POLICY REGARDING INDIVIDUAL RIGHTS TO REQUEST ACCESS TO INSPECT/COPY PROTECTED HEALTH INFORMATION

Purpose: To set forth the policy and procedures of WVU Physicians of Charleston (WVUPC) regarding an individual’s right to request access to inspect and/or copy his/her Protected Health Information (“PHI”).

Standard: An individual has the right to request access to, and to inspect/copy his or her PHI, subject to certain limitations.

Policy: WVUPC will address individual requests to access, inspect and/or copy PHI which is maintained in a designated record set in a timely and professional manner, subject to the provisions and requirements of this policy and applicable law.

Procedure

A. An individual has the right to request access to inspect and/or obtain a copy of his/her PHI that is contained in a designated record set, subject to the limitations stated in this policy and applicable law. When a request for access is sought, the following process applies:

1. The individual will be informed that the request for access may be required to be in writing.

2. Requests for access to and/or review PHI by a patient (or requests by the patient’s legal representative) should be directed to the WVUPC Office of Health Information Management (HIM).

3. HIM staff will provide the patient with a form to be completed in order to document the access request, and shall make arrangements to either comply with the request or to notify the patient in writing that an exception applies which precludes the access requested.

B. WVUPC’s response to a request for access must be provided: 1) no later than 30 days after the request for access was made and submitted to WVUPC; or 2) If the request is for PHI that is not maintained or accessible on-site to WVUPC, no later than 60 days after the request was received. If WVUPC cannot take action on a request for access to PHI
POLICY REGARDING INDIVIDUAL RIGHTS TO REQUEST ACCESS TO INSPECT/COPY PROTECTED HEALTH INFORMATION

within the time periods set forth above, the organization may extend the time required by thirty (30) days.

C. If the request for access is granted, WVUPC will provide the individual with access to the PHI in the form or format requested by the individual, including the option of release in an electronic format.

D. A summary of the requested PHI may be provided in lieu of access to the information if the individual agrees in advance to a summary and to any related fees related to preparation of such summary, or when psychological information and/or records are at issue and a summary of the requested psychological records is all that is accessible to the individual under applicable provisions of state law.

F. HIM staff will appropriately document the request and the delivery of the PHI, or written denial thereof, in the individual’s chart.

G. Any fees imposed on the individual for a copy of the requested PHI, or a summary or explanation of such information must be reasonable and cost based, not inconsistent with state law, and only be for the cost of copying (including supply and personnel cost, postage, and/or preparation of an explanation of a summary of the PHI).

H. Individuals do not have the right to access the following types of information:

1. Psychotherapy notes;

2. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

3. Protected health information that is:

   (a) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. §263a. to the extent the provision of access to the individual would be prohibited by law; or

   (b) Exempt from the Clinical Laboratory Improvements
POLICY REGARDING INDIVIDUAL RIGHTS TO REQUEST ACCESS TO INSPECT/COPY PROTECTED HEALTH INFORMATION

(c) Amendments of 1988, pursuant to 42 C.F.R. §493(a)(2).

E. Denial of Access

1. The following are **unreviewable grounds** for the denial of a patient’s request for access under 45 C.F.R. §164.524:

   a. **Excepted Information.** WVUPC may deny a patient’s request for access to information which is excepted from the right of access under (a)(1) of §164.524 (psychotherapy notes; information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative proceeding; or PHI maintained by a covered entity subject to the Clinical Laboratory Improvements Act (“CLIA”).

   b. **Inmate information.** WVUPC, acting under the direction of a correctional institution, 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 patient or of other inmates, or the safety of any officer, employee or other person at the correctional institution, or those responsible for the inmate’s transportation.

   c. **Research.** WVUPC may temporarily suspend a patient’s access to PHI created or obtained in the course of research that includes treatment. The suspension may last 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, and the patient has been informed that the right of access will be reinstated upon completion of the research.

   d. **Privacy Act documents.** WVUPC may deny an individual’s access to PHI that is contained in records that are subject to the Privacy Act, 5 U.S.C. § 552a, if the denial of access would meet the requirements of that law.
e. Records from others. WVUPC may deny access to PHI obtained from someone other than a health care provider under a promise of confidentiality and the access requested would likely reveal the source of that information.

2. The following are reviewable grounds for denial of access.

WVUPC may deny an individual access, provided that the individual is given a right to have such denials reviewed, as required by paragraph (a)(4) of 45 C.F.R. §164.524 of HIPAA, in the following circumstances:

1. When 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;

2. When 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

3. When 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.

G. Review of a Denial of Access.

If WVUPC denies access to PHI, in whole or in part, it must comply with the following requirements:

1. Making other information accessible. WVUPC must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which the covered entity has a ground to deny access.

2. Provide Notice of the Denial. The covered entity must
POLICY REGARDING INDIVIDUAL RIGHTS TO REQUEST ACCESS TO INSPECT/COPY PROTECTED HEALTH INFORMATION

A provider must provide a timely, written denial to the individual. The denial must be in plain language and contain:

a. The basis for denial;
b. If applicable, a statement of individual’s review rights, including a description of how the individual may exercise such review rights; and
c. A description of how the individual may complain to the covered entity pursuant to the complaint procedures of §164.530(d) of HIPAA, or to the Secretary pursuant to the procedures in §160.304. The description must include the name, or title, and telephone number of the contact person or office designated in §164.530(a)(1)(ii).

H. Review of Denial Requested.

If the individual requests a review of a denial of access to PHI as outlined above, WVUPC must designate a licensed health care professional, who was not directly involved in the denial, to review the decision to deny access. WVUPC must promptly refer a request for review to such designated reviewing official.

The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards of §164.524(a)(3).

WVUPC must promptly provide written notice to the individual of the determination of the designated reviewing official, and take other action as required by the HIPAA privacy rule to carry out the designated reviewing official’s determination.

References:
45 C.F.R. § 164.524
| POLICY REGARDING INDIVIDUAL RIGHTS TO REQUEST ACCESS TO 
| INSPECT/COPY PROTECTED HEALTH INFORMATION |