

UNIVERSITY OF WYOMING

HIPAA POLICY 4.5

RIGHT OF ACCESS TO PROTECTED HEALTH INFORMATION

- I. **PURPOSE:** To define the process for UW Covered Components who provide direct treatment to patients to provide a patient or his/her personal representative the opportunity to review and obtain a copy of the patient's protected health information ("PHI"), or for denying the patient or his/her personal representative access to the patient's PHI, in accordance with HIPAA.
- II. **RIGHT TO ACCESS:** In general, an individual has a right of access to inspect and obtain a copy of PHI about the individual in a designated record set, for as long as the PHI is maintained in the designated record set.
 - a. **Exceptions:** An individual may not review and/or copy certain categories of PHI as follows:
 - i. **Psychotherapy notes:** Includes notes created by the mental professional and which are maintained separately from the medical record.
 - ii. **Legal Action:** Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - b. **Unreviewable Grounds to Deny Request for Access:** A UW Covered Component may deny an individual right to access the PHI in the designated record set in the following circumstances:
 - i. **Falls under one of the exceptions listed above in subsection a.**
 - ii. **Inmate requests:** If A UW Covered Component is a covered health care provider acting under the direction of a correctional institution the UW Covered Component may deny, in whole or in part, an inmate's request to obtain a copy of PHI, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
 - iii. **Research:** An individual's access to PHI created or obtained by a UW Covered Component in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the UW Covered Component has informed the individual that the right of access will be reinstated upon completion of the research.
 - iv. **Records subject to the Privacy Act, 5 U.S.C. Section 552(a):** Federal agency records including any item, collection or grouping of information about an individual that is maintained by an agency, including but not limited to his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying information particularly assigned to the individual, such as a finger or

voice print or photograph. Such records include information maintained by military hospitals, U.S. Public Health Service facilities, Veterans Administration and Indian Health Services.

- v. **Non-health care provider:** An individual's access may be denied if the PHI 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.
- c. **Reviewable Grounds for Denial of Access:** A UW Covered Component may deny an individual access, provided that the individual is given a right to have such denials reviewed, as set forth in Section III, in the following circumstances:
 - i. **Endangerment:** A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
 - ii. **Substantial Harm:** The PHI makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person;
 - iii. **Request by Personal Representative and Substantial Harm:** The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

III. PROCEDURE TO REQUEST RECORDS: Unless one of the provisions above apply, the patient and/or his personal representative has the right to inspect and obtain a copy of the patient's PHI, in a designated record set.

- a. **Submit Request:** The patient must submit either a completed request for access to PHI on a form approved by the UW Covered Component or an authorization form to the UW Covered Component Privacy Officer or his/her designee.
- b. **Review:** The Privacy Officer or his/her designee should mark the form in some manner to show the date/time received in order to establish the beginning of the time frame for response. If the form is not completed properly by the individual/patient, the Privacy Officer or his/her designee may return the form to the individual/patient with an explanation regarding the incomplete elements, asking that it be returned after the information is completed.
- c. **Time to respond:** The UW Covered Component must act on the request for access no later than 30 days after receipt of the request if the PHI is maintained on-site (or no later than 60 days after receipt of the request if the PHI is not maintained on-site) by either informing the individual of the acceptance of the request and providing the access requested or providing a written denial of the request.
 - i. **Exception:** The UW 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/patient within the original time stating the reasons for the delay and the date by which it will complete its action. Only one extension is permitted.

- d. **Denial of Request:** If the UW Covered Component denies access, in whole or in part, to PHI, the UW Covered Component must comply with the following requirements:
 - i. **Make other information accessible:** The UW Covered Component must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which the UW Covered Component has a ground to deny access.
 - ii. **Contents of Denial:** The denial must be in writing and contain in plain language the following:
 - 1. Basis for denial;
 - 2. If applicable, a statement of the individual's review rights, including a description of how the individual may exercise the review rights; and
 - 3. A description of how the patient and/or his personal representative may file a complaint with UW or with HHS along with the name, or title, and telephone number of the UW Privacy Officer.
 - iii. **Review of Denial:** The patient or his/her personal representative must make a written request to the UW Covered Component's Privacy Officer to review the denial.
 - 1. The Privacy Officer will refer the review request to a designated reviewing official, who must be a licensed healthcare professional not involved with the denial. This could be the UW campus Privacy Officer.
 - 2. The reviewing official will review the materials and make a determination within a reasonable period of time whether or not to deny access. The determination will be made in writing and sent to the UW Covered Component's Privacy officer.
 - 3. The UW Covered Component's Privacy Officer will notify the patient or his/her personal representative of the determination of the reviewing official.
 - 4. If the reviewing official determines the patient should have access to the PHI, the UW Covered Component must provide the requested access.
 - iv. **Records not Maintained by a UW Covered Component:** If the UW Covered Component does not maintain the PHI that is the subject of the individual's request for access, and the UW Covered Component knows where the requested information is maintained, the UW Covered Component must inform the individual where to direct the request for access.
 - v. **Partial Denial:** If there are grounds to deny the request as to only part of the PHI requested, the UW Covered Component should make its best efforts to provide the patient or his/her personal representative with access to the rest of the information after excluding the parts that cannot be inspected or copied.
- e. **Approval of Request:** If a UW Covered Component provides an individual with access, in whole or in part, to PHI, the following applies:
 - i. **Providing access requested:** The UW Covered Component must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the PHI about the individual/patient in designated record sets. If the

same PHI that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the UW Covered Component need only produce the PHI once in response to a request for access.

- ii. **Form of access requested:** The UW Covered Component must provide the patient and his/her personal representative with access to PHI in the form or format requested, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the UW Covered Component and the individual.
 1. **Electronic copy:** If the PHI that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the UW Covered Component must provide the individual with access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual.
 2. **Summary:** The UW Covered Component may provide the patient or his/her personal representative with a summary of the PHI requested, in lieu of providing access to the PHI, or may provide an explanation of the PHI to which the access has been provided if:
 - a. The individual agrees in advance to such a summary or explanation; and
 - b. The individual agrees in advance to the fees imposed, if any, by the UW Covered Component for such summary or explanation.
- iii. **Time and Manner of Access:** A UW Covered Component must provide the access as requested by the individual in a timely manner as required by this policy, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing the copy of the PHI at the individual's request. The UW Covered Component may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.
 1. **Transmission of PHI to another person:** If an individual's request for access directs the UW Covered Component to transmit the copy of PHI directly to another person designated by the individual, the UW 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 PHI.
- iv. **Fees:** When a UW Covered Component grants access and makes copies of the requested PHI for the patient or his/her personal representative, the UW Covered Component may charge a reasonable fee for copies as approved in the UW Fee Book approved by the UW Board of Trustees.
 1. The current fees as permitted above shall be clearly set forth to the individual or his/her personal representative in writing prior to copies

being made; this notice of fees may be accomplished in the request form provided by the UW Covered Component.

- v. **Recording of Access provided:** If access is granted or copies made pursuant to an individual's request, the UW Covered Component should record this in the patient's file.

IV. DOCUMENTATION: The UW Covered Component must document the designated record set that are subject to access by the individuals and the titles of the persons or offices responsible for receiving and processing requests by individuals for a period of six years from the date of its creation or the date when it last was in effect, or as required by state or federal law or UW Regulations, whichever is later.

V. REFERENCES/APPLICABLE LAW:

- a. 45 C.F.R. Section 164.524

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