

HIPAA PROCEDURES AND CORNERSTONE

July 1, 2003

HIPAA Notice of Privacy Practices requirement (45 CFR 164.520)

Cornerstone users will give the Notice to participants at intake. DHS will provide the Notice to be used for Cornerstone participants.

Access to protected health information (45 CFR 164.524)

Request procedure

1. Requests must be in writing.
2. You must act on the request in 30 days unless the information is not maintained or accessible on-site, in which case you may have one 15 day extension if you inform the person in writing giving the reason for delay.
3. If you deny access whether in whole or in part you must give the person a written denial.

Denials requiring no review

You may deny access to certain information without offering review, such as:

1. psychotherapy notes;
2. information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding;
3. information created or obtained in the course of research if the individual has agreed to the denial of access when consenting to participate in the research;
4. certain protected health information to which access is prohibited or not required by law (and which the Cornerstone user is highly unlikely to have);
5. if the protected health information was obtained from someone other than a healthcare provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information;

Denials requiring review

You may deny access in some circumstances if you offer review, such as:

1. if 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;
2. if the protected health information makes reference to another person (unless the 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 the other person; or
3. if 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 access to the personal representative is reasonably likely to cause substantial harm to the individual or another person.

Review must be done by a professional

The review must be done by a licensed health care professional who did not participate in the original decision to deny.

Denial procedure

If you deny access, in whole or in part, you must:

1. To the extent possible, give the person access to any other requested protected health information, after excluding the denied information.
2. Provide a timely, written denial containing:
 - a. The basis for the denial;
 - b. If applicable, a statement of the individual's review right and the place to direct the request for review (name or title and telephone number of contact person); and

- c. A description of how the individual may complain to you or the Department pursuant to 45 CFR 164.530 and to the Secretary of HHS pursuant to the procedures in 45 CFR 160.306. The description shall include the name, title and telephone number of the contact person or office designated.
3. Inform the individual where to direct the request for access if the protected health information that is requested is not maintained by you and you know where it is maintained.
4. Designate and promptly refer a request for review to a licensed health care professional who was not directly involved in the denial. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access based on the above review standards.
5. Promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required above to carry out the designated reviewer's official determination.

Who responds to requests

You must handle requests regarding records created and maintained by you in the course of providing services. If the request relates to records created and maintained by the Department of Human Services, you should instruct the individual to contact the Department directly to request access.

Amendment of Protected Health Information (45 CFR 164.526)

An individual has a right to request amendment of records under HIPAA.

Procedure

Requests for amendment must be in writing and provide a reason to support the requested amendment. They must be designated as a request for amendment under HIPAA. You must handle requests regarding records created and maintained by you in the course of providing services. If the request relates to records created and maintained by the Department of Human Services, you should instruct the individual to contact the Department directly to request the amendment.

Denials that are allowed

Under HIPAA you may deny the request if the record they wish to amend:

1. was not created by the Cornerstone user, unless the individual provides a reasonable basis to believe that the originator of the protected health information is no longer available to act on the requested amendment;
2. is not part of the records subject to amendment;
3. is not accessible to the person under the access provisions above; or
4. is accurate and complete.

Response required in 60 days

Under HIPAA if you are unable to act on the amendment within 60 days, you may extend the time by no more than 30 days, if you provide the individual with a written statement of the reasons for the delay and the date by which you will respond in writing.

Acceptance

If you agree to an amendment, you must notify the person in writing and make the change. You must also:

1. Obtain the individual's identification of and agreement to notification of relevant persons with whom the amendment needs to be shared.

2. Make reasonable efforts to inform and provide the amendment within a reasonable time to those identified and persons that you know have the record and could rely on it to the detriment of the individual.

Denial

If you deny the request, in whole or in part you must provide the timely written notification giving the basis for denial and the right to contest the decision. Under HIPAA there is a right to submit a complaint under the HIPAA complaint procedure below.

Statement of disagreement

Under HIPAA, the person must also be informed of the right to place a statement in the record commenting on the contested information and their disagreement with it. The person can also request that their request to amend and its denial be placed in the record. The statement of disagreement can be limited in length and you may provide and maintain a rebuttal, if it is shown to the individual.

Future disclosures

You must include the material appended through the above procedures, with any subsequent disclosure of the protected health information to which the disagreement relates.

When a subsequent disclosure is made using a standard transaction under 45 CFR 162 that does not permit the additional material to be included with the disclosure, you may separately transmit the material to the recipient of the standard transaction.

Accounting of disclosures(45 CFR 164.528)

Exceptions

An individual has a right to receive an accounting of any disclosures of protected health information made in the six years prior to the date on which the accounting is requested, except for disclosures:

1. To carry out treatment, payment and health care operations;
2. To the subjects of the protected information;
3. As authorized by law, valid consent or authorization;
4. To persons involved in the individual's care or other notification purposes as provided in 45 CFR 164.510 (for example, disclosures to a close friend or clergy member);
5. For national security or intelligence purposes;
6. To correctional institutions or law enforcement officials as provided in 45 CFR 164.512(k)(5); or
7. That occurred prior to April 14, 2003.

Suspension by enforcement agencies

Health oversight agencies and law enforcement agencies may temporarily suspend individuals' rights to accounting of disclosure if it may impede their activities.

Contents of accounting disclosure

Accounting must include for each disclosure:

1. the date of the disclosure;
2. the name of the entity or person who received the protected health information and, if known, the address of the entity or person;
3. a brief description of the protected health information disclosed; and
4. a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the written request.

If during the period covered by the accounting, multiple disclosures were made to the same person or entity for a single purpose, the accounting may, with respect to such multiple

disclosures, provide the above information regarding the first disclosure, the frequency, or number of disclosures and the date of the last such disclosure.

Action in 60 days

You must act on a request for an accounting no later than 60 days after receipt of the request, by either providing the individual with the accounting requested; or extend the time by no more than 30 days if you provide the individual with a written statement of the reasons for the delay and the date by which you will provide the requested accounting.

Fees

You must provide the first accounting to an individual in any 12-month period without charge. You may impose a fee for each subsequent request by the same individual within a 12-month period, unless (if the participant is enrolled in EI) such a fee would prevent the individual from exercising this right. You must advise the individual in advance of the fee and provide the

opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fees.

HIPAA “Minimum Necessary” Requirement (45 CFR 164.502(b))

Minimum Necessary Standard

When using, disclosing or requesting protected health information, reasonable efforts must be used to use, disclose or request only the minimum amount necessary for the intended purpose.

Exceptions

The minimum necessary standard does not apply when:

1. The information is disclosed to or requested by a health care provider for treatment;
2. The use or disclosure is authorized by the individual;
3. The disclosure is made to the United States Dept. of Health and Human Services Office of Civil Rights, when investigating a complaint or conducting a compliance review under the federal HIPAA rule;
4. The use or disclosure is required by law; and
5. The use or disclosure is required for compliance with the federal HIPAA rules.

Procedure

When you receive, request or store protected health information, you must identify:

1. Those persons or classes of persons in the workforce (which includes employees, volunteers, trainees, contractors and employees of contractors) who need access to protected health information to carry out their duties; and
2. The category or categories of protected health information to which access is needed.

You must establish appropriate conditions on access to protected health information to ensure that:

3. Only staff with a need for access to protected health information, as determined above, has such access; and
4. staff shall only have access to the categories of protected health information needed, as determined above, to carry out their assigned duties.

Limit requests

When requesting protected health information from another entity, you must request only the information reasonably necessary for the purposes of the request.

Limit disclosures

When disclosing protected health information to another entity, you must disclose only the information reasonably necessary for the purposes of the disclosure.

Complaint process (45 CFR 160.306 & 164.530)

Filing a complaint

Individuals who have complaints concerning the Cornerstone user's or the Department's HIPAA privacy policies and procedures ("policies and procedures"), or the Cornerstone user's or the Department's compliance with those policies and procedures, may submit a complaint.

Complaints about DHS policies and procedures or actions

If the complaint concerns the Department's policies and procedures or actions by Department staff (for example, if the complaint is that the Department's amendment procedure violates HIPAA, or that DHS staff inappropriately refused to amend a record maintained by the Department), the individual shall be directed to submit the complaint in writing to the Cornerstone Privacy Office at:

Cornerstone Privacy Office
Department of Human Services
Division of Community Health and Prevention
535 West Jefferson St.
Springfield, IL 62761
(217)782-5945

Complaints about the Cornerstone user's policies and procedures or actions

If the complaint concerns the Cornerstone user's policies and procedures or its actions (for example, if the complaint is that the Cornerstone user wrongfully denied a request to amend a record within its control), the complainant shall be directed to submit the complaint in writing to the Privacy Officer at the Cornerstone user's office. If the Cornerstone user receives a complaint that is about the Department, the Cornerstone user shall immediately forward the complaint to the Department of Human Services for disposition.

Responding to a complaint about the Department

When the complaint is about the Department, the Privacy Officer (or his or her designee) for the Department will review the complaint and conduct an investigation as appropriate, and inform the complainant as to the disposition of the complaint within 30 days of the receipt of the complaint. If a disposition is not made within the 30 day period, the Department will inform the complainant as to the time frame within which a disposition will be made.

Responding to a complaint about a provider

When the complaint is about a provider's (other than the Cornerstone user) HIPAA policies and procedures or actions, the complainant shall be directed to send the complaint to the provider. A copy of the complaint must also be sent to the Department of Human Services.

Documenting the complaint

All complaints received by the Department of Human Services and the Cornerstone user must be documented by the Department and the Cornerstone user, respectively, along with the disposition of the complaint, if any. When the complaint is about the Cornerstone user,

the Cornerstone user will immediately forward a copy of the complaint to the Department. The Cornerstone user shall also forward a copy of the disposition of the complaint to the Department at the address listed in (a)(1) upon disposition of the complaint.

Non-exclusive

This complaint procedure does not replace or usurp the procedures for filing a complaint about an alleged violation of HIPAA with the U.S. Dept. of Health and Human Services pursuant to 45 CFR 160.306.

Non-retaliation

Neither the Department nor the Cornerstone user, or their respective employees, may intimidate, threaten, coerce, discriminate against, or take other retaliatory action against an individual for:

1. The exercise of any right, or for participation in, any process established under HIPAA, including filing of a complaint;
2. Filing a complaint with the Secretary of the U.S. Department of Health and Human Services under HIPAA;
3. Testifying, assisting or participating in an investigation, compliance review, proceeding or hearing under Part C of Title XI; or
4. Opposing any act or practice made unlawful by HIPAA, provided the individual has a good faith belief that the opposed practice is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of any provision of the HIPAA privacy rule.

No waiver of rights

Neither the Department nor the Cornerstone user may require individuals to waive their rights under HIPAA as a condition of the provision of treatment, payment or eligibility for services.