

CHECKLIST FOR RESPONSE BY PROVIDERS

RE: Requests for Access and/or Copies of PHI

An individual has a right to inspect and obtain a copy of PHI about the individual in a designated record set, EXCEPT FOR:

- Psychotherapy Notes;
- Information compiled in anticipation of a civil, criminal, or administrative action;
- PHI where access is prohibited by or exempt from Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a (CLIA);
- PHI contained in records subject to the Privacy Act, 5 U.S.C. 552a, if the denial of access under the Privacy Act would meet the requirements of that law;
- PHI maintained by a correctional institution, or a provider acting under the direction of a correctional institution, if access would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates, or the safety of persons at the institution or those responsible for transporting the inmate;
- PHI created or obtained by a covered health care provider in the course of research—that includes treatment—and the access is temporarily suspended for as long as the research is in progress, provided that the patient has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the patient that the right of access will be reinstated upon completion of the research;
- PHI 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;
- 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 patient or another person; *
- 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; or *
- The request is made by the patient’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 patient or another person. *

* These grounds for denial of an individual’s right to access/copy PHI are reviewable upon request by the individual as described in the last item (in *Italics*) under the section “Denial of Access” of this document.

Requests for access and timely action:

- _____ A covered entity must permit an individual to request access to the individual's PHI maintained in a designated record set. The covered entity may require requests for access to be in writing, provided individuals are informed of such a requirement (such as in the Notice of Privacy Practices.)
- _____ The covered entity must act on a request for access within 30 days after receipt of the request unless the PHI is not maintained or accessible on site, in which case the entity must act within 60 days.
- _____ If unable to act within the time limits above, the covered may, within those times limits, inform the individual in writing of the reasons for the delay and when, no later than 30 additional days, the PHI will be made available.

Provision of access:

- _____ If access is granted, the covered entity must permit an inspection and/or copying as requested, although if the PHI is maintained at more than one site, it only has to produce it once.
- _____ The information must be provided in the form or format requested if it is readily producible in such form or format, but, if not, it shall be produced in readable hard copy or in any other form agreed to by the entity and the individual.
- _____ The covered entity may produce a summary of the PHI in lieu of access if the individual agrees to it and any associated fees in advance.
- _____ The covered entity may provide an explanation of PHI that has been produced if the individual agrees to it and any associated fees in advance.
- _____ The covered entity may discuss the scope, format, and other aspects of the request for access with the individual to facilitate timely access, but any access must be within the time limits described above.
- _____ The covered entity may impose a reasonable, cost-based fee, for copies, summaries and explanations of PHI, provided it includes only the cost of copying, including supplies and labor, any postage, and fees agreed to in advance by the individual for explanations or summaries of the PHI.

Denial of Access:

- _____ If access is denied in whole or in part, the covered entity must, to the extent possible, grant access to any other PHI requested after excluding the PHI to which access is denied.

_____ Within the time limits described above, the covered entity must provide a written denial in plain language containing the reason for the denial, a description of the individual's right to a review of the denial, if any, and a description of how to complain to the entity or to the U.S. Secretary of HHS. The description must include the name, or title, and telephone number of the person or office with the covered entity designated to receive complaints.

_____ If the covered entity does not maintain the requested PHI and knows where it is maintained, the covered entity must inform the individual where to direct the request.

_____ If the individual requests a review of the denial (for those denials that are reviewable as described above) the covered entity must arrange for review by a licensed health care professional who did not directly participate in the original decision to deny. The reviewer shall determine within a reasonable time whether to provide access, and the covered entity must promptly provide the individual with written notice of the reviewer's decision.

Documentation:

_____ A covered entity must document designated record sets subject to access by individuals and the titles of the person or offices responsible for receiving and processing requests for access to PHI. The designated record set is the group of medical records and billing records about individuals maintained by or for a covered health care provider to make decisions about such individuals.