

A CHECKLIST FOR RESPONSE BY PROVIDERS RE: Request to Amend PHI

____ Physician must permit a patient or an authorized representative to request an amendment of the PHI maintained by or on behalf of the practice in the designated record set.

____ Physician may require requests for amendment to be made in writing and to include a reason to support the request.

____ A request to amend PHI must be handled within 60 calendar days after the physician receives the request.

____ If there is a delay due to unusual circumstances (e.g. if the record is in use) specify in writing, within the 60 calendar days, to the patient:

- The reason for the delay
- The date the information will be available—but no later than 90 calendar days from the date the request was received.

____ Patients must be informed of the disposition of the request. If the request is denied—in whole or in part—they must be informed in writing (*see sample denial letter*).

____ If the request is approved:

- Patients must be informed in a timely manner that the amendment is accepted;
- The amendment must be made in the appropriate record;
- Mark the affected record as amended;
- Append or provide a link to the amended information;
- Obtain the patient's identification of any persons the patient wants notified of the amendment, and take reasonable steps to notify such persons within a reasonable time;
- Take reasonable steps to notify any other persons the physician knows have the PHI that is the subject of the amendment and could rely on the un-amended information to the detriment of the patient.

____ If the request is denied, the written denial must specify one or more of the following permissible reasons to deny any part of a patient's request.

- The requested health information was not created by the physician's office (unless the patient provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the request.)

- The patient cannot have access to the health information, and therefore the patient may not amend it. Examples of when a patient may be denied access to PHI include:¹
 - i. The information is psychotherapy notes;
 - ii. Access to the PHI is prohibited by or exempt from Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a (CLIA);
 - iii. Access to PHI contained in records subject to the Privacy Act, 5 U.S.C. 552a, if the denial of access under the Privacy Act would meet the requirements of that law;
 - iv. Access to PHI maintained by a correctional institution, or a provider acting under the direction of a correctional institution, if access would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates, or the safety of persons at the institution or those responsible for transporting the inmate;
 - v. Access to information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
 - vi. The PHI was created or obtained by a covered health care provider in the course of research—that includes treatment—and the access is temporarily suspended for as long as the research is in progress, provided that the patient has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the patient that the right of access will be reinstated upon completion of the research;
 - vii. The PHI was obtained from someone other than a health care provider under a promise of confidentiality, and the access requested would be reasonably likely to reveal the source of the information;
 - viii. 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 patient or another person;
 - ix. The PHI makes reference to another person (unless such 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 such other person; or
 - x. The request is made by the patient’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 patient or another person.

¹See s. 164.524. These specific examples do not have to be disclosed to the patient. However, sometimes it may be advisable to do so.

- ❑ The request does not pertain to the patient's medical and financial records.
- ❑ The existing health information is accurate and complete.

_____ If the request is denied:

- ❑ The written denial must include the basis for the denial;
- ❑ The written denial must offer the individual an option to file a statement of disagreement and tell the individual how to file it;
- ❑ The written denial must inform the individual that if he or she does not submit a statement of disagreement, the individual may request that the covered entity include the request for amendment and the denial with any future disclosures of the PHI that is the subject of the requested amendment; and
- ❑ The written denial must include a description of how the individual may complain to the covered entity or to the U.S. Secretary of HHS. It must also include the name, or title, and telephone number of the contact or person with the covered entity responsible for receiving complaints.
- ❑ The physician may, but need not, prepare a written rebuttal to a statement of disagreement and must provide the individual with a copy of any rebuttal.
- ❑ The covered entity must identify the record that is disputed, and append or otherwise link to it the request for amendment, the denial of the request, the statement of disagreement, if any, and the rebuttal statement, if any.

_____ Future disclosures of PHI must include:

- ❑ The request, the denial, any statement of disagreement, and any rebuttal or, at the physician's option, an accurate summary of the information; but
- ❑ If no statement of disagreement is filed, the request and the denial (or an accurate summary) can be included ONLY upon request by the patient; and
- ❑ When the future disclosure is made using a standard transaction that does not permit the additional material described in (a) and (b) to be included, the physician may separately transmit such material.

_____ If notified by another health care entity that an amendment has been made to a patient's PHI then:

- ❑ The amendment must be made in the appropriate record; and,
- ❑ The record affected by the change marked as amended; and

- The affected record shall be attached or linked or shall otherwise indicate where in the record the amended information is located.

____ The physician must document the titles of the persons or offices responsible for receiving and processing requests for amendments by patients and retain the documentation in the manner required by section 164.530 (j).

THIS DOCUMENT SHOULD BE CONSIDERED ONE EXAMPLE OF HOW AN ORGANIZATION CAN START THEIR COMPLIANCE EFFORTS- IT IS INTENDED TO BE USED SOLELY AS A VEHICLE FOR DISCUSSION TO HELP COMPANIES DEVELOP THEIR OWN COMPLIANCE MATERIAL. THIS DOCUMENT IS PROVIDED AS GENERAL GUIDANCE AND DOES NOT CONSTITUTE LEGAL ADVICE. COMPANIES SHOULD CONTACT THEIR OWN LEGAL COUNSEL TO TAILOR THE DOCUMENT TO MEET THEIR SPECIFIC NEEDS.