

**POLICY TITLE:** Access and Amend – Access of Individuals to Protected Health Information

**Responsible Department:** Corporate Privacy Office

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**SUBMITTED BY (AUTHOR):** Mercedes del Rey

**Title:** Assistant Vice President, Chief Privacy Officer

**APPROVED BY:** Janette Sanchez

**Title:** Vice President, Finance

**APPROVED BY:** Matthew Arsenault

**Title:** Executive Vice President & Chief Financial Officer

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#### **SUMMARY & PURPOSE:**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared.

The HIPAA Privacy Rule grants patients important rights with respect to health information obtained and maintained by Baptist Health. The Baptist Health Privacy Office is responsible for ensuring the confidentiality of Baptist Health patient medical information and responding to such requests. An individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set.

#### **POLICY:**

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner.

This policy defines and identifies the designated record set subject to patient requests for access, areas that are authorized to grant a patients request to inspect and obtain a copy of protected health information and formalizes process of receiving and responding to patients request to access or obtain their Health Information.

#### SCOPE/APPLICABILITY:

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below who are responsible for records that include information about a patient that is used to provide treatment or make health care decisions or for billing purposes.

- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.
- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.
- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.

#### DEFINITIONS:

##### Psychotherapy notes

Notes recorded (in any medium) 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 medical record. Psychotherapy notes exclude 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.

##### Designated Record Set

Medical, clinical, research and billing records about an individual maintained or used to make decisions about the individual and the individual's treatment and subject to an individual's right to request access and amendment.

#### PROCEDURES TO ENSURE COMPLIANCE:

The HIPAA Privacy Rule grants patients important rights with respect to health information maintained by Baptist Health.

1. Access to Protected Health Information
  - a. Right of Access: Except as otherwise stated below, an individual has a right of access to inspect and obtain a copy of their protected health information in a designated record set, for as long as the protected health information is maintained in the designated record set, except for<sup>1</sup>:
    - i. Psychotherapy notes;
    - ii. If the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or
    - iii. Information subject to the Clinical Laboratory Improvements Amendments of 1988.
2. Identifying Information Subject to Patient Requests for Access
  - a. Designated Record Sets
    - i. The Health Information Management department (HIM) and other designated records custodians at each BHSF facility shall determine which of its records contain patient-level information that will constitute a HIPAA designated record set.

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<sup>1</sup> For a complete list of mitigating factors, please see Exhibit A.

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- ii. Designated record sets include the following records maintained by a BHSF facility or its business associate:
  - 1) Billing records;
  - 2) Medical records; and
  - 3) Any other record used, in whole or in part, to make decisions about patients.
- b. Designated record sets do not include information prepared in reasonable anticipation of litigation, or for use in a civil, criminal, or administrative action or proceeding.
- c. The HIM department in conjunction with the Privacy Office shall identify and compile a list of all of its designated record sets. The list also shall specify the records custodian for each designated record set.
  - i. The HIM department at each BHSF facility shall submit a copy of its list of designated record sets and names and contact information for the records custodians to the Privacy Office; and
  - ii. The HIM department at each BHSF facility shall keep its designated record sets list current and accurate and promptly provide any revisions to the Privacy Office.
- d. The records custodian of each designated record set, shall:
  - i. Provide the patient with access to the information requested;
  - ii. Provide the patient with a summary of the information requested;
  - iii. Deny the patient's request for access for a reason set forth in this policy, using an appropriate denial letter; or
  - iv. Forward and respond to the patient's request.
- 3. Requests for Access and Timely Action
  - a. BHSF must permit an individual to request access to inspect or to obtain a copy of their protected health information that is maintained in a designated record set.
  - b. BHSF may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement.
  - c. Within 30 days from the date that Baptist Health receives a patient's written request for access, Baptist Health must:
    - i. Provide the patient with the access requested, in whole or in part; and
    - ii. Provide the patient with a written explanation of any whole or partial denial, in accordance with this policy.
  - d. If the information requested is stored off-site, Baptist Health must respond within 60 days from receipt of the patient's request.
  - e. If Baptist Health is unable to respond to the patient's request in the applicable time frame, Baptist Health may receive an additional 30 days to respond if a written letter is sent to the patient.
- 4. Granting Patient Request
  - a. Anyone covered by this policy must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, BHSF need only produce the protected health information once in response to a request for access.
  - b. If the records custodian determines that none of the above restrictions apply, or an interested workforce member fails to respond within the designated time period to deny access, the records custodian shall promptly notify the patient that their request for access has been granted.
  - c. To provide the patient with access to the requested information, the records custodian shall provide access using one of the following options, as appropriate:
    - i. Send a copy of the information with the letter notifying the patient that access has been granted if no fee will be collected in advance;
    - ii. Make the information available at the time and place agreed upon by the patient for inspection;
    - iii. Make a copy of the information available at the time and place specified in the patient's letter and obtain any applicable fee, in accordance with the applicable HIPAA privacy policy before providing the copy to the patient; or
    - iv. Mail a copy of the information to the patient once the patient has paid the fee for copying in accordance with the applicable HIPAA privacy policy, as stated in the patient's notification letter.
- 5. Form of Access Requested

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- a. Anyone covered by this policy must provide the individual with access to the protected health information in the form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by BHSF and the individual.
  - i. If the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, BHSF must provide the individual with access to the protected health information in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by BHSF and the individual.
6. Time and Manner of Access
  - a. Anyone covered by this policy must provide the access as requested by the individual in a timely manner as required by this policy, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request. BHSF may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.
    - i. If an individual's request for access directs BHSF to transmit the copy of protected health information directly to another person designated by the individual, BHSF must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.
7. Requests by Personal Representatives.
  - a. If the request for access is from someone other than the patient, the records custodian shall comply with the applicable HIPAA privacy policy for verifying whether the requester is on record as a personal representative. In the absence of verification, forward the request to Risk Management.
8. Forwarding Patient Requests to Interested Parties.
  - a. A copy of a patient's request for access, with the relevant records, shall be forwarded to certain interested parties so that such parties have the opportunity to deny the patient's request for access.
  - b. If the interested party identified in the following categories fails to notify the records custodian of their desire to deny access within seven business days, the records custodian shall provide access to the patient.
  - c. If the interested party notifies the records custodian within seven business days that access should be denied, the records custodian shall promptly deny the patient's request, using the appropriate denial letter.
9. Mature Minors.
  - i. If the request is for access to a mature minor's records and is made by someone other than the patient, a copy of the request and any relevant information shall be forwarded to Risk Management for review. Risk Management shall promptly respond, within the time period required by applicable federal and state law, to such request.
  - b. In specific areas where minors are able to consent to their own treatment, requests for access to their records by parents or other legal guardians would have to be referred to Risk Management for review are, as follows:
    - i. Married minors (Fl. Stat. Sec. 743.01); unwed pregnant minor in connection with medical or surgical care or services relating to her pregnancy (Fl. Stat. Sec. 743.065(1));
    - ii. Unwed minor mother in connection with medical or surgical care or services for her child (Fl. Stat. Sec. 743.065(2));
    - iii. Minor in connection with examination and treatment for sexually transmissible diseases (Fl. Stat. Sec. 384.30); and
    - iv. Minors, age 13 or older, in connection with limited outpatient crisis intervention services and treatment (Fl. Stat. Sec. 394.4784).
10. Duplicative Information
  - a. If the same information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the information may be provided only once in response to a request for access.
11. Summary of Protected Health Information

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- a. BHSF may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:
    - i. The individual agrees in advance to such a summary or explanation; and
    - ii. The individual agrees in advance to the fees imposed, if any, by BHSF for such summary or explanation.
  - b. The records custodian is under no obligation to offer this summary, but may do so in its sole discretion when:
    - i. The patient has requested film or images that are difficult or costly to copy;
    - ii. The attending physician has orally or in writing agreed to prepare the summary; and
    - iii. The patient agrees to receive the summary instead of the specific information itself.
  - c. If a patient agrees to receive a summary and agrees to the fee for the summary:
    - i. The patient's request and all relevant information shall be forwarded to the patient's attending physician to draft the summary;
    - ii. The records custodian shall note on the letter in the deadline for the physician to provide the summary to the patient; and
    - iii. The physician must send the summary to the patient within the time period specified by the records custodian, with a copy to the records custodian.
12. Fees for Copying Information
- a. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, BHSF may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:
    - i. Labor for copying the protected health information requested by the individual, whether in paper or electronic form;
    - ii. Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;
    - iii. Postage, when the individual has requested the copy, or the summary or explanation, be mailed;
    - iv. Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by this policy.
  - b. Records custodians may charge a fee, except for patients who maintain that they are requesting the records in order to receive continuing medical care, in which case there shall be no charge for copies of pertinent medical records.
    - i. The charge for copies of medical records will be made in accordance with HIM Policy 400.
    - ii. This excludes governmental agencies and intermediaries charged as allowed by regulations.
    - iii. The patient must be informed in advance of the fees associated with copying of the requested information.
13. Denying Patient Requests
- a. The records custodian shall deny patient requests for access in the following circumstances:
    - i. If the information requested is not maintained in a designated record set, as set forth in the applicable HIPAA privacy policy; or
    - ii. If the information requested is not maintained by the BHSF facility, if known, the patient shall be provided with information on where to obtain such information.
    - iii. If BHSF denies access, in whole or in part, to protected health information, BHSF must comply with the following requirements.
  - b. Making other information accessible - BHSF must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which BHSF has a ground to deny access.
  - c. BHSF must provide a timely, written denial to the individual. The denial must be in plain language and contain:
    - i. The basis for the denial;
    - ii. If applicable, a statement of the individual's review rights as outlined in this policy, including a description of how the individual may exercise such review rights; and
    - iii. A description of how the individual may complain to BHSF pursuant to the complaint policy.

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- 1) The description must include the name, or title, and telephone number of the contact person or office designated to receive the complaint.
14. Review of a Denial of a Request for Access
- a. BHSF may deny an individual access, provided that the individual is given a right to have such denials reviewed, in the following circumstances:
    - i. If 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;
    - ii. When the PHI makes reference to another person. (unless such other person is a health care provider); or
    - iii. When the request is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.
  - b. If the individual has requested a review of a denial, BHSF must designate a licensed health care professional, who was not directly involved in the denial, to review the decision to deny access.
  - c. BHSF must promptly refer a request for review to such designated reviewing official.
  - d. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested.
  - e. BHSF must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.
  - f. Each facility will respond to patient's requests for a review of their denial for access to information in medical, billing, or other records.
    - i. If the patient requests a review of a decision to deny access for a denial that is subject to review, a copy of the access request, relevant information, and the request for review of the denial must be promptly forwarded to the Risk Managers of each BHSF facility.
    - ii. In the event that the Risk Managers were involved in the original denial, then the request for review shall be forwarded to the Chief Privacy Officer to be assigned to a reviewer (designated in accordance with the applicable HIPAA privacy policy), who was not involved in the original denial.
    - iii. The Risk Manager or other reviewing officer must review the request and the relevant information and, within a reasonable period of time, inform the records custodian whether the request for access should be denied or whether access may be granted.
    - iv. The records custodian shall grant or deny access to the patient's request in accordance with the reviewing officer's decision and the applicable HIPAA privacy policy.
    - v. If a patient requests a review of a decision to deny access to information, and the denial is not subject to review pursuant to the applicable HIPAA privacy policy, the records custodian shall notify the patient that the decision to deny access is not subject to review.
15. Unreviewable grounds for denial
- a. BHSF may deny an individual access without providing the individual an opportunity for review, in the following circumstances:
    - i. An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research;
    - ii. When the request is made by an inmate of a correctional institution; or
    - iii. If the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
16. Designation of Reviewing Officers

- a. If access is denied on a ground permitted in this policy, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by BHSF to act as a reviewing official and who did not participate in the original decision to deny.
- b. BHSF must provide or deny access in accordance with the determination of the reviewing official.
- c. Each BHSF facility shall designate reviewing officers to review denials of patient requests to medical, billing and other information.
- d. For each BHSF facility, the Risk Management department shall designate several health care professionals as reviewing officers to review denials of patient requests for access to medical, billing and other information, in accordance with the applicable HIPAA privacy policies.
- e. Each BHSF facility Risk Management department shall forward a copy of its list of designated reviewing officers, and any changes or updates to the list, to the Corporate Privacy Officer.
- f. The Corporate Privacy Officer shall forward a copy of the list of each BHSF facility's designated reviewing officers, and any changes or updates to the list, to each records custodian of the BHSF facility, upon their request.

**SUPPORTING/REFERENCE DOCUMENTATION:**

- Health Insurance Portability and Accountability Act of 1996 ("HIPAA")
- Applicable Florida State Laws: Fl. Stat. Sec. 743.01, Fl. Stat. Sec. 743.065(1), Fl. Stat. Sec. 743.065(2), Fl. Stat. Sec. 384.30, Fl. Stat. Sec. 394.4784

**RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:**

- Corporate HIPAA Privacy Policies
- 10000-74220-001.00 - Unified Corporate Privacy Policy HIPAA Compliance
- HIM 400 – Use or Disclosure of Medical Record Information
- Form 6001- Authorization to use and disclose health information

**ENFORCEMENT & SANCTIONS:**

1. Reference: Corporate HIPAA Privacy Policy 10000-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level.
3. Reference: HR policies 5250 – Employee Conduct and 5300 – Corrective Action.
4. Violations of this policy may lead to disciplinary action up to and including termination.
5. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.

**Exhibit A**

1. The Privacy Office may involve Risk Management to determine whether any of the following factors are present. The Chief Privacy Officer will make the final decision to grant or deny access.
  - a. *Information could harm the patient*: If the medical record relates to an emotionally disturbed patient or contains information about the patient's emotional state or any other sensitive information, a copy of the request and the relevant information shall be forwarded to the patient's attending physician, using the appropriate letter. If the physician recommends that the patient's request for access be denied and the patient requests a review of such denial, the denial must be reviewed in accordance with the applicable HIPAA privacy procedure.
  - b. *Information references confidential sources*: If the medical record or other designated record set prominently refers to a confidential source of the information, the request and the relevant information shall be forwarded to the patient's attending physician, using the appropriate letter. If the physician denies the patient's request for access and the patient requests a review of such denial, the denial must be reviewed in accordance with the applicable HIPAA privacy procedure.
  - c. *Information regarding inmates*: If the subject of the information is an inmate in a correctional institution, the request shall be forwarded to the warden of the applicable correctional institution, using the appropriate letter attached hereto. If the warden denies access, such denial is not subject to review.
  - d. *Information regarding research*: If the requested information is prominently marked as being restricted while research is still in progress, the request and the relevant information shall be forwarded to the Principal Investigator, using the appropriate letter attached hereto. If the Principal Investigator denies access, such denial is not subject to review.
2. An individual has a right of access to inspect protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, except for:<sup>2</sup>
  - a. Psychotherapy notes;
  - b. Information subject to the Clinical Laboratory Improvements Amendments of 1988;
  - c. If the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
  - d. If an individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research;
  - e. If 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;
  - f. When the PHI makes reference to another person (unless such other person is a health care provider);
  - g. When the request is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access to such personal representative is reasonably likely to cause substantial harm to the individual or another person;
  - h. When the request is made by an inmate of a correctional institution; or
  - i. If the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

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<sup>2</sup> An individual's right of access can be denied without the opportunity for review as outlined in the section above "Unreviewable Grounds for Denial".