POLICY REGARDING INDIVIDUAL RIGHT TO REQUEST AMENDMENT OF PROTECTED HEALTH INFORMATION

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

Standard: An individual has the right to request an amendment of his/her PHI contained in any given designated record set for as long as the PHI remains in that record set. An individual’s right to request such an amendment does not impose an absolute obligation on WVUPC to grant such request.

Policy: WVUPC will provide individuals with a right to request an amendment of their PHI in accordance with the procedures outlined below.

Procedure: 1. Request to Amend PHI

An individual has the right to request an amendment of his/her PHI in accordance with the following procedures:

a. The individual will submit to WVUPC’s Department of Health Information Management a written request for amendment of PHI on a form prescribed by WVUPC’s Department of Health Information Management (HIM). The form shall be completed and signed by the individual or the individual’s legal representative.

b. WVUPC will respond to the request within sixty (60) days of the date of receipt of the request. If WVUPC is unable to respond within sixty (60) days, the time within which it shall respond may be extended by an additional thirty (30) days, but only if:

   i. WVUPC notifies the individual in writing of the need for an extension of time to respond, stating the reason for the delay and identifying the date by which a response will be provided; and
2. Granting the Request for Amendment

If a determination is made to grant the request, then WVUPC will:

a. Notify the individual, either orally or in writing, that the amendment is accepted and document such notification in the individual’s medical record;

b. Obtain the individual’s agreement to allow WVUPC to notify other individuals or organizations with whom the amendment needs to be shared, including WVUPC’s business associates; and

c. Identify the records in the designated record set that are affected by the amendment and then append or otherwise provide a link to the location of the amendment.

3. Denying the Request for Amendment

a. WVUPC may deny a request to amend PHI in the following instances:

i. Upon a determination by WVUPC that the PHI sought to be amended was not created by WVUPC;

ii. The information sought to be amended is not a part of a designated record set;

iii. The information sought to be amended is accurate and complete; or

iv. The information sought to be amended is not available for inspection under one of the exceptions to the right of access or pursuant to one of the non-reviewable denials as provided for in WVUPC’s Policy Regarding Individual Rights to Request Access to Inspect/Copy Health Information,
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including the following:

(a) Psychotherapy notes;

(b) PHI compiled by WVUPC in reasonable anticipation of or for use in a civil, criminal, or administrative action or proceeding;

(c) PHI maintained by a facility that is either subject to or exempt from certain provisions of the Clinical Laboratory Improvements Amendment of 1988 ("CLIA");

(d) PHI regarding an inmate which is maintained by WVUPC on behalf of a correctional institution, but only to the extent that access to such PHI would endanger the health, safety, security, custody, or rehabilitation of the inmate, other inmates, or the safety of any officer, employee, or other person at the correctional institution, or person responsible for the transportation of an inmate;

(e) PHI created or obtained by WVUPC in the course of research that includes treatment, as long as the individual has agreed to a denial of access at the time of consenting to participate in the research (the denial of access to, and therefore amendment of, this PHI is allowed only for as long as the research is in progress – once the research is concluded, the individual’s rights are reinstated);

(f) PHI contained in records that are subject to the Privacy Act of 1974, as long as the denial under the Privacy Act meets the requirements of law; and

(g) PHI obtained from someone else, other than a health care provider, under a promise of confidentiality, but only if access would be
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Reasonably likely to reveal the source of the information.

b. If a request for amendment is denied, WVUPC will provide the individual with a written notice of denial which contains the following, in plain language:

1. The basis for denial;

2. An explanation of the individual’s right to submit a written statement disagreeing with the denial and how such a statement may be submitted;

3. A statement that, if the individual does not submit a statement of disagreement, the individual may request that WVUPC include the request for amendment and the denial in any future disclosures of PHI that include the PHI which is the subject of the requested amendment; and

4. A description of how the individual may submit a complaint to WVUPC using WVUPC’s complaint process, or to the Secretary of DHHS. (This description must include the name, or title, and telephone number of WVUPC’s contact person or office that is responsible for the receipt and processing of such complaints.)

4. Submission of a Statement of Disagreement by an Individual and Submission of a Rebuttal by WVUPC

a. If WVUPC has denied an individual’s request for amendment, the individual has the right to submit a written statement disagreeing with the denial and identifying the reasons for disagreement. WVUPC has the right to submit a written rebuttal to the individual’s statement of disagreement and must provide a copy of the rebuttal to the individual.

b. If the individual has submitted a statement of disagreement, WVUPC must include all documentation regarding the requested amendment (including the individual’s request for
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amendment, the written denial, the statement of disagreement, and WVUPC’s rebuttal, if any) with any subsequent disclosure of the information. Alternatively, a summary of this information may be included in any subsequent disclosure in lieu of the above-noted documentation, but only if WVUPC has obtained the individual’s agreement in advance to use such a summary.

c. If an individual has not submitted a statement of disagreement, WVUPC will include the individual’s request for amendment and the denial (or an accurate summary thereof) with any future disclosure **ONLY** if the individual has requested such an action.

4. **Documentation and Retention of Records**

All documentation regarding an individual’s right to request an amendment of PHI, including this policy and procedure and any modifications and/or amendments thereto, the individual’s request, any written denials, an individual’s statement of disagreement, and WVUPC’s rebuttal, will be maintained for a period of not less than six (6) years from the date that the documentation was first created or last in effect, whichever is later.

**REFERENCES:**

45 C.F.R.§164.526