

County Of San Diego
Health and Human Services Agency (HHS)

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: privacy, access

SUBJECT: Individual Access to Protected Health Information in the Designated Record Set

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REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process for handling requests from individuals (patients/residents/clients) or their legal representatives to access or obtain copies of protected health information in designated record sets.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Designated Record Set:

1. County as Health Care Provider: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes:
 - Patient/resident/client medical records, including images (e.g. radiology films, fetal monitor strips, electrocardiograph (EKG) tracings, electroencephalograph (EEG) tracings, imaged records of procedures, and the like); and
 - Patient/resident/client billing records.

2. County as Health Plan: Records maintained by or for the County that are used, in whole or in part, by or for the County to make decisions about individuals. This designated record set includes the following records:
 - Enrollment;
 - Payment;
 - Claims adjudication; and
 - Case or medical management systems.

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The designated record set **excludes** information compiled by the County that is not used to make decisions about specific individuals, including, but not limited to, information compiled for peer review, quality assurance, and business operations.

Individually Identifiable Health Information: Information that is created or received by the County, that identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of physical or mental health care to an individual

This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Legal Representative: An individual's legal representative may include the following:

- Conservator of the Person – Court appointed;
- Attorney-in-Fact for Health Care – Holder of a valid Durable Power of Attorney for Health Care;
- Guardian of the Person – Court appointed;
- Parent – Unemancipated minor where the minor does not have the authority to authorize the release of records on his or her own behalf;
- Decedent's Personal Representative – Court appointed;
- Executor of a Decedent's Estate – Court appointed;
- Administrator of a Decedent's Estate – Court appointed;
- Personal Representative – Court appointed; or
- Beneficiary of a Decedent's Estate – Must provide adequate documentation that the person is a beneficiary of the decedent's estate and that no other person has the authority to prevent the release of the protected health information.

Note: This policy uses the term "legal representative." That term is meant to be synonymous with the Privacy Rule term "personal representative." This policy uses the term "legal representative" because the term "personal representative" has a separate and distinct legal meaning under California law.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained electronically or by any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include

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records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

Psychotherapy Notes: Notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversations during a private, joint, family, or group counseling session that are filed separately from the rest of the individual's medical record.

Psychotherapy notes **exclude:**

- Medication prescription and monitoring records;
- Counseling session start and stop times;
- Modalities and frequency of treatment;
- Results of clinical tests; and
- Summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

POLICY: In compliance with state and federal laws and regulations, individuals or their legal representatives will be given the opportunity to access and obtain a copy of their PHI in the designated record set.

Individuals or their legal representatives do **not** have the right to access or obtain copies of:

- Psychotherapy notes;
- Information compiled in reasonable anticipation of or for use in civil, criminal, or administrative actions or proceedings;
- Information subject to prohibition by the Clinical Laboratory Improvements Act (CLIA);
or
- Information that is not part of the designated record set.

Individuals or their legal representatives may be denied access to or prevented from obtaining copies of their PHI where:

- Providing the information to an individual or his or her personal representative is reasonably likely to endanger the life or physical safety of the individual or another person;
- The information was provided in confidence to the health care provider by someone other than another health care provider;
- Providing the information to an inmate of a correctional institution, where the covered entity is the correctional institution or a covered health care provider acting under the direction of the correctional institution, would jeopardize the health, safety, security,

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custody or rehabilitation of the inmate or other inmates, or the safety of any officer, employee, or other person at the correctional institution or person responsible for transporting the inmate; or

- The records are subject to the Privacy Act, 5 U.S.C. 553a, and the denial of access is allowable under that law.

PROCEDURES:

1. Requests for Access

To review or obtain a copy of PHI in the designated record set, an individual or his or her legal representative must submit a written request that includes all required elements for a valid authorization. This may be done by completing the County's form entitled "Request for Access and Copy of Protected Health Information" or through use of another acceptable form submitted by the individual or his or her legal representative. In the event an individual's legal representative seeks to review or obtain a copy of the PHI in the designated record set, the legal representative must explain in the written request what information is needed and how it is relevant to his or her duties as the legal representative of the individual.

Original records must be reviewed during normal business hours in the appropriate County facility. Reviews must be done under the direct observation of a member of the County's staff. Individuals reviewing records must provide picture or other adequate identification on request.

2. Timely Action

The County must act on a request to inspect PHI in the designated record set within five (5) working days of receipt of the written request. The County must act on a request to obtain copies of PHI in the designated record set within fifteen (15) calendar days of receipt of the written request. Individuals will be given a written notice that their request to review or obtain copies of their records has been granted.

If the records have been destroyed in accordance with the County's record retention policies, the program/unit manager or designee will give the individual a written statement explaining why the request cannot be fulfilled.

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3. Form of Access

The County will provide a legible paper copy of the portions of the record(s) requested, and in situations where the records are requested by an individual's legal representative, only those records requested and relevant to the person's duties as legal representative of the individual will be provided. Online access will not be provided for computer-based records. Images will be provided on paper printouts or film copies, as appropriate.

A summary format may be provided if the individual or his or her legal representative agrees in writing to accept a summary and pays the fees required for preparing it. The summary must be provided to the individual within ten (10) working days of the request. If additional time to prepare the summary is needed because the individual has been discharged from a County facility within the past ten (10) calendar days or the record is of extraordinary length, the County shall notify the individual of the reason for the delay and the date on which the summary will be provided. In no event will the summary be provided more than thirty (30) calendar days after the request was received.

4. Copy Fees

No fees will be charged to individuals or their legal representatives for retrieving or reviewing records. Fees will be charged for making copies in accordance with the County's fee schedule. (See Policy HHSa-L-20, Clerical and Copy Fees for Protected Health Information.)

An individual who does not have the ability to pay may be given copies of records in the designated record set upon providing proof of economic need. Such proof may include, but is not limited to, participation in state Medi-Cal or charity care programs. The manager of the program/unit releasing the information or designee may make this determination, based on information provided by the individual or his or her legal representative.

The individual or his or her legal representative shall be entitled to copy, at no charge, the relevant portion of the individual's records upon presenting to the County a written request and proof that the records are needed to support an appeal regarding eligibility for one of the following public benefit programs: Medi-Cal, social security disability benefits, Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled. The phrase "relevant portion of the individual's records" means those records regarding services rendered to the individual during the time period beginning with the date of the individual's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the individual's application is pending. The individual is entitled to one free copy of the records. Additional copies will be charged as set forth in this policy and procedure.

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5. Denial of Access

Individuals or their legal representatives may be denied access to the records under certain circumstances, as outlined below. If the County denies access to some information in the designated record set, it must make other information available if it does not have grounds to deny access to that information.

Reviewable Grounds for Denial: The County may deny an individual's access, provided the individual is given a right to have the denial reviewed, in the following circumstances:

- A licensed healthcare 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;
- The PHI makes reference to another person (unless the other person is a healthcare provider) and a licensed healthcare professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person; or
- The request for access is made by the individual's legal representative, and a licensed healthcare professional has determined, in the exercise of professional judgment, that the provision of access to such representative is reasonably likely to cause substantial harm to the individual or another person.

If access is denied on these grounds, the individual has the right to have the denial reviewed by a licensed healthcare professional designated by the County who did not participate in the original decision. The County must provide prompt, written notice of the reviewer's decision to the individual and must comply with the reviewer's decision.

Unreviewable Grounds for Denial: The County may deny an individuals access without providing an opportunity for review if:

- The PHI is exempted from the right of access;
- The County is acting under the direction of a correctional institution, and the information could jeopardize the health, safety, security, custody, or rehabilitation of the inmate, any officer, employee, or other inmates;
- An individual's right to PHI created or obtained in the course of research may be temporarily suspended while the research is in progress, provided the individual has agreed to the denial of access when agreeing to participate. The right of access will be reinstated upon completion of the research;
- The PHI was obtained from someone other than a healthcare provider under a promise of confidentiality and the access would reveal the source of the information; or
- The information contained in the designated record is subject to the Privacy Act, 5 U.S.C. 553a, and the individual's access to the information may be denied under that Act

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Written Notice:

When access is denied, The County will provide individuals with timely, written notice of the denial. This notice must be in plain language and include the following:

- The basis for the denial;
- A statement of the individual's right to request a review (for reviewable grounds of denial); and
- A description of how the individual may complain to the County or the U.S. Department of Health and Human Services.

The County will provide written notice by using these form letters:

- Reviewable Denial of Access to Protected Health Information
- Unreviewable Denial of Access to Protected Health Information

6. Required Documentation

The County must document and retain the following:

- The designated record set subject to individual access; and
- The titles of the persons or offices responsible for receiving and processing requests for access by individuals. This information will be provided to the County's Privacy Officer and will be updated as necessary.

All correspondence and associated documentation related to individual access, including denials, must be maintained for six (6) years as required by federal regulation.

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego

SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved: _____



Jean M. Shepard, Director
Health and Human Services Agency