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Owner: David Behinfar: HCS Exec
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Applicability: UNCHCS - All except Pardee

Patient Right of Access to Inspect and Obtain a Copy of PHI

APPLICABILITY:

This policy applies to the following entities (collectively referred to as "UNC Health" in this policy):

✓ UNC Health Care System / UNC Medical Center*	✓ Johnston Health
✓ UNC Physicians Network	✓ Lenoir Memorial Hospital
✓ UNC Physicians Network Group Practices / UNC Physicians Group Practices II	Margaret R. Pardee Memorial Hospital
✓ Rex Healthcare / Rex Hospital	✓ Nash Healthcare System/Nash Hospitals
✓ Chatham Hospital	✓ Wayne Memorial Hospital
✓ Caldwell Memorial Hospital	
✓ UNC Rockingham Health Care / UNC Rockingham Hospital	

*UNC Medical Center includes all UNC Hospitals' facilities and the clinical patient care programs of the School of Medicine of UNC-Chapel Hill (including UNC Faculty Physicians).

I. Description

UNC Health shall uphold the right of patients, or their authorized representatives to inspect and obtain copies of their PHI contained in a designated record set for as long as the PHI is maintained in the designated record set, except for Psychotherapy Notes and information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

Included within the scope of this policy are the patient care programs of the UNC School of Medicine (UNC SOM). As a result, this policy shall apply to all UNC SOM personnel, including but not limited to faculty, staff, students, trainees, interns and volunteers who may be full-time, part-time, paid or unpaid who create, store, transmit, access or use any patient information in support of clinical purposes for UNC Health or any other healthcare entity.

II. Policy

A. Right to Inspect or Receive Copies:

1. UNC Health recognizes that each patient has a right of access to inspect and obtain a copy of his or her protected health information (PHI) in a designated record set for as long as the PHI is maintained.
2. UNC Health must approve or deny a request by a patient or personal representative of the patient to inspect or obtain copies of the patient's PHI no later than thirty (30) days after receipt of the request, which may be subject to a one-time extension of thirty (30) days under certain circumstances.
3. PHI that includes mental health information will be released only after the applicable UNC Health entity's health information management department has obtained the approval of the appropriate attending health care provider.
4. UNC Health may charge a reasonable fee for inspection and/or copies of PHI (See UNC Health [Copy Requests and Charges for PHI](#) Policy).

B. Patients or their Personal Representatives Requests for Access to Inspect or Receive Copies of Medical Records:

1. **Office Responsible for Receiving Requests for Access to Inspect or Obtain Copies of PHI.** The UNC Health HIM Department (which may be delegated to facility HIM personnel at each facility) shall be responsible for receiving and reviewing requests for access to inspect and receive copies of PHI.
2. **Requesting Copies of Medical Records.** Upon the receipt of a request from an individual (or his/her authorized representative) for a copy of his or her medical records to be provided to the patient him or herself or to another person, UNC Health must provide the copy to the person designated. A patient or his or her personal representative may request copies of the patient's medical records be sent to:
 - a. The patient him or herself;
 - b. To another party, such as an attorney, an insurance company, or any other party to whom the patient directs.
3. **Form to be Used When Requesting Copies of Medical Records.** Patients who request copies of their medical records **may use any form to do so** and do not need to use a HIPAA compliant authorization or the UNC Health HIPAA Authorization to request copies of their medical records. The patient may, but is not obligated, to use the UNC Health [Patient Request for Access to PHI Form](#) directing UNC Health to send copies of the patients records to a third party. If the patient does not use UNC Health [Patient Request for Access to PHI Form](#), the form used by the patient must be in writing and contain the following elements:
 - a. Clearly states what information the individual wants UNC Health to disclose (i.e., "my medical record" or "my medical record for my October 8, 2016, emergency room visit"); and
 - b. Clearly states to whom UNC Health must send the information (i.e., "to me" or "to the Law Firm of John Doe"); and
 - c. Clearly identifies where to the send the information (mailing address or email address); and
 - d. Must be signed by the individual or his/her personal representative (See UNC Health [Personal Representatives](#) Policy).
4. **Producing Copies of Records in Electronic Format.** If records are maintained in an electronic

health record ("EHR"), UNC Health will provide a copy of the electronic in the electronic format requested by the individual, if it is readily producible in such form and format. If it is not readily producible in the electronic form and format requested by the individual, UNC Health will provide a copy in a readable electronic form and format as agreed to with the individual. If the individual declines the available electronic alternatives, a hard copy may be offered to fulfill the request.

- a. Electronic copies may be produced on a CD, DVD, USB drive or other appropriate recording media. **Do not use electronic storage media provided by a patient.**
 - b. The electronic copy provided in response to the patient's request must be encrypted. Provide the encryption key (password) to the patient by a separate means (letter, (authorized) e-mail, or hand-delivery).
 - c. An electronic copy may also be released to a patient's MyUNCchart account. Please contact the UNC Health HIM department for further information about releasing patient records directly to a patient's MyUNCchart account.
 - d. An email containing copies of electronic medical records should be sent via an encrypted email if possible. If it is not possible to send copies of records via encrypted email, UNC Health should consider whether the contents of the email may be separately encrypted. If it is neither possible or practical to encrypt either the email itself or the file attachment, then UNC Health must advise the patient of the risk that the email and the PHI attached to the email (or in the body of the email as the case may be) could be read or intercepted by a third party and document in writing that the patient was advised of this specific risk and elected to receive the PHI via unencrypted email despite the risk.
- C. **Time Frame for Approval or Denial.** UNC Health shall approve or deny a request for access to inspect or obtain copies of the patient's PHI within thirty (30) days of receiving the request. If action cannot be taken within thirty (30) days, the deadline may be extended by an additional thirty (30) days if, within the initial thirty (30) days after receiving the request, the patient is provided with a written statement describing the reasons for the delay and the date by which the patient or authorized representative will receive a response.
- D. **Request for Inspection.** Upon a request by a patient or patient's authorized representative to visually inspect the PHI of the patient in person, the patient or his or her authorized representative shall be offered convenient times during business hours to come to HIM's business offices to view the information.
1. **Time and manner of access.** UNC Health must provide access to the patient or his or her representative to visually inspect the patient's PHI in a timely manner, as required above. UNC Health may discuss the scope, format, and other aspects of the request with the individual as necessary to facilitate the timely provision of access, including arranging for a convenient time and place to inspect and/or obtain a copy of the PHI.
 2. **Setting an Appointment.** After receiving a request for a visual inspection of PHI, HIM staff shall schedule an appointment for the patient and/or representative to visually inspect records at the earliest opportunity, but no more than 30 days from the date of the request.
 3. **If Another Entity Maintains the PHI.** If the PHI that is the subject of the patient's request for access is not maintained by UNC Health and UNC Health is aware of the identity of the entity maintaining the PHI, UNC Health may provide the patient or the patient's authorized representative of where to direct the request for access
 4. **Supervision Required.** Patients and personal representatives may only review records in the company of a UNC Health representative.

5. **Notifying the Patient's Provider.** HIM shall notify the patient's health care provider of the appointment date and time to permit the healthcare provider the opportunity to participate in the decision of who will sit with the patient during the inspection.
 6. **For paper records being reviewed:** Prior to the appointment, UNC Health HIM staff shall prepare the paper record for inspection by removing all parts of the health record that are not included in the designated record set (see UNC Health [Designated Record Set](#) Policy). **For electronic records:** HIM shall determine the appropriate arrangements including electronic access details necessary for the review to occur.
 7. **Altering Records Prohibited.** Patients or their representatives may not alter any part of a health record during the inspection, but may make notes and request an amendment or correction, using the UNC Health [Request for Amendment of Protected Health Information \(PHI\) Form](#).
 8. **Documentation.** After the inspection, HIM shall document the participants and the date and time that the inspection took place.
- E. **Requests for Mental Health Records.** If the records requested contain in part or in whole any mental health records such as psychiatric, psychological, or psychotherapeutic records, HIM staff shall notify the patient's mental healthcare provider for further instructions; the provider may elect to provide a summary report of examination and treatment instead of actual copies of records or may seek to deny the request to release certain records if in the provider's professional judgment the release of such records is reasonably likely to endanger the life or physical safety of the patient or another person (see paragraph J below).
- F. **Exception for Release of Lab Reports or Similar.** Patients may request and can receive directly from their health care provider certain copies of or information related to laboratory results or the results of medical procedures. An Authorization Form is not required for release of laboratory and procedure information ("Results") only in accordance with the following:
1. Only a licensed independent practitioner ("LIP") or a registered nurse ("RN") may provide the Results to the patient;
 2. The LIP or RN must ensure that the Results are given only to the patient, or to the patient's authorized representative if the patient is not capable of making or communicating decisions (see UNC Health Policy, [Authorized Representatives of Patients](#));
 3. The LIP must explain the Results personally or in writing to the patient or authorized representative;
 4. If an RN provides the Results, the RN may discuss the results only in accordance with standing orders or protocols; and
 5. The LIP or RN, or his/her designee, must document in the patient's record under "phone messages" or "clinic notes" (as appropriate) that the patient received the Results, when the patient received the Results, and specifically what documentation was provided to the patient.
- G. **Identity Verification for Requesting Copies or Access.** Reasonable efforts shall be made to verify the identity of the person making the request, and if not the patient, their relationship to the patient and authority to access the patient's PHI. (See UNC Health [Verification of Identity](#) Policy). If a patient or legal representative has documents to corroborate identity or authority, UNC Health HIM personnel shall ensure that such documentation is copied and retained in the patient's chart.
- H. **Copying Charges.** See UNC Health [Copy Requests and Charges for PHI](#) Policy for allowable charges for providing copies of medical records.
- I. **Denying a Patient's Request for Access Without the Opportunity to Appeal:** A patient's or authorized

representative's request for access to PHI may be denied without providing the patient with an opportunity to review the denial, in the following circumstances:

1. The patient or authorized representative is not entitled to access such PHI because the patient is not the subject of the PHI;
2. The request is for psychotherapy notes;
3. The PHI was created in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
4. If UNC Health is under the direction of a correctional institution, denial of an inmate's request to obtain a copy of PHI, if obtaining such information would jeopardize the health, safety, security, custody, or rehabilitation of the patient or other inmates, or the safety of any officer, employee, or other person at the correctional institution, or responsible for the transporting of the inmate;
5. The PHI is maintained by UNC Health and subject to the Clinical Laboratory Improvements Act of 1988, to the extent the provision of access of the patient would be prohibited by law; or is exempt from the Clinical Laboratory Improvements Amendment of 1988;
6. The request is for access to PHI created or obtained by UNC Health in the course of research that includes treatment may be 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 UNC Health has informed the patient that the right of access will be reinstated upon completion of the research;
7. The requested PHI is contained in records that are subject to the Privacy Act of 1974 (5 U.S.C. 552(a)) which provides that a patient may be denied access to any information compiled in reasonable anticipation of a civil action or proceeding.

J. Denying a Patient's Request for Access with the Opportunity to Appeal. A patient or his or her authorized representative's request for access to PHI may be denied, provided that the patient is given a right to have any denials reviewed, in the following circumstances:

1. 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.
2. 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.
3. The request for access 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.

K. Informing the Patient of a Denial of the Request for Access and the Patient's Right to File a Complaint. If a patient's or authorized representative's request for access to PHI is denied, a timely written denial shall be provided to the patient. The denial shall be written in plain language and shall contain the reasons for denying the patient's request, a statement of the patient's rights to have the denial reviewed, if applicable, and a description of how the patient may file a complaint with the UNC Health Privacy Office. Even if the patient's or authorized representative's request for access to the PHI is denied, the request shall be satisfied to the extent possible by making any other information and PHI requested accessible, provided that such information complies with the HIPAA Privacy Policies and Procedures.

1. **Review of Patient's Appeal of Denial.** If a patient or authorized representative requests review of a denial, the denial shall be reviewed by the UNC Health Privacy Office or its designee who may solicit the assistance of additional parties as deemed necessary.
- L. **Incomplete Records.** If a patient's medical records are incomplete, the requestor shall be given the option of waiting until the records are complete or be allowed to access the records prior to completion. When possible, completion of incomplete records shall be expedited.
- M. **Documenting a Release.** Release of any patient records shall be documented by the HIM department staff, which shall record the following information:
 1. A copy of written request and approvals/denials related to the same;
 2. The date the request was received;
 3. The date and manner of compliance; and
 4. The name of the person who was responsible for receiving and/or processing the request.
- N. **Requests to be Referred to Legal Counsel.** Requests for access to suspected abuse records (spousal, child or elder abuse) by a patient or patient representative shall be referred to appropriate UNC Health legal counsel.

III. Definitions

Electronic Health Record – means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

Designated Record Set – means a group of records maintained by or for UNC Health that is:

- The medical records and billing records about individuals maintained by or for UNC Health; and
- Used, in whole or in part, by or for UNC Health to make decisions about individuals.

Record – any item, collection or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for UNC Health.

Personal Representative – means an executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status.

Psychotherapy Notes – means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and **that are separated from the rest of the individual's medical record.** *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

IV. References

45 C.F.R. §§ 164.514(h)(1), 164.524 Right of Access

45 C.F.R. §§ 164.501 – Definition of Psychotherapy Notes

V. Related Policies/Forms

[Release of Information \(Patient or Authorized Representative\) \(English\)](#)

[Release of Information \(Patient or Authorized Representative\) \(Spanish\)](#)

[Release of Information \(Requestor Other Than Patient or Authorized Representative\) \(English\)](#)

[Release of Information \(Requestor Other Than Patient or Authorized Representative\) \(Spanish\)](#)

[Request for Amendment of Protected Health Information \(PHI\) Form \(English\)](#)

[Request for Amendment of Protected Health Information \(PHI\) Form \(Spanish\)](#)

[Copy Requests and Charges for PHI](#)

[Personal Representatives](#)

[Designated Record Set](#)

[Verification of Identity](#)

[Authorized Representatives of Patients](#)

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
	Jerylyn Williams: Chief Audit & Compliance Ofcr	06/2020
SYSTEM Site Administrator	Emilie Hendee: HCS Attorney Sr	06/2020
	David Behinfar: HCS Exec Dir Privacy	06/2020

Applicability

Caldwell Memorial Hospital, Chatham Hospital, Johnston Health, Nash UNC Health Care, UNC Health Care System, UNC Lenoir Health Care, UNC Medical Center, UNC Physicians Network, UNC Rex Healthcare, UNC Rockingham Health Care, Wayne Memorial Hospital