

LAC+USC MEDICAL CENTER POLICY

Subject: PROTECTED HEALTH INFORMATION: ACCESS OF INDIVIDUALS TO		Original Issue Date: 4/14/03	Policy # 400.5
		Supersedes: 8/13/13	Effective Date: 1/10/17
Departments Consulted: Health Information Management	Reviewed & Approved by: Privacy Council Attending Staff Association Executive Committee Senior Executive Council	Approved by: Chief Medical Officer	
		Chief Executive Officer	

PURPOSE

To establish a uniform policy for responding to an individual's right to access protected health information contained within his or her health/medical record/designated record set.

POLICY

Individuals shall be granted the right to access, inspect, and obtain copies of their protected health information (PHI) that is contained in a designated record set except PHI that has been compiled for use in a civil, criminal, or administrative proceeding or disclosure is prohibited by the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

A minor legally authorized by law to consent to treatment and an individual's personal representative have the right to request access to his or her PHI.

DEFINITIONS

Protected Health Information (PHI)

Individually identifiable information relating to past, present, or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present, or future payment for health care provided to an individual.

Designated Record Set

A group of records that contain PHI and are maintained, collected, used or disclosed by or for the Medical Center, and that are either medical records or billing records about an individual; or used, in whole or in part, by or for the Medical Center to make decisions about an individual. The composition of the designated record set is defined in DHS Policy No. 361.14, "Designated Record Set."

Business Associate (BA)

A person or entity who, on behalf of the Medical Center, but not in the capacity of a workforce member, performs or assists in the performance of a function or activity involving the use or disclosure of PHI, or provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services involving disclosure of PHI.

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Access

Inspect, copy or arrange to copy PHI maintained by the Medical Center or Medical Center business associate in a designated record set.

Minor

Under California law, a person under the age of 18 years.

Emancipated**Minor**

Under California law, considered an adult for the purpose of consenting to medical care if any of the criteria in the following categories are met:

1) Emancipated by court order, 2) Minors on active duty with U.S. Armed Forces regardless of age, 3) Married or formerly married.

Self-Sufficient**Minor**

Under California law, a minor 15 years of age or older who is living separately and apart from his or her parents or legal guardian; and manages his or her own financial affairs, regardless of the source of income.

Personal**Representative**

(1) the guardian or conservator of an adult; (2) a parent or guardian of a Minor; or (3) the executor or administrator of the estate of a deceased individual. Refer to DHS Policy No. 361.17, "Use and Disclosure of Protected Health Information (PHI) of Deceased Individuals, Minors to Personal Representatives."

PROCEDURE**Processing a Request for Access to Protected Health Information**

- A. Access for inspection or copying of information requires a written request from the individual using the *Request for Access to Protected Health Information* form (Attachment A). If the individual requests to access, inspect, and/or to obtain copies of his or her PHI contained within the designated record set held at another Department of Health Services (DHS) facility, the facility receiving the request will process the request.
- B. If Health Information Management (HIM) grants the request for access, in whole or in part, it must inform the individual of the acceptance of the request, and provide the access requested using the *Letter Responding to Request for Access to Protected Health Information* (Attachment B).
- C. HIM shall arrange with the individual for a convenient time and place to inspect or obtain a copy of the individual's PHI. The inspection must take place during business hours. If requested, HIM may alternatively provide a copy through the mail or fax.
- D. The individual is allowed to have one other person accompany him or her during the inspection of the PHI.
- E. If the PHI is maintained at more than one location, HIM need only produce the PHI once in response to a request for access.

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- F. HIM shall respond to written requests for inspection of PHI within five (5) days after receipt of the request. Requested copies shall be provided at time of inspection or mailed within 15 days after receipt of the request. Within these designated time periods, HIM will either make the information available, inform the individual that the information does not exist, or deny the request in whole or in part.
- G. HIM may provide a written summary of the PHI requested or an explanation of the PHI to which access has been provided if the individual agrees in advance. A reasonable fee may be charged for preparing the summary or written explanation.
- The Medical Center may charge a reasonable fee for copies of an individual's PHI at a charge of 25 cents per page for paper.
 - The cost of retrieval or handling the PHI cannot be part of the fee charged.
 - If the person needs copies for an appeal regarding eligibility for public benefits, HIM shall waive the fees pending the outcome of the hearing. If the individual's appeal is successful, the Medical Center may bill the patient. However, the fees may not be waived if the patient is represented by an attorney.
- H. Upon receipt of the request for access, HIM shall establish the identity and the authority of the individual making the request in accordance with the policy and procedures outlined in DHS Policy No. 361.16, "*Verification of Identity and Authority of Individuals Requesting Protected Health Information.*"

Unreviewable Grounds for Denial

- A. An individual may be denied access without opportunity for review in the following circumstances:
1. PHI compiled for use in a civil, criminal, or administrative proceeding;
 2. PHI maintained by LAC+USC Medical Center's clinical laboratories which are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to the extent that the provision of access directly to the patient is prohibited by law; and
 3. PHI maintained by LAC+USC Medical Center's clinical laboratories that are exempt from CLIA.
- B. When acting under the direction of a correctional institution, HIM may deny an inmate's request to obtain a copy of PHI without providing an opportunity for review when the access would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates; the safety of any officer, employee, or person at the correctional institution; or the safety of a person responsible for transporting the inmate.

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- C. When an active research project includes treatment, HIM may temporarily deny access to PHI without providing an opportunity for review provided that:
1. The individual agreed to the denial when the individual agreed to participate in the research; and
 2. The health care provider has informed the individual that access to the information would be available at the completion of the research.
- D. HIM may deny an individual access to requested PHI without providing an opportunity for review if that PHI was provided by someone other than the health care provider under a promise of confidentiality, the confidentiality is reasonable, and the access would likely reveal the source of the information.
- E. Access to the PHI is otherwise prohibited by law.

Reviewable Grounds for Denial

The Medical Center must provide the individual an opportunity for review of a determination to deny access if an individual's access is denied for any of the following reasons:

- A. When a licensed health care professional, exercising professional judgment, determines 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 (not including the health care provider) and a licensed health care professional, exercising professional judgment, determines that the access requested is reasonably likely to cause substantial harm to the person referenced; or
- C. The request for access is made by the individual's personal representative and a licensed health care provider, exercising professional judgment, determines that providing access to the personal representative is reasonably likely to cause substantial harm to the individual or another person.

Denial of Access

If the Medical Center denies access in whole or in part, HIM must:

- A. To the extent possible, provide the individual access to any other PHI requested in the designated record set after excluding PHI for which HIM has a ground to deny access.
- B. Provide a written denial to the individual within fifteen (15) working days of the determination using the *Letter Responding to Request for Access to Protected Health Information* that includes the following information:

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- The basis for the denial;
 - A statement of the individual's review rights including a description of how the individual may exercise such rights;
 - A description of how the individual may file a complaint with the Medical Center, DHS, or with the U.S. Secretary of Health and Human Services;
 - The names or titles of the contact person/office; and
 - The telephone number of the contact person/office.
- C. If the Medical Center does not maintain the requested PHI but knows where the requested PHI is maintained, then HIM will inform the individual where to direct the request for access.

Denial of Access – Individual's Right to Request Review of Denial

- A. When an individual is denied access, the Medical Center is required to give the individual the right to have the denial reviewed where the grounds for denial are subject to review. The individual may request a review of the denial using the *Request for Review of Denial of Access to Protected Health Information* form (Attachment C).
- B. The denial must be reviewed by a licensed health care provider designated by the Medical Center to act as a reviewing official. The reviewing official must not have participated in the earlier decision to deny access.
- C. The reviewing official must act on the request for review within a reasonable period of time and decide whether or not to deny access to the records requested based on the standards set forth in this policy. The reviewing official's decision must promptly be communicated to the individual in writing using the Final Letter of Response to Request *for Review of Denial of Access to Protected Health Information* form (Attachment D). The Medical Center will abide by the final determination made by the reviewing official.

Documentation Requirements for Access of Information

All documents required to be created or completed under this policy shall be retained for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

HIM shall document and retain the following documentation in electronic or written format in accordance with the Medical Center's record retention policies and procedures (which meet or exceed the HIPAA record retention requirements):

- The Designated Record Sets that are subject to access by individuals; and
- The titles of the persons or offices responsible for receiving and processing requests for access by individuals.

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REFERENCES

45 Code of Federal Regulations: Parts 160 and 164; Section 164.524.
California Health & Safety Code §§ 123100 *et seq.*
California Family Code § 6500, 6922, 7002 (a)(b)(c), 7120.
DHS Policy No. 361.15, "Access of Individuals to Protected Health Information"
DHS Policy No. 361.16, "Verification of Identity and Authority of Individuals Requesting Protected Health Information"

ATTACHMENTS

Attachment A: DHS "Request For Access To Protected Health Information" form
Attachment B: DHS Sample Letter, "Letter Responding To Request For Access To Protected Health Information"
Attachment C: DHS "Request For Review Of Denial Of Access To Protected Health Information"
Attachment D: DHS Sample Letter, "Final Letter Of Response For Review Of Denial Of Access To Protected Health Information"

REVISION DATES

March 01, 2007; September 25, 2008; August 13, 2013; January 10, 2017