

Section 3	Compliance Policies	00/00/03	- Effective
Subject 6.2	HIPAA: Privacy and Disclosure		- Revised
<b>Policy 6.2.31</b>	<b>Access to and Denial of Patient Request for PHI</b>	Compliance Office	- Reviewed
			- Author

## Access to and Denial of Patient Request for PHI

### Audience

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The information in this document applies to all UTMB faculty, staff, students, volunteers, and any other contractors or agents granted access to Protected Health Information (PHI).

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### Definitions

**Record:** Any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated.

**Designated Record Set:** A group of records maintained by or for UTMB that are:

- A. The medical records and billing records about patients maintained by or for UTMB;
  - B. The enrollment, payments, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - C. Used, in whole or in part, by or for UTMB to make decisions about patients.
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UTMB HANDBOOK OF OPERATING PROCEDURES

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**Policy**

UTMB ensures that patients' rights are protected by providing a process for patients (or legally-authorized representative on behalf of the patient) to inspect and receive a copy, at their expense, of the PHI in the patient's designated record set. Exceptions to this include:

- psychotherapy notes, but not a summary of these (see IHOP Policy 6.2.8, *Use and Disclosure of Psychotherapy Notes*)
- information compiled in anticipation of or use in a civil, criminal, or administrative action or proceeding
- PHI subject to the Clinical Laboratory Improvements Amendments (CLIA) of 1988.
- Employee Assistance Program (EAP) records, which are not part of the designated record set, but may be requested separately. (See IHOP Policy 3.8.2, *Employee Assistance Program* for information)
- PHI exempt from CLIA, pursuant to 42 CFR 493.3(a)(2). In other words, PHI generated by:
  - facilities or facility components that perform testing for forensic purposes.
  - research laboratories that test human specimens but do not report patient-specific results for diagnosis, prevention, treatment, or the assessment of the health of patients.

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## **Access and Denial of Patient Request for PHI, Continued**

### **Policy (cont'd)**

- laboratories certified by the National Institutes on Drug Abuse (NIDA) in which drug testing is performed that meets NIDA guidelines and regulations. However, other testing conducted by a NIDA-certified laboratory is not exempt.

The access and denial process is managed by Health Information Management (HIM).

### **Patients Access to PHI**

#### **All personnel must strictly observe the following standards:**

- o A patient has the right to inspect, or receive copies of PHI about the patient in a designated record set for as long as the PHI is maintained in the designated record set.
- o If UTMB does not maintain the PHI that is the subject of the patient's request for access, and UTMB knows where the requested information is maintained, UTMB must inform the patient where to direct the request for access.
- o The patient must make the request in writing using the [General Authorization](#) form.
- o Based on Texas law, UTMB must act on the patient's request no later than the 15th business day after receipt and payment of the request. UTMB shall:
  - make the information available, in full or in part, for examination; or
  - inform the authorized requestor if the information does not exist, cannot be found, or is not yet complete. Upon completion or location of the information, UTMB will notify the patient.
- o If the access is granted, in whole or in part, UTMB must comply with the following requirements:
  - UTMB must provide the patient access to his/her PHI in the designated record sets, including inspection or receiving a copy, or both. If the same PHI that is the subject of a request for access is maintained in more than one designated record set or at more than one location, UTMB need only produce the PHI once in response to a request for access.

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## **Access and Denial of Patient Request for PHI, Continued**

### **Patients Access to PHI (cont'd)**

- UTMB must provide the patient with access to the PHI in the form or format requested by the patient, if it is readily producible in such form or format, or if not, in a readable hard copy form or such other form or format as agreed to by both parties.
- UTMB may provide the patient with a summary of the PHI requested, in lieu of providing access to the PHI, or may provide an explanation of the PHI to which access has been provided, if:
  - A. The patient agrees in advance to such a summary or explanation; and
  - B. The patient agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.
- UTMB must provide the access as requested by the patient in a timely manner, including arranging with the patient for a convenient time and place to inspect or receive a copy of the PHI, or mailing the copy of the PHI at the patient's request. UTMB 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.
- If the patient requests a copy of the PHI or agrees to a summary or explanation of such information, UTMB may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:
  - Copying, including the cost of supplies for and labor of copying, the PHI requested. The fee schedule for these services is set by the State of Texas. To obtain the fee schedule contact [Health Information Management \(HIM\)](#);
  - Postage, if the patient has requested the copy, summary, or the explanation is mailed. The fee schedule for postage can be obtained from [HIM](#); and
  - Preparing an explanation or summary of the PHI, if agreed to by the patient.

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## **Access and Denial of Patient Request for PHI, Continued**

### **Denial of Access**

UTMB must allow a patient to request access to inspect or receive a copy of PHI maintained in their designated record set. However, UTMB may deny a patient’s request without providing an opportunity for review when:

- an exception detailed above in the policy statement exists;
- UTMB is acting under the direction of a correctional institution and the prisoner’s request to obtain a copy of PHI would jeopardize the patient, other prisoners, or the safety of any officer, employee, or other person at the correctional institution, or a person responsible for transporting the prisoner;
- the patient agreed to temporary denial of access when consenting to participate in research that includes treatment, and the research is not yet complete;
- the records are subject to the Privacy Act of 1974 and the denial of access meets the requirements of that law;
- the PHI was obtained from someone other than UTMB under a promise of confidentiality and access would likely reveal the source of the information

UTMB may also deny a patient access for other reasons, provided that the patient is given a right to have such denials reviewed under the following circumstances:

- a licensed healthcare provider, designated or appointed by the hospital committee established for the purpose of managing patient privacy rights under HIPAA (“committee”), has determined that the access is likely to endanger the life or physical safety of the patient or another person;
- the PHI makes reference to another person who is not a healthcare provider, and a licensed healthcare professional, designated or appointed by the committee, has determined that the access requested is likely to cause substantial harm to such other person;

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### **Denial of Access (cont'd)**

- the request for access is made by the personal representative and a licensed healthcare professional, designated or appointed by the committee, has determined that access is likely to cause substantial harm to the patient or another person.

If access is denied on a ground permitted above, the patient has the right to have the denial reviewed by a licensed healthcare professional, designated or appointed by the committee to act as a reviewing official, and who did not participate in the original decision to deny. UTMB must provide or deny access in accordance with the determination of the reviewing official.

If UTMB denies access, in whole or in part, to PHI, UTMB must comply with the following requirements:

- UTMB must, to the extent possible, give the patient access to any other PHI requested, after excluding the PHI to which UTMB denied access.
- UTMB must provide a timely, written denial to the patient, in plain language and containing:
  - The basis for the denial;
  - If applicable, a statement of the patient’s review rights, including a description of how the patient may exercise such review rights; and
  - A description of how the patient may complain to UTMB pursuant to the IHOP Policy 6.1.5, *Reporting & Investigating Allegations of Privacy Violations*

If the patient has requested a review of a denial, UTMB must designate or appoint a licensed UTMB health care professional by the committee, who was not directly involved in the decision to deny access. UTMB must promptly refer a request for review to such licensed health care professional. The licensed health care professional must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards discussed before under procedures. UTMB must promptly provide written notice to the patient of the findings of the committee, and take other action as required by this section to carry out the licensed health care professional’s determination.

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### Enforcement

All supervisors are responsible for enforcing this policy. Individuals who violate this policy will be subject to the appropriate and applicable disciplinary process, up to and including termination or dismissal.

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### References

45 C.F.R. §164.524

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