

## **HIPAA PRIVACY RULE: ACCESS TO PROTECTED HEALTH INFORMATION**

### **I. POLICY:**

#### **A. General Right to Access Protected Health Information<sup>1</sup>**

This policy describes when it is appropriate to permit a patient to access his or her Protected Health Information and the procedures to follow when approving or denying a patient request to access his or her Protected Health Information.

The University of Southern California (USC)<sup>2</sup> recognizes the right of a patient to have access to (i.e., inspect and/or obtain a copy of) Protected Health Information maintained by USC in a “Designated Record Set” unless an exception applies as described below. A Designated Record Set is defined as the following:

1. An individual’s patient records and billing records maintained by USC; and
2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for USC’s health plans (including the USC Network Plan); and

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<sup>1</sup> Protected Health Information is defined as identifiable information that relates to the individual's past, present or future physical or mental health condition or to payment for health care.

<sup>2</sup> For purposes of the HIPAA Privacy Rule, USC includes those entities that comprise Keck Medicine of USC, including but not limited to, USC Norris Cancer Hospital, Keck Hospital of USC, USC’s employed physicians, nurses and other clinical personnel, those units of USC that provide clinical services within the Keck School of Medicine, School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as USC Care Medical Group, affiliated medical foundations of Keck and their physicians, nurses and clinical personnel, USC Verdugo Hills Hospital, its nurses and other clinical personnel, Verdugo Radiology Medical Group, Verdugo Hills Anesthesia, and Chandnish K. Ahluwalia, M.D., Inc. and those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

3. Records used by USC providers, in whole or in part, to make decisions about individuals. This includes psychotherapy notes<sup>3</sup> as well as records received from other providers but that are used in connection with USC clinical decision making.

B. Exceptions to Right to Access Protected Health Information

USC shall not provide a patient with access to the following Protected Health Information maintained in the Designated Record Set:

1. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
2. Minor's Protected Health Information that is not accessible to that minor's parent or legal guardian under state law.<sup>4</sup> See also USC's HIPAA Personal Representatives policy for more information about when a parent or guardian may serve as a personal representative for a minor.

C. USC Right to Deny Patient Request to Access Protected Health Information

USC may deny a patient access to his/her Protected Health Information for any of the reasons set forth below. If USC denies access (in whole or in part), USC will give the patient access to any other Protected Health Information requested after excluding the Protected Health Information to which USC had grounds to deny access, to the extent possible. If USC denies the request because it does not maintain the Protected Health Information, USC will inform the patient where to direct the request, if known. If the patient has a right to request a review of the denial, USC will follow its procedures below to review the request. However, certain denials are not reviewable.

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<sup>3</sup> Under the HIPAA privacy rule, providers are not required to provide patients access to their psychotherapy notes, but state law does not contain such an exception. Because state law provides greater rights to patients than the privacy rule, state law will apply. That means that USC may not deny a patient request to access their psychotherapy notes.

<sup>4</sup> Generally, a parent of a minor has the right of access to the minor's patient information. However, where the minor is authorized by law to consent to treatment, the right of access with respect to that patient information rests with the minor, not the parent or guardian. Additionally, a provider may deny a parent or guardian access to a minor's patient information where the provider determines that access would have a detrimental effect on the provider's professional relationship with the minor or on the minor's physical safety or psychological well-being. California Health and Safety Code Sections 123100 et seq.

1. Grounds for Denial of Access With Opportunity for Review

USC may deny a patient request for access under the following circumstances:

- a. If a licensed health care professional has determined that providing such access is reasonably likely to endanger the life or physical safety of the patient or another person;
- b. The Protected Health Information makes reference to another person (unless such other person is a Health Care Provider) and a licensed health care professional has determined that the access requested is reasonably likely to cause substantial harm to such other person; or
- c. The request for access is made by the individual's personal representative and a licensed health care professional has determined that provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

Section II describes USC's procedures for reviewing denials of requests for access.

2. Grounds for Denial of Access Without Opportunity for Review

USC may deny a patient request for access without a right to have the denial reviewed for any of the reasons below:

- a. If the requested Protected Health Information falls under one of the exceptions discussed above.
- b. If the requested Protected Health Information is information that has been obtained by USC in the course of research that includes treatment of the research participants (e.g., a clinical trial), the patient's right to access the information may be temporarily suspended for as long as the research is in progress *provided* that:

- i. the patient has agreed to the denial of access when consenting to participate in the research study; and
  - ii. USC has informed the patient that his or her right to access the Protected Health Information will be reinstated once the research is completed.<sup>5</sup>
- c. If an inmate of a correctional institution makes a request for access while USC is acting under the direction of the correctional institution, and the inmate's request would jeopardize the health, safety, security, custody, or rehabilitation of the requesting inmate<sup>6</sup>, other inmates or the safety of any officer, employee or other person at USC, the correctional institution or person responsible for transporting the inmate.
- d. If USC obtained the requested Protected Health Information from someone other than a Health Care Provider under a promise of confidentiality and such access would be reasonably likely to reveal the source of the information.

## II. PROCEDURES

### A. Requesting Access

1. Access Request Form. A patient that requests access to his or her Protected Health Information must make a request **in writing** on USC's *Access Request Form*. A copy of USC's *Access Request Form* can be downloaded from the USC policies website at <http://policy.usc.edu/hipaa>. Access Request Forms should be obtained for any request for health information from a designated record set that is not otherwise obtainable on the KeckCare patient portal (myUSCchart). While preferable, it is not necessary to obtain an Access Request Form for copies of billing statements.

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<sup>5</sup> USC's template HIPAA research authorization has been revised to include the appropriate language to meet these requirements. The standard documents can be obtained from the relevant IRB office or the USC policies website at <http://policy.usc.edu/hipaa>.

<sup>6</sup> California state law permits inmates to access their records in very limited situations. Contact the Office of Compliance before denying an inmate the right to his or her records.

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2. Verification of Identity of Person Requesting Information. The Department Clinic Manager or the Health Information Management Office fulfilling the request should use reasonable efforts to verify the identity of the person requesting access to his or her Protected Health Information, e.g., through the review of a photo ID if the request is in-person, or through the verification of a date of birth if by mail, and the authority of such person to have access, if not the patient.
3. Provider Review of Protected Health Information. The Department Clinic Manager or the Health Information Management Office fulfilling the request should consult with the appropriate health care provider(s), as necessary, or Medical Director if the provider is not available, to confirm that there is not a reason to deny the request. The provider or designee will determine whether to approve or deny the request in accordance with this policy. Where a denial of access is contemplated, the provider or designee also should consult with the USC Office of Compliance for assistance.

B. Providing Access

1. Options for Response. The patient has the right to inspect the information, to obtain a copy of the information or to do both. The patient also may be provided with a summary of the Protected Health Information requested, in lieu of providing an opportunity to inspect or obtain a copy of the Protected Health Information, if the patient agrees in advance;
  - a. to the provision of the summary,
  - b. to any fees imposed by USC for such summary, and
  - c. to any extended time period required by USC to produce the summary.

Summaries of Protected Health Information should be prepared by the provider/designee.

2. Format of Access. The requested Protected Health Information should be given to the patient in the form and format requested, provided that the information is readily producible in such form or format. If the information is not readily producible in the requested form or format, then the information should be provided in a readable hard copy or such other form and format as agreed to by

USC and the patient. If the patient requests an electronic copy of Protected Health Information that is maintained electronically, the Department Clinic Manager or the Health Information Management Office must provide the patient with access to the information in the electronic form and format requested by the patient, if it is readily producible. Otherwise, the information should be provided in a readable electronic form and format as agreed to by USC and the patient.

3. Time to Respond. The Department Clinic Manager or the Health Information Management Office must respond to a request for access as follows unless the patient agrees to extend the time to respond:

- a. Within five (5) business days of receipt of a patient's written request to inspect his/her Protected Health Information;
- b. Within fifteen (15) calendar days of receipt of a patient's written request to receive copies of the patient's Protected Health Information;
- c. Within ten (10) business days of patient's written request to receive a summary of the patient's Protected Health Information, or within a maximum of thirty (30) days if USC notifies the individual that more time is necessary, either because of the length of the record or because the individual was discharged from the hospital within the prior ten (10) days.

4. Fees.

- a. Categories of Fees: USC may charge the individual the following reasonable, cost-based fees associated with obtaining access to Protected Health Information:

- (1) Copying: No more than twenty-five cents per page and may include the labor costs incurred in locating and copying the information. Such fees may include the cost of supplies for creating the paper copy or electronic media, including, the actual costs of providing copies

of x-rays or tracings derived from electrocardiography, electroencephalography or electromyocardiography.

- (2) Mailing: Fees may include the cost of postage;
- (3) Electronic Media: Fees may include the cost of a computer disk, USB drive or other similar device of comparable cost; and
- (4) Preparation of Summary or Explanation. USC may charge a reasonable fee, based on actual time and cost for the preparation of an explanation or summary of the Protected Health Information that USC provides to a patient, if (i) the patient requests or agrees to receive such summary as described above, and (ii) the patient agrees to fees imposed, if any.

- b. No Fees for Eligibility Appeals of Public Benefit Program. A patient or his or her representative is entitled to a copy, at no charge, of the relevant portion of the patient's Protected Health Information, upon presenting to USC a written request and proof that the information is needed to support an appeal regarding eligibility for the Medi-Cal program, Social Security Disability Insurance (“SSDI”) benefits and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (“SSI/SSP”). Fees for copies beyond the first copy shall otherwise be in accordance with the Fees section above. If the patient’s attorney (i.e., an attorney hired by the patient but not employed by a nonprofit legal services organization) is paying the costs of such appeal, this Subsection (b) shall not apply.

C. Procedures in Case of Denial. If access is denied (in whole or in part) for any of the reasons described in this policy, the procedures set forth below shall be followed:

- 1. Request Denial Form. The Department Clinic Manager or the Health Information Management Office responding to the request shall complete a *Denial of Access* Form. The *Denial of Access* Form must

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include: (i) a space to be filled in by a licensed health care provider for the “reason for denial of access to Protected Health Information”<sup>7</sup>; (ii) complaint procedures for patient to be directed to USC; (iii) complaint procedures for patient to be directed to the Secretary of U.S. Department of Health and Human Services; (iv) information describing the patient’s right to a review of the denial of access and how the patient may exercise this right; and (v) contact information (name, telephone number) for the reviewing official for Denials of Access to Protected Health Information Requests. If USC denies a Request, in whole or in part, the Department Clinic Manager or the Health Information Management Office will furnish the patient with the completed Denial Form. A copy of USC’s *Denial of Access* Form can be downloaded from the USC policies website at <http://policy.usc.edu/hipaa>.

2. Denial Review Procedures. USC must provide the patient with a right to have the denial reviewed by a licensed health care professional designated by USC who did not participate in the original decision to deny access. Requests that have been denied but are reviewable under this policy should be directed to the Chief Medical Officer, the Chief Pharmacy Officer or the Dean of Clinical Affairs, as appropriate.

D. Determination by the Reviewing Official. Within a reasonable time of receiving the request for review, the licensed health care professional reviewing the denial must determine whether or not to deny the requested access based on the standards set forth in this policy, and provide the patient with written notice of the reviewer’s decision. The decision of the reviewing licensed health care professional will be final.

E. Documentation. The Department Clinic Manager or the Health Information Management Office responding to the request for access should confirm that the following is documented:

- The date that the request is received;
- The date that the clinical unit provides access and the information is provided to the patient;

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<sup>7</sup> The provider who completes the form should be mindful of confidentiality issues when explaining the reasons for denial. For example, providers should use caution when denying a parent/legal guardian access to a minor’s Protected Health Information, whether in whole or in part. If a parent is permitted to access most of the record, but is denied access to the portion relating to the minor’s treatment for a sexually transmitted disease, for example, then the written notice of denial should not alert the parent to the existence of such information.

- If the request is denied, the date of the denial, the date of the appeal, if any, the determination on appeal, and the date the request is closed (either by appeal or by producing Protected Health Information).

*Access Request Forms and Denial of Access Forms*, as well as any other written correspondence to or from a patient regarding his or her right to access Protected Health Information shall be maintained in the patient's medical record(s).

**Additional References**

45 C.F.R. § 164.524.

Cal. Health & Safety Code § 123110

Cal. Health & Safety Code § 123130

**Responsible Office:**

Office of Compliance

<http://ooc.usc.edu>

[complian@usc.edu](mailto:complian@usc.edu)

(213) 740-8258