

## PATIENT RIGHTS UNDER HIPAA

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The HIPAA Privacy section provides all patients with several rights regarding their Protected Health Information. This section will first list the rights, and then provide a more detailed description of what those patient rights mean.

### LIST OF PATIENT RIGHTS

1. Right to receive Notice of Privacy Practices.
2. Right to request restrictions on use and disclosure of Protected Health Information.
3. Right to receive Confidential Communication.
4. Right to Access, Inspect and Copy PHI.
5. Right to Amend PHI.
6. Right to receive an accounting of disclosures of PHI.

### 1. RIGHT TO RECEIVE NOTICE OF PRIVACY PRACTICES (NPP)

- A. An individual receiving services from a covered entity on or after April 14, 2003 is entitled to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, the individual's rights and the covered entity's legal obligations.

### 1. RIGHT TO RECEIVE NOTICE OF PRIVACY PRACTICES (NPP)

- B. The NPP must contain specific language and descriptions of allowable uses and disclosures regarding an individual's medical information and how they may access their information.
- C. Each covered entity must distribute its own specific NPP to an individual seeking treatment and must make a good faith effort to document that distribution.

### 2. RIGHT TO REQUEST RESTRICTIONS ON USE AND DISCLOSURE OF PHI

- A. A Covered Entity (CE) must permit an individual to request restrictions on the use and disclosure of PHI:
  - To carry out Treatment, Payment and Operations
  - To use in a facility directory
  - To relatives and friends
  - For disaster relief purposes

## 2. RIGHT TO REQUEST RESTRICTIONS ON USE AND DISCLOSURE OF PHI

- B. A covered entity (CE) is not required to agree to a restriction.
- C. A covered entity may “override” its agreement to a restriction if the individual is in need of emergency treatment and the PHI is needed for that treatment. This PHI must not be disclosed to anyone other than those providing the emergency treatment.

## 2. RIGHT TO REQUEST RESTRICTIONS ON USE AND DISCLOSURE OF PHI

- D. A covered entity may terminate a restriction:
  - if the individual agrees to the termination.
  - without an individual’s agreement. In this case the termination of restriction applies only to PHI created or received after the termination date. PHI created or received prior to the termination date must continue to be restricted.

## 3. RIGHT TO RECEIVE CONFIDENTIAL COMMUNICATION

- A. The CE must accommodate reasonable requests from individuals to receive communications of PHI by alternative means or at alternative locations.
- B. The CE must accommodate all requests where the individual states that the disclosure could endanger the individual.

## 3. RIGHT TO RECEIVE CONFIDENTIAL COMMUNICATION

- C. The CE may require this request in writing.
- D. The CE may evaluate this request based on:
  - Information on how payment will be handled
  - Specification of an alternate address
  - Added costs and logistics required to accommodate the request.
- E. The CE cannot require a reason for the request.
- F. A Health Plan reviewing a request, may require a statement that disclosure could endanger the individual.

## 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- A. Individuals have the right to access, inspect and receive copies of their own PHI except for:
  - Psychotherapy notes
  - PHI compiled for civil, criminal or administrative action or proceedings
  - PHI subject to CLIA Act of 1988 when access would be prohibited by law

## 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- B. A covered entity may deny access without the opportunity for review when:
  - PHI is excepted from access by section “A”
  - A correctional inmate’s request may jeopardize health and safety of the inmate, other inmates or others at the correctional institution.
  - A research study has previously secured agreement from the individual to deny access.

#### 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- B. A CE may deny access without the opportunity for review when:
- Access is protected by the Federal Privacy Act
  - PHI was obtained under promised of confidentiality and access would reveal the source of the PHI

#### 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- C. A CE may deny access and give an individual the right to appeal when:
- A licensed healthcare professional believes the request may likely endanger the life or physical safety of the individual or another person.
  - The PHI references another person and a licensed professional believes that access would cause substantial harm to that other person.
  - Access is requested by an individual's representative and a licensed professional believes access would cause substantial harm to the individual or another person.

#### 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- D. A requesting individual may appeal a denial of his/her right to access PHI and
- The appointed reviewer cannot have participated in the decision to deny access
  - The CE must act on the request within 30 days. Added response time of an additional 30 or 60 days is allowed in special circumstances.

#### 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- E. When agreeing to provide access the CE:
- Must provide inspection or copies as requested
  - Must provide PHI in the format requested
  - Must provide PHI in a timely manner
  - May collect cost based fees for copying, postage, preparation, etc. (provided the CE had informed the individual of such fees)

#### 4. RIGHT TO ACCESS, INSPECT AND COPY PHI

- F. If the CE denies access, it must:
- Provide access to other PHI where access was not denied.
  - Provide a timely denial in plain language including basis for the denial, listing review rights and complaint procedures.
  - Identify the keeper of the PHI requested - if not this CE.
  - If requested, designate a licensed professional to review the decision to deny, and inform the individual of that review decision in a timely way.

#### 5. RIGHT TO AMEND PHI

- A. An individual may request an amendment to PHI maintained by the CE.
- B. The CE may deny the request if the PHI:
- Was not created by the CE.
  - Is not part of the individual's designated record set.
  - Would not be available for inspection (Right #4 above).
  - Is accurate and complete.

## 5. RIGHT TO AMEND PHI

- C. In reviewing amendment requests the CE:
- May require requests in writing
  - May require a reason to support the request
  - Must act on the request within 60 days (with 30 day extension in certain circumstances)

## 5. RIGHT TO AMEND PHI

- D. If accepting the amendment, the CE must:
- Identify records amended and provide a link to the amendment location.
  - Inform the individual of the amendment.
  - Inform other affected persons as designated by the individual or business associates who may rely on the information.

## 5. RIGHT TO AMEND PHI

- E. If denying the amendment the CE must:
- Provide a timely denial in plain language
  - Include the basis for the denial
  - Allow for a statement of disagreement from the individual
  - Allow for a statement reflecting the request with subsequent disclosures of the PHI
  - Identify the complaint process

## 5. RIGHT TO AMEND PHI

- F. The individual may submit a statement of disagreement with the denial.
- G. The CE may issue a rebuttal of the statement of disagreement and give the individual a copy.
- H. The CE must record in the record and create links to any requests, denials, disagreements and rebuttals.

## 5. RIGHT TO AMEND PHI

- I. Future disclosures of PHI that has been the subject of a denied request for amendment must include documents related to the request.
- J. Accepted amendments must be shared among CE's so all appropriate records are amended.
- K. A CE must document persons responsible for processing amendment requests and must retain documents for at least 6 years.

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- A. In general, an individual may request a listing of the disclosures of the PHI made within the previous six years.
- B. Disclosures not requiring accounting include disclosures made:
- For Treatment, Payment or Operations
  - To the individual subjects of the PHI
  - Incident to an otherwise permitted disclosure
  - Based on the individual's signed authorization
  - For a facility directory

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- B. Disclosures not requiring accounting include disclosures made: (Cont.)
- To persons involved in the individual's care.
  - For national security or intelligence purposes.
  - To correctional facilities or law enforcement on behalf of inmates.
  - As part of a limited data set (see 164.514)
  - That occur prior to the compliance date of April 14, 2003.

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

### C. Disclosures requiring accounting include:

- Required by law
- For public health activities
- Victims of abuse, neglect, violence.
- Health oversight activities
- Judicial/Admin proceedings
- Law enforcement purposes
- About decedents
- Organ/eye/tissue donation
- Research Purposes
- To avert threat to health and safety
- For specialized government functions
- Workers' compensation

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- D. A CE must suspend accounting of disclosures to an agency or law enforcement if the accounting is likely to impede the agency's activity.
- E. An individual may request an accounting for disclosures as far back as six years before the time of the request - but to start no earlier than April 14, 2003.

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

### F. The accounting must include:

- Date of disclosure
- Name and address (if known) of recipient
- Brief description of PHI disclosed
- Brief reason for disclosure or copy of request

- G. Multiple disclosures to the same requestor may be batched - as appropriate.

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- H. When related to research with 50 or more people, the accounting should provide:
- Name of research protocol
  - Purpose of research and how records selected
  - Description of PHI that was disclosed
  - Dates disclosures occurred
  - Contact information for research sponsor
  - Statement about possible disclosure of PHI
  - Assistance in contacting the research sponsor

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- I. A CE should routinely respond to a request for accounting within 60 days (30 day extension allowed in certain situations).
- J. The first in a 12 month period is free. Subsequent requests may have a cost based fee (if previously stated). The requestor may modify the request based on the fee.

## 6. RIGHT TO RECEIVE AN ACCOUNTING OF DISCLOSURES OF PHI

- K. A CE must document and keep six (6) years:
- Information required in the accounting
  - The written accounting that is provided.
  - Titles of persons or offices responsible for processing accounting requests.