

Sample Policy

Patient Access to Protected Health Information

Policy:

A patient may access his/her Protected Health Information in a designated record set maintained or created by or on behalf of the Provider unless such access may be denied under the applicable federal or state law.

Procedures:

1. All requests for access to Protected Health Information will be forwarded to the Privacy Officer or his/her designee.
2. The Provider may require that a request be in writing and may charge a reasonable cost-based fee for any copies provided to the patient or another individual at the request of the patient in accordance with the Provider's _____ Policy. The requestor is notified via _____ of the estimated fee before processing a request for information.
3. The Provider will act on a request for access within 30 days from the date the request is made. The Provider may have an additional 30 days to act on a request if, due to circumstances beyond its control, it cannot fulfill the request within the specified time frame. If an extension is necessary, the Provider will inform the patient of the extension within the original time frame.
4. If access to Protected Health Information may be denied under the applicable federal or state law, the Provider will notify the patient that his or her access request has been denied. Under federal law, access may be denied based on one of the following. If a denial is "reviewable," the procedures in Section 6 must be followed:

Unreviewable Denials:

- The information requested is psychotherapy notes.
- Information requested was compiled in anticipation of use in a civil, criminal, or administrative action or proceeding.
- Patient is an inmate, and we believe the information requested would jeopardize the health, safety, security, custody, or rehabilitation of the patient, other inmates, employees, officers, or agents of the correctional facility, or individuals involved in the transportation of the patient.
- Information requested is prohibited from being disclosed by CLIA
- Information requested was compiled for research purposes, and the patient agreed to the denial of access until research is completed.
- Access is prohibited by the Privacy Act of 5 USC § 552(a).
- Information requested was obtained by a source who requested to remain anonymous, and releasing this information would be reasonably likely to reveal the source of the information.

Reviewable Denials:

- A licensed health care professional has determined that the information requested is reasonably likely to endanger the life/physical safety of the patient or another individual.
- Information requested makes reference to another individual, not a health care provider, and a licensed health care professional has determined that release would jeopardize the other individual.
- The request was made by the patient's personal representative, and a licensed health care professional has determined that the release is reasonably likely to cause substantial harm to the patient or another person.

5. If it is determined that access will be denied, a letter similar to that attached as Appendix A will be provided to the patient within the initial 30 day period (or 60 day period if a previous extension notification has been provided) and documentation maintained supporting the reason for the denial. If the reason for the denial is reviewable, the patient may request that the Provider review the denial.

6. Upon receipt of a patient's request to review a denial, the Provider will consult a second licensed health care professional to review the denial. The reviewing health care professional will be someone who did not participate in the first decision to deny the patient access to Protected Health Information. The Provider will follow the decision of the reviewing health care professional and notify the patient of the final decision.

7. In the event the patient is incompetent as determined by his/her physician, this Policy shall apply to requests by the patient's personal representative to the same extent it applies to the patient.

Sample Form Denial of Access Letter

Dear _____:

You previously requested access to certain protected information created or received by us in the course of providing you with health care services. This letter is to notify you that your request has been denied. This denial is based reason checked below:

Grounds for denial which are not reviewable:

- ☐ The information requested is psychotherapy notes.
- ☐ Information requested was compiled in anticipation of use in a civil, criminal, or administrative action or proceeding.
- ☐ Patient is an inmate, and we believe the information requested would jeopardize the health, safety, security, custody, or rehabilitation of the patient, other inmates, employees, officers, or agents of the correctional facility, or individuals involved in the transportation of the patient.
- ☐ Information requested is prohibited from being disclosed by CLIA.
- ☐ Information requested was compiled for research purposes, and the patient agreed to the denial of access until research is completed.
- ☐ Access is prohibited by the Privacy Act of 5 USC § 552(a).
- ☐ Information requested was obtained by a source who requested to remain anonymous, and releasing this information would be reasonably likely to reveal the source of the information.

Grounds for denial that are reviewable:

- ☐ A licensed health care professional has determined that the information requested is reasonably likely to endanger the life/physical safety of the patient or another individual.
- ☐ Information requested makes reference to another individual, not a health care provider, and a licensed health care professional has determined that release would jeopardize the other individual.
- ☐ The request was made by the patient's personal representative, and a licensed health care professional has determined that the release is reasonably likely to cause substantial harm to the patient or another person.

If the basis for denial is reviewable as indicated above, you may request that the denial be reviewed by requesting a review in writing. All review requests should be sent to my attention at the address listed

above. Once a request for review is received, a licensed health care professional designated by the Provider who was not involved in the original decision will review the denial.

Please do not hesitate to contact me if you have any questions regarding this notice of denial or your right to a review. You may also submit a complaint to the Office of Civil Rights for HHS via

_____.

SAMPLE