

# Policy and Procedure on Patient's Right to Access Health Information

## Cardiac Surgery Associates, SC

**Date:** April 14, 2003

**Authority:** Executive Management Committee, Drs. Bakhos, Blakeman, Bonilla, and Foy; M. Budzynski

**Responsibility:** Officer Manager

### **Purpose:**

**The purpose of this policy is to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and to afford our patients the right to inspect and obtain a copy of health information about themselves.**

### **General Policy:**

It is our policy to provide our patients the right of access to inspect and obtain a copy of health information about themselves, for as long we maintain the information in our designated record set, with exceptions permitted by law.

It is our policy to comply with all legal requirements and obligations relating to the PHI of minor patients. Under most circumstances, a parent or legal guardian will have legal authority to act on behalf of minor children; in this matter the parent is considered to be the minor's "personal representative." The "personal representative" is entitled to receive PHI and permit its disclosure, as the patient would be. Under the following circumstances, the minor has authority to make his/her health care decisions:

- when the minor has the right under state law and the minor has not requested another person be treated as a personal representative;
- when the minor has the right to obtain a particular health care service;
- when the guardian agrees to an agreement of confidentiality between health care provider and the minor.

### **Definitions:**

*Access* means that patients may inspect their medical records and billing records under the supervision of a staff member for which an inspection fee is charged; or obtain a copy of all or a portion of their medical records and billing records for which a copying fee is charged.

*Designated record set* means medical records and billing records that we use to make health care and payment decisions about patients.

### **Procedure:**

1. Patients may request access to their medical records and/or billing records by submitting a request in writing on our Authorization for Release of Information Form to our Officer Manager. This Form specifies that the access will be granted within 30 days of its receipt unless the patient is otherwise notified, and identifies the fees that will be charged for supervision of inspection, for copying all or portions of the record, or for summarizing the record. The request must state the type of access requested (inspection, copy, or if a summary will be accepted if

there are reasons why a complete inspection or copy cannot be released, see step 3.b.), specify the dates and specific information requested, and be signed by the patient.

2. When a request for access to the medical record and/or billing record is made by a patient:

a. Obtain the patient's medical record and verify the patient's demographic information and signature on the Authorization for Release of Information Form with demographic information and signature on the consent for use and disclosure of health information, or other document signed by the patient contained within the medical record. If the authenticity of the patient cannot be verified, send a request to the patient to have a new Authorization for Release of Information Form notarized.

b. Review the medical record and/or billing record according to the request, to determine if:

1.) The information requested is excepted from the patient's right of access (see step 3. Exceptions to access), in which case access must be denied. Follow the procedure in step 4. for Denial of access.

2.) The information requested is complete. If the information is not complete, inform the physician responsible for completion that a request for access has been made by the patient and the record will need to be completed within 30 days in order to comply with the patient's request or be found in non-compliance with HIPAA and subject to fines. If the record is not completed within 30 days, send a copy of the Authorization for Release of Information Form to the patient indicating that an extension to providing access will be required because the record is in the process of being completed and indicating the specific date on which access will be granted. This date must not exceed an additional 30 days.

c. If access is not excepted and the information is complete and the patient requests inspection of the medical record and/or billing record or any portion thereof, schedule an appointment for the patient to visit the office. If the request is only for a portion of a record, remove that portion and place it in a separate folder for purposes of the inspection. Our Officer Manager must be present with the patient during the time the patient is inspecting the record(s). During this time, the patient may not remove any documents from the record(s) or write any information in the record(s). If the patient wishes to make an amendment to the record(s), follow the Policy and Procedure for Patient's Right to Request Amendment of Health Information. If the patient has any questions concerning the information in the medical record, inform the patient that an appointment must be made with the physician to discuss the information. If the patient has any questions concerning the information in the billing record, refer the patient to the Patient Accounts Representative.

d. If access is not excepted and the information is complete and the patient requests a copy of any or all of the medical record and/or billing record, make the specified copies and mail the information to the patient via postal mail. If the patient requests this information to be mailed to a different address, mailed to a different individual, or be given to someone else who physically presents to our office, this information must be authorized through the Authorization for Release of Information Form. If another individual is designated to physically pick up the copy of the information, verify the individual's identity by requesting a photo identification card and match the name on the card to the name on the Authorization for Release of Information signed by the patient.

Have the individual sign the Authorization for Release of Information as having received the information.

3. Exceptions to access are limited to very specific situations. Certain exceptions are unreviewable and for others we must permit the patient to request a review of our decision not

to grant access.

Unreviewable grounds for denial of access include:

- when the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- when the 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.

Reviewable grounds for denial of access include:

- when 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 patient or another person.
- when the information makes reference to another person (unless such 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.
- when the request for access is made by the patient's personal representative and a 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 patient or another person.

4. Denial of access is a serious matter under the law. Before the Nurse or Physician Assistant may make such a denial decision, it is our policy to conduct an internal review of that denial. Any such case should be given to the Physician who will authorize the denial.

a. If access is denied for one of the unreviewable reasons to deny access, return a copy of the Authorization for Release of Information to the patient indicating that we are unable to comply with the request for access due to the applicable reason. Retain a copy of the Authorization for Release of Information sent to the patient in the patient's medical record.

b. If access is denied for one of the reviewable reasons, determine if a summary of the record may be made or portions of the record may be provided access such as to prevent the risk associated with denial.

1.) If a summary or access to portions of the record would prevent risk, return a copy of the Authorization for Release of Information to the patient indicating we are not able to comply with the request for access for the specified reason but would be able to provide a summary of information in the record or access to portions of the record.

2.) If such a summary or access to portions of the record is not possible, return a copy of the Authorization for Release of Information to the patient indicating we are not able to comply with the request for access for the specified reason. Indicate on this Form that the patient has the right to have this decision reviewed by another licensed health care professional.

3.) If a request for review is received, give a copy of the Authorization for Release of Information Form, the medical record, and, if applicable, the billing record to Physician, who will make a final determination. Upon the review and

determination, send a response to the patient indicating the result of the review and how the patient may file a complaint with our office or to the Secretary of Health and Human Services (HHS).

4.) File a copy of the Authorization for Release of Information Form and other documentation received from the patient in the patient's medical record. Place a copy of the Authorization for Release of Information in your Risk Management file.

5. If a request for access to the medical record or billing record is made and the person was not a patient of ours, return a copy of the Authorization for Release of Information Form to the individual indicating we have no records. If we do not have records on this individual but know where the requested information may be maintained (such as at a hospital or other physician's office), return the Authorization for Release of Information Form to the individual and provide the name and address of the location where we believe the records may be maintained. Keep a copy of the Authorization for Release of Information Form in your Risk Management file.

# State Law Information for Patient's Right to Access Health Information

## Cardiac Surgery Associates, SC

State: IL

Your state's laws regarding Protected Health Information must be considered along with the HIPAA Privacy Regulation when updating your organization's policies and procedures. We are providing the information below as a guide to what those other considerations may be. Consult your state's laws to make sure you are meeting all of the requirements.

### Summary

The Illinois law is more stringent than the federal regulation. The state law affects the actual process for patient's access to their PHI, and the information that may be released is much more controlled. This has a medium to high impact to the policies. Carefully read each state provision and our "Expected Impact" and then incorporate appropriate language into your policy. Seek outside counsel if anything is unclear.

### General Policy Issues

The HIPAA Privacy Regulation allows patients to access information about themselves, with some exceptions. Your state law may not allow a patient to access his or her own health information or they may limit the information held in the data set. Thus you may need to make changes to your general policy accordingly.

### Definitions

In our standard HIPAA policy, we provide the definition for access and designated data set. Your state regulations, as cited below, may have a different definition for access. The state may also change the content held in the designated data set, or use a different term for the records that can be accessed by the patient.

### Specific Issues

In Part 1, the policy states that patients are allowed to obtain a copy of their medical records pursuant to the covered entity receiving a written Authorization of Release of Information form and that this access or denial will occur within 30 days. State law may prohibit patients to access their medical records and/or have a different time limit in which they must comply with a request.

Part 2 establishes a process for you to accept or reject a patient's request to obtain their medical record. State law may have a different process in which you may accept or reject a patient's request. Be careful to note that the state law may require the provider to inform the patient of their decision in a certain period of time and have a different cost

for copying the records.

Part 3 includes the grounds for denial of access to the patient. State law may or may not have the same grounds for denying access.

Part 4 deals with the process of reviewing a denial decision. State law may have a process in which a denial is reviewed and have certain criteria for patients who would like to appeal a denial.

Part 5 refers to the process providers should use if the requested records are not part of their data set. State law may have a different provision for handling this situation.

### ***Definition of Protected Health Information***

#### **Expected Impact [Low]**

The federal access regulation applies to protected health information maintained in a designated record set. State law appears to be broader in scope. The broader state definition appears to be applicable. The federal regulation clearly covers payment information and that aspect of the federal regulation is applicable.

NOTE: A patient is entitled to the most information available under state law or the federal regulation.

#### **State Law Citation**

735 ILCS 5/8-2003

#### **Highlight of State Provision**

Access must be provided to records including diagnosis, treatment, prognosis, history, charts, etc. kept in connection with the treatment of a patient.

### ***Records exempt from access requirements***

#### ***Psychotherapy Notes***

#### **Expected Impact [Medium]**

Psychotherapy notes are not available under the federal regulation. The state law definition of personal notes is similar to, but not identical with, the federal regulation definition. Any personal notes that fall outside the federal regulation definition of psychotherapy notes might be accessible to the patient.

NOTE: The state law definition of personal notes is not identical to the federal regulation definition of psychotherapy notes for access. Proceed with caution or seek more authoritative advice.

#### **State Law Citation**

740 ILCS 110/2, 110/3

#### **Highlight of State Provision**

The Mental Health and Developmental Disabilities Confidentiality Act excludes personal notes maintained by a therapist from the definition of record.

## *Litigation*

### **Expected Impact [Medium]**

State law has no exemption for litigation materials, but they may not be within the scope of a required disclosure under state law.

NOTE: It looks like litigation materials can be withheld. If you have litigation materials, you also probably have a lawyer and can ask about it.

#### **State Law Citation**

735 ILCS 5/8-2003

#### **Highlight of State Provision**

Access must be provided to records including but not limited to those relating to the diagnosis, treatment, prognosis, history, charts, pictures and plates, kept in connection with the treatment of such patient.

***There are several types of disclosures that have a similar impact when compared to the regulation. We have grouped them together and listed the expected impact below.***

*Harm to Individual*

*Information about third parties*

*Harm to others*

*Harm from disclosure to personal representative*

*Confidential Sources*

### **Expected Impact [Medium]**

State law does not have an exemption comparable to the federal regulation for withholding information obtained under a promise of confidentiality.

NOTE: State law does not appear to recognize any exceptions to access, so all records must be disclosed.

### **Access Process**

*Procedure*

### **Expected Impact [Low]**

Under state law, a request must be in writing. The federal regulation allows covered entities to ask for written requests.

NOTE: You can ask patients who want access to medical records to make a written request. There is no conflict between access procedures under state law and federal regulation.

#### **State Law Citation**

735 ILCS 5/8-2003

#### **Highlight of State Provision**

A request for examining and copying records must be made in writing and delivered to the provider.

### *Time*

#### **Expected Impact [Medium]**

The federal regulation requires action on a request in a timely manner, no later than 30 days after receipt. The federal time frame appears to be shorter and therefore applicable. Any extensions of available under the federal regulation cannot exceed the state law 60-day time limit.

NOTE: Provide access no later than the 30 days specified in the federal regulation. Any extensions should not exceed the 60-day limit under state law.

#### **State Law Citation**

735 ILCS 5/8-2003

#### **Highlight of State Provision**

Access must be provided within 60 days of a request.

### *Cost*

#### **Expected Impact [Medium]**

The federal regulation allows a reasonable, cost-based fee. It does not allow for a handling or shipping fee, as the state law does.

NOTE: Fees for copying may not exceed the maximum allowed under either the federal regulation or state law, whichever is less.

#### **State Law Citation**

735 ILCS 5/8-2003

735 ILCS 5/8-2006

#### **Highlight of State Provision**

The provider can charge a patient a \$20 handling charge for processing the request for copying, shipping fees associated with the request, and appropriate copying fees (\$0.75/page for pages 1-25, \$0.50/page for pages 26-50, and \$0.25/page for pages in excess of 50. The charges cannot exceed \$1.25/page for copies from microfiche or microfilm. The provider can also charge a reasonable cost for copies of x-ray films and other materials that cannot routinely be copied on a standard photocopy machine. Rates are subject to annual inflation adjustments.

### ***Appeal***

We have not discovered any relevant state statutes for this section.