

HIPAA Policy No. 5

Patient Rights Policy

Policy:

5.1 Patients' Rights to Request Restrictions on Use of Protected Health Information

Except as necessary for an emergency situation, the patient has the right to request that restrictions be placed on the use and/or disclosure of his or her protected health information. The practice does not have to agree to these requests, other than as set forth below in Section 5.2 (restriction on disclosure to health plan).

5.2 Request for Restriction on Communications to a Health Plan

The practice must comply with a patient's request to restrict disclosures to a health plan where the patient paid for the service at issue out of pocket and did not want the service to be submitted to the health plan for payment or to meet a deductible. ***The practice must agree to a restriction in this circumstance and may not terminate the restriction.***

5.3 Termination of Restriction Agreement

Other than restrictions of disclosures to a health plan as described above in Paragraph 5.2, a practice that has agreed to a restriction may choose to terminate a restriction as follows:

- **For information that has already been created or received (e.g., existing medical records):** The practice can terminate its agreement to a restriction only if the patient agrees to the termination. The patient's agreement must be documented in writing by the patient or by an employee who received oral authorization from the patient.
- **For future information (that has not yet been created or received):** The practice can terminate its agreement by notifying the patient that it will not continue with the agreed upon restriction for future uses and disclosures.

5.4 Right to Request Alternative Means of Communications

The patient may request that protected health information be communicated in a certain way (for example, the patient may request that communications not be made at the patient's place of work, or that all bills be sent to a certain address).

The practice must comply with all reasonable requests for alternative means of communications. Reasonableness must be determined by administrative considerations only. Employees are not permitted to ask patients the reason for the request.

It is the policy of the practice that employees consult with the Privacy Officer prior to making a determination that a request is unreasonable.

If a request is determined to be unreasonable, this information will be communicated to the patient. The patient will then be notified that they can either (1) modify their request for alternative communications to make it reasonable, (2) continue treating with the practice with the understanding that the requested communications will not be honored, or (3) make the decision to treat elsewhere.

5.5 Right to Request Access to Records

Upon request, the practice must allow a patient to inspect and/or copy his or her own medical records, billing records, or other records used by the practice to make decisions about the patient.

If the practice does not maintain the requested information, but knows where the requested information is kept, the practice must inform the patient where to direct the request for access.

If the patient requests that the information be provided in a particular format, the practice must comply if the information can be readily made available. If the practice cannot readily provide the requested format, the practice can ask the patient to agree to a different format or provide the information in hard copy.

The practice may provide the patient with a summary of the requested information instead of the actual information if the patient agrees to accept a summary and agrees to accept any charges imposed by the practice for preparation of the summary.

If information is maintained electronically, and if the patient requests an electronic copy of the information, the practice must provide the individual with access to the information in the electronic form and format requested by the individual if it is readily producible in such form and format. If not, the information must be produced in a readable electronic form and format as agreed to by the practice and the patient.

The practice may charge reasonable fees for copying, postage, and preparation of a summary (if the individual has agreed to a summary) or for labor involved in creating an electronic copy. The practice may also charge reasonable fees for supplies used to create an electronic copy if the patient requests the use of portable media, such as a CD or flash drive. If the patient wishes to inspect paper information instead of receiving a copy, the practice will arrange for a convenient time and place for the inspection. It is the policy of this practice to have the Privacy Officer or another individual designated by the Privacy Officer remain with the patient as he or she reviews the record. Patients will not be given access to any electronic records or systems unless a patient portal is established.

A patient can also request that the copy of protected health information (in paper or electronic form) be transmitted directly to another person designated by the individual.

Such a request must be in writing, signed by the patient and must clearly identify the designated person and where to send a copy of the protected health information.

The practice must act on all requests for access or inspection within thirty (30) days by either sending a denial letter or providing the requested access. If the practice cannot meet this time frame, the practice can receive one thirty (30) day extension by sending the patient a letter including the reason for the delay and the date by which the practice will comply with the request.

5.6 Denial of Patient Request for Access

The practice can deny access for any of the reasons set forth below. If the reason for the denial applies to only a portion of the requested information, then the request should be granted to the extent possible. If a request is denied, the practice must provide a letter stating the reason for the denial, the patient's right to review and the review process, if applicable, and a description of how the patient can complain to the practice or the Secretary of HHS.

5.6.1 Unreviewable Grounds for Denial

In the following circumstances, the practice is not required to provide access to the patient and the patient does not have the right to request a review of the denial:

- The request is for **psychotherapy notes**. For the purposes of HIPAA, psychotherapy notes include only those notes that are separated from the rest of the patient's medical record and document or analyze conversations during a counseling session. Please note that the rest of the medical record, even though it may include mental health diagnoses, etc. is not considered to be "psychotherapy notes" and, therefore, must be disclosed to the patient (unless another ground for denial exists).
- The request is for information compiled in anticipation of a civil, criminal or administrative proceeding.
- The information requested 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.
- The information requested cannot be provided due to CLIA requirements.
- The practice is providing health care services on behalf of a correctional institution and the **patient is an inmate** (if providing the records would jeopardize the health, safety, security, custody, or rehabilitation of the patient, other inmates or the safety of any employee or agent of the correctional institution).
- The request is for information collected and maintained **in the course of research** that includes treatment and the patient agreed to the denial of access when consenting for the research study. Please note that denial under these circumstances can only be temporary and the patient must be afforded access once the research study has been completed.

5.6.2 Reviewable Grounds for Denial

In the following circumstances the practice may refuse to grant access to the patient, but must give the patient the right to have the denial reviewed by another licensed health care professional who did not participate in the original denial:

- A health care professional determines that allowing access to the information would be reasonably likely to endanger the life or safety of the patient or another person.
- The requested information makes reference to another person (other than a health care provider) and a licensed health care professional determines that the access requested is reasonably likely to cause substantial harm to this other person.
- The request is made by a personal representative and a licensed professional has determined that the requested access is reasonably likely to cause substantial harm to the patient or another person.

5.7 Right to Request Amendment to Patient Information

A patient has the right to request that his or her information be amended. The practice may require that the patient submit the request in writing and that the patient provide a reason to support the requested amendment. The practice must either accept or deny a patient's request within sixty (60) days of the request. The practice can obtain one thirty (30) day extension if it provides the patient with written notice of the reason for the delay and the date upon which the information will be provided.

5.7.1 Accepting a Request for Amendment. If the practice agrees to the requested amendment, the practice must do the following within the 60-day time frame (or 90-days if the extension is requested):

- Make the requested amendment
- Inform the patient that the amendment has been accepted
- Obtain from the patient the names of all individuals who received the protected health information, obtain the patient's agreement to notify these individuals of the amendments, and inform the individuals of the amendments.
- Identify and inform all persons or entities who have the information that is the subject of the request who have relied upon this information, or can be expected to rely upon this information in the future to the detriment of the patient.

5.7.2 Denying a Request for Amendment

The following are grounds for denial:

- The practice believes that the record is accurate and complete.
- Access to the medical record has been denied for one of the reasons set forth above in section 5.6.

- The information is not part of a designated record set (i.e., not part of the medical records, billing records, or other records used to make decisions about the patient).
- The information was not created by the practice (e.g., medical records from another provider). Please note that in rare circumstances, the practice may amend the information if the provider who created the record is no longer available (e.g., physician retired) and the practice had reason to believe that the record was not accurate or complete.

If the request is denied, the practice must provide the patient with a written denial letter, containing the reason for the denial, the patient's right to request a written statement of disagreement or to request that the practice include the patient's request for amendment and the practice's denial in any future disclosures. The letter must also include contact information or the practice's Privacy Officer and a description of how to complain to the practice and/or the Secretary of HHS.

If the patient submits a statement of disagreement, the practice has the option of responding with a written rebuttal.

5.8 Inclusion of Amendment Information in Future Disclosures

- If the patient submits a statement of disagreement, the above information (request for amendment, denial, statement of disagreement, and rebuttal) or a summary of this information must be included with any subsequent disclosure of the information that is the subject of the amendment request.
- If the patient does not submit a statement of disagreement, he or she may request that the amendment request and denial be submitted with any future disclosures of the information that is the subject of the amendment request.
- If a future disclosure must be made in standard format, the additional information described above may be submitted separately.

5.9 Documentation

All requests for restrictions and alternative methods of communications (along with decisions to deny or accept) must be kept for a period of at least six (6) years.

With regard to requests for amendment, the following information must be maintained for at least six years and appended or linked to the information that is the subject of the amendment request:

- The request for amendment
- The denial (if applicable)
- The patient's statement of disagreement (if applicable)
- The practice's rebuttal to the statement of disagreement (if applicable)

Any denials of access must also be kept for a period of at least six (6) years.

Procedure:

1. Employees should inform patients that all requests for access or amendment should be in writing and either mailed or hand-delivered to the practice, to the attention of the Privacy Officer. The request should be signed and dated by the patient or the patient representative. If requests are hand-delivered to the office, all employees are responsible for making sure that the request is dated and signed and is given to the Privacy Officer.
2. The Privacy Officer, either personally or by delegation, will be responsible for keeping a log of all requests and the deadline for the requested information and/or amendment.
3. If the practice does not maintain the requested information, but knows where the requested information can be found, the Privacy Officer is responsible for contacting the patient to inform him or her of the location of the requested information. (For example, if the patient requests a film from a diagnostic test that is kept at the hospital, the Privacy Officer must inform the patient of the location).
4. If a request for inspection, copies, or amendment is denied, the Privacy Officer must send the patient a denial letter before the relevant deadline as set forth in the policy above (thirty (30) days for inspection/copies, sixty (60) days for amendment).
5. If a request for inspection and/or copies is denied for grounds that are reviewable and the patient seeks a review of the denial, the Privacy Officer will arrange for an independent review by a licensed health care provider who was not involved in the denial. This can be a member of the same group practice.
6. If the patient responds to a denial of a request for amendment with a written statement of disagreement, the Privacy Officer will be responsible for preparing a written rebuttal and providing a copy of the rebuttal to the patient.
7. The Privacy Officer will be responsible for making sure that the following are included in the patient record that was the subject of any request for amendment: the request, the denial, statement of disagreement and rebuttal. This information must always be included with subsequent disclosures of the information if the patient submitted a statement of disagreement or asked that the request for amendment be included with future disclosures.
8. An employee receiving a request for a restriction on uses and disclosures or a request for an alternative method of communication of protected health information is responsible for communicating the request to the Privacy Officer.
9. Employees should ask the patient to put requests for alternative methods of communication in writing. If the patient objects to the written request requirement, he or she should be referred to the Privacy Officer. The Privacy Officer may enforce the requirement that the request be placed in writing, or can agree to document the patient's request on behalf of the patient.
10. The Privacy Officer, or an employee designated by the Privacy Officer, will be responsible for determining whether a request can be granted. The Privacy

Officer cannot refuse a request for alternative method of communications if the request is reasonable.

11. If a patient's request for either a restriction or alternative method of communication is refused, the patient must be informed of the refusal in writing.
12. If a request for restriction or alternative method of communication is granted, the Privacy Officer, or an employee designated by the Privacy Officer, will be responsible for notifying staff of the restriction as necessary to comply with the restriction.
13. If a Request is terminated as permitted by this Policy, the Privacy Officer will be responsible for notifying staff that the restriction has been removed.
14. The Privacy Officer will be responsible for maintaining all documentation required by this policy for a period of at least six (6) years.

Authorities:

45 CFR §164.502(c) (obligation to comply with agreed upon restriction)

45 CFR §164.522 (request for restrictions)

45 CFR §164.524 (inspection/copy)

45 CFR §164.526 (amendment)

45 CFR §164.530 (Documentation and retention)