

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 11	Patient Privacy Policies	Effective:	April 2003
Section 11.3	Patients' Rights in Regard to Privacy of Protected Health Information	Revised:	February 2006
Policy 11.3.6	Access of Individual to Protected Health Information	Responsibility:	Assistant Vice President for Regulatory Affairs & Compliance

ACCESS OF INDIVIDUAL TO PROTECTED HEALTH INFORMATION

Policy

Patients have a right to inspect and receive a copy, at their expense, of the protected health information in their designated record set as long as the protected health information is maintained in the designated record set. Exceptions to this include:

1. Psychotherapy notes, see [Section 11.2.2](#), of the *Handbook of Operating Procedures* (HOP), "Use and Disclosure of Psychotherapy Notes".
2. Information compiled in anticipation of or use in a civil, criminal, or administrative action or proceeding.
3. Protected health information subject to the Clinical Laboratory Improvements Amendments (CLIA) of 1988.
4. Protected health information exempt from Clinical Laboratory Improvement Amendments (CLIA), pursuant to 42 CFR 493.3(a)(2):
 - a. Facilities or facility components that perform testing for forensic purposes;
 - b. Research laboratories that test human specimens but do not report patient-specific results for diagnosis, prevention, treatment, or the assessment of the health of patients; or,
 - c. Laboratories certified by the National Institutes on Drug Abuse (NIDA) in which drug testing is performed that meets NIDA guidelines and regulations. However, other testing conducted by a NIDA-certified laboratory is not exempt.

Definitions

DESIGNATED RECORD SET: A group of records maintained by or for the Health Science Center that are:

1. The medical/health records and billing records about patients maintained by or for the Health Science Center;

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2. The enrollment, payments, claims adjudication, and case or medical management record systems maintained by or for a health plan; or,
 3. Used, in whole or in part, by or for the Health Science Center to make decisions about patients.

RECORD: Any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated. See [Section 11.1.5](#) of the HOP, "Patient Health Records".

Patient's Access to Protected Health Information

1. A patient has the right to inspect, and receive copies of protected health information in a designated record set for as long as the protected health information is maintained in the designated record set. Refer to [Section 11.1.5](#) of the HOP, "Patient Health Records", for additional information regarding the legal medical record and designated record set.

If the Health Science Center does not maintain the protected health information that is the subject of the patient's request for access, and the Health Science Center knows where the requested information is maintained, the Health Science Center must inform the patient where to direct the request for access.

2. The patient must make the request in writing using an authorization form. See [Section 11.2.3](#) of the HOP, "Uses and Disclosures of Protected Health Information Based on Patient Authorization".
3. The Health Science Center must act on the patient's request no later than the 30th business day after receipt and payment of the request for all records except mental health records, which are to be available within 15 days of the patient's request. The Health Science Center shall:
 - a. Grant the request, in whole or part, and provide access; or,

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- b. Deny the request, in whole or part, and provide the individual with written denial.
4. If the access is granted, in whole or in part, the Health Science Center must comply with the following requirements:
 - a. If the request is for protected health information not maintained or accessible to the Health Science Center on-site, the Health Science Center must take an action by no later than 60 days of the request.
 - b. If the Health Science Center is unable to take an action within this time period, the time may be extended for no more than 30 days, provided that the Health Science Center provides the patient with a written statement of the reasons for the delay and the date by which it will complete its action. The Health Science Center may have only one such extension.
 - c. The Health Science Center must provide the access requested by the patient, including inspection, receiving a copy, or both, of his/her protected health information in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the Health Science Center need only produce the protected health information once in response to a request for access.
 - d. The Health Science Center may provide the patient with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:
 - The patient agrees in advance to such a summary or explanation; and,

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- The patient agrees in advance to the fees imposed, if any, by the Health Science Center for such summary or explanation.
 - e. The Health Science Center must provide the access as requested by the patient in a timely manner, including arranging with the patient for a convenient time and place to inspect or receive a copy of the protected health information, or mailing the copy of the protected health information at the patient's request. The Health Science Center may discuss the scope, format, and other aspects of the request for access with the patient as necessary to facilitate the timely provision of access.
 - f. The Health Science Center must provide the protected health information to the individual in the form or format requested by the individual, if readily available in such form or format; if not, in a readable hard copy form or other format as agreed to by the Health Science Center and the individual.
 - g. A Health Science Center employee must stay with a patient reviewing his/her records to ensure integrity of the information contained in the record. If copies are requested, the employee makes the copies on behalf of the patient.
 - h. If the patient requests a copy of the protected health information or agrees to a summary or explanation of such information, the Health Science Center may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:
 - Copying. Including the cost of supplies for and labor of copying, the protected health information requested. The fee schedule for these services is set by the State of Texas;
 - Postage. If the patient has requested the copy, summary, or explanation is mailed; and,

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- Preparing an explanation or summary of the protected health information, if agreed to by the patient.
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Denial of Individual to Protected Health Information

1. The Health Science Center may deny an individual's access to protected health information without providing an opportunity for review when:
 - a. An exception detailed above in the policy statement exists;
 - b. The Health Science Center is acting under the direction of a correctional institution and the prisoner's request to obtain a copy of protected health information would jeopardize the patient, other prisoners, or the safety of any officer, employee, or other person at the correctional institution, or a person responsible for transporting the prisoner;
 - c. The patient agreed to temporary denial of access when consenting to participate in research that includes treatment, and the research is not yet complete;
 - d. The records are subject to the Privacy Act of 1974 and the denial of access meets the requirements of that law; or,
 - e. The protected health information was obtained from someone other than the Health Science Center under a promise of confidentiality and access would likely reveal the source of the information.
2. The Health Science Center may also deny a patient access for other reasons, provided that the patient is given a right to have such denials reviewed under the following circumstances:
 - a. A licensed healthcare provider has determined that the access is likely to endanger the life or physical safety of the patient or another person;
 - b. The protected health information makes reference to another person who is not a healthcare provider, and a licensed

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healthcare professional, has determined in the exercise of professional judgment that the access requested is likely to cause substantial harm to such other person; or,

- c. The request for access is made by the patient's representative, and a licensed healthcare professional has determined that access is likely to cause substantial harm to the patient or another person.
3. If the Health Science Center denies access, in whole or in part, to protected health information, it must comply with the following requirements:
 - a. The Health Science Center must, to the extent possible, give the patient access to any other protected health information requested, after excluding the protected health information to which it denied access.
 - b. The Health Science Center must provide a timely, written denial to the patient, in plain language and containing:
 - The basis for the denial;
 - If applicable, a statement of the patient's review rights, including a description of how the patient may exercise such review rights; and,
 - A description of how the patient may file a complaint with the Health Science Center, [Section 11.1.1](#) of the HOP, "Complaints Regarding Privacy and Confidentiality of Protected Health Information".
 4. If the patient requests a review of a denial, a licensed Health Science Center health care professional, who was not directly involved in the decision to deny access, such as the Associate Dean of Clinical Care, will review the case and promptly notify the Privacy Officer to assist with the review. The Privacy Officer, in consultation with the designated licensed health care professional, must determine, within a reasonable period of time,

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whether or not to deny the access requested, based on this policy. The Health Science Center must promptly provide written notice to the patient of the findings of the review. If additional assistance is required in any situation, the Office of Legal Affairs and the Office of Regulatory Affairs & Compliance should be consulted.
