

**Office of Compliance Programs**

**PRIVACY POLICY AND PROCEDURES**

LSU Health Sciences Center New Orleans

Date Effective: April 14, 2003

Policy #: 2100.10

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**Patient Information Policy**

Patient's Right of Access to and Obtain a Copy of Their Protected Health Information

**SCOPE:**

All Louisiana State University (LSU) System health care facilities and providers including, but not limited to hospitals, physician practices, clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus.

**Nota Bene:** All LSU System health care facilities and providers including, but not limited to hospitals, physician clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus, are referred to in this policy as LSUHSC-NO.

**PURPOSE:**

To provide guidance to the health care facilities and providers affiliated with LSUHSC-NO on a patient's right to request access to and to receive a copy of their Protected Health Information as required by the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations), and any other applicable state or federal laws or regulations.

**POLICY:**

All LSUHSC-NO health care facilities and providers must provide patients with a right of access to inspect and obtain a copy of their Protected Health Information about the individual in a Designated Record Set of any LSUHSC-NO health care facility or health care provider.

**DEFINITIONS:**

**Protected Health Information (also referred to as PHI)** – for purposes of this policy means individually identifiable health information, that relates to the past, present or future health care services provided to an individual. Examples of Protected Health Information include medical and billing records of a patient.

For the definition of "Designated Record Set"

The term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for LSUHSC-NO.

The term "record" also includes patient information originated by another health care provider and used by LSUHSC-NO to make decisions about a patient.

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The term "record" includes tracings, photographs, and videotapes, digital and other images that may be recorded to document care of the patient.

**Designated Record Set** – is a group of records maintained by or for LSUHSC-NO that is:

- The medical records and billing records about individuals maintained by or for LSUHSC-NO.
- Any records used, in whole or part, by or for the LSUHSC-NO to make decisions about individuals.
- Any record that meets this definition of Designated Record Set and which are held by a HIPAA Business Associate of LSUHSC-NO are part of LSUHSC-NO's Designated Record Set.

**Psychotherapy Notes** – means notes recorded 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 record. Psychotherapy notes do not include: 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.

**Privacy Officer** - person designated by LSUHSC-NO to be the Privacy Official.

### PROCEDURE:

- 1.0 Responsible Person. The Privacy Officer shall be responsible for receiving and processing requests for access by individuals to inspect and obtain a copy of their Protected Health Information in a Designated Record Set of LSUHSC-NO.
- 2.0 Designated Record Sets Subject to Access by Patients.  
A patient has a right of access to inspect and obtain a copy of PHI about the patient in the following designated record sets:
  - 2.1 All medical records maintained by LSUHSC-NO that pertain to the patient making the request;
  - 2.2 All billing records maintained by LSUHSC-NO that pertain to the patient making the request; and
  - 2.3 Any other records in possession by LSUHSC-NO.
- 3.0 Written Request for Access. LSUHSC-NO may require patients to make a request for access to inspect and copy their PHI to be in writing, provided that the patient is informed in advance of this requirement. See Attachment A.
- 4.0 Deciding Whether to Grant a Patient Access to Their PHI.

LSUHSC-NO must first decide whether to grant a patient access to inspect and obtain a copy of their PHI in a Designated Record Set. A patient does not have a right of access to inspect and copy the following types of PHI:

- 4.1 Psychotherapy notes;

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- 4.2 Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
- 4.3 Protected Health Information maintained by LSUHSC-NO that is subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. § 263a, to the extent the provision of access would be prohibited by law; or
- 4.4 Exempt from the Clinical Laboratory Improvements Amendments of 1988, 42 C.F.R. §493.3(a) (2).
- 5.0 Unreviewable Grounds for Denial of Access.

In certain circumstances, LSUHSC-NO may deny a patient access without providing the individual an opportunity for review of the decision to deny access.

- 5.1 The PHI is not subject to the right of access as provided in section 4.0 of this policy.
- 5.2 If the Facility or Clinic is acting under the direction of a correctional institution, then the LSUHSC-NO may deny, in whole or in part, an inmate's request to obtain a copy of their PHI, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the patient or other inmates, or the safety of an officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate;
- 5.3 During the course of a patient's participation in a research program, the Facility or Clinic may deny access provided that the patient agreed to the denial when consenting to participation in the research program which includes treatment and the Facility or Clinic has informed the individual that the right of access will be reinstated upon the completion of the research.
- 5.4 If the patient's PHI was obtained from someone other than a health care provider under a promise of confidentiality, then the access requested would be reasonably likely to reveal the source of the information; or
- 5.5 If the records are subject to the Privacy Act, 5 U.S.C. A. § 552a, the denial of access under the Privacy Act would be permissible if it meets the requirements of law.
- 6.0 Reviewable Grounds for Denial.  
LSUHSC-NO may deny the patient's request for the access on these grounds. The patient must be provided with a right to have this decision reviewed in the following circumstances:
- 6.1 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 individual or another person;
- 6.2 The PHI makes reference to another person (unless the 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

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- 6.3 The request for access is made by the patient's personal representative and 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 individual or another person.
- 6.4 If a request for access to a patient's PHI is denied, then LSUHSC-NO must comply with either the "Unreviewable Grounds for Denial of Access" or "Reviewable Grounds for Denial of Access" and any other sections concerning a denial decision that are applicable.
- 7.0 Review of a Denial of Access.  
If access is denied on a reviewable ground described in this policy, the patient has the right to have the denial reviewed by a licensed health care professional designated by the LSUHSC-NO to act as a reviewing officer and who did not participate in the original decision to deny. This designated reviewing officer must determine, within a reasonable period of time, whether or not to deny the access requested in accordance with the standards in the "Reviewable Grounds for Denial" section of this policy. LSUHSC-NO must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action, as necessary, to carry out the designated reviewing official's determination.
- 8.0 Time Periods for Responding to Requests. LSUHSC-NO must act on a request for access no later than 15 days after receipt of the request as follows:
  - 8.1 If LSUHSC-NO grants the request, in whole or in part, it must inform the patient of the acceptance of the request and provide the access requested;
  - 8.2 If LSUHSC-NO denies the request, in whole or in part, it must provide the patient with the basis for the denial in plain written language and, if applicable, how the patient may exercise any available review rights; and a description of how the patient can file any complaints including the name, title, and telephone number or address of the contact person;
  - 8.3 If LSUHSC-NO does not maintain the PHI that is the subject of the request, and LSUHSC-NO knows where the requested information is maintained, LSUHSC-NO must inform the individual where to direct the request for access.
- 9.0 Provision of Access if Granted. If LSUHSC-NO provides a patient access, in whole or in part;
  - 9.1 LSUHSC-NO must within 15 days comply with the following requirements:
    - 9.1.1 Provide the patient access, including inspection and copying, or both, of PHI about them in Designated Record Sets. If the same PHI is contained in more than one place or designated record set, the PHI need only be provided once.
    - 9.1.2 The access must be in the form or format requested by the patient, if it is readily producible, if not, in a readable hard copy form or such other form or format as agreed to by the LSUHSC-NO and the patient.

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9.1.3 LSUHSC-NO may provide the patient with a summary of the PHI, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided if:

9.1.3.1 If the patient agrees in advance to a summary or explanation; and

9.1.3.2 The patient agrees in advance to any fees imposed by LSUHSC-NO for the summary or explanation.

10.0 Time and Manner of Access. LSUHSC-NO may provide the access requested within the time frames in this policy, including arranging with the patient for a convenient time and place to inspect or obtain a copy of the Protected Health Information, or mailing a copy of the Protected Health Information at the individual's request. LSUHSC-NO may discuss the scope, format, and other aspects of the request for access with the patient as necessary to facilitate the timely provision of access.

11.0 Fees for Copies. If the patient requests a copy of the PHI LSUHSC-NO may impose a reasonable, cost-based fee, not to exceed:

11.0.1 One dollar (\$1.00) per page for the first 25 pages;

11.0.2 Fifty cents (\$.50) per page for the next 26 – 500 pages; and

11.0.3 Twenty-five cents (\$.25) per pages for pages greater than the first 500 copies.

11.1 LSUHSC-NO may not impose a handling charge for providing copies of his or her PHI.

11.2 LSUHSC-NO may require the patient to reimburse the Facility or Clinic for actual postage used in mailing the PHI to the patient.

### **REFERENCES:**

45 C.F.R. § 164.524

LA R.S. 40:1299.96