
 <p>HAWAII HEALTH SYSTEMS CORPORATION "Quality Healthcare For All"</p> <p style="text-align: center;">POLICY</p>	<p>Department:</p> <p style="text-align: center;">Quality Through Compliance</p>	<p>Policy No.:</p> <p style="text-align: center;">CMP 049A</p>
	<p>Issued by:</p> <p>Audit and Compliance Committee</p>	<p>Revision No.:</p>
<p>Subject:</p> <p style="text-align: center;">HIPAA Patient Right to Access and Obtain Copies of Designated Record Set</p>	<p>Approved by:</p>  <p>HHSC Board of Directors By: Carol VanCamp Its: Secretary/Treasurer</p>	<p>Supersedes Policy:</p> <p style="text-align: center;">New</p>
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Last Reviewed: August 19, 2013. Next Review: August 19, 2016

- I. **PURPOSE:** This Policy provides guidance regarding the process whereby an individual or the individual's personal representative may exercise his/her legal right to inspect and obtain a copy of the protected health information about the individual, describes the reasons why an individual or the individual's personal representative may be denied access to protected health information, and delineates the review process when an individual appeals a decision to deny access to protected health information.
- II. **DEFINITIONS:**
- Designated record set – Medical and billing records about an individual maintained by or for HHSC.
- Licensed Health Care Professional – Any individual licensed by the State of Hawaii to provide health care services.
- Protected Health Information (PHI) – Any information, identifiable to an individual, including demographic information, whether or not recorded in any form or medium that relates directly or indirectly to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- Psychotherapy Notes – Notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private, group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.
- Unemancipated minor – For the purposes of this policy, unemancipated minor is an unmarried minor age 14 – 17.
- III. **POLICY:**
- A. Access:
1. Upon verification of identity, an individual, or the individual's personal representative, has the right to access and obtain a copy of the protected health information about the individual maintained in a designated record set held by Hawaii Health Systems Corporation (HHSC).

2. An individual's request for access will be acted upon within the following time frames.
 - a) Within 30 days of receipt of the request for medical records.
 - b) Within 30 days of receipt of the request for billing records.
3. Should additional time be needed to respond to the request for billing records, the individual will be informed, in writing, of the reasons for the delay and the date (not to exceed 30 days in excess of the above time frames) by which the records will be ready.
4. The manner of access, including time, place, scope and form will be arranged with the individual as necessary to facilitate the timely provision of access.
5. If the PHI that is the subject of the request for access is maintained in one or more designated record sets electronically, and if the individual requests an electronic copy of such information, HHSC 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 HHSC and the individual.
6. If an individual's request for access directs HHSC to transmit the copy of PHI directly to another person designated by the individual, HHSC 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.
7. A summary of the protected health information requested may be provided if:
 - a) The individual agrees, in advance, to such a summary and;
 - b) The individual agrees, in advance, to any fees that may be imposed for the creation of the summary.
8. If the protected health information being requested is not maintained by HHSC and it is known where the information is maintained, the individual shall be informed where to direct the request for access.

B. Denial of Access:

1. Access to PHI may be denied on the basis of the following:
 - a) Unreviewable Grounds for Denial:
 - i. Information requested consists of psychotherapy notes.
 - ii. Information was compiled by HHSC in reasonable anticipation of, or for use in a civil, criminal or administrative action or proceeding.
 - iii. Protected health information maintained by laboratories subject to Clinical Laboratory Improvement Act (CLIA) amendments of 1988 that prohibit individual's access to the information.
 - iv. When requested by an inmate of a correctional institution and the institution has determined that obtaining such a copy would jeopardize the health, safety, security, custody or rehabilitation of the individual or other inmates or the safety of any officer, employee or other person at the correctional institution or responsible for the transporting of the inmate.
 - v. The information was created or obtained in the course of research that includes treatment and the individual agreed to temporary denial of access when consenting to participate in the research.
 - vi. The records are subject to the Privacy Act of 1974 and denial of access meets the requirements of that law.
 - vii. The protected health information was obtained from someone other than the health care provider under a promise of confidentiality and access would likely reveal the source of the information.
 - b) Additional Unreviewable Grounds for Denial of Access to Records of an Unemancipated Minor: A parent, guardian or other person acting *in loco*

parentis under law has the authority to exercise the minor's right to access and obtain copies of protected health information except with respect to protected health information pertaining to health care services where:

- i. The unemancipated minor consented to the care for pregnancy, venereal disease, or family planning services, no other consent to the service was required by law, and the minor has not requested that such a person be treated as the personal representative.
 - ii. The unemancipated minor may lawfully obtain such health care services without the consent of the parent, guardian or other person acting *in loco parentis* and the minor, the court or other person authorized by law consented to the healthcare service.
 - iii. The parent, guardian or other person acting *in loco parentis* agrees to an agreement of confidentiality between the provider and the minor with respect to particular health services.
- c) Reviewable Grounds for Denial:
- i. A licensed healthcare provider has determined that the access would endanger the life or physical safety of the individual or another person.
 - ii. The protected health information makes reference to another person who is not a healthcare provider and a licensed healthcare provider has determined that the access requested is reasonably likely to cause substantial harm to such other person.
 - iii. The request for access is made by the individual's personal representative and a licensed healthcare provider has determined that access is likely to cause substantial harm to the individual or another person.
2. An individual will be notified of a denial of access in writing. The denial letter will include the following information:
- a) The basis for the denial;
 - b) If applicable, an individual's right to request a review of the denial;
 - c) A description of how the individual may exercise such review rights;
 - d) A description of how the individual may complain to the Secretary of Department of Health and Human Services (DHHS); and
 - e) A description of how the individual may complain to HHSC, including the name or title and telephone number of the contact person.
3. To the extent possible, the individual will be given access to any other protected health information after excluding that protected health information which was the basis for a denial of access.
- C. Appeal of Denial of Access:
1. An individual may request, in writing, a review of a decision to deny access to protected health information when such denial was based on Reviewable Grounds for Denial.
 2. The request will be promptly reviewed by a designated licensed health care professional who was not directly involved in the original decision to deny access.
 3. Upon completion of the review by the designated professional, a written notice of the determination will be promptly provided to the individual.
- D. Fees:
1. Reasonable cost-based fees will be charged for copies of protected health information provided to the individual.
 2. Fees will be based on ADM 0001.

E. HHSC Facilities shall implement procedures to operationalize this Policy.

IV. APPLICABILITY: This Policy applies to all HHSC facilities.

V. AUTHORITY: Hawaii Revised Statutes (HRS) 622-57; HRS 577A-2 *Consent valid for care related to pregnancy, venereal disease or family planning services*; HRS 577-26 *Alcohol or drug abuse relating to minors; diagnosis, counseling, and related activities*; 1996 Health Insurance and Portability and Accountability Act (HIPAA) Public Law 104-191; 45 CFR 164.524. ADM 0001.

VI. ATTACHMENTS: None.