

<p style="text-align: center;">The University of Texas SOUTHWESTERN MEDICAL CENTER At Dallas</p>	<p style="text-align: center;">Privacy Compliance Program Privacy Manual Section 4: Patient Rights Policy No: 4.4 Last Revised: March 3, 2003 Effective Date: April 14, 2003</p>
<p>Right to Access and/or Obtain Copies of Records</p>	

POLICY:

UT Southwestern shall recognize an Individual’s right to access (i.e., inspect and/or obtain copies) of his or her own PHI contained in a Designated Record Set, if it is determined the Individual is entitled to access.

PROCEDURE:

1. Responsibilities Regarding the Right to Access Records
 - a. All UT Southwestern departments that maintain Designated Record Sets (“records offices”) will be responsible for:
 - i. Receiving and responding to an Individual’s request for access to inspect and copy his/her PHI contained in the Individual’s Designated Record Set, in accordance with this Policy; and
 - ii. Directing the Individual where to file his/her request, if the responsible records office does not maintain the PHI being requested, but knows where the PHI is maintained.
 - b. The Privacy Officer or designee will be responsible for:
 - i. Providing guidance for determinations on the composition of the Designated Record Set;
 - ii. Ensuring that the Notice of Privacy Practices informs Individuals of their right to request access to inspect and obtain a copy of PHI in their Designated Record Sets; and

- iii. Providing guidance and responding to questions from UT Southwestern departments regarding departmental implementation and compliance with this Policy.

2. Submission of Individual Requests for Copies of Records

- a. All Individuals requesting copies of records contained in their Designated Record Set must submit their request in writing using the Authorization to Disclose Protected Health Information Form. This form is included in the Forms Appendix on UT Southwestern's HIPAA website, and will be available from the Privacy Officer or designee.
- b. Requests will be forwarded to the records office that is responsible for maintaining the applicable Designated Record Set. The records office may discuss the scope, format and other aspects of the request for copies with the Individual, as necessary, to facilitate the timely provision of the request.
- c. Only upon specific request from an Individual, all UT Southwestern departments with patient contact will be responsible for:
 - i. Distributing the Authorization Form to the Individual;
 - ii. Instructing Individuals how to complete the form and the appropriate mechanisms for submitting the form to the records office that is responsible for maintaining the applicable Designated Record Set; and
 - iii. Advising Individuals that they should contact the responsible records office if they have any questions regarding how to complete the form.

3. Determinations on the Designated Record Set.

- a. An Individual shall only be given access and/or copies of information contained in Designated Record Sets, as defined in Section 1.2 of this Manual.
- b. An Individual shall have access and/or copies of this information for as long as it is maintained in a Designated Record Set, unless a reason for denial exists.
- c. If the information requested is not part of a Designated Record Set, the Individual has no right of access to it. For example, an Individual will *not* have access or copies of PHI contained in records or information systems used for (i) quality control, or (ii) peer review analysis, unless this information was used to make a health care treatment decision about the Individual.

- d. If the same PHI that is the subject of a request for access and/or copies is maintained in more than one Designated Record Set, or at more than one location, UT Southwestern is required to produce the PHI only once.
 - e. The Privacy Officer or designee shall provide further information to the responsible records offices to use in making determinations regarding the composition of the PHI that is covered by a particular request from an Individual. If there is difference of interpretation, the Privacy Officer or designee shall have the authority to make all final determinations on what PHI is in the Individual's Designated Record Set, and is accessible to the Individual.
 - f. For further discussion of the designated record set, see Section 4.7 of this Manual.
4. Verification Requirements. Before allowing access or releasing PHI to an Individual, the responsible records office will verify the Individual's identity in accordance with Section 6.5 of this Manual.
5. Time Requirements for Providing Access and/or Copies
- Once the responsible records office has received a valid request from an Individual to access and/or copies of his/her Designated Record Set, and payment of any applicable fees has been received, the responsible records office has 15 business days to notify the Individual of the decision to grant or deny the request.
6. Form of Providing Access
- a. UT Southwestern shall provide the Individual with access to the PHI as requested by the Individual. For example, if the Individual is requesting personal access to inspect records, arrangements should be made with the Individual to arrange a convenient time for him or her to inspect the records at a UT Southwestern-designated location.
 - b. UT Southwestern shall provide the Individual with copies of the PHI in the form or format requested by the Individual, if it is readily producible in such form or format. If the form requested by the individual is not readily producible, the information may be produced in a readable hard copy format or other format agreed upon by the Individual and UT Southwestern or required by state law. If the request is for diagnostic imaging studies or films of an Individual, UT Southwestern may provide copies of the films or imaging studies. UT Southwestern will release the original films or imaging studies to the Individual or Individual's designated recipient only if copies are not readily producible.
 - c. If an Individual requests that PHI be mailed to him or her, UT Southwestern shall honor that request if applicable fees for copying and

mailing are paid in advance. UT Southwestern is not responsible for misdirected or mishandled mail.

- d. An Individual may be provided with a summary of the requested PHI, rather than specific information, if:
 - i. The Individual agrees to receive a summary;
 - ii. The Individual agrees, in advance, to pay any fees that will be imposed in preparing the summary; and
 - iii. A summary is permitted by and in accordance with Texas law (e.g. medical records may be summarized, but films may not be summarized).

7. Fees for Access and Copying.

- a. *Reasonable Cost-Based Fees Required.* UT Southwestern may charge a reasonable cost-based fee for providing medical record access/copies. Contact the responsible records office for the fee schedule. When applicable, the fee may include:
 - i. The cost of copying (supplies and labor);
 - ii. Postage; and
 - iii. The cost of preparing a summary, if the Individual agrees to a charge, in advance.
- b. *No Charge for Disability Requests.* UT Southwestern will not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits, or assistance or an appeal relating to denial of those benefits or assistance. UT Southwestern will provide the requested information not later than the 30th day after the date on which UT Southwestern receives the request.

8. Denial of Access to PHI.

- a. *Reasons for Denial.* Responsible records offices may deny an Individual access to the Individual's PHI in the following circumstances:
 - i. The PHI is:
 - (1) Not part of a Designated Record Set, such as psychotherapy notes and research records;

- (2) Compiled by UT Southwestern in reasonable anticipation of a civil, criminal or administrative action or proceeding;
 - (3) A test report or result held by a clinical laboratory regulated under the Clinical Laboratory Improvement Amendments (“CLIA”), or a research laboratory exempt from CLIA, if the Individual is not an “authorized person,” which CLIA defines as the person who requested the test— (e.g., the physician);
 - (4) Received from another source, other than a health care provider, under a promise of confidentiality, and providing access would reveal the source of the information; or
 - (5) Subject to denial of access under the Privacy Act (5 U.S.C. § 552a).
- ii. A licensed health care provider has decided to deny access because, in his or her professional judgment, he or she believes that:
 - (1) The access requested would endanger the life or physical safety of the Individual or another person (this excludes the potential for causing emotional or psychological harm);
 - (2) The PHI contains a reference to a third person, and it is reasonably likely that access may cause substantial physical, emotional or psychological harm to that other person; or
 - (3) The person requesting the PHI is the parent or legal representative of a minor, and the denial is necessary to avert a serious threat to health or safety, as further discussed in Section 7.16 of this Manual.
- b. *Partial Denial.* If access to PHI is denied, in part, for the reasons stated in Paragraph 8(a) of this Policy, UT Southwestern shall provide the Individual with access to the PHI that the Individual has the right to access, and delete the PHI for which UT Southwestern has grounds to deny access.
 - c. *Notice of Denial.* If access is to be denied, in part or in whole, UT Southwestern will inform, in writing and within the timeframes established by Paragraph 4 of this Policy, the Individuals requesting access to inspect and/or copy PHI:
 - i. Of the specific grounds for the denial; and
 - ii. Of the Individual’s right to protest the denial to the Privacy Officer or designee (specifically stating the name, title and phone number of such person), as well as to the Secretary of DHHS, as described in Section 12.3 of this Manual, which sets forth the policy and procedure on Complaints and Internal Investigations.

Additionally, if access is denied because a licensed health care professional has determined, in the exercise of his or her professional judgment, that access should be denied because of the potential harm to either the Individual or another person as listed in Paragraph 8(a)(ii) of this Policy, the notice must also:

- iii. Inform the Individual that he or she has the right to have the decision to deny access reviewed by another licensed health care provider, designated by UT Southwestern, who did not participate in the initial decision to deny access; and
- iv. Inform the Individual that he or she may exercise this right by notifying the Privacy Officer or designee of his or her desire to have the decision reviewed by another licensed health care provider.

A copy of this Notice of Denial, signed and dated, will be maintained in the Individual's medical record.

d. *Review of Denial.*

- i. If an Individual has requested review of a denial of access based on one of the reasons in paragraph 8(a)(ii) of this Policy, the responsible records office will so notify the Privacy Officer or designee. The Privacy Officer or designee will designate a licensed health care professional, who was not directly involved in the decision to deny access to be the designated reviewing official ("official"), and will promptly refer the request to that official.
- ii. The official will determine, within a reasonable period of time, whether to deny access based upon the criteria listed in paragraph 8(a)(ii) of this Policy. The decision of the official will be final, and will be reported to the Privacy Officer or designee.
- iii. UT Southwestern will promptly notify the Individual, in writing, of the determination of the official. If the official finds that the Individual should be given access to inspect and/or copy his or her PHI, the responsible records office will be instructed by the Privacy Officer or designee to provide that access, as described in this Policy.

9. Document Retention.

- a. The Privacy Officer or designee shall maintain, at a minimum, the documentation describing the Designated Record Sets that are subject to access by Individuals in paper or electronic form for at least 6 years from the date when such documents were last in effect.
- b. The responsible records offices shall maintain, at a minimum, the following documentation in paper or electronic form in accordance with the Medical Record Maintenance, Storage and Retrieval policy:

- i. All written documentation submitted by Individuals in connection with their requests for access and/or copies of their PHI;
- ii. Any written notices to an Individual of denial from UT Southwestern pertaining to the Individual's request for access to PHI; and
- iii. Any written notices to an Individual of reviews of denial from UT Southwestern pertaining to the Individual's request for review of a denial of access to PHI.

LEGAL REFERENCES:

45 C.F.R. §§ 160.202, 164.501, 164.514(h), 164.524 (2001)

65 Fed. Reg. 82462, 82485, 82504, 82538, 82547, 82548, 82554-58, 82593, 82605-07, 82731-36, 82764 (Dec. 28, 2000); 67 Fed. Reg. 53182, 53191, 53249 (Aug. 14, 2002)

OCR Guidance, 28, 30, 44, 49 (July 6, 2001)

Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a; 42 C.F.R. part 493 (2001)

Privacy Act, 5 U.S.C. § 552a

TEX. OCCUPATIONS CODE §§ 159.006-159.008 (Vernon 2002); 22 TEX. ADMIN. CODE § 165.2; 165.3 (Vernon 2002) (Tex. State Bd. of Med. Examiners, Medical Records)