

# UNIVERSITY PHYSICIANS OF BROOKLYN

## UNIVERSITY HOSPITAL OF BROOKLYN POLICY AND PROCEDURE

No. HIPAA-17

Subject: PATIENT REQUESTS FOR ACCESS

Page 1 of 8

Prepared by: Shoshana Milstein

Original Issue Date \_\_\_\_\_

Reviewed by: Renee Poncet  
Sonia Davidson

Supersedes: \_\_\_\_\_

Effective Date: 4/17

Approved by: William P. Urban, MD

The JC Standards:

Issued by: Regulatory Affairs

### I. PURPOSE

To establish a policy and procedure for granting access to a patient to review health information maintained in the designated record set to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

### II. POLICY

University physicians of Brooklyn will ensure that patient requests for review of their health information are reviewed in a timely manner and access is granted appropriately as required by State and Federal law, professional ethics and accreditation agencies.

### III. DEFINITION(s)

**Designated Record Set-** A group of records maintained by or for a covered entity which include:

1. The medical and billing records about a patient maintained by or for a covered healthcare provider; or
2. Records used, in whole or in part, by or for the covered entity to make decisions about the patient.

Electronic designated record sets include electronic links to images or other data.

#### **IV. RESPONSIBILITIES**

It is the responsibility of all HIM, Radiology, Student Health, Patient Relations, Social Services, Risk Management, medical staff, Medical Records Committee members and other hospital staff members, as appropriate, to comply with this policy. Medical staff members include physicians as well as allied health professionals.

#### **V. PROCEDURE/GUIDELINES**

**A. Right to Information-** Patients have a right to access their health information:

1. Maintained in the designated record set;
2. For as long as the information is contained in the designated record set;
3. As long as the request is made in writing. Refer to Patient Request for Access to Health Information form attached to this policy. All requests for access to information should be referred to the Health Information Management Department (HIM). HIM staff will refer the request to the Radiology Department, Student Health or other department for records not maintained in HIM.
4. Appropriate staff must then contact the attending physician, in addition to Risk Management, to determine whether the request should be granted or denied.

**B. Response Time-** Appropriate staff should respond to patient requests for access in an expeditious fashion and at the very latest, in accordance with the following guidelines. To ensure that these deadlines are met, appropriate staff should complete the information on the back of the Patient Request to Access Health Information form:

1. Inspection of Records- Response within ten (10) days from the date the request was received by the HIM Department.
2. Copies of Records- Response within thirty (30) days of request.
  - a. A one- time extension of thirty (30) days may be granted if the department is experiencing unusual difficulties responding within the timeframes above. However, under no circumstances may a response be given later than sixty (60) days from the date of the patient's request.
  - b. If an extension is needed, the Department must notify the patient within the original thirty (30) day timeframe to explain the reason for the delay and the date when the hospital expects to answer the patient's request. See Extension Notification form attached to this policy.
  - c. If the patient requests a copy of information that is maintained partly on-site and partly off-site, appropriate staff must respond within the timeframe above. The patient's request to copy on-site records should not be delayed while the hospital processes the request for off-site records.

**C. Granting Access**

1. Requests for Inspection of Records- The appropriate department must arrange an appointment with the patient to review his or her records during regular business hours. Copies cannot be provided in lieu of inspection unless the patient agrees or a ground for denial (See Section IV.D.) justifies providing copies instead of inspection.

- a. Proper Identification- The patient must present proper identification or, to staff before being permitted to inspect his or her information (An employee ID card, driver's license or insurance card will suffice). Personal representatives must provide proof of their authority to access the records.
  - b. Patient's Review- Appropriate staff should inquire as to whether the patient wishes to have the attending physician or nursing staff member assist in the review. A patient cannot be penalized or denied access for refusing.
    - i. A staff member should be present in the room at all times to ensure that the integrity of the records is maintained. Care should be taken to ensure that the patient is afforded appropriate privacy when reviewing the content of his or her records.
    - ii. The patient's review should take place only where the patient will not be able to view information or records concerning other patients.
    - iii. If the patient wishes to be completely alone, the patient must request copies of the record.
    - iv. Any questions regarding the content of the medical record must be referred to the attending physician.
2. Requests for Copies of Records
- a. Format of copies- Whenever possible, copies of records should be provided in the format requested by the patient.
    - i. If the information cannot be easily produced in the specified format, appropriate staff can either provide the patient with a hard paper copy of the information or attempt to work out an alternative format acceptable to the patient. However, if the protected health information requested is maintained electronically, access should be provided in the electronic format requested by the patient if it is reasonably producible, or, if not, in a readable electronic form and format as agreed to in consultation with the patient.
    - ii. Original mammogram films should be provided to the patient when requested.
    - iii. Copies should be delivered in the method specified on the patient's request form. The patient may pick up the copies or request that they be delivered by mail or electronically. In providing an individual with electronic or hard copies of their protected health information-through web-based portal, email, on portable electronic media or by other means - reasonable safeguards must be put in place to protect the information from unauthorized disclosure in transit. Any foreseeable risk based upon the method of delivery requested by the patient should be explained to the patient and his/ her informed consent documented.
  - b. Summaries or Explanations- The following additional items should be provided if the patient requests the items or agrees to our request to provide the items:
    - i. A summary of the requested information instead of, or in addition to, providing access to inspect or copy the information;
    - ii. An explanation of the PHI contained in the requested records. This explanation should be given to the patient when s/he inspects the records when the copies of the records are provided to the patient. If the patient's request to access information is denied, appropriate staff must provide the patient with a summary of the information that the

patient is not permitted to access. All summaries and explanations must be added to the patient's medical record.

3. Access to Third Parties- Patients may request that their protected health information be sent directly to a third party.
  - a. Requests must be made in writing and signed by the patient.
  - b. Requests should clearly identify the third party, the format in which the information is to be sent, the method/manner of delivery and where the information should be sent.
  - c. The same 30 day response time applies as well as any applicable fees described in sections V.B and V.C.5., respectively.
4. Duplicate Information- If the same PHI is maintained in more than one designated record set, appropriate staff must only produce the PHI once, in response to the patient's request. Access need not be provided to records that merely duplicate identical information, unless the second record provides any additional information.
5. Collection of Fees- There is a charge for copies, mammograms, supplies, mailing and preparation of summaries and explanations. The Patient Request for Access to Health Information form notifies the patient of these fees. An estimated cost will be provided to the patient for approval before proceeding with preparing the request. See Fee Estimate form attached to this policy. However, the patient will not be denied access due to genuine inability to pay costs. An indigent patient will be referred to Patient Relations who, in conjunction with Social Services, will make a determination and inform the appropriate department.
  - a. Copies- There will be a charge for each page photocopied. Fees are as follows:
    - i. \$0.75/ per page for patients and personal representatives
    - ii. \$1.00/ per page for attorneys or insurers
  - b. Electronic Media- The cost of supplies for creating the physical media such as compact disc (CD) or USB/ flash drive, if requested by the patient, should be included in the fee estimate. In addition, a reasonable, cost- based fee related to the labor of any skilled technical staff required to produce a patient's electronic copy may be imposed.
  - c. Mammograms- There will be a charge for recovering the costs of furnishing an original mammogram. No fee will be charged for making a copy of the mammogram for the hospital's future use.
  - d. Summaries and Explanations- The charge will depend on the number of hours required to prepare the summary or explanation.
  - e. Supplies and Mailing- There will be a charge for recovering the cost of any postage paid by the hospital when mailing materials to the patient.
  - f. Neither standard retrieval fees or fees based upon actual retrieval costs may be charged to the patient.

#### **D. Denying Access**

1. Reasons for Denial- A patient's request to access his/her information may be denied under the following circumstances:
  - a. The request is not in writing, in original form;
  - b. The information requested is not contained in a designated record set maintained by University Physicians of Brooklyn or any of its business associates;

- c. The information was obtained from someone other than a healthcare provider and :
    - i. University Physicians of Brooklyn agreed to keep the identity of that person confidential;
    - ii. It is determined that providing the patient with access to the information requested would reveal the identity of that person.
  - d. An authorized officer from a correctional institution certifies that granting an inmate's request to **copy** his/her information would:
    - i. Jeopardize the health, safety, security, custody or rehabilitation of that inmate or other inmates;
    - ii. Jeopardize the safety of any other person at the correctional institution, including those supervising or transporting inmates. However, the inmate's request to **inspect** his/her information cannot be denied under these grounds.
  - e. A licensed healthcare professional determines that granting the patient's request is reasonably likely to endanger the life or physical safety of the patient or another person. The request cannot be denied because the information is sensitive or has the potential to cause emotional or psychological harm to the patient or another person.
  - f. The information requested refers to another person and a licensed healthcare professional has determined that granting the patient access to this information is reasonably likely to cause substantial physical, emotional or psychological harm to that other person (Ex: Group therapy notes). However, access cannot be denied if the person who may be harmed is a healthcare provider.
2. Summaries- If the patient's request for direct access to his or her information is denied for one of the reasons above, appropriate staff must provide the patient with a summary of the information in lieu of direct access.
  3. Partial Denial- If only a part of the PHI requested is denied, appropriate staff must provide the patient with the rest of the information after excluding the parts that cannot be inspected or copied. A summary of the excluded parts should be provided to the patient.
  4. Notice of Denial- Appropriate staff must notify the patient of a denial within the specified timeframe. See Notice of Denial Letter attached to this policy.
    - a. Appropriate staff must indicate the grounds for the denial;
    - b. If the request is denied because the information is not maintained in the designated record set, appropriate staff must state any known information about where the patient may obtain access to the requested records.
    - c. If the requested information is only partially denied, appropriate staff must explain in the Denial Letter what information the patient will and will not be able to access.
      - i. If the patient requested to inspect the records, the letter should include instructions about how the patient may schedule an appointment to inspect the permitted information.
      - ii. If the patient requested copies of the records, appropriate staff should include the copies of the permitted information together with the partial denial letter.

5. Review Process- If access is denied, the patient may appeal the decision by seeking review according to the following procedures:
  - a. First Level of Review- The Medical Records Committee should be called into executive session to review the denial of access. The attending physician must attend the Medical Records Committee session.
    - i. A response should be given to the HIM Director within 10 business days.
    - ii. HIM staff must notify the patient of the results of the review. See Notice of Denial Review Letter attached to this policy.
    - iii. If, as a result of the review, access is permitted, Section IV.C. should be followed.
    - iv. If, as a result of the review, access is denied, the patient should be provided, together with the Notice of Denial Review letter, the New York State Department of Health form for appealing the decision.
  - b. Second Level of Review- If access is denied after the first level of review, the patient is entitled to seek a second level of review by a committee appointed by New York.
    - i. A coordinator from the State, known as an API coordinator, will contact the HIM department and the appropriate state review committee.
    - ii. HIM staff must send the patient's information that is in dispute, together with the denial notice and any further explanation, to the API coordinator within 10 days after receiving notification from the API coordinator.
    - iii. If the state review committee decides that access should be granted, Section IV.C. should be followed.
    - iv. If the state review committee decides that access should be denied, the committee will inform the patient of any opportunity to seek judicial review in the court system.
  - c. Third Level of Review- In some cases, the patient may be entitled to seek a third level of review by appealing the decision to the court system for judicial view.
    - i. HIM staff must inform the Risk Manager upon receiving notification that a patient has sought judicial review.
    - ii. The Risk Manager will provide further instruction to HIM staff.

**E. Access by Personal Representatives-** The same procedures for granting or denying access to patients should apply to personal representatives. Additional documentation must be provided and attached to the written request in order to grant access to the following personal representatives:

1. Distributee of a deceased subject for whom no personal representative exists must provide a:
  - a. Certified copy of the patient's death certificate; and
  - b. Notarized affidavit containing the following or substantially similar attestations:
    - i. "I am a distributee of the named decedent's estate as the term 'distributee' is used in §18 of the New York Public Health Law and defined by §1-2.5 of the New York Estates, Powers and Trusts Law" and

- ii. “No ‘personal representative’, as that term is defined by §1-2.13 of the New York Estates, Powers and Trusts Law, has been appointed for the deceased subject names herein.”
2. Attorney who holds a power of attorney from a qualified person or the patient’s estate must provide a copy of the power of attorney that explicitly authorizes the attorney to request access to patient information. Access to PHI must be subject to the duration and terms of the power of attorney.

**F. Denial of Access by Personal Representatives-** Access should be denied in the following circumstances:

1. Patient Would Otherwise Be Denied Access- If the patient would normally be denied access under Section IV.D., the personal representative should not receive access, unless the attending physician certifies that:
  - a. The patient lacks the capacity to make healthcare decisions on his/her own; and
  - b. The personal representative must be given access to the patient’s information in order to make healthcare decisions on behalf of the patient.
2. Patient Objects- Appropriate staff, in conjunction with the attending physician, should notify any patient over the age of twelve years when a personal representative requests access to sensitive information related to:
  - a. HIV information
  - b. Mental health information
  - c. Developmental disability information
  - d. Alcohol and drug abuse information
  - e. Sexually transmitted disease (STD) information
  - f. Pregnancy results
  - g. Genetic screening If the patient objects to the personal representative’s access, appropriate staff must notify the personal representative of the denial.
3. Harm to Patient- The personal representative may be denied access if a licensed healthcare provider determines that granting such access is reasonably likely to cause substantial harm to the patient or another person. Appropriate staff must notify the personal representative of the denial.
4. Detrimental Effect From Access by Parent or Guardian- A parent or guardian of a minor may be denied access to the minor’s PHI if the attending physician certifies that such access would have a detrimental effect on:
  - a. The physician’s or UPB’s professional relationship with the minor;
  - b. The care or treatment of the minor; or
  - c. The minor’s relationship with his/her parents or guardian. Appropriate staff must notify the personal representative of the denial.

**G. Documentation-** The appropriate department must retain the following documentation in connection with any request for access for six years from the date of creation:

1. The request for access (Patient Request for Access to Health Information form);

2. Copies of any notices explaining that the hospital requires an extension of time to arrange for the access requested (Extension Notification form);
3. Copies of any notices advising of fees that may be charged for providing the requested information (Fee Estimate form);
4. Copies of any notices of denial sent to the patient (Notice of Denial Letter);
5. Copies of any notices of denial review results sent to the patient (Notice of Denial Review Letter).

**II. Attachments-** Patient Requests for Access to Health Information, Extension Notification, Fee Estimate, Notice of Denial Letter, Notice of Denial Review Letter

**III. References-** Standards for Privacy of Individually Identifiable Health Information, 45 CFR §164.524, NY Public Health Law §18

	Revision	Required	Responsible Staff Name and Title
	Yes	No	Adeola O. Dabiri, Director of Regulatory Affairs





## FEES

**Copying, Supplies, Mammogram and Distribution Costs:** We will charge you a reasonable fee to recover the costs of copying, mailing and supplies used to fulfill your request. Our standard fee for copying is \$0.75 per page. Original mammograms generally cost about \$ \_\_\_\_\_. We will not contact you before this information is prepared.

**Electronic Requests, Summaries or Explanations:** We will also charge a fee to recover the costs of providing any summary or explanation you have requested. Copies that require electronic media (CDs/USB drives) may include fees for the media as well as fees for any technical labor needed to assess and create your electronic copy. We will contact you with an estimate of the fee before we prepare these items. You can then decide whether you want to continue with the request, modify the request to reduce the fee or withdraw your request and pay no fee.

*By signing below, I certify that I am requesting access to my health information in the manner described above. I understand that I will be only be contacted for fees for any summary or explanation.*

\_\_\_\_\_  
Print Name of Patient/ Personal Representative

\_\_\_\_\_  
Signature of Patient/ Personal Representative

\_\_\_\_\_  
Description of Personal Representative's Authority

\_\_\_\_\_  
Date

**FOR UPB USE ONLY-** To be completed by appropriate staff member:

Date Request Received: (MM/DD/YY) \_\_\_\_/\_\_\_\_/\_\_\_\_

Disposition of Request:

☐ Granted

☐ Denied

☐ Partially Denied

Date Patient Notified of Response: (MM/DD/YY) \_\_\_\_/\_\_\_\_/\_\_\_\_

If request has been partially denied, what information is the patient permitted to access?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Patient Inspection: (MM/DD/YY) \_\_\_\_/\_\_\_\_/\_\_\_\_ ☐ Not applicable

Date Copies Provided: (MM/DD/YY) \_\_\_\_/\_\_\_\_/\_\_\_\_ ☐ Not applicable

Fee for Copies: \$ \_\_\_\_\_ ☐ Not applicable

Fee for Electronic Access/Summary/ Explanation: \$ \_\_\_\_\_ ☐ Not applicable

\_\_\_\_\_  
Name of UPB Staff Member

\_\_\_\_\_  
Date

REMINDER: APPEND COPIES OF SUMMARY/ EXPLANATION TO PATIENT'S MEDICAL  
**RECORD.**



## **EXTENSION NOTIFICATION**

[Date]

[Patient Name]

[Street Address 1]

[Street Address 2]

[City, State Zip Code]

Re: Request For A Copy Of Health Information

Dear [Patient Name]:

This letter responds to your request for a copy of your health information, which we received from you on \_\_\_\_\_.

We have been working hard to determine whether we can grant your request. We are usually able to process requests for copies within thirty (30) days. However, for the following reason(s), we need an additional 30 days to respond to your request for copies of these records:

- ☐ We are still working to access the information you requested.
- ☐ We are still working to prepare the information you requested.
- ☐ We are still working to determine whether all or part of your request may be granted.

We expect to have a final answer for you no later than \_\_\_\_\_. If additional time is required, we will notify you again.

Please contact

University Physicians of Brooklyn at (718) 270-8105 if you have questions or concerns about this delay.

Sincerely,

\_\_\_\_\_ Department



### **FEE ESTIMATE**

[Date]

[Patient Name]

[Street Address 1]

[Street Address 2]

[City, State Zip Code]

Re: Request For Access to Health Information

Dear [Patient Name]:

This letter responds to your request to access your health information, which we received from you on \_\_\_\_\_.

We have determined that the following fees will apply if we process your request:

- ☐ A fee of \$ \_\_\_\_\_ per hour will be charged to prepare a summary of the information for you. We estimate that the preparation will take \_\_\_\_ hour(s).
- ☐ A fee of \$ \_\_\_\_\_ will be charged to prepare an explanation of the information for you. We estimate that the preparation will take \_\_\_\_ hour(s).
- ☐ A fee of \$ \_\_\_\_\_ per hour will be charged to prepare an electronic copy of the information for you. We estimate that the preparation will take \_\_\_\_ hour(s).

We want you to know that you have the following options. Please check the appropriate box and return within thirty (30) days to

University Physicians of Brooklyn

\_\_\_\_\_Department- Box #80

450 Clarkson Ave., Brooklyn, NY 11203.

- ☐ Proceed with my request. I have enclosed the fee provided in this letter.
- ☐ Withdraw my request. I will pay no fee.
- ☐ Modify my request to reduce the applicable fee. Specify modification of request:

\_\_\_\_\_  
\_\_\_\_\_

If we do not hear from you within thirty (30) days, we will assume that you have decided to withdraw your request.

\_\_\_\_\_ Department



### **NOTICE OF DENIAL LETTER**

[Date]

[Patient Name]

[Street Address 1]

[Street Address 2]

[City, State Zip Code]

Re: Denial of Request To Access Health Information

Dear [Patient Name]:

This letter responds to your request to access your health information, which we received from you on \_\_\_\_\_. For the reasons stated below, we are denying your request for access to all or part of this information:

- ☐ The request was not in writing.
- ☐ The information requested is not available in records we use to make decisions about your treatment or benefits. However, this information may be available in records maintained by \_\_\_\_\_ at the following telephone number \_\_\_\_\_.
- ☐ We have obligations to other parties to keep the information you requested confidential. Our staff has determined that granting your request would violate our confidentiality obligations.
- ☐ An authorized officer from a correctional institution has certified that granting your request to copy your information would jeopardize the health, safety, security, custody or rehabilitation of you or another person.
- ☐ We believe that granting your request is reasonably likely to endanger a person's life or physical safety.
- ☐ The information you have requested refers to another person (who is not a health care provider) and we believe that granting your request is reasonably likely to cause substantial harm to that other person.
- ☐ You are the patient's personal representative, and we believe that granting your request is reasonably likely to cause substantial harm to the patient or a third person.
- ☐ The form/format in which you requested the information is not readily producible. Please contact us to identify an alternatively acceptable form/ format for the information.

This denial applies to ☐ ALL or ☐ PART of the information you requested. We will provide you with a summary of any information we cannot permit you to access. If we are denying only part of your request, you will be given complete access to the remaining information after we have excluded the parts which we cannot permit you to access.

You have the right to have this decision reviewed by licensed health care professionals not directly involved in our initial decision to deny your request. If you want to exercise this right, please check the box at the bottom of this form, sign and return to:

University Physicians of Brooklyn  
Department of Health Information Management- Box # 80  
450 Clarkson Ave.  
Brooklyn, NY 11203

We will comply with the health care professionals' decision. If the health care professionals agree with our decision, you will have the opportunity to seek further review by a special committee appointed by the State of New York.

If you believe that we have improperly handled your request to access your protected health information, you may file a complaint with us or with the Secretary of the United States Department of Health and Human Services. To file a complaint with us, please contact the Department of Patient Relations at (718) 270-8105. *No one will retaliate or take action against you for filing a complaint.*

☐ I would like to have your denial reviewed by licensed healthcare professionals, as stated above.

---

Signature of Patient or Personal Representative

---

Date



### **NOTICE OF DENIAL REVIEW LETTER**

[Date]

[Patient Name]

[Street Address 1]

[Street Address 2]

[City, State Zip Code]

Re: Denial of Request To Access Health Information- Results of Review

Dear [Patient Name]:

This letter notifies you of the results of the review provided by licensed health care professionals who were not directly involved in our initial decision to deny your request to access your protected health information. The health care professionals who reviewed your request have reached the following conclusion.

- ☐ Your request was properly denied for the reason provided in the hospital's initial notice.
- ☐ Your request was improperly denied for the reason provided in the hospital's initial notice, but is properly denied for another reason, which is \_\_\_\_\_.
- ☐ Your request was properly denied with respect to part of the information. The request was not properly denied for another part of the information. Please contact the Correspondence Unit at (718) 270-8105 to set up an appointment to inspect the information which you are entitled to access. If you have requested copies, we will provide them in the manner requested on your initial request form after we have removed the information that we cannot permit you to access.
- ☐ Your request was improperly denied. Please contact the Correspondence Unit at (718) 270-8105 to set up an appointment to inspect the information. If you have requested copies, we will provide them in the manner requested on your initial request form.

You have the right to have this decision reviewed by a committee appointed by the State of New York. If you want to exercise this right, please complete the form included with this letter and send it to the address provided on the form.

If you believe that we have improperly handled your request to access your protected health information, you may file a complaint with us or with the Secretary of the United States Department of Health and Human Services. To file a complaint with us, please contact the Department of Patient Relations at (718) 270-8105. *No one will retaliate or take action against you for filing a complaint.*