

# ACCESS OF INDIVIDUALS TO PROTECTED HEALTH INFORMATION

**Policy:** The University of Connecticut, in accordance with state and federal laws, will give an individual the right to access and inspect or obtain a copy of his/her protected health information (PHI) for as long as the University maintains the PHI. The Individual's health and/or billing record is the property of the University and may not be removed from the University's control except by court order. This policy will ensure the Individual's right to obtain paper or electronic copies of his/her PHI. Individuals and/or their authorized representatives have the right to request copies of their health and billing record information and may request to receive this information in either paper or electronic format. Electronic format is only available for records that are maintained electronically and will be released in a format of the Individual's choosing or a machine readable electronic format as agreed upon by the client and the University.

**Rationale:** To maintain compliance with Title 45 CFR Part 164.524, Access of Individuals to Protected Health Information.

## **I. General Procedures:**

1. The University will permit an Individual to request access to inspect or to obtain a copy of the protected health information about the Individual that is maintained in a designated record set. The University will require Individuals to make requests for access in writing to the appropriate HIPAA-Covered Component and will inform Individuals of that requirement.
2. The University will act on a request for access no later than 30 days after receipt of the request as follows:
  - a. If the University grants the request, in whole or in part, it will inform the Individual of the acceptance of the request and provide the access requested;
  - b. If the University denies the request, in whole or in part, it will provide the Individual with a written denial. If the request for access is for PHI that is not maintained or accessible to the University, the University will inform the Individual that the requested information cannot be provided.
3. PHI that may not be accessed, copied, released or inspected due to state and federal law include:
  - a. Psychotherapy notes recorded by a mental health professional, in any medium, and maintained separately from the rest of the patient's medical record. Psychotherapy notes document or analyze conversation during a private, joint, family or group counseling session. By definition psychotherapy notes do not include medication records, counseling start and stop times, treatment records, results of clinical tests, diagnoses, functional status, symptoms, prognosis and progress and notes maintained with the Individual's regular health record.

- b. Information subject to Clinical Laboratory Improvement Amendments of 1988 (CLIA). Labs that are subject to CLIA must not grant Individuals access to test results if CLIA bans them from doing so. Research labs that are exempt from CLIA may also deny Individuals access to health information.
    - c. Information compiled in reasonable anticipation of or for use in a civil, criminal or administrative action or proceeding or pending litigation. Incident reports generated when a medical error occurs are not included in the designated record set and thus requests to copy this information by the Individual or their authorized representative will be denied.
4. If the University does not maintain the PHI that is the subject of the Individual's request for access, and the University knows where the requested information is maintained, the University will inform the Individual where to direct the request for access.
5. If the University provides an Individual with access, in whole or in part, to PHI, the University will:
  - a. Provide access as requested by an Individual, including inspection or obtaining a copy, or both, of the PHI about them in designated record sets. If the same PHI that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the University need only produce the PHI once in response to the request for access.
  - b. Provide the Individual with access to the PHI in the form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the HIPAA-Covered Component and the Individual. If the PHI that is the subject of a request for access is maintained in one or more designated record sets electronically and if the Individual requests an electronic copy of such information, the HIPAA-Covered Component shall 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 the HIPAA-Covered Component and the Individual. Provide the Individual with a summary of the PHI requested, in lieu of providing access to the PHI or may provide an explanation of PHI to which access has been provided, if:
    - i. The Individual agrees in advance to such a summary or explanation; and
    - ii. The Individual agrees in advance to the fees imposed, if any, by the University for such summary or explanation.
  - c. Provide the access as requested by the Individual in a timely manner, including arranging with the Individual for a convenient time and place to

inspect or obtain a copy of the PHI, or mailing the copy of the PHI at the Individual's request.

#### Fees

6. If the Individual and/or the Individual's authorized representative requests a copy of his/her PHI or agrees to a summary or explanation of such information, the University may charge .65¢ per page for paper records that are copied for the Individual and/or authorized representative's use. For requests in electronic format, charges are based on the format agreed to between the Individual and the University and at no time shall exceed reasonable cost-based fees as defined by the HITECH Rule.

#### Unreviewable Grounds for Denial:

7. The University may deny an Individual access without providing the Individual with an opportunity for review if:
  - a. The University, acting under the direction of a correctional institution, has denied, in whole or in part, an inmate's request to obtain a copy of PHI and the University believes that obtaining the PHI would jeopardize the health, safety, security, custody, or rehabilitation of the Individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for transporting the inmate;
  - b. An Individual has agreed to the denial of access when consenting to participate in research that includes treatment and the University has informed the Individual that the right of access may be reinstated upon completion of the research;
  - c. The PHI is held in records that are subject to the Privacy Act of 1974 (5 U.S.C. § 552a ) and the denial of an Individual's access to PHI meets the requirements described in that law;
  - d. The PHI was obtained from someone other than the University under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

#### Reviewable Grounds for Denial:

8. The University may deny an Individual access, provided that the Individual is given a right to have such denials reviewed, in the following circumstances:
  - a. 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;
  - b. 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

- c. The request for access is made by the Individual's authorized representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such authorized representative is reasonably likely to cause substantial harm to the Individual or another person.
9. If access has been denied, an Individual has the right to have the denial reviewed by a licensed health care professional who is designated by the University to act as a reviewing official and who did not participate in the original decision to deny access. The University will provide or deny access in accordance with the determination of the reviewing official.
10. If the University has denied access to all or part of the PHI it maintains, the University will:
  - a. Give the Individual access to any PHI that has not been denied;
  - b. Provide a timely, written denial to the Individual. The denial must be in plain language and contain:
    - i. The basis for the denial;
    - ii. A description of how the Individual may exercise his/her right to have the denial reviewed by a licensed healthcare professional designed by the University; and
    - iii. A description of how the Individual may complain to the University's Privacy Officer in the Office of Audit, Compliance & Ethics, or to the Secretary of Department of Health and Human Services. The description must include the name, or title, and telephone number of the contact person or office designated to receive these complaints.
11. If the Individual has requested a review of a denial, the University must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The University 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. The University must promptly provide a written notice to the Individual of the determination of the designated reviewing official and take other action as required.
12. The University must document and retain the following for a minimum of six (6) years:
  - a. The designated record sets that are subject to access by Individuals; and
  - b. The titles of the people at the University who are responsible for receiving and processing requests for access by Individuals.