

Access to Protected Health Information

1. SCOPE

- 1.1 System-wide
- 1.2 Facilities and departments included in the scope are further defined in the [Scope Definitions Resource Guide](#) if not specifically outlined above.

2. DEFINITIONS & EXPLANATIONS OF TERMS

2.1. Abbreviations

- CLIA: Clinical Laboratory Improvements Amendments
- HIM: Health Information Management
- HIPAA: Health Insurance Portability and Accountability Act
- MCHS: Marshfield Clinic Health System
- PHI: Protected Health Information
- NIDA: National Institutes on Drug Abuse

2.2. Definitions

- Patient: All references to the "patient" in this policy mean the patient or her/his Personal Representative as defined in the [Personal Representatives of Patients](#) policy.
- Patient Health Care Records: Under Wisconsin law means all records related to the health of a patient prepared by or under the supervision of a health care provider, including billing statements and invoices for treatment or services provided by a health care provider. Patient health care records do not include mental health treatment records subject to Wisconsin Statutes Section [51.30](#), induced abortion reports collected under Wisconsin Statutes Section [69.186](#), records of HIV tests administered under Wisconsin Statutes Sections [252.15\(5g\)](#) or [\(5j\)](#), [938.296\(4\)](#) or [\(5\)](#) or [968.38\(4\)](#) or [\(5\)](#), alcohol testing results under Wisconsin Statutes Section [343.305](#), records related to sales of pseudoephedrine products, as defined in Wisconsin Statutes Section [961.01\(20c\)](#), that are maintained by pharmacies under Wisconsin Statutes Section [961.235](#), fetal monitor tracings, as defined under Wisconsin Statutes Section [146.817\(1\)](#), or a pupil's physical health records maintained by a school under Wisconsin Statutes Section [118.125](#).
- Designated Record Set: Group of records maintained by or for a covered entity that is:

- ◇ The medical records and billing records about Individuals maintained by or for a covered health care provider;
- ◇ The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- ◇ Used, in whole or in part, by or for the covered entity to make decisions about Individuals.

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POLICY

3. POLICY BODY

Purpose Statement: It is the policy of Marshfield Clinic Health System to honor a patient's right of access to inspect or obtain a copy of their PHI that is maintained in the MCHS designated record set, except for situations where an individual's access to their PHI is restricted by law. MCHS will permit patients to access or obtain a copy of their patient health care records upon the submission of a written access request or electronic equivalent (e.g. email or secure patient portal request). MCHS will honor requests for access to PHI and patient health care records made by the individual, or the individual's legal or personal representative, unless one or more of the exceptions defined in this policy below apply.

The purpose of these guidelines is to provide a process for the appropriate management of patient requests for access to their Protected Health Information that is maintained by MCHS in its designated record set.

The HIPAA Privacy Rule states that individuals have a right of access to inspect and obtain a copy of Protected Health Information (PHI) about the individual that is maintained in a Covered Entity's designated record set except where access is limited by law. Wisconsin law states that patients have a right to inspect and receive a copy of their health care record upon submitting a statement of informed consent (written access request or electronic equivalent (e.g. email or secure patient portal request)).

- 3.1. Review of Requests for Access to PHI/Patient Health Care Records. All requests for access to PHI should be processed by the Health Information Management (HIM) department (unless otherwise specified in this policy) who will review the request and make the determination of action set forth by the guidance provided below.

- a. Methods to Request Access to Patient Health Care Records

- The individual may make a written request to the HIM department to access, inspect and/or copy their PHI. This request shall be documented on the MCHS Release of Information Authorization form or the MCHS Release of Information Request-Patient Access, as appropriate, and filed in the individual's electronic health record. The individual will be provided with information about their right to access their PHI maintained in the MCHS designated record set including exceptions where access will not be granted.
 - The use of these forms will not create a barrier to, or unreasonably delay, the individual from obtaining access to his/her PHI.
- The individual may make a request to the HIM department to access, inspect, and/or copy their PHI, via email or secure patient portal. This request shall be filed in the individual's electronic health record. The individual will be provided with information about their right to access PHI maintained in the MCHS designated record set, including exceptions where access will not be granted.
- The patient may indicate their directive to "Authorize release of my medical records" on the MCHS Sharing of Information Authorization form. This action authorizes the person designated by the patient to complete

the MCHS Release of Information Request-Patient Access or MCHS Release of Information Authorization on behalf of the patient. Such requests must follow the guidance in this policy.

- b. Determination of accessibility of the information shall be based on availability of PHI (i.e., final completion of information, long-term storage, retention practices, etc.).
 - c. MCHS will take action within a reasonable period of time not greater than thirty days after receipt of the request when the PHI is on-site, and within sixty days when the PHI is off-site. Only one thirty day extension is permitted, and if MCHS requires a thirty day extension MCHS will provide the patient with a written statement of the reason(s) for the delay and the date by which the access request will be processed.
 - d. In situations where a patient requests a copy of a limited amount of PHI, such as a copy of laboratory results or a clinic office note directly from a health care professional at MCHS, that request does not need to be in writing. The health care professional may provide the requested copy without directing such requests to the HIM department. Requests for copies of significant amounts of PHI should be referred to the HIM department.
- 3.2. Request for Access, Inspection, and/or Copy Granted.
- a. The patient and MCHS HIM staff will arrange a mutually convenient time for the patient to inspect and/or obtain a copy of the requested PHI. Inspection and/or copying of PHI will be carried out within the HIM department under the direction of HIM staff. The HIM department will document the date/time of each request as well as the name of the inspecting person and the date/time of the inspection and a list of all medical records released for inspection or copying.
 - b. The patient may choose to inspect the PHI, have it copied, or both, in the form or format requested. If the PHI is not readily producible in the requested form or format, MCHS will provide the patient with a readable hard copy form, or other suitable copy in a format as agreed to by both MCHS and the patient.
 - c. If the requested PHI is maintained electronically in one or more designated record set and the individual requests an electronic copy of such PHI, MCHS will provide the individual with access to the PHI in an 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 both MCHS and the patient.
 - d. If the patient chooses to receive a copy of the PHI, MCHS staff will provide copy services and charge the patient as per the MCHS copying fee schedule, consistent with the legal requirements set forth in Section 3.5, below.
 - e. If the individual directs MCHS to transmit the copy of the PHI directly to another person designated by the individual, MCHS will provide the copy to the designated person. The individual's request must be in writing, signed by

the individual, and clearly identify the designated person and where to send the copy of the PHI.

- f. If, upon inspection of the PHI the patient claims that the PHI is inaccurate or incomplete, the patient has the right to request an amendment to the PHI. This request must be in writing on the MCHS Amendment/Correction of Health Information Request form. HIM department staff will process requests for amendment as outlined in MCHS policy/procedures.

3.3. Requests for Access, Inspection and/or Copy that are Denied in Whole or in Part.

- a. MCHS will provide a written denial to the patient. The denial will be in plain language and contain:
 - The basis for denial;
 - A statement, if applicable, of the patient's review and appeal rights; and
 - A description of how the patient may complain to MCHS and/or to the Secretary of Health and Human Services about the denial of access.
- b. If access is denied because MCHS does not maintain the PHI that is the subject of the request, and MCHS knows where that PHI is maintained, MCHS will inform the patient where to direct the request for access.
- c. If MCHS denies a request for certain PHI, MCHS must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which MCHS has a ground to deny access.
- d. MCHS may deny access to PHI without providing an opportunity for review if the basis for the denial is one of the reasons set forth in "Exceptions to the individual Right to Access PHI" below. If the basis for the denial is one of the reasons specified in "Exceptions to the individual Right to Access PHI" below, the individual has the right to have the denial reviewed. The individual's request for review of the denial must be in writing. Reviews of such denials will be conducted by a licensed health care professional who has not participated in the decision to deny the patient access. MCHS will provide the individual with prompt notice of the reviewer's determination of the denial.

3.4. Exceptions to the Individual's Right to Access PHI. MCHS will not provide an individual with access to PHI in the following circumstances:

- a. The request is not in writing, or submitted by e-mail or secure patient portal, or the requested PHI is not maintained in the MCHS designated record set.
- b. The requested PHI pertains to Psychotherapy Notes.
- c. The requested PHI is subject to the Federal Privacy Act, 5 U.S.C. Section 552a, if the denial would meet the requirements of that law.
- d. The requested PHI is information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- e. The requested PHI is information that was obtained from someone other than the health care provider under a promise of confidentiality and patient

access to the information would be likely to reveal the source of the information.

- f. The requested PHI is certain PHI that is subject to the Clinical Laboratory Improvements Amendments of 1988 ("CLIA"), 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law (e.g. incomplete test reports).
 - g. The PHI is exempt from CLIA, pursuant to 42 C.F.R. 493.3(a)(2). In other words the PHI was generated by 1) a facility or facility component that performs testing for forensic purposes; 2) research laboratories that test human specimens but do not report patient-specific results for diagnosis, prevention, treatment, or the assessment of the health of individual patients; or 3) laboratories certified by the National Institutes on Drug Abuse (NIDA) in which drug testing is performed that meets NIDA guidelines and regulations.
 - h. The individual, when consenting to participate in research that includes treatment, agreed to temporary denial of access to PHI created or obtained by MCHS in the course of research and the research is not yet complete.
 - i. The requested PHI is certain PHI of a minor (child under age 18) which access is restricted to the minor's parent, court-appointed guardian or legal custodian under Wisconsin State law (records relating to alcohol and other drug abuse treatment, mental health treatment, HIV test results, or records of an emancipated minor).
 - j. Under Wisconsin Statutes Section 146.835 a parent who has been denied periods of physical placement of their child because placement would endanger the life, health or safety of the child, the parent does not have rights to access the child's health care records.
 - k. A licensed health care provider has determined that granting access is likely to endanger the life or safety of the individual or another person.
 - l. The requested PHI contains a reference to another person (who is not a health care provider) and a licensed health care provider has determined that providing access is reasonably likely to cause substantial harm to such other person.
 - m. The request is made by the individual's personal representative and a licensed health care provider believes that granting access is likely to cause harm to the individual or any other person.
- 3.5. Fees Associated with Obtaining Access to PHI. MCHS may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:
- a. Copying, including the cost of supplies for and labor related to copying the requested PHI, whether in paper or electronic form. MCHS may not charge any fees for retrieving or handling the PHI or for processing the request for the PHI.
 - b. Postage, when the individual has requested that the PHI be mailed.
 - c. A reasonable cost-based rate per employee hour for the preparation of an explanation or summary of the PHI if agreed to by the individual in advance.

- d. Electronic: Supply costs for electronic media and electronic media devices including but not limited to CD-ROMs if the individual requests the electronic copy be provided on portable media.
 - e. The Wisconsin Department of Health Services will, by regulation, define the fees that may be charged for medical record requests in Wisconsin. The fees plus applicable taxes are the maximum amount a Wisconsin healthcare provider may charge for duplication of medical records. MCHS's fee schedule for duplication of medical records will comply with applicable federal and state law.
- 3.6. It is the policy of MCHS to make available and useful, electronic health information, for authorized and permitted purposes in accordance with applicable federal and state laws.

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4. ADDITIONAL RESOURCES

4.1. References:

- HIPAA Regulations 45 CFR 164.524
- Wisconsin Statutes 146.83 and 51.30
- 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule: 45 CFR § 171.100-103; §171.200-205; and §171.300-303
- [Selected HIPAA Definitions](#)
- [Personal Representatives of Patients](#)
- [Amendment of Protected Health Information](#)
- [Uses and Disclosures of Psychotherapy Notes and Mental Health Treatment Records](#)
- [Consent for Treatment of Minors](#)
- [Minor's Consent Chart](#)
- [Policy Against Blocking of Electronic Health Information](#)

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5. DOCUMENT HISTORY

Version No.	Revision Description
1.0	Convert Policy#4421 to the new Document Control System
2.0	Annual review. Updated Scope and MC to MCHS.
3.0	Annual review. Updated Scope, logo, and links. Added definition for Designated Record Set. Updated formatting, added abbreviations, updated header, removed logo Updated links for Selected HIPAA Definitions and Minor's Consent
4.0	Annual review. No changes.
5.0	Annual review. Added "or personal" in last sentence of first paragraph under Section 3. Added Section 3.1.a first bullet. Minor changes to Section 3.1.c and 3.1.d.
6.0	Updated Policy Body, Sections 3.1.a, 3.2.f, 3.4.a, 3.5.e, and 4.1. Added Section 3.6.
7.0	Minor word change in Section 3.1.a first bullet. Added "Policy Against Blocking of Electronic Health Information" to References.
8.0-10.0	Refer to version history
11.0	Removed Alex Khoo as approver and added Kris Bergmann.
12.0	DCS Checklist, AO to republish

6. DOCUMENT PROPERTIES

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