

RIGHT OF ACCESS TO PROTECTED HEALTH INFORMATION POLICY

RESPONSIBILITY: Privacy Official or Designee(s), Director of Medical Records and Office and Department Managers

BACKGROUND:

Patients have a right to inspect, or to receive a copy of their protected health information (PHI) in the Bureau for Behavioral Health and Health Facilities (BBHFF's) records. Some exceptions apply, as defined further in this template.

(NOTE: This template is written to comply with federal HIPAA privacy rule standards. Any state law that provides patients with a greater right of access takes precedence, and this policy must be amended to conform to such state law).

POLICY:

The BBHFF will provide patients with access to their medical records, and certain other protected health information that is in the custody of the BBHFF. Patients may also receive a copy of such records.

This right applies only to protected health information that is stored in "designated record sets" (See DESIGNATION OF RECORD SETS policy). It does not apply to protected health information stored in other forms, such as information stored in correspondence files.

In certain circumstances, the BBHFF may deny a patient access to certain PHI, as provided for in this policy.

Form of Access

1. The BBHFF will provide the patient with access to PHI in the form or format the patient requests, if the information is readily producible in that form or format (e.g. paper and/or electronic medium).
2. If the information cannot be readily produced in the form requested by the patient, alternative choices of medium will be offered so that the PHI is provided to the individual in a readily producible or readable electronic form as agreed to by the individual and the BBHFF.
3. The patient may be provided with summary information if the patient has agreed in advance that this is acceptable and has agreed to pay the fee for creating the summary.
4. The patient will be granted access to the information at a mutually convenient time and place, as discussed with the patient. The patient may also receive a copy of the information by mail upon request, or via electronic mail if secure transmission is available.
5. If the patient requests the BBHFF to transmit a copy of the PHI directly to another person, the BBHFF will process this request in writing so that the receiving party is clearly identified and the patient has signed the request.

Denial of Access: Reasons for Which There Is Not a Right of Review

Unless prohibited by applicable state law, the BBHMF may deny the patient access to certain information as follows. In these instances, the decision to deny access is final and the patient will not be granted the opportunity to request a review of the decision.

1. Patients do not have a right to have access to, or a copy of, the following types of information:
 - 1.1. Psychotherapy notes.
 - 1.2. Information compiled for use in a criminal, civil, or administrative proceeding or action.
 - 1.3. Information to which patients may not have access under the terms of the Clinical Laboratory Improvements Act (CLIA).
2. When the BBHMF has provided health care to an inmate acting under the direction of a correctional institution, it may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
3. A patient's access to protected health information that was created or obtained in the course of research that includes treatment (during a clinical trial, for example) may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.
4. An individual's access to protected health information that is contained in records that are subject to the Privacy Act (which regulates the federal government's use of personal information) may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.

(NOTE: The Privacy Act is not HIPAA. It is a separate act, which applies to agencies of the federal government.)
5. A patient's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
6. The BBHMF may deny a patient's request for access to information if the BBHMF does not maintain the requested information in a designated record set. However, if the BBHMF does not maintain the requested information, but knows where the requested information is maintained, the notice of denial will inform the patient where to direct the request for access.

Denial of Access: Reasons for Which There is a Right of Review

Unless prohibited by applicable state law, the BBHMF may also deny access to certain information for the following reasons. When one of the following is the reason for the denial, the patient will be granted the opportunity to request a review of the decision.

1. 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; or
2. The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
3. The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that granting the personal representative access to the requested information is reasonably likely to cause substantial harm to the individual or another person. (Example: A record that identifies the patient as a victim of abuse, and names the personal representative as the perpetrator.)

[Note: Federal HIPAA privacy regulations require that the determinations described in the three preceding paragraphs must be made by a licensed health care professional.]...

When a patient has been denied access to certain information, the patient will be granted access to all other requested information to the extent possible.

Notice of Denial of Access

A notice of denial of access must contain all of the following:

1. Basis for the denial.
2. A statement of any review rights, if applicable.
3. A statement of how the patient may complain to the BBHMF or to the Secretary of the Department of Health and Human Services. (This will be the same information that is contained in the Notice of Privacy Practices.)
4. If access is denied because the BBHMF does not maintain the information, the notice of denial must include any information that the BBHMF has regarding the location of the requested information.

Review of Denial of Access

When the reason for denial of access is subject to review, that review will be conducted by a licensed health care professional designated by the BBHMF. The reviewer may not have participated in the original decision to deny access. The decision of the reviewer is final, and is binding on the BBHMF. The referral for review must be prompt, and the reviewer must complete the review within a reasonable period of time. The reviewer will determine if the standards of this policy were properly applied in denying access. The BBHMF will promptly provide written notice of the reviewer's decision to the patient.

Time Frame

The BBHMF must respond to requests for access to PHI within the following time frames:

1. Within 30 days of the date of the request, the BBHMF must provide access, request an extension, or issue a notice of denial for information.

2. One extension of up to 30 days is permitted. Requests for extension must be in writing, must state the reasons for the delay, and the date by which the patient will either be granted access or receive a notice of denial.
3. Applicable state law may set shorter time frames.

Fees

Fees to produce either a copy of the requested information, or to produce a summary, whether on hard copy or electronic form, may only include:

1. The cost of labor for copying, whether in paper or electronic form.
2. Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media.
3. Postage.
4. The cost of preparing the summary, if agreed in advance by the patient.

Any fee to produce the copy in electronic form cannot be greater than the costs associated with the supplies and labor listed above.

Designation of Responsibility for Receiving and Processing Patient Requests for Access to PHI

The Privacy Official or Designee(s) is responsible for receiving and processing all formal requests for access to protected health information in designated record sets.

Effective Date: 4/14/03

Dates Revised: 9/23/13



Victoria L. Jones, Commissioner, Bureau for Behavioral Health and Health Facilities

01/27/15