

**UNIVERSITY OF MAINE SYSTEM
HIPAA POLICY #34
ACCESS OF INDIVIDUALS TO PHI**

I. Right of Access

Except as otherwise provided below, an individual has a right of access to inspect and obtain a copy of PHI about the individual in a Designated Record set ("DRS"), for as long as the PHI is maintained in the record, except for:

- A. Psychotherapy notes, as defined in HIPAA Policy #10 and in 45 CFR §164.501, as may be amended from time to time;
- B. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;

II. Unreviewable Grounds for Denial

A Covered Component may deny an individual access without providing the individual an opportunity to review, in the following circumstances:

- A. The PHI is excepted from the right of access by section (I) above.
- B. Where the individual is a participant in a research project and has agreed prior to entering into the research project to suspend the right to access during the research study, provided that the individual will have access to PHI after the research project is completed and that the individual may revoke the agreement at any time and have access to the PHI. If the individual revokes the agreement to suspend the right to access during the research project, the individual's participation in the research study may be discontinued.

III. Reviewable Grounds for Denial

A Covered Component may deny an individual access, provided the individual is given a right to have the denial reviewed, in the following circumstances:

- A. A licensed health care professional has determined that the access requested is likely to endanger the life or physical safety of the individual or another person, provided that the individual is notified that copies of the records or a narrative will be provided to the individual's authorized representative, designated for this purpose, upon written authorization signed by the individual and the copies or narrative are released to the authorized representative within a reasonable time;
- B. The PHI makes reference to another person, (other than a health care provider) and a licensed health care professional has determined that the access requested is likely to cause substantial harm to the other person, provided that the individual is notified that copies of the records or a narrative will be provided to the individual's authorized representative, designated for this purpose, upon written authorization signed by the individual and the copies or narrative are released to the authorized representative within a reasonable time; or
- C. If the request for access is made by an individual's personal representative, and a licensed health care professional has determined that the access requested is likely to cause substantial harm to the individual or another person.

The Covered Component should consult with the Privacy Official and University Counsel in all situations under this section III before denying or providing access. Where provision of access under this section III may present a direct threat of imminent harm to the health or safety of any individual, the Covered Component may need to warn such individual in accordance with 22 M.R.S.A. §1711-C(6)(D) and 45 CFR §164.512(j).

IV. Review of a Denial of Access

If access is denied under section (III), the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the Covered Component as a reviewing official and who did not participate in the original decision to deny. The Covered Component must provide or deny access in accordance with the decision of the reviewing official.

V. Requests for Access and Timely Action

A. Requests for Access - The Covered Component must permit an individual to request access to inspect or obtain a copy of PHI about the individual in a Designated Record Set. The Covered Component should obtain a written authorization from the individual to release the information to the individual and must inform individuals of this requirement.

B. Timely Action by the Covered Component

1. Except as provided in the subsection (2) below, the Covered Component must act on a request for access no later than 30 days after receipt of the request by either informing the individual of the acceptance of the request and providing the access requested or providing a written denial of the request.
2. If the Covered Component is unable to take action within the time required, the Covered Component may extend the time for such actions by no more than 30 days, provided that it provides a written statement to the individual within the original time limit stating the reasons for the delay and the date by which it will complete its action, and the Covered Component may have only one such extension.

VI. Provision of Access

If the Covered Component provides an individual with access to PHI, the Covered Component must comply with the following requirements:

A. Providing the Access Requested - The Covered Component must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the PHI about the individual in a Designated Record Set. If the same PHI is maintained in more than one record set or location, the Covered Component need only produce the PHI once in response to a single request. Repeated requests over time for the same information should be handled in the same manner as the original request.

B. Form of Access Requested

1. The Covered Component must provide the access in the form or format requested by the individual, if readily producible, or, if not, in a readable hard copy or other format as agreed to by the Covered Component and the individual. If access is provided in electronic form or format, it shall be in a form or format which cannot be altered subsequently.
2. If the Covered Component uses or maintains an electronic health record with respect to PHI of an individual, the individual shall have a right to obtain a copy of such information in an electronic format and, if the individual chooses, to direct the Covered Component to transmit such copy directly to an entity or person designated by the individual, provided that any such choice must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.
3. The Covered Component may provide a summary of the PHI in lieu of providing access or may provide an explanation of the PHI requested, if the individual agrees in advance to such a summary or explanation and the individual agrees in advance to any fees imposed for such summary or explanation.

C. Time and Manner of Access - The Covered Component must provide access in a timely manner, including arranging for a convenient time and place for the individual to inspect or obtain a copy of the PHI or mailing a copy at the individual's request. The Covered Component may discuss the aspects of the request to facilitate timely access. Access shall occur at the Covered Component and only in the presence of a person designated by the Covered Component. If an individual's request for access directs the Covered Component to transmit the copy of protected health information directly to another person designated by the individual, the Covered Component must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.

D. Fees - If the individual requests a copy of the PHI or agrees to a summary or explanation, the Covered Component may impose a reasonable, cost-based fee, provided the fee includes only the cost of:

1. Copying, including the cost of supplies and labor;
2. Postage, when the individual has requested the copy be mailed; and
3. Preparing an explanation or summary of the PHI, if agreed to by the individual or the individual's personal representative, if applicable.

Notwithstanding this section (D), the charge for the copies (or the summary or explanation) may not exceed the reasonable costs incurred by the Covered Component in making and providing the copies (or the summary or explanation). The charge for copies of records may not exceed \$10 for the first page and 35¢ for each additional page.

VII. Denial of Access

If a Covered Component denies access, in whole or in part, to PHI, the Covered Component must comply with the following requirements:

A. Making Information Accessible - The Covered Component must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI to which the Covered Component has a ground to deny access.

B. Denial - The Covered Component must provide a timely, written denial to the individual. The denial must be in plain language and contain:

1. The basis for denial;
2. If applicable, a statement of the review rights, including a description of how to exercise such review rights; and
3. A notice that the individual may complain to the Covered Component about this decision or that a complaint may be made to the Secretary of DHHS. The notice must include the name, or title, and phone number of the designated contact person or office at the University for such a complaint.

C. Other Responsibility - If the Covered Component does not maintain the PHI requested, and the Covered Component knows where the PHI is maintained, the Covered Component must inform the individual where to direct the request for access.

D. Review of Denial Requested - If the individual has requested a review of the denial, the Covered Component must designate a licensed health care professional, who did not participate in the original decision to deny, to review the decision to deny and must promptly refer the request for review to such designated reviewing official. The designated reviewing official must determine within a reasonable time whether or not to deny access. The Covered Component must promptly provide written notice to the individual of the decision of the designated reviewing official and provide or deny access in accordance with that decision.

VIII. Documentation

A Covered Component must document the following and retain the documentation as required by the regulations:

- A. The original Designated Record Sets that are subject to access by individuals;
- B. The titles of persons or offices responsible for receiving and processing requests for access by individuals;
- C. The requests for access; and
- D. All documents relating to the processing of a request for access.

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