denial reviewed (if applicable) and a description of the procedures for complaints to the record holder, DBHDD or the Secretary of DHHS.
 - c. If the record holder does not maintain the PHI for which access has been requested, but knows where the requested PHI is maintained, the record holder must inform the individual where to direct the request for access.
 - d. All requests for review must be promptly referred to the Privacy Officer or designee, upon notification to the Privacy Officer; the Privacy Officer or designee must make a determination within a reasonable period of time.
 - e. All documentation related to denial of requests for access to PHI must be retained in the clinical record for a minimum of six (6) years.
6. The record of a deceased consumer may be reviewed by court order. The Privacy Officer or designee, must review all documents to determine whether the documents are valid and must render a decision after consultation with the case coordinator. The legally appointed representative of a deceased individual may request access to that individual's record upon submission of the legal documentation certifying the appointment. In either case, only non-privileged information may be disclosed.