

Access Uses Disclosures of PHI

HIPAA Policy: Privacy 01

Summary: This policy addresses the provision of PHI to patients upon request.

Affected Individuals: Staff in HIPAA covered entities, patients of HIPAA covered entities

1.0 PURPOSE

The purpose of the University of Mississippi (UM) Access, Uses and Disclosures of Protected Health Information (PHI) Policy is to guide patients on accessing their PHI and personnel in handling the requests made by individuals who wish to inspect and/or copy their PHI to protect the patient from release of PHI to unauthorized parties.

2.0 SCOPE

This policy applies to all individuals requesting in writing, using an Authorization to Release Information Form with the stated purpose “for individual’s use,” access to their records for the purpose of inspecting or obtaining a copy of their PHI and also to all UM employees making disclosures of PHI.

3.0 STANDARDS

Ownership of records – Clinical or medical records are the property of UM.

Removal of hospital or clinic records – health records at HIPAA covered entities are not removed from those departments upon court order.

Custodian – The directors of the individual HIPAA covered entities are the legal custodians of all health records in their respective departments.

Legal adults – All students at UM are considered adults for purposes of giving consent for treatment and authorizing the release of medical information.

HIPAA covered entity – Any department listed on the UM HIPAA Hybrid Policy as a covered entity that must comply with HIPAA regulations

3.1 Patient Access

Requests for access made by individuals who wish to inspect and/or obtain copies of their PHI must be made in writing in paper format on an Authorization for Release of Information Form.

3.2 Accepting the request for access and timely action:

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Individual's request for access – UM permits individuals to request to inspect or to obtain a copy of their own PHI, which is maintained in any UM HIPAA covered entity

Notifying the Individual of Acceptance - If UM grants the request in whole or in part, it must inform the individual of the acceptance of the request and provide access requested. See section 3.3 for denying access.

Timely action by UM:

UM must provide access as requested by the individual within 30 days from the date the request is received. If UM is unable to complete the request within 30 days, the time to complete the request may be extended to 60 days from the date of the original request provided the UM provides the requestor with a written statement of the reasons for the delay and the date by which the request will be completed.

Allowing access - UM must, in the applicable time frame, arrange with the individual for a convenient time and place to inspect or obtain a copy of the PHI. At the individual's request, UM may mail or fax a copy of the PHI.

Form of access requested – UM must provide the individual with access to the PHI in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form and such other form or format as agreed to by UM and the individual. If the requested PHI is maintained in an electronic format, UM shall provide the requestor with access to the PHI in the electronic form and format requested by the requestor, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by UM and the requestor.

If the requestor directs UM to provide the copy of the PHI to another person, the requestor must designate such person in writing, must sign such request and clearly identify the designated person and where to send the copy of PHI. If such conditions are met, UM shall provide the designated person with a copy of the requested PHI.

UM may provide the individual with a summary of the PHI requested, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided, if

- ⑩ The individual agrees in advance to such a summary or explanation; and
- ⑩ The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

Fees – If the individual requests a copy of the PHI or agrees to a summary or explanation of such information, UM may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

- ⑩ Copying, including the cost of supplies for and labor of copying, the PHI requested by the individual;

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- ⑩ Postage when the individual has requested the copy, or the summary or explanation, be mailed; and
- ⑩ Preparing an explanation or summary of the PHI if agreed to by the individual.

3.3 Reasons for denying access, under which an individual has the right to request a denial review:

UM may deny an individual access provided that the individual is given the right to have such denials reviewed, in the following circumstances:

- ⑩ 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.
- ⑩ The PHI makes reference to another person (other than 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
- ⑩ 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.

3.4 Review of a denial of access:

If access is denied on a ground as permitted above, the individual has the right to have the denial reviewed. The UM HIPAA Compliance Committee has been designated as the reviewing official by UM. UM will provide or deny access in accordance with the determination of the reviewing committee. The following requirements concerning denials will be met by UM:

- ⑩ Making other information accessible – In instances where UM determines that access can be granted to at least a portion of the PHI requested, UM must, to the extent reasonably possible, give the individual access to any other PHI.
- ⑩ Denial - UM must provide a timely, written denial to the individual. The denial must be in plain language and contain:
 - The basis for the denial;
 - If applicable, a statement of the individual's review rights and a description of how to act upon those rights; and
 - A description of how the individual may complain to UM or to the Secretary of Health and Human Services. The description must include the name or title and the telephone number of the the Chair of the UM HIPAA Compliance Committee.
- ⑩ Other Responsibility – If UM does not maintain the PHI that is the subject of the individual's request for access and UM knows where the requested

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information is maintained, UM must inform the individual where to direct the request for access.

- ⑩ Review of denial requested – The HIPAA Compliance Committee will review the requests and promptly provide notice to the individual of their determination.

3.5 Uses and Disclosures of PHI

Employee access - UM will make a reasonable effort to allow access only to the PHI employees need to fulfill their job duties. This includes PHI that is stored as a hard copy and/or electronically. For more information on the hospital medical record access, see UHC Policy on Medical Record Access and UM Policy on Minimum Necessary.

Use and disclosure of PHI within UM - Except for psychotherapy notes, UM may use and disclose PHI that is included in our designated record set for the following purposes without written authorization from the patient or the patient's legal representative:

- ⑩ For treatment of UM's patients;
- ⑩ To seek payment for services rendered; and
- ⑩ To carry out the healthcare operations of UM.

Disclosures outside of UM - Except for psychotherapy notes, UM can release PHI to another healthcare provider (i.e. physician, hospital, etc.), clearinghouse (i.e. third party billing company), or a health plan, without an authorization, so long as the PHI is intended to be used:

- ⑩ By a healthcare provider, outside of UM, for the treatment of the individual;
- ⑩ For the payment activities of a healthcare provider, clearinghouse, or a health plan;
- ⑩ For the healthcare operation activities of a healthcare provider, clearinghouse, or a health plan if:
 - UM and the receiving party has or had a relationship with the individual who is the subject of the information;
 - The PHI pertains to such relationship; and
 - The disclosure is for a purpose listed under the definition of healthcare operations.

Uses and disclosures of psychotherapy notes - UM must obtain a separate and specific psychotherapy note authorization for any use or disclosure of psychotherapy notes **except** under the following circumstances:

- ⑩ For use by the originator of the psychotherapy notes for treatment;
- ⑩ For use or disclosure by UM in training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling;
- ⑩ For use or disclosure by UM to defend a legal action or other proceeding brought by the individual;
- ⑩ For uses and disclosures made to a health oversight agency for oversight activities authorized by law with respect to the oversight of the originator of the psychotherapy notes, including audits, or criminal investigations, inspections,

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licensure or disciplinary actions, civil administrative, or criminal proceeding or actions; or any other activities necessary for appropriate oversight of:

- The healthcare system;
 - Government benefit programs for which health information is relevant to beneficiary eligibility;
 - Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards;
 - Entities subject to civil rights laws for which health information is necessary for determining compliance; or
 - Uses and disclosures to coroners and medical examiners.
- ⑩ When required by the US Secretary of Human Services to investigate or determine the covered entity's compliance with this subpart;
- ⑩ When the disclosure is required by law which includes the following:
- Disclosures about victims of abuse, neglect and domestic violence – For more information, please see the UM Policy on Reporting Domestic Violence;
 - Disclosures for administrative or judicial proceedings - For more information, please see the UM Policy on Disclosures for Judicial and Administrative Proceedings;
 - Disclosures for Law Enforcement purposes – For more information, please see the UM policy on Reporting Incidents to Law Enforcement Agent.
- ⑩ When the disclosure is intended to lessen a serious threat, UM may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if UM, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. Such release shall be only to a person(s) reasonably able to prevent or lessen the threat, including the target of the threat. **Note: any such request should be referred to UM Office of General Counsel for review.**

Disclosures where a written authorization is not required – There are other disclosures that UM is required or permitted to make without an authorization and, with only a few exceptions, without an agreement or objection from the individual.

⑩ Disclosures to public health authorities - UM is permitted to disclose PHI to public health authorities for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. The reporting of communicable diseases to the MS Department of Health, the maintenance of cancer and trauma registries would all be examples of disclosures made pursuant to this portion of the policy.

⑩ Disclosures to avert a serious threat to health or safety – UM may consistent with applicable law and standards of ethical conduct, use or disclose PHI, if UM, in good faith believes:

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- The use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person reasonably able to prevent or lessen the threat, including the target of the threat;
- The use or disclosure is necessary for law enforcement authorities to identify or apprehend an individual because of a statement by an individual admitting participation in a violent crime that UM reasonably believes may have caused serious physical harm to the victim; or
- That the individual has escaped from a correctional institution or from lawful custody.

Note: any such request should be referred to UM Office of General Counsel for review.

Valid Authorizations - In accordance with HIPAA, all authorizations must contain six core elements and three statements to be considered a valid authorization. The original authorization is preferred, but copies are allowable so long as the authorization contains the core elements and statements as listed below:

⑩ Required Elements:

- A description of the information to be disclosed that identifies the information in a specific and meaningful fashion. NOTE: Psychotherapy (psychiatric) information can be disclosed only if such information is specifically requested in a separate psychotherapy note authorization. For more detailed information on the release of psychotherapy notes, see “Uses and disclosures of psychotherapy notes” stated earlier in this policy.
- The name or other specific identification of the person(s) or class of persons (physician’s name, UHC, etc.) authorized to make the requested disclosure;
- The name or specific identification of the person(s), or class of persons, to whom UM may make the requested disclosure;
- A description of each purpose of the use or disclosure;
- An expiration date or description of an event upon which the authorization will expire must be present on the authorization (UHC’s authorizations will have an expiration date of 6 months unless otherwise indicated);
- Signature of the individual and date; and
- If the authorization is signed by a legal representative (personal representative) of the individual, a description of such representative’s authority to act for the individual.

⑩ Required Statements:

- A statement of the individual’s right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization;

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- Treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule or, if conditioning is permitted, a statement about the consequences of refusing to sign the authorization.
- A statement that information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and may no longer be protected by this rule;

Invalid Authorizations - In accordance with HIPAA, any authorization lacking the above information is to be considered invalid and should not be fulfilled.

Minimum Necessary – In accordance with the minimum necessary requirements of HIPAA, the UM employee fulfilling the authorization will disclose only that information specifically described in any written authorization, and/or court order.

Verification - Information should be released only to the person or class of persons (person, firm or corporation) identified in the authorization to receive the information. All outside individuals who present to pick up a copy of protected health information must present a form of I.D. This I.D. may be a driver's license, credentials or etc. This is needed to ensure that only the person or class of persons designated in the authorization as the recipient of an individual's protected health information is who receives it. This includes those authorizations initiated by individuals who are seeking copies of their own protected health information.

Faxing PHI – Faxing of PHI is discouraged and should be done on limited occasions. When it becomes necessary to obtain PHI through fax communication, the following information should be obtained from the requestor: (1) the name of the requestor; (2) a phone number at which the requestor can be reached; (3) a fax number; (4) a signed authorization, if applicable. Once the employee has retrieved the requested information:

1. He/she should always verify the fax number before faxing;
2. Complete a fax cover sheet that contains:
 - a. The name of the person who is to receive the information;
 - b. The intended fax number;
 - c. The following disclaimer; and
"Individuals who have received this information in error or are not authorized to receive it must promptly return or dispose of the information and notify the sender. Those individuals are hereby notified that they are strictly prohibited from reviewing, forwarding, printing, copying, distributing or using this information in any way."
 - d. The name and a return phone number of the UM employee who is faxing the information.

Revoking an Authorization – An individual may revoke an authorization provided that the revocation is in writing, except to the extent that UM has taken action in reliance

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thereon. All requests for revocations should be directed to the appropriate release of information personnel.

4.0 CONTACT INFORMATION

For questions about the UM Access, Uses and Disclosures of Protected Health Information Policy or for more information, call the Office of General Counsel