

POLICY and PROCEDURE IM08

Subject:
IM08 Patient's Right to Access Protected
Health Information

Effective Date:
April 2003

Applies to:
All Houston Methodist Entities

Date Revised/Reviewed:
09/01/2015

Originating Area:
System Business Practices Office

Target Review Date:
09/30/2018

I. POLICY AND GENERAL STATEMENT

Houston Methodist respects the patient's right to view and obtain a copy of the patient's protected health information for as long as the information is maintained in Houston Methodist's legal medical record and patient billing record (Designated Record Set). Exceptions to information that may be accessed and the circumstances in which Houston Methodist may deny a patient's request for access are provided by law.

II. DEFINITIONS

Business Associate – A person or entity who performs or assists in the performance of a function or activity on behalf of Houston Methodist which involves the use or disclosure of individually identifiable health information.

Designated Record Set – Houston Methodist's legal medical record and patient billing record; [Exhibit A](#) provides guidelines as to items included and excluded in the Designated Record Set.

Protected Health Information (PHI) – Any patient identifiable health information, including demographic and financial information that is transmitted or maintained in any form or medium.

Psychotherapy Notes – Notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private, group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy Notes do not include:

- Medication prescription and monitoring;
- Counseling session start and stop times;
- Modalities and frequencies of treatment furnished;
- Results of clinical tests; and
- Any summary of: diagnosis, functional status, treatment plan, symptoms, prognosis and progress to date.

Qualified Personal Representative (QPR) – A person who has authority to act on behalf of an individual, in making decisions related to health care.

III. **PROCEDURE**

A. Patient's Right to Access PHI

1. A patient has the right to access his/her PHI for as long as Houston Methodist maintains the information in its Designated Record Set.
2. A patient also has the right to access his/her PHI if the information is maintained by a business associate of Houston Methodist and the information is not duplicated in Houston Methodist's Designated Record Set.
3. A patient has the right to obtain an electronic copy of his/her electronic medical record if Houston Methodist uses or maintains an electronic medical record.
4. Exceptions to information the patient has the right to access are listed below in Section E.
5. Circumstances in which the patient does not have the right to access PHI are listed below in Section F.

B. Patient's Request for Access to PHI

The patient shall submit a written request for access or complete the appropriate patient authorization and access [form](#). The patient's request for access shall be directed to the applicable department for handling as follows:

1. **Health Information Management Department** – for viewing or obtaining copies of medical records for patients not currently in-house
2. **Head Nurse or Designee** – on the unit of an in-house patient requesting access for viewing or obtaining copies
3. **Patient Billing Department** – for viewing or obtaining copies of billing related documents

C. Time Frame for Responding to a Patient's Request for Access to PHI

In accordance with applicable federal and state laws, Houston Methodist shall respond to a patient's request for access as follows:

1. Skilled Nursing Facility records – one working day.
2. Hospital and Home Health records – fifteen (15) days.
3. Physician's Office clinical records – fifteen (15) business days.

D. Providing the Patient with Access to PHI

1. Each patient request for PHI access shall be reviewed by the applicable department noted in Section B., to determine if the request is complete and to determine if the patient's request for access is valid and not subject to an exception listed in Section E. and/or one of the circumstances for denying access listed in Section F.

2. If the patient's request is valid, access to PHI will be provided as follows:
 - a. If the patient requests to view the PHI, arrangements shall be made for a time and place for the patient to review the information. Viewing shall only be allowed with a Houston Methodist attendant present.
 - b. To the extent Houston Methodist's electronic systems are capable; Houston Methodist shall provide the requested record in electronic form unless the patient agrees to accept the record in another form.
 - i. Houston Methodist shall provide an electronic copy after any applicable fees are paid in advance. Houston Methodist may only charge labor costs associated with responding to the request when providing an electronic copy.
 - ii. If the patient requests that PHI be mailed, the request shall be honored after any applicable fees for copying and mailing are paid in advance, in accordance with fees established by federal and Texas state law.
 - iii. At the patient's request, Houston Methodist will transmit the copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific.

E. Exceptions to Information the Patient has the Right to Access

1. Under law, there are exceptions to the patient's right to access PHI. Because of these exceptions, the patient does not have the right to access:
 - a. Information that is not part of Houston Methodist's Designated Record Set;
 - b. Psychotherapy notes;
 - c. Information compiled by Houston Methodist in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
 - d. Test reports or results held by Houston Methodist's clinical laboratory if the individual is not an "authorized person" to receive the information under the Clinical Laboratory Improvements Amendments of 1988 (CLIA); and
 - e. Information obtained from someone other than a health care provider under a promise of confidentiality, and the access being sought would be reasonably likely to reveal the information source.
2. The patient shall be denied access to PHI if any of the above exceptions apply.

F. Circumstances for Denying a Patient's Access to PHI

1. Under law, there are circumstances for denying a patient's access to PHI when a licensed health care professional, using professional judgment determines that:
 - a. The Patient's request for access is reasonably likely to endanger the life or physical safety of the patient or another person;
 - b. The PHI makes reference to another person and the access is reasonably likely to cause substantial harm to such other person; or
 - c. The patient's QPR is the person requesting the PHI and providing access to the PHI is reasonably likely to cause substantial harm to the patient or another person.

2. The patient shall be denied access to PHI if such a determination is made in accordance with the above.

G. Denying a Patient's Request for Access to PHI

1. The patient's request for access to PHI shall be denied if:
 - a. The PHI is excepted from the right to access, as listed in Section E.;
 - b. A licensed health care professional has determined that access should be denied because of a circumstance listed in Section F.; or
 - c. The Patient has agreed to denial of access in the course of research that includes treatment, while such research is in progress, but only if:
 - The patient agreed to the denial of access in conjunction to providing consent to participate in the research; and
 - Houston Methodist has informed the patient that the right of access will be reinstated upon completion of the research.
2. If access is denied, in part, or in whole, the patient shall be notified in writing.
3. The [notification of denial](#) shall inform the patient:
 - a. Of the specific grounds for the denial, and
 - b. The right to protest the denial to the Houston Methodist Entity's Business Practices Officer and to the Secretary of the Department of Health and Human Services.
4. If access was denied because of a determination made by a designated licensed health care professional for one of the reasons listed in Section F., the [denial letter](#) shall also inform the patient:
 - a. Of the patient's right to have the decision to deny access reviewed by another licensed health care provider designated by Houston Methodist who did not participate in the initial decision to deny access, and
 - b. That the patient can exercise this right by notifying the Houston Methodist Entity's Business Practices Officer or designee.

H. Review of a Denial for Access when the Patient is Entitled to a Review of the Denial

1. If the patient is denied access to PHI in one of the circumstances listed in Section F., the patient has the right to have the denial reviewed by a licensed health care professional who did not participate in the original decision to deny access.
2. If the patient has a right to review of the denial and requests such review, Houston Methodist Entity's Business Practices Officer shall designate a licensed health care professional who was not directly involved in the decision to deny access to be the designated review official and will promptly refer the request for review to that official.
3. The official will determine within a reasonable time period, whether to deny access based upon the circumstances listed in Section F. The decision of the official will be final.
4. Houston Methodist shall promptly notify the patient in writing [hyperlink to form letter] of the determination of the reviewing official.

5. If the decision is made to provide access, such shall be provided, in accordance with Section D.

I. Required Documentation and Retention

Houston Methodist shall document and retain for a minimum of six years from the date created, or the date last in effect, whichever date is later, all information related to the process of providing and denying patients access to their PHI.

IV. COUNCILS OR COMMITTEES REVIEWING OR APPROVING PROCEDURE

Information Security and Privacy Committee

System Business Practices Committee

V. AUTHORITATIVE REFERENCES

American Recovery and Reinvestment Act of 2009, Title XIII, Subtitle D, Part I, Section 13405(b).

Summary of the HIPAA Privacy Rule, OCR Privacy Brief, issued by the U.S. Department of Health & Human Services (“DHHS”), last revised May 2003.

Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (45 CFR Parts 160 and 164).

45 C.F.R. §164.524

Texas Health and Safety Code; Title 2, Subtitle I.; Chapter 181

- VI. NAME OF APPROVING EXECUTIVE:** Marc L. Boom, MD
TITLE: President, Chief Executive Officer

(Signed Original on File)

 Signature of Approving Executive

 Date Signed

Revision	Date	Changed by	Revision Summary
1	10/21/15	Virginia Heimerson at request of Judy Kuczynski	Logo updated, document reformatted into PolicyTech template; typo and formatting corrected; inserted 1 statement relating to the HMSPG that had been inadvertently omitted.