


**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

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CONTENT: Patient's Right of Access to and Obtain a Copy of their PHI
- Form to make request for access or for a copy
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3/10/2016
Date


Compliance and Privacy Officer
LSU Health Care Services Division

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Patient's Right of Access to and Obtain a Copy of their PHI

I. SCOPE

This policy is applicable to all workforce members of the LSU Health Care Services Division facilities, including employees, physician/practitioner practices, vendors, agencies, business associates and affiliates.

II. PURPOSE

To provide guidance to the health care facilities and providers affiliated with the LSU HCSD on a patient's right to request access to and to receive a copy of their Protected Health Information as required by the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations), and any other applicable state or federal laws or regulations.

III. POLICY

All LSU HCSD facilities, workforce members and providers must provide patients with a right of access to inspect and obtain a copy of their Protected Health Information about the individual in a Designated Record Set of any LSU System health care facility or health care provider.

IV. DEFINITIONS

1. **Protected Health Information (sometime referred to as "PHI")** – for purposes of this policy means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. Includes demographic data that relates to
 - i. The individual's past, present or future physical or mental health or condition;
 - ii. The provision of health care to the individual, or;
 - iii. The past, present, or future payment for the provision of health care to the individual, and that identified the individual or for which there is a reasonable

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basis to believe it can be used to identify the individual. PHI includes many common identifiers such as name, address, birth date, social security number, etc.

2. Designated Record Set – is a group of records maintained by or for the facility, provider or clinic that is:

- The medical records and billing records about individuals maintained by or for the facility, provider or clinic; or
 - Any records used, in whole or part, by or for the facility, provider or clinic to make decisions about individuals.
 - Any record that meets this definition of Designated Record Set and which are held by a HIPAA Business Associate of the facility, provider or clinic are part of the facility, provider or clinic's Designated Record Set.
- The term *record means* any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for the facility, provider or clinic .
- The term *record* also includes patient information originated by another health care provider and used by the facility, provider or clinic to make decisions about a patient.
- The term *record* includes tracings, photographs, and videotapes, digital and other images that may be recorded to document care of the patient.

3. Psychotherapy Notes – means notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of 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 record. Psychotherapy notes does not include: 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.

V. PROCEDURE:

1. **Responsible Person.** The HIM Director or designee shall be responsible for receiving and processing requests for access by individuals to inspect and obtain a copy of their Protected Health Information in a Designated Record Set of the Facility.
2. **Designated Record Sets Subject to Access by Patients.** The following are the

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Designated Record Sets of the Facility that are subject to access by patients under this policy:

- All medical records maintained by the Facility that pertain to the patient making the request
 - All billing records maintained by the Facility that pertain to the patient making the request
 - Any other records that the Facility desires to include
 - Any other records designated in Policy 7529, Designated Record Set
3. **Written Request for Access.** Facility, provider or clinic may require patients to make a request for access to inspect and copy their PHI to be in writing, provided that the patient is informed in advance of this requirement.
4. **Deciding Whether to Grant a Patient Access to Their PHI.** The Facility must first decide whether to grant a patient access to inspect and obtain a copy of their PHI in a Designated Record Set. A patient does **not** have a right of access to inspect and copy the following *types* of PHI:
- a. Psychotherapy notes;
 - b. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
 - c. Protected Health Information maintained by the Facility that is
 - (i) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. § 263a, to the extent the provision of access would be prohibited by law; or
 - (ii) Exempt from the Clinical Laboratory Improvements Amendments of 1988, 42 C.F.R. § 493.3(a) (2).
5. **Unreviewable Grounds for Denial of Access.** The Facility may deny a patient access without providing the individual an opportunity for review of the decision to deny access if denied for the following reasons:

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- The PHI is not subject to the right of access as provided in section 4 of this policy.
 - If the Facility is acting under the direction of a correctional institution, then the Facility may deny, in whole or in part, an inmate's request to obtain a copy of their PHI, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the patient or other inmates, or the safety of an officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
 - During the course of a patient's participation in a research program, the Facility may deny access provided that the patient agreed to the denial when consenting to participation in the research program;
 - If the patient's PHI 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.
 - Records that are subject to the Privacy Act, 5 U.S. C. Section 552a, if the denial of access under the Privacy Act would meet the requirements of law.
6. **Review of a Denial of Access.** If access is denied on a reviewable ground described in this policy, the patient has the right to have the denial reviewed by a licensed health care professional designated by the Facility to act as a reviewing officer and who did not participate in the original decision to deny. This designated reviewing officer must determine, within a reasonable period of time, wither or not to deny the access requested in accordance with the standards in the "Reviewable Grounds for Denial" section of this policy.
7. **Reviewable Grounds for Denial.** The Facility may deny the patient's request for the access on these grounds. The patient must be provided with a right to have this decision reviewed in the following circumstances:
- a. 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;
 - b. The PHI makes reference to another person (unless the 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

- 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 judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

8. If a request for access to a patient's PHI is denied, then Facility must comply with either the "Unreviewable Grounds for Denial of Access" or "Reviewable Grounds for Denial of Access" (and any other sections concerning a denial decision) sections of this policy, that is applicable.

9. **Time Periods for Responding to Requests.** Facility must act on a request for access no later than 15 days after receipt of the request as follows:

- If the Facility grants the request, in whole or in part, it must inform the patient of the acceptance of the request and provide the access requested;
- If Facility denies the request, in whole or in part, it must provide the patient with the basis for the denial in plain written language and if applicable how the patient may exercise any available review rights; and a description of how the patient can file any complaints including the name, title and telephone number or address of the contact person;
- If Facility does not maintain the PHI that is the subject of the request, and the Facility knows where the requested information is maintained, the Facility must inform the individual where to direct the request for access.

10. **Provision of Access if Granted.** If the Facility provides a patient access, in whole or in part, the Facility must within 15 days comply with the following requirements:

- a. Provide the patient access, including inspection and copying, or both, of PHI about them in Designated Record Sets. If the same PHI is contained in more than one place or designated record set, the PHI need only be provided once.

- b. The access must be in the form or format requested by the patient, if it is readily producible; if not, in a readable hard copy form or such other form or format as agreed to by the Facility and the patient.
- c. The Facility may provide the patient with a summary of the PHI, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided if:
 - (i) If the patient agrees in advance to a summary or explanation; and
 - (ii) the patient agrees in advance to any fees imposed by Facility for the summary or explanation.

11. Time and Manner of Access. The Facility may provide the access requested within the time frames in this policy, including arranging with the patient for a convenient time and place to inspect or obtain a copy of the Protected Health Information, or mailing a copy of the Protected Health Information at the individual's request. The Facility 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.

12. Fees for Paper Copies. If the patient requests a paper copy of the PHI, the Facility may impose a reasonable, cost-based fee, not to exceed:

- a) One dollar (\$1.00) per page for the first 25 pages;
 - b) Fifty cents (\$.50) per page for the next 26 – 500 pages; and
 - c) Twenty-five cents (\$.25) per pages for pages greater than the first 500 copies.
- The Facility may *not* impose a handling charge for providing copies of his or her PHI.
 - The Facility may require the patient to reimburse the Facility for actual postage used in mailing the PHI to the patient.

13. Electronic Copy of PHI. If a patient requests an electronic copy of PHI that is maintained electronically in one or more designated record sets, the Facility must provide the individual with access to the electronic information in the electronic form and format requested by the individual. The requirement to provide the individual with their PHI in the electronic form and format only applies if the PHI is readily producible. If the PHI is not readily producible, the Facility must provide the PHI in a readable electronic form and format

as agreed to by the Facility and the individual.

Machine readable data means digital information stored in a standard format enabling the information to be processed and analyzed by a computer. The Facility is not required by HIPAA to purchase new software or systems in order to accommodate an electronic copy request for a specific form/format that is not readily producible by the Facility.

If the individual requests a form of electronic copy that the Facility is unable to produce, the Facility must offer other electronic formats that are available. A hard copy (i.e., paper copy) of the individual's PHI would not satisfy the electronic access requirement. However, a hard copy may be provided if the individual decides not to accept any of the electronic formats offered by the Facility.

The electronic copy must contain all PHI electronically maintained in the designated record set at the time the request for the electronic copy is fulfilled. The individual may request, however, only a portion of the PHI electronically maintained in the designated record set, in which case the Facility is only required to provide the requested information.

The Facility is permitted to send individuals unencrypted emails if the individual has been advised of the security risk to their PHI, and the individual still prefers the unencrypted email. The advisement only has to notify the individual that there may be some level of risk that the PHI could be read by a third party.

The Facility is not required to use an individual's flash drive or other portable media device to transfer the electronic PHI if the Facility has a security concern regarding the external portable media.

14. Fees for Electronic Copy of PHI. The Facility may charge a fee for the electronic copy of PHI, but may not charge more than its labor costs in responding to the request for the copy.

a. The labor cost may not include the costs associated with searching for and retrieving the requested information.

b. The labor cost may include skilled technical staff time spent to create and copy the electronic file, such as compiling, extracting, scanning, and burning PHI to media, and distributing the media. The labor cost may also include the time spent preparing an explanation or summary of the PHI if appropriate.

c. The cost of supplies for creating the electronic media may also be charged if the individual requests that the electronic copy be provided on portable media. However, the Facility may not require that the individual purchase the portable media from the Facility.

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15. Individual's Right to Have Electronic Copy of PHI Sent to Third Party. An individual has the right to direct the Facility to transmit an electronic copy of their PHI in an electronic health record directly to an entity or person designated by the individual, provided that the individual's choice is clear, conspicuous, and specific. This request by the individual must be made in writing, signed by the patient, and clearly identify the designated entity/person who will be receiving the PHI, and where to send the PHI.

The Facility must implement reasonable policies and procedures to verify the identity of any individual who requests PHI be shared with a third party electronically, as well as to implement reasonable safeguards to protect the information that is being disclosed.

REFERENCES: 45 C.F.R. § 164.524
LA R.S. 40:1299.96

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Request for Access to Protected Health Information

Patient:

I _____ request access to my protected health information contained in the medical records or billing records maintained by (Facility) to review the contents and obtain copies or

Patient's Personal Representative:

I _____ request access to the protected health information of _____ Contained in the medical records or billing records maintained by (Facility) to review the contents and obtain copies.

I have the right to inspect and request copies of whatever portions or the entirety of the health records as well as to request a summary explanation of these records. I understand this request will require the collection of these records and that (Facility) will arrange a convenient time and place for me to conduct my review of this protected health information. I request access and/or copies/summaries of the following information:

From (date) _____ to (date) _____

From (date) _____ to (date) _____

Please check type of information to be accessed/copied:

<input type="checkbox"/> Complete health record	<input type="checkbox"/> Diagnosis & treatment codes	<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	<input type="checkbox"/> X-ray reports	<input type="checkbox"/> X-ray films/images
<input type="checkbox"/> Photographs, videotapes	<input type="checkbox"/> Complete billing record	<input type="checkbox"/> Itemized bill

Other, (specify) _____

I would like the protected health information to be provided in (check one):

_____ Photocopy format

_____ Summary explanation format

_____ Electronic format. Specify format: _____

And provided to me by the following method (check one):

_____ Personal pick-up

_____ US Postal Service to (Address)

_____ Email (unencrypted) NOTE: This method carries the risk of that the PHI could be read by a third party.

_____ Other, specify: _____

Signature _____ Date: _____

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