

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

POLICY NUMBER: 7503-19

CATEGORY: HIPAA Policies

CONTENT: Individual'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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Individuals' 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 an individual'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. Under HIPAA, individuals have a right of access to review and obtain a copy of protected health information that is maintained in their designated record set, with a few exceptions.

III. POLICY

All LSU HCSD facilities, workforce members and providers must provide individuals 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 (sometimes 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:
 - a. The individual's past, present or future physical or mental health or condition;
 - b. The provision of health care to the individual, or;
 - c. 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 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:

- a. The medical records and billing records about individuals maintained by or for the facility, provider or clinic; or
 - b. Any records used, in whole or part, by or for the facility, provider or clinic to make decisions about individuals.
 - c. 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 Individuals.** The following are the Designated Record Sets of the Facility that are subject to access by individuals under this policy:
 - a. All medical records maintained by the Facility that pertain to the individual making the request
 - b. All billing records maintained by the Facility that pertain to the individual making the request
 - c. Any other records that the Facility desires to include
 - d. Any other records designated in Policy 7529 - Designated Record Set

3. **Written Request for Access.** Facility, provider or clinic may require individuals to make a request for access to be in writing, provided that the individual is informed in advance of this requirement. However, the individual shall not be denied these rights should they prefer not to put the request in writing unless the request is to send the PHI to a third party.

4. **Deciding Whether to Grant an Individual's Access to Their PHI.** In most instances, the individual has a right to access their PHI. However, there are a few instances in which the Facility may choose to not grant that access. Those instances are considered either:
 - a. Unreviewable – the individual may not ask for the decision to deny access to be reviewed by the Facility.
 - b. Reviewable – the individual may ask for the decision to deny access to be reviewed by the Facility.

5. **Unreviewable Grounds for Denial of Access.** The Facility may deny an individual access without providing the individual an opportunity for review of the decision to deny access if denied for the following reasons:
 - a. The PHI in question is psychotherapy notes. Psychotherapy notes are personal notes taken by a mental health professional separated from the rest of the individual's medical record.
 - b. The PHI is information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - c. 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 individual 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. However, the inmate still retains the right to inspect his/her PHI.
 - d. In the course of research that includes treatment, access 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 Facility has informed the individual that the right of access will be reinstated upon completion of the research.
 - e. If the individual'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.
 - f. The PHI is contained in 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. **Reviewable Grounds for Denial.** The Facility may deny the individual’s request for the access on the following grounds. However, the individual must be provided with a right to have this decision objectively reviewed, within a reasonable amount of time, by the Facility.
- 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 individual’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.

7. **Review of a Denial of Access.** If access is denied on a reviewable ground described in this policy, the individual 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.

At the hospital, the licensed health care professional will be the Hospital Medical Director, unless he or she was involved in the original decision to deny access. In such a case, the Hospital Chief of Staff will review the denial of access.

At HCSD, the licensed health care professional will be the HCSD Medical Director.

8. If a request for access to an individual’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. If a request for access to an individual’s PHI is denied, the Facility must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which the Facility has a ground to deny access.
10. **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:
- a. If the Facility grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested;
 - b. If the Facility denies the request, in whole or in part, it must provide the individual with the basis for the denial in plain written language and if

applicable how the individual may exercise any available review rights; and a description of how the individual can file any complaints including the name, title and telephone number or address of the contact person, as well as how to complain to the Secretary of DHH. Such notification must be prompt;

- c. If the 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.

11. Provision of Access if Granted. If the Facility provides an individual access, in whole or in part, the Facility must comply within 15 days with the following requirements:

- a. Provide the individual 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 individual, 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 individual.
- c. The Facility may provide the individual 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 the individual agrees in advance to:
 - (i) a summary or explanation; and
 - (ii) any fees imposed by Facility for the summary or explanation.

12. Time and Manner of Access. The Facility must provide the access requested within the time frames in this policy, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing or emailing (in a secure format) a copy of the PHI at the individual's request. The Facility may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access. The Facility may not require that the individual travel to the Facility's physical location to pick up a copy of PHI if the individual requests that the copy be mailed or emailed.

13. Verification of Identity. The Facility must take reasonable steps to verify the identity of the individual making a request for access. There are no regulations that mandate any particular form of verification. However the verification process must not create barriers to or unreasonably delay the individual from obtaining access to his own PHI.

Verification may be done orally or in writing. Typical methods of verification include providing an identification card with picture and/or signature, or providing identifying personal information that matches the individual's medical record.

14. Fees for Paper Copies. If the individual requests a paper copy of the PHI, the Facility may impose a reasonable, cost-based fee. This fee must be based on the

labor to make the actual copy, to be calculated by the entity completing the copying task on a periodic basis. Labor for copying only includes labor for creating and delivering the paper copy after the request has been identified, retrieved or collected, compiled and/or collated, and is ready to be copied. The cost may not include costs associated with reviewing the request for access, nor verification of the information to be released. A fee schedule shall be used by the Facility to outline fees charged in various access and authorization scenarios.

It is important to note that third parties may be directed by the individual to obtain PHI records on behalf of the individual. If this is the case, then the Facility must follow the same cost-based fee schedule used when charging individuals for the records.

If an entity other than the individual requests a paper copy of the PHI based on a patient authorization, the Facility may impose the following fees, unless other regulations apply:

- 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 individual to reimburse the Facility for actual postage used in mailing the PHI to the individual.

15. **Electronic Copy of PHI.** If an individual requests an electronic copy of PHI that the Facility maintains only on paper, the Facility is required to provide the individual with an electronic copy if it is readily producible electronically and in the electronic format requested (if readily producible in that format). If the copy is not readily producible in the requested format, the Facility must provide the PHI in a readable alternative electronic format or hard copy format as agreed to by the Facility and the individual.

If an individual 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.

16. 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.

NOTE: A fee schedule for reproducing medical records will be maintained by the Release of Information Department which will outline the fees charged in a variety of record release situations. This fee schedule reflects the requirements of the HIPAA Privacy Rule related to individual Access and release of information under an individual's authorization. The fee schedule will include reproduction rates for both paper and electronic records.

17. Personal Representatives. A personal representative is a person formally designated by the individual, generally a person with authority under state law, to make health care decisions for the individual.

In cases where personal representatives make a PHI access request or release of information authorization, the Facility shall follow the personal representative's

directive, with respect to the scope of the formal designation. The personal representative may only act within the scope of the designated representation. For example, if a person has a limited healthcare power of attorney regarding only a specific treatment, such as the use of artificial life support, the personal representative should only have access to the individual's PHI related to the treatment surrounding the artificial life support.

- 18. Individual's Right to Have Electronic Copy of PHI Sent to Third Party.** An individual has the right to direct the Facility to reproduce or transmit a paper or electronic copy of their PHI in a 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 individual, 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. However, such policies and procedures may not impose an unreasonable burden to the individual or delay in the disclosure of the records.

Any fees charged in this situation must be identical to those that would be charged to the individual who owns the PHI.

