

Individual Right of Access to Protected Health Information

Effective Date: 01/01/2018

Policy

- A. It is the policy of the ACO to recognize the right of an individual to have access to inspect and obtain a copy of their own Protected Health Information (PHI), which is maintained by the ACO in a designated record set for as long as the PHI is maintained in the designated record set.

Applicability

This policy and procedure applies to all Next Generation Participants, Preferred Providers, Next Generation Professionals and other individuals or entities performing functions or services related to the ACO's activities.

Procedure

- A. Individuals have the right of access to any of their PHI maintained in the ACO's designated record sets. The individual will have access to any PHI that is used, in whole or in part, to make decisions about him or her.
- B. All requests by individuals to inspect or to obtain a copy of their PHI (hereinafter referred to as "Request") must be made in writing and submitted to Compliance for processing.
- C. All requests to inspect or obtain a copy of PHI must include, at a minimum, the following information for the individual who is the subject of the PHI:
 - 1. Full legal name;
 - 2. Unique personal identification number (e.g., HICN, SSN);
 - 3. Address and phone number;
 - 4. Date of birth;
 - 5. Signature (of the individual or authorized representative); and,
 - 6. Date range of records requested.
- D. The ACO shall not provide an individual with access to the following types of information, maintained in a designated record set:
 - 1. Psychotherapy notes; or,
 - 2. Information compiled in reasonable anticipation of, or for the use in, a civil, criminal, or administrative action or proceeding.
- E. **ACO Action on the Request for Access**

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1. The ACO shall act on the Request within 30 days of receiving the Request.
2. If the ACO is unable to act on a Request within 30 days of receiving the Request, it may extend the deadline once by no more than 30 days by providing the individual with a written statement of the reasons for the delay and the date by which the ACO will complete its action on the Request.
3. The ACO may grant or deny access to an individual's PHI for defined reasons.
4. If the ACO grants access to the information, in whole or in part:
 - a. The ACO must notify the individual of the decision and arrange for a mutually convenient time and place to provide the access requested.
 - b. The ACO shall provide the individual with access to summaries of PHI and to the underlying information in a timely fashion.
 - c. If the same PHI is maintained in more than one designated record set or at more than one location, the ACO will only produce the information once per Request.
 - d. The ACO shall provide the requested information in the form or format requested, provided that the information is readily producible in such form or format. If it is not, the ACO shall produce it in readable hard copy form or in another form or format on which the individual and ACO can agree.
 - e. Once the ACO has located the requested PHI, and the individual has been granted access to the PHI, the individual has the right to inspect the information, copy the information, or to do both.
 - f. If the individual requests that the ACO mail a copy of the requested information, the ACO shall do so.
 - i. If the records requested are maintained electronically and the individual requests the records electronically, the ACO will provide the individual copies of the records in the electronic form and format requested by the individual, if readily producible.
 - ii. If the electronic form and format requested by the individual is not readily producible, the ACO will offer the individual other electronic formats that are available on the ACO's system.
 - iii. All electronic data will be produced in an encrypted format.
5. If the ACO denies access to the information, in whole or in part:
 - a. The ACO shall provide a timely, written denial to the individual containing:
 - i. The basis for the denial;
 - ii. A statement of the individual's right to have the denial reviewed and description of how to exercise such right, if applicable;

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- iii. A description of how the individual may make a complaint to the ACO or to the Secretary of the Department of Health and Human Services; and,
 - iv. The name or title and telephone number of the ACO's designated contact person or office responsible for receiving complaints.
- b. The ACO shall afford the individual the right to have the denial reviewed by a licensed health care professional, designated by the ACO, who did not participate in the original decision to deny access. Such review may occur where a licensed health care professional has determined that:
- i. Providing such access is reasonably likely to endanger the life or physical safety of the individual or another person; or,
 - ii. Providing such access is reasonably likely to cause substantial harm to the individual or another person. This applies where the requested information contains a reference to another person (who is not a health care provider) or where the Request is made by the individual's personal representative.
- c. The ACO may, but is not required to, deny a Request without providing the individual with a right to have the denial reviewed where:
- i. The requested information is subject to the Privacy Act (5 U.S.C. §552a), and denial of access is permitted under the Privacy Act; or,
 - ii. The ACO obtained the requested information:
 - 1. From someone other than a health care provider;
 - 2. Under a promise of confidentiality; and,
 - 3. Granting the individual access would be reasonably likely to reveal the source of the information.
 - 4. This exception does not apply to PHI obtained from another health care provider.
- d. The ACO shall, to the extent possible, give the individual access to any other PHI requested, after excluding all information that the ACO had grounds to deny access. If the ACO denies the Request because it does not maintain the requested information, the ACO shall inform the individual where to direct the Request for access, if known.

F. Review Procedures

1. The Compliance Officer shall be responsible for appointing, on a case-by-case basis, a representative of the ACO to serve as the Reviewing Official for denials of Requests for access to PHI. The Reviewing Official shall be a licensed health care professional who did not participate in the original denial decision.

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2. The ACO shall promptly refer a Request for review to the Reviewing Official.
3. Within a reasonable time after receiving the Request for review, the Reviewing Official shall determine whether or not to deny the requested access, and the ACO will promptly provide written notice of the Reviewing Official's decision to the individual. The Reviewing Official's decision shall be final.

G. Fees

1. The ACO may charge the individual only the following reasonable, cost-based fees associated with obtaining access to PHI:
 - a. Copying: fees may include the labor and supply costs;
 - b. Mailing: fees may include the cost of postage;
 - c. Electronic: fees may include the labor costs.
 2. The ACO shall not charge any fees for retrieving or handling the information or for processing the Request.
 3. The ACO shall charge \$5 per hour for the preparation of an explanation or summary of the PHI that the ACO provides to an individual, if the individual agrees in advance to such explanation or summary and to the fees to be charged.
- H. The ACO shall retain written or electronic documentation of its designated record sets that are subject to access by individuals and the titles of the persons or offices responsible for receiving and processing Requests for such access. Such documentation shall be retained for ten (10) years after the later of the date of its creation or the date it was last in effect.
- I. The individual's request must be provided to the ACO in writing and must clearly state that the disclosure of all or part of the information to which the request pertains could endanger the individual. No specific description or proof of such endangerment shall be required.
- J. If requested by the individual, the ACO will transmit the copy of PHI directly to another person designated by the individual. The individual's request must clearly identify the designated person and where to send the copy of the PHI. This request may be made as part of the initial written request for PHI.

Reporting

- A. N/A

Related Documentation

- A. 45 CFR §164.524

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- B. Next Generation ACO Model Participation Agreement Section V.I
- C. ACO Terms & Definitions Policy
- D. Accounting of Disclosures of Protected Health Information Policy
- E. Medical Records Policy