



**HIPAA: Right to Access, Inspect and Copy
Protected Health Information**

Policy #: DHHS-03-16

Issue Date: 1/26/16

I. SUBJECT

HIPAA: Right to Access, Inspect and Copy Protected Health Information

II. POLICY STATEMENT

1. The Health Insurance Portability and Accountability Act (HIPAA)-covered entities of the Maine Department of Health and Human Services (the Department) recognize the right of consumers to access, inspect and request copies of their Protected Health Information (PHI) held in a Designated Record Set (DRS). A DRS generally is a group of records maintained by or for a HIPAA-covered entity such as:
 - i. The medical records and billing records about consumers maintained by or for a covered health care provider;
 - ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; and
 - iii. That are used, in whole or in part, by or for the covered entity to make decisions about consumers.
2. **Purpose:** This policy describes the conditions under which we provide access to and copies of PHI maintained in a DRS.
3. **Scope:** This policy applies to the protection of PHI and ePHI, in any location, that is associated with our work.
4. **Exceptions to right of access:** Consumers may be denied access to certain information, including, but not limited to, information compiled in anticipation of, or for use in, a legal action, or where there is a concern that the information could lead to harm.
5. **Process for requesting access:**
 - a. Consumers who wish to inspect or copy their information must submit their request in writing to the appropriate Privacy/Security Liaison or records custodian. Where the request is made by a personal representative, the law requires that the Department verify the identity of the individual and his/her and the authority to act on behalf of the individual consumer. We will document such information in our records.

- b. We may provide a summary of the PHI requested if the consumer agrees.
- c. If the consumer is receiving mental health services from a licensed mental health provider or program within the Department, supervised access to the record must be provided within 3 business days, even if there is a reasonable concern of “possible harm.”
- d. If the individual is not requesting access, but is authorizing a copy to be provided to another, to licensed mental health information, the Department must respond within 30 days from receipt of the request.

6. Providing a Copy:

- If the Department grants the request for a copy, the consumer will be informed and the copy provided in the manner decided between the patient and the Department, so long as the information is maintained by or accessible to our workforce.
- If the Department grants the request for access, but the information is in part or wholly stored off-site, we may extend the delivery time by an additional 30 days if we provide the individual, within 30 days of the request, a written statement of the reasons for the delay and the date by which we will complete the request. We are not permitted any further time extensions.
- If the individual directs us to transmit a copy electronically to a specified entity or person designated by the individual, we will transmit the information as long as the designation is documented, clear, and unambiguous. The requester must fill out the email request section on the Department’s authorization form, acknowledging the inherent insecurity of email and providing the email address of the intended recipient.
- If the request is denied in whole or in part, we will provide a written notice of the denial within 30 days. The denial notice will include the following:
 - The basis for the denial.
 - The Consumer’s rights regarding review of our decision.
 - A description of how the individual may file a complaint with us or with the federal Office for Civil Rights. The description must include the name or title and telephone number of the contact person or office.
- If the request is denied in part, we will provide access to and copies of any other PHI requested after excluding the information for which we have grounds to deny access.

7. Denials of Request for Access, *with Opportunity for Review*:

If access is denied, the individual has the right to a review of the denial in several circumstances, including:

- Where the request is made by the individual or the individual’s personal representative, and a licensed healthcare professional has determined that access is likely to cause “substantial harm” or “endangerment” of the individual or another

person, access by the individual or personal representative may be denied subject to a review by another licensed professional.

8. **Denial of Review Process:** Another licensed healthcare professional (the “designated reviewing official” who was not involved in the initial denial) must determine, within a reasonable period of time, whether or not to deny the access requested based on the legal standards and this policy. The covered entity must promptly provide written notice to the individual of the determination of the designated reviewing official and carry out the designated reviewing official's determination.

9. **Denials of Request for Access, *without Opportunity for Review*:**

A HIPAA-covered entity may deny an individual's request for access without providing an opportunity for review, and must document the reason for denial in several situations, including the following:

- In cases of *documented imminent danger* to the physical or mental well-being of the patient/individual, access by the personal representative or the individual may be denied without review.
- The individual agreed to temporary denial of access when he or she consented to participate in research that includes treatment, and the research is not yet complete.
- The records are subject to the Privacy Act of 1974, which states that an individual shall not be allowed access to any information compiled in reasonable anticipation of a civil action or proceeding, and the denial of access meets the requirements of that law.
- *(Current Maine Rule – Revision of rule submitted) Where the records were obtained under promise of confidentiality from individuals or facilities, and access would be likely to reveal the source of the information. The individual must be given assistance in obtaining the record from other sources as well as a summary of the information.*

10. **All determinations regarding access and copying must be documented in the chart.**

11. **Fees for copies:**

- Fees for copies, summaries, or explanations of such information provided in *electronic form* shall not be greater than our labor costs in responding to the individual's request.
- Fees for copies, summaries, or explanations of such information provided in paper format shall be reasonable, cost-based fees as permitted by Maine law.
- If agreed to by the individual, the cost may be limited to the preparation of an explanation or summary of the PHI.
- Postage will be charged if copies, summaries, explanations, or physical media containing electronic PHI are to be mailed to the Individual at the Individual's request.

III. DEFINITIONS

Protected Health Information is information about a patient, including demographic information that may identify a patient, which relates to the patient's past, present or future physical or mental health or condition, related health care services or payment for such services.

IV. DISTRIBUTION

All Staff via e-mail and posting on the DHHS Intranet.

1/26/16
Date

Mary C. Mayhew
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Commissioner