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**HIPAA Procedure 5002**

**Right to Request Access and Amendment to Designated Record Set**

**Effective Date: April 14, 2003**

**Revised Date: December 17, 2020**

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**Release of Records to the Patient Portal**

Records will be released to the MyChart patient portal in a timely manner as required under the 21<sup>st</sup> Century Cures Act as of its implementation date. Test results and clinical notes will be released daily unless the release meets one of the exceptions outlined in the rule. In particular, the following exceptions are likely to be relevant to release of records to MyChart:

1. Preventing Harm Exception

The Harm Exception may be met if it is determined that the following conditions are met:

- a. withholding the information will substantially reduce the risk of harm to the patient or to another person; and
- b. the information withheld is no broader than necessary to reduce the risk of harm; and
- c. the risk of harm either arises from
  - i. data known or suspected of being erroneous; or
  - ii. Is determined by a licensed health care professional with a current or prior clinician-patient relationship with the patient to pose harm in one of the following conditions:
    - 1. Arise from release of information about the patient to their legal representative and is determined to pose substantive harm to the patient;
    - 2. Arises from release of information to the patient or their personal representative and involves information included in the patient's record that references a person other than the patient and poses risk of substantial harm to such person;
    - 3. Arises from release of information to the patient and poses a risk of harm to the life or physical safety of the patient or another individual, or in accordance with CGA Sec 17a-548, poses a substantial risk of severe deterioration in mental state.

A patient may request a review of the decision by a licensed health care professional to withhold information as described in the the section below on Denial of Access and Request for Review.

2. Privacy Exception

The Privacy Exceptions requires that at least one of the following conditions are met:

- a. Unsatisfied legal preconditions to the release  
Records which are further restricted by state or federal law requiring explicit patient consent prior to be release should be withheld from release to anyone other than the patient, such as a MyChart proxy or through a health information exchange unless such consent is obtained. See HIPAA Procedure 5031 for information regarding release of
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mental health information, substance abuse treatment information, HIV information, and psychotherapy notes.

- b. Access may be denied under the Privacy Rule  
As described in the following section, certain records may be withheld including blinded clinical research, or information developed in anticipation of civil, criminal, or administrative action or other proceeding.
- c. Respecting an individual's request to not share information  
Where a patient has requested and the University has accepted a request for restriction, the information must be withheld in accordance with the restriction granted.

Exceptions will be made on a case by case basis by the treating clinician in consideration of the specific patient, the nature of the information and applicability of the harm or privacy exception. In rare cases, a specific practice or record type may be withheld generally based on documented determination that one of the exceptions is applicable. Determinations at the level of record type will be documented and maintained by the Privacy Office.

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## **Right to Request Access to Designated Record Set**

Patients may request access to their PHI by submitting a request in writing on the official Request Access to PHI Retained in the Designated Record Set form. Requests should be made to their provider's clinical department, who is responsible for reviewing the request and ensuring its resolution. The request must state the type of access requested (inspection or copy and if copy, paper or electronic, if applicable), specify the dates and specific information requested, and be signed by the patient. The Request Access form specifies that the access will be granted or denied within thirty (30) days of its receipt and identifies that reasonable cost-based fees may be charged for copies of records. In cases where use of the Request Access to PHI Retained in a Designated Record Set form creates an undue burden, a written note or verbal request can be accepted when the individual's identity has been verified.

Charges for copies may include labor, supplies, and postage costs based on average labor costs to fulfill standard types of access requests and may not include fees related to search and retrieval of records. Copy fees are not required, however, if they are to be collected they must be calculated in accordance with 5002 Exhibit B for copy fees.

The Request Access form can also be used to direct that a copy of the records be sent to a third party on behalf of the patient. Requests by patients to send records to a third party must always be made in writing.

When a request for access to PHI is made by a patient:

1. Where possible, refer the patient to MyChart for direct access to their record at any time.
2. Verify the patient's demographic information. If the patient is not known to you, seek reasonable verification of their identification using the guidelines in the Yale Policy and Procedure on Authorization Requirements for Use & Disclosure of PHI – Section on Verification of Identification.
3. Review the PHI according to the request, to determine if:
  - A. The information requested is excepted from the patient's right of access (see Exceptions to access below), in which case access may be denied. Follow the procedure for Denial of Access.
  - B. The information requested is complete.
  - C. If the information is not complete, inform the physician responsible for completion that a request for access has been made by the patient and the record will need to be completed within 14 days in order to comply with the patient's request.
  - D. If access is granted and the information is complete and the patient requests **inspection** of the medical record and/or billing record or any portion thereof, schedule an appointment for the patient to view their record. If the request is only for a portion of a record, remove or print that portion and place it in a separate folder for purposes of the inspection. A member of the clinical department workforce must be present with the patient during the time the patient is inspecting the record(s). During review, the patient may not remove any documents from the record(s) or write any information in the record(s). If the patient wishes to make an amendment to the record(s), follow guidelines in the Amendment section of this procedure. If the patient has any questions concerning the information in the medical record, inform the patient that an

appointment must be made with the provider to discuss the information. If the patient has any questions concerning the information in the billing record, refer the patient to their provider's clinical department privacy representative.

- E. If access is granted and the information is complete and the patient requests a **paper copy** of any or all of the medical record and/or billing record, make the specified copies and mail the information to the patient via postal mail to the address indicated on the request form. Any charge for copies will be inclusive of labor, supplies and postage but will exclude costs associated with search and retrieval of the records. If another individual is designated to physically pick up the copy of the information, verify the individual's identity by requesting a photo identification card and match the name on the card to the name on the access request signed by the patient. Have the individual sign the access request as having received the information. Refer to the Yale Policy on Authorization Requirements for Use and Disclosure of Protected Health Information, Including Verification of Identification.
- F. If access is granted and the information is complete and the patient requests an **electronic copy** of any or all of the medical record and/or billing record, and the information resides in an EHR, copy the records in accordance with the EHR system specifications. For example, if the EHR allows records to be copied directly to a CD or thumb drive, the relevant records should be copied to these media and delivered to the requestor as specified in the request form and as described in E above.

Patients may request copies of their records be sent to them via email, including unencrypted email. In such cases, patients should be advised of the insecurity of sending records via email and if the patient continues to request records be sent via insecure email, the patient's consent should be noted on the request and the records sent accordingly.

Fees for electronic copies may either be 1) labor costs associated with reviewing the request, converting the records to an appropriate format if needed, transferring the records to the requested media, the cost of the media itself and postage; or 2) a flat fee of no more than \$6.50.

If the records are not maintained in an electronic health record, inform the patient that an electronic copy is not feasible and provide a paper copy as described above.

- 3. Exceptions to access are limited to very specific situations including:
  - A. When the patient has agreed to not have access to PHI created or obtained by Yale in the course of research that includes treatment, but access to such information may only be denied for as long as the research is in progress;
  - B. Psychotherapy notes;
  - C. If a provider reasonably determines that the information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm himself, herself or another;
  - D. Information compiled in reasonable anticipation of civil, criminal, or administrative action or other proceeding.

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## **Denial of Access and Request for Review**

- 1. A patient's request to access his or her own records will be denied only on the grounds listed above. Any potential denials should be referred to the relevant Deputy Privacy Officer who will authorize the denial only after consulting with the Chief HIPAA Privacy Officer and Legal Counsel.
- 2. If access is denied, return a copy of the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form to the patient indicating that Yale is unable to comply with the request for access due to the applicable reason. Retain the original of the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form sent to the patient in the patient's medical record.
- 3. If access to portions of the record will be provided, return a copy of the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form to the patient indicating Yale is not able to comply with the request for access for the specified reason but is able to provide access to portions of the record.
- 4. If access to portions of the record is not possible, return a copy of the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form to the patient indicating

that Yale is not able to comply with the request for access for the specified reason. Indicate on the Form that the patient has the right to have this decision reviewed by another licensed health care professional by submitting their request in writing to the Deputy Privacy Officer.

5. Forward all written requests for a review of access denials to the specific Clinical Department Privacy representative. The Department will assign this review to a licensed health care professional that did not participate in the original decision to deny access.
6. If a request for access to the medical record or billing record is made and Yale does not maintain the requested record, return a copy of the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form to the individual indicating that Yale has no such records. If Yale does not have records on this individual but knows where the requested information may be maintained (such as at a hospital or other physician's office), return the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form to the individual and provide the name and address of the location where Yale believes the records may be maintained.
7. Upon the final review and determination, send a response to the patient indicating the result of the review and, if applicable, how the patient may file a complaint with The Yale University Privacy Officer or in writing to the Secretary of Health and Human Services (HHS).
8. File the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form and any other documentation received from the patient in the patient's medical record and maintain it for a period of six (6) years.
9. Copies of all responses regarding denials of access only should be forwarded to the Deputy Privacy Officer.

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## **Employee Access to Their Own Record**

Employees who are also patients and who have access to the electronic health record due to their position at Yale may access their own electronic record for the sole purposes of reviewing and/or printing their health information. Employee access and safeguarding of information must be conducted in accordance with all applicable HIPAA Privacy and Security policies. Access to Protected Health Information of a family member, including a family member who the employee is an authorized representative of (minor children, etc) must be obtained by following the process described in the sections above and may not be obtained by direct access to the electronic record by the requesting employee.

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## **Right to Request Amendment to Designated Record Set**

A patient may request an amendment to their medical record or billing record. In most cases except as described below, the request must be in writing, and should be made on the Request Amendment of PHI Retained in the Designated Record Set form to their provider's clinical department privacy representative, who is responsible for reviewing the request and ensuring its resolution. This form serves as both evidence of the request and notice to the patient they will receive a response within sixty (60) days of their request (with not more than one 30-day extension) and Yale's duty to supply others with the information. This form will be processed in the following manner:

1. Ensure the Request Amendment of PHI Retained in the Designated Record Set form is complete, or if the request is in another form of writing, that all required information has been provided. If this is not received in person, verify the patient's signature on the form using reasonable means; e.g. with a sample in the medical record. The form must be dated and signed by the patient or received electronically via the patient's MyChart account.
2. Route the Request Form and the medical and/or billing record to the original provider (author of the record) or the specific clinical department privacy representative will assign this to another provider within the department if the original provider is not available.
3. If processing cannot occur within sixty (60) days of receipt of the request, indicate Yale's request for a thirty (30) day extension and the reason for the delay on the Response to Request for Access to or Amendment of PHI Retained in the Designated Record Set form. Mail a copy of this to the patient at the address indicated on the Request form.
4. Acceptance of requested amendment
  - A. If the author or assigned provider accepts the patient's amendment, the author or assigned provider will sign and date the Form as amendment accepted and make a note at the site in the

record to which the amendment applies that an amendment exists. The author or assigned provider may document any additional information relative to the amendment in the designated record set. The documentation must retain the original entry, state the new information, and reflect the author or assigned provider's identity and date of the change. In an electronic information system, the change should be made in accordance with the vendor's specification for changes such that an audit trail exists to show both the original entry and the new entry. In paper documents, a correction/amendment may be made by drawing a single line through the replaced information, initialed, and dated.

- B. A copy of the form will be returned to the patient indicating that the amendment has been accepted.
  - C. Yale will notify persons identified on the form by the patient as having previously received PHI about the patient and who needs the amendment. Such disclosures will be noted on the form as having been completed with the signature of the staff member who processed the disclosures.
  - D. Yale will also inform persons or Business Associates it knows who have the PHI that needs to be amended and have relied or may rely on it to the detriment of the individual. Such disclosures will be noted on the form as having been completed with the signature of the staff member who processed the disclosures.
  - E. The original Request Amendment of PHI Retained in the Designated Record Set form will be placed in the patient's designated record set and maintained for a period of six (6) years.
5. Denial of requested amendment
- A. If the author or assigned provider rejects the patient's amendment, the author or assigned provider must indicate one of the following as reasons on the Request Amendment of PHI Retained in the Designated Record Set form:
    - The information subject to the requested amendment was not created by Yale (unless the patient provides a reasonable basis to believe that the originator of the protected health information is no longer available to act on the requested amendment).
    - The information subject to amendment is not part of the designated record set.
    - The information would not be available for access (refer to Section of this procedure on Patient's Right to Access Health Information).
    - The information is accurate and complete.
  - B. The author or assigned provider must make a note at the site in the record to which the amendment applies that an amendment was requested and denied by Yale.
  - C. A copy of the form with this information will be returned to the patient. The original copy of the form will be filed in the patient's designated record set.
  - D. Yale must notify the patient that, if they do not submit a statement of disagreement as described below, the patient may request that the request for amendment and the denial be disclosed with any future disclosures of the information that is the subject of the amendment.
  - E. The patient may choose to submit a written statement disagreeing with the denial. This statement must be contained on not more than one typed page of at least 10-point font.
  - F. When a statement of disagreement is received, it should be forwarded to the author or assigned provider, who will determine whether a rebuttal will be prepared. The statement of disagreement and any rebuttal must also be filed in the patient's medical record for a period of six (6) years and accompany any future disclosures of the information that is the subject of the amendment. Any rebuttal must also be provided to the individual who submitted the statement of disagreement. Copies of all documentation should be forwarded to the Deputy Privacy Officer.
  - G. Inform the patient that they may file a complaint in writing to the Yale University Privacy Officer or the to the Secretary of Health and Human Services (HHS).
  - H. All information relative to the disputed amendment, i.e. patient's request for amendment, Yale's denial of the request, the patient statement of disagreement and Yale's rebuttal to the statement of disagreement, if any, must be linked to the patient's designated record set, and maintained for a period of six (6) years.

**Amendments Made by Others**

If Yale is informed by another provider of an amendment to one of Yale’s patient’s records, Yale must review the contents of that patient’s records and advise the provider who attended the patient as to any information that appears to require action. Yale will place the amendment information in the designated record set.

**Exception for verbal requests**

In limited circumstances, verbal request for amendment will be accepted such as:

- Clerical errors noted when the record is reviewed in the presence of the author or treating clinician;
- Demographic changes provided by the patient when the patient’s identity has been verified.

**Documentation and Record Keeping**

Originals and copies of the following types of documentation must be maintained for a period of six (6) years.

<b>Form or Document</b>	<b>Original Filed</b>	<b>Copy to DPO?</b>
Request Access to PHI Retained in the Designated Record Set	Patient’s Medical Record	No
Response to Request for Access to PHI Retained in the Designated Record Set	Patient’s Medical Record	Denials of Access Only
Request for review of denial to access the DRS	Patient’s Medical Record	Yes
Request Amendment of PHI Retained in the Designated Record Set	Patient’s Designated Record Set	No
Response to Request for Amendment of PHI Retained in the Designated Record Set	Patient’s Designated Record Set	No
Statement of disagreement to denial of request to amend the DRS	Patient’s Designated Record Set	Yes
Rebuttal to statement of disagreement to denial of request to amend the DRS	Patient’s Designated Record Set	Yes
Written complaints regarding denials of access or amendment	Yale University HIPAA Privacy Office	Yes

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