

PURPOSE

To protect the privacy rights of individuals receiving benefits from one or more of the Michigan Department of Health and Human Services' (MDHHS) health programs or covered components. An individual will be provided access to medical information created and maintained by the MDHHS in a designated record set and provide copies upon request for a reasonable fee.

REVISION HISTORY

Issued: April 14, 2003. Revised: August 28, 2013. Revised: October 1, 2014. This Policy and Procedure rescinds and replaces previous versions.

DEFINITIONS

Individual: means a client as defined in 06.8 Health Insurance Portability and Accountability Act (HIPAA) Policies and Procedure Definition Glossary and any individual whose information is maintained by a MDHHS covered component in a designated record set.

Refer to 06.8 HIPAA Policies and Procedures Definition Glossary.

POLICY

It is the policy of the MDHHS that an individual receiving benefits from a MDHHS health program or covered component (or a legally authorized representative) may inspect and obtain a copy of the individual's own PHI, except:

- a. For psychotherapy notes.
- b. For information compiled in reasonable anticipation of use in a civil, criminal, or administrative action or proceeding.
- c. For inmate information, when MDHHS is acting under the direction of a correctional institution, may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security custody or rehabilitation of the patient or the other inmates, or the safety of any officer, employee, or other person at the correctional institution or who is responsible for the transporting of the inmate.

- d. For research. The MDHHS may temporarily suspend a patient's access to protected health information 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.
- e. For records that are subject to the Privacy Act, 5 U.S.C. §552a, if the denial of access would meet the requirements that Act.
- f. For protected health information obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
- g. When a licensed health care professional has determined, using their professional judgment that access to the PHI is reasonably likely to endanger the life or physical safety of the individual or another person.
- h. 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.
- i. 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.

Denials of access must be reviewed for the reasons indicated in g, h, and i above. Reasonable fees charged for copies; see procedures for specific billing information.

PROCEDURE Approvals

Right to Access PHI in the Designated Record Set

MDHHS Personnel may take the following actions:

1. Individuals must make their requests for access in writing. The form MDHHS-1226 is available for this purpose. Any MDHHS employee who receives a request for access can provide the individual with the form MDHHS-1226. Individuals making their request for access by telephone or email can be forwarded a copy of the form.
2. MDHHS-1226 or a request for access that is received by MDHHS should be forwarded to the privacy office for processing. Verification of the requester's identity must be obtained prior to granting access. See MDHHS policy and procedure 06.8.D.12 and 06.8.D.12.2 for guidance on verification.
3. The request form or letter must be maintained in the privacy office for a minimum of six years.

MDHHS personnel, privacy office, or hospital or center privacy officer may take the following actions (see 7. below):

1. When an individual submits a written request for access, but has not used MDHHS-1226, the privacy office will accept and process the written request as long as it contains the information requested on the form:
 - a. Name of facility or MDHHS program that maintains the individual's records.
 - b. Individual's name.
 - c. ID number.
 - d. Date of birth.
 - e. Address.
 - f. Phone number.
 - g. Identification of the records requested for access (type and amount - including dates where appropriate).
 - h. The letter must also be signed and dated.
2. If the request is insufficient, MDHHS will request supplemental information needed to respond to the request, or provide the individual with MDHHS-1226 for the individual to complete and submit.

Privacy office, or Hospital or Center privacy officer (see 7. below) may take the following actions:

1. An individual's request for access to PHI must be acted upon as soon as reasonably possible, but in not more than thirty days after receiving the request.
2. A requestor will be charged a reasonable cost based fee, provided that the fee includes only the cost of:
 - a. Copying, including the cost of supplies for and labor of copying the protected health information requested by the individual.
 - b. Postage, when the individual has requested the copy, or the summary or explanation, be mailed.
 - c. Preparing an explanation or summary of the PHI if agreed to by the individual.

Copies will be made at .25 per page (one or two sided). If the total cost to provide the information is \$25.00 or greater, the individual will make payment as requested before the documents will be provided.

3. MDHHS must provide the individual with access to their PHI in the form and format requested, if it is readily producible in such form and format. If not, MDHHS must provide the individual a readable hard copy form or other such form and format as agreed to by MDHHS and the individual requesting access.
4. If requested by the individual, MDHHS must transmit a copy of the PHI requested directly to another person who has been designated by the individual. Such a request must be made in writing and signed by the individual and clearly identify the person who is to receive the individual's PHI and where to send the individual's PHI. Verification of the third party designated to receive the requester's PHI must be obtained prior to granting access. See MDHHS Policy 06.8.D.12 and Procedure 06.8.D.12.2 for guidance on verification.
5. If MDHHS does not maintain the PHI that is the subject of the individual's request for access but MDHHS knows where the requested information is maintained, the department must inform the individual where to direct the request for access.

6. All activity in response to requests for access will be recorded on the applicable computer based tracking system.
7. The following individuals are responsible for receiving and processing requests for access by the individual. The privacy office must maintain a record of the designations for a minimum of six years.
 - For open state psychiatric hospitals or centers – Hospital or Center privacy officer.
 - For closed state psychiatric hospitals or centers – privacy office.
 - For all other areas – privacy office.
8. Any questions regarding an individual's right of access should be forwarded to the privacy office.

Denial

Denial of Right to Access

Privacy office, or Hospital or Center privacy officer (see 7. above) may take the following actions:

1. If an individual's request for access is denied, the individual must be provided with a written denial. The denial must contain:
 - a. An explanation of the basis for the denial,
 - b. If applicable, a statement of the individual's review rights, including a description of how the individual may exercise such review rights, and
 - c. A description, including the name, or title, and telephone number of a contact person, of how the individual may complain to MDHHS or to the Secretary.
2. The denial form must be maintained in the privacy office for a minimum of six years.

Review**Review of Denied Access**

A privacy office, or hospital or center privacy officer (see 7. above) may take the following actions:

1. An individual whose request for access has been denied, is entitled to have the denial reviewed in certain circumstances in accordance with HIPAA. A request for review of denied access can be made using the form MDHHS-1227.
2. MDHHS employees are required to promptly forward requests for review to the privacy office. The denial is required to be reviewed within a reasonable period of time, but no later than 30 days after receiving the request for review.

The review of denied access will be conducted by the department's director or, if the director is not a licensed health care professional, by the department's chief medical executive. The reviewer must not have participated in the original decision to deny access. The individual making the request for review should be notified promptly, in writing, of the reviewer's decision.

**When other applicable privacy or confidentiality laws conflict with HIPAA, comply with the law that provides the individual with greater privacy protection or rights. (Examples of state and federal laws are. Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, Mental Health Code). When in doubt, contact the Bureau of Legal Affairs.*

REFERENCES

45 CFR §164.524, §164.530(j), MDHHS-1226 Access to Records Request, MDHHS-1227 Request for Review of Denial of Access to Protected Health Information, APL-680, HIPAA Policies and Procedures Definition Glossary, APL-68D-120 Verification Policy, APL-68D-122, Verification Procedure.

CONTACT

For additional information concerning this policy, contact the MDHHS Bureau of Legal Affairs.