

## Emma Eccles Jones College of Education &amp; Human Services

**POLICY INFORMATION**

Document # <b>107</b>	Title: <b>Patient Right to Request Access to/Copy PHI</b>	Print Date: <b>5/18/2016</b>
Revision # <b>1.0</b>	Prepared by: <b>J. Black</b>	Date Prepared: <b>1/15/2016</b>
Standard: <b>HIPAA</b>	Approved by: <b>Dean Beth E. Foley</b> 	Date Approved: 8/7/2016

**I. POLICY STATEMENT**

In accordance with 45 CFR §164.524 this policy shall:

1. Define the process for providing a patient or personal representative the opportunity to review and obtain a copy of the patient's PHI.
2. Define the process for denying a patient request to access PHI.

**II. DEFINITIONS**

See HIPAA Privacy Policy 100

**III. AUTHORITY AND RESPONSIBILITIES**

CEHS has component units that are listed as a hybrid entity in accordance with USU's HIPAA Hybrid Covered Entity Declaration. Only the Health Care Component/HCC (i.e., covered functions) of CEHS must comply with this policy. All references in this policy to "CEHS" shall be construed to refer only to the health care component of CEHS.

**IV. PROCEDURES TO IMPLEMENT**

1. Request for Access – Approved - In most situations, a patient or is/her personal representative has the right to obtain a copy of and inspect the patient's PHI. Some exceptions may apply (See Request for Access - Denied).
  - a. To review or copy PHI, the patient or his/her personal representative must complete a **Request/Authorization to Access Protected Health Information** form (See attachment A), and submit it to the HCC that houses the PHI. The request should be dated by the HCC at the time it is received in order to establish the beginning of the time frame for the response.
  - b. The appropriate Privacy Officer or other designated trained staff member must review the request/authorization to access PHI and determine whether it has been properly completed. If the request is incomplete, the Privacy Officer or designate shall return it to the requestor with an explanation regarding the incomplete elements.

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Upon receipt of a request/authorization to access PHI, the Privacy Officer or designate must determine whether the patient or personal representative has the right to access the PHI.

- i. If the patient or personal representative is granted access to the patient's PHI, in whole or in part, the Privacy Officer or designate must notify the requestor of the approval and when access will be available.
    - ii. A covered component must act on a request or authorization for access to PHI no later than 30 days after its receipt, or no later than 60 days of the receipt if the PHI is not readily accessible. NOTE: If Utah law requires a shorter time frame in which to provide a copy of PHI, the shorter time frame shall apply to all requests. Current Utah law regarding PHI can be found at: <http://le.utah.gov/xcode/Title78B/Chapter5/78B-5-S618.html>.
    - iii. If the requested PHI is not available to the patient or representative within the time frames mentioned above, the patient or representative must be notified in writing of the reason for the delay and give a date that the PHI will be available. The PHI must be made available within 60 days of the receipt of the original request, that is only one 30-day extension is possible. NOTE: As previously mentioned, a more stringent Utah law will preempt the HIPAA deadline (if applicable).
    - iv. The HCC must provide the patient or representative with access to the PHI in the format requested, so long as it is readily available in such format: or, if not, in a readable hard copy form or such other form or format as agreed to by the HCC and the patient or representative.
  - c. The HCC may provide the patient or representative with a summary of the PHI requested, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided, if:
    - a. The patient or representative agrees in advance to such a summary or explanation; and
    - b. The patient or representative agrees in advance to the fees imposed, if any, by the HCC for such a summary or explanation.
2. Copying and Fees - The Privacy Officer or designate will make copies of PHI requested by the patient or representative. Reasonable fees may be charged for copies and may include the cost of:
  - a. Copying, including the cost of supplies for and the labor of copying;
  - b. Postage, when the patient or representative has requested that the PHI be mailed; and
  - c. Preparation of an explanation or summary of the PHI, if agreed to in advance by the patient or representative.NOTE: Utah has a schedule of fees that may be charged for copies of PHI. The copy fee requirements of Utah's law can be found at: <http://le.utah.gov/xcode/Title78B/Chapter5/78B-5-S618.html>.

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3. Request for Access – Denied - There are special categories of PHI that an individual may NOT review and/or copy. The HCC may deny a request to access PHI in those special categories. These categories include:
- a. *Psychotherapy Notes* - Psychotherapy notes (e.g., notes created by the mental health professional and which are maintained separately from the medical record).
  - b. *Legal Actions* - Information compiled in reasonable anticipation of, or for use in, a criminal, civil, or administrative action or proceeding.
  - c. *CLIA* - Information exempted from the Clinical Laboratory Improvement amendments (CLIA).
  - d. *Inmates* - A correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of his/her PHI, if obtaining such PHI would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates, or the safety of any officer, employee, or other person at the correctional institution or person transporting the inmate.
  - e. *Research* - An individual's access to PHI created or obtained by a covered health care provider in the course of research that 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.
  - f. *Records Subject to the Privacy Act, 5 U.S.C. § 552a* - Federal Agency records including any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying information particularly assigned to the individual, such as a finger or voice print or photograph. Such records include information maintained by military hospitals, U.S. Public Health Services facilities, Veterans Administration, and Indian Health Services.
  - g. *Non-Healthcare Provider* - An individual's access to PHI may be denied if the PHI was obtained from someone other than a health care provider under promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

*Notice of Denial* - if a request by a patient or representative to inspect and copy PHI is denied, in whole or in part, in accordance with this policy, the HCC must inform the requestor in writing. See **Attachment B - Denial of Access to Protected Health Information** should be utilized by the HCC to communicate the standard notice of denial.

*Notice of Denial Requirements* - The notice of denial must be in writing, in plain language and must include:

- a. The reason for the denial;

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- b. If applicable, a statement of the individual's review rights, including a description of how the individual may exercise the review rights; and
- c. A description of how the patient or representative may file a complaint with the HCC, CEHS or with HHS along with the contact names, titles, and telephone numbers of who the complaint can be forwarded to.

*Time Requirements* - The notice of denial must be provided to the patient or representative within 30 days after the receipt of the request, or within 60 days after the receipt of the request if the PHI is not readily available. If the HCC notified the patient or representative of a delay in the decision on access, and the HCC thereafter denies access to the PHI, the HCC must notify the patient or representative no later than 60 days after the receipt of the original request for access to PHI.

*Right of Review of Denial* - An individual has a right to review a denial of access if:

- a. A licensed health care professional has determined, in his/her professional judgment, that the access is reasonably likely to endanger the life or physical safety of the patient or other person;
- b. The PHI makes reference to another person (unless the person is a licensed health care professional) and a licensed health care professional has determined, in the exercise of professional judgment, that access is reasonably likely to cause harm to such a person; or
- c. The request for access is made by the patient's personal representative and a licensed health care professional has determined in the exercise of professional judgement, that access is reasonably likely to cause harm to the patient or another person.

*Process for Review of Denial* -

- a. The patient or representative must make a written request to the Privacy Officer or his/her designee to review the denial.
- b. The Privacy Officer will promptly refer the review request to the designated reviewing official who must be a licensed health care professional not involved with the denial.
- c. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny access and notify the Privacy Officer in writing.
- d. The Privacy Officer must promptly provide written notice to the patient or representative of the determination of the reviewing official.
- e. If the designated reviewing official overturns the original denial and grants access to the PHI, the Privacy Officer must provide the patient or representative access to the PHI.

*Denial of Access to PHI Not Maintained by Covered Component* - If the HCC does not maintain the PHI that is requested, but knows where it is maintained, the HCC must inform the patient or representative where to direct the request for access to the PHI. Such notice must follow the procedure for notice of denial or request for access.

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*Partial Denial* - If the HCC of CEHS denies access to PHI in part, it must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI that the HCC has grounds to deny access. If access to part of the PHI is denied, and the patient or representative is granted access to another part of PHI, please refer to the Request for Access - Approval section of this policy for the review and copying process.

**V. ATTACHMENTS**

Attachment A - Authorization/Request for Access to Protected Health Information

Attachment B - Denial of Access to Protected Health Information

**VI. REFERENCES**

HIPAA Privacy Policy 100

HIPAA- State Law Preemption

Federal Privacy Act, 5 USC § 552a

HIPAA Regulations, 45 CFR §164.524

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## Attachment A

**CEHS Authorization/Request for Use and/or Disclosure of  
Protected Health Information**

**Patient Identification**

Printed Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

Medical Record #: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Information to Be Released – Covering the Periods of Health Care**

From (date) \_\_\_\_\_ to (date) \_\_\_\_\_

From (date) \_\_\_\_\_ to (date) \_\_\_\_\_

*Please check type of information to be released:*

<input type="checkbox"/> Entire medical record	<input type="checkbox"/> Itemized bill	<input type="checkbox"/> Discharge summary
<input type="checkbox"/> History and physical exam	<input type="checkbox"/> Consultation reports	<input type="checkbox"/> Progress notes
<input type="checkbox"/> Laboratory test results/reports	<input type="checkbox"/> X-ray reports	<input type="checkbox"/> X-ray films / images

 Other, (specify) \_\_\_\_\_**Purpose of Request**

<input type="checkbox"/> Treatment or consultation	<input type="checkbox"/> At the request of the patient	<input type="checkbox"/> Billing or claims payment
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 Other, (specify) \_\_\_\_\_**Person Authorized to Receive Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Drug and/or Alcohol Abuse and/or Psychiatric, and/or HIV/AIDS Records Release**

If my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted diseases, Hepatitis B or C testing, and/or other sensitive information, I agree to its release. **Check One:** Yes \_\_\_\_\_ No \_\_\_\_\_ Initials \_\_\_\_\_

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If my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment, I agree to its release. **Check One:** Yes \_\_\_\_\_ No \_\_\_\_\_ Initials \_\_\_\_\_

**Time Limit and Right to Revoke Authorization**

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the Clinic Privacy Officer at [location and mailing address]. Unless revoked, this authorization will expire on the following date or event

\_\_\_\_\_

**Re-disclosure**

By signing this form, I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act of 1996.

**Signature of Patient or Personal Representative Who May Request Disclosure**

I understand that this clinic may not condition my treatment on whether I sign this authorization form unless specified above under Purposes of Request. I can inspect or copy the protected health information to be used or disclosed. **I authorize** \_\_\_\_\_ *(Name of CEHS Health Care Component or Provider)* \_\_\_\_\_ **to use and disclose the protected health information specified above.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authority to Sign if not patient \_\_\_\_\_

Identity of Requestor Verified via:

- Photo ID
- Matching Signature
- Other, specify \_\_\_\_\_

Verified by: \_\_\_\_\_

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Attachment B
Denial of Access to Protected Health Information

Date: \_\_\_\_\_

To: [Name and address of patient or personal representative]: \_\_\_\_\_

From: [Name and address of Privacy Officer] \_\_\_\_\_

("CEHS Health Care Component Name") is denying you access to inspect and copy your protected health information (PHI) as requested by you on [date] \_\_\_\_\_. The portions of your health information you are denied access to, include:

- checkbox All records; or
checkbox Portions specified here\*: \_\_\_\_\_

\*If access to only a portion of the record described in your request is denied, we will provide access to those other portions of your records included in your request.

Reason for Denial of Access to PHI

A. \_\_\_\_\_ (CEHS Health Care Component Name) has denied your access, and you may not request a review of this denial because of the following circumstance(s):

- checkbox The PHI is either psychotherapy notes, information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative proceeding; or subject to the Clinical Laboratory Improvement Amendments of 1988.
checkbox The clinic is acting under the direction of a correctional institution where the patient is an inmate and it is judged that obtaining a copy would jeopardize the patient's health, safety, security, custody, or rehabilitation, or of other inmates, or the safety of an officer, employee, or other person at the correctional institution or those responsible for transporting the inmate.
checkbox The PHI was obtained in the course of research, and the patient agreed to the denial of access in consenting to participate in the research. The research is in progress; once the research has concluded, access to these records may be permitted.
checkbox The PHI is contained in records subject to the Privacy Act, 5 U.S.C. 522a.
checkbox The PHI was obtained under a promise of confidentiality from someone other than a health care provider and the inspection and copying is likely to reveal the source of the information.

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The clinic has denied your access, and you may request a review of denial by a licensed healthcare professional designated by the clinic who did not participate in this decision to deny access. Submit your written request for review of denial to:

CEHS Privacy Officer  
2800 Old Main Hill,  
Logan, UT 84322-2800

Your request is denied because:

- A licensed healthcare professional has determined the inspection and copying of this PHI is reasonably likely to endanger the life or physical safety of the patient or another person.
- The PHI contains data about another person and a licensed healthcare professional has determined that the inspection and copying is reasonably likely to cause substantial harm to that person.
- The request for access has been made by the patient's personal representative and a licensed healthcare professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the patient or another person.
- CEHS does not maintain the protected health information you requested.
- We do not know who maintains the PHI you requested.
- Please contact the provider or facility that maintains your PHI

**How to Complain About this Denial of Access to PHI**

You have the right to complain about this action to:

**CEHS Privacy Officer  
2800 Old Main Hill  
Logan UT 84322-2800**

and to the Secretary of the United States Department of Health and Human Services at:

**HHS/Office for Civil Rights  
1961 Stout Street  
Room 08-148  
Denver, CO 80294**