
HIPAA COW
PRIVACY NETWORKING GROUP
INDIVIDUAL RIGHT TO ACCESS, INSPECT AND COPY
PROTECTED HEALTH INFORMATION

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Background:

In compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Wisconsin Stat. §146.83, organizations must have in place and implemented policies and procedures to ensure an individual’s right of access to inspect and obtain a copy of their protected health information (§164.524).

Wisconsin Stats. §51.30(4) (d), §146.83(1), §252.15(5) and §610.70(3) also provide access by an individual to their health care information, including personal medical information maintained by an insurer.

<p>Preemption Issues: There are several Wisconsin State Administrative Codes, Statutes and also Federal Laws that address individual rights to access, inspect and/or copy PHI. These include: HFS 61, 92, 94, 124, 132, 133, 134; WI Stats. §146.81-83, §51.30; §252.15(5), §610.70(3), 42 CFR §483.10(j), and 29 CFR §2560.503-1.</p>
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Policy:

It is the policy of the organization to honor an individual’s right of access to inspect and obtain a copy of their protected health information (PHI) in the organization’s defined designated record

Based on Final HIPAA Security Rule & HITECH Interim Rules (8/24/09)

set, for as long as the PHI is maintained in the designated record set is in compliance with HIPAA and the organization's retention policy.¹

Procedures:

1. An individual must make a request to the organization to access and inspect PHI in the organization's designated record set. Whenever possible and when indicated in advance as a standard, this request shall be made by the individual or the individual's authorized personal representative in writing.² However, the organization may not apply any unreasonable measures on an individual requesting access that serve as barriers or delay the individual from obtaining access.³
2. The request must be documented by the organization, as required by state law,^{4,5} or other applicable records management system.
3. Determination of accessibility of the information shall be based on the availability of PHI (i.e., final completion of information, long term storage, retention practices, etc.).
4. The organization must take action within a reasonable period of time not to exceed 30 days after receipt of the request.
 - A. Action taken includes a review and determination on whether to deny or grant an individual to access, inspect, or copy PHI. See [Appendix B](#) at the end of this policy relating to access by an individual.
 - B. One 30-day extension is permitted, if the organization provides the individual with a written statement within the initial 30 days from receipt of the request of the reasons for the delay and the date by which the access request will be processed.⁶
5. The organization must document and retain the designated record set(s) subject to access, and the titles of persons or offices responsible for receiving and processing requests for access.⁷

¹ In compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), providers must have in place and implemented policies and procedures to ensure the patients' right to access and amend protected health information in the designated record set (§164.524 and §164.526).

² Comment: It would be helpful to insert language which addresses an allowance to provide access to the individual without a written request in the event such access might be necessary. HIPAA states that the organization "may require" the individual to make the request in writing, "provided that it informs the individual of such a requirement. See [Appendix A](#) at the end of this policy.

³ FAQs on Individuals' Right under HIPAA to Access their Health Information 45 CFR § 164.524. *Requests for Access.* <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html#newlyreleasedfaqs>

⁴ Comment: This procedure, as written, requires that a request be made to the organization with brackets allowing insertion of the designated staff member's title or position that might be more appropriate. Location of the documentation may be specified as appropriate. Also, an authorization for disclosure is not required for an individual's access and might not be used under the circumstances of this policy. See [Appendix A](#) at the end of this policy.

⁵ The organization may require the individual to use the organization's "Authorization for Disclosure" form provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to PHI.

[Appendix A.](#)

⁶ See [Appendix C](#) at the end of this policy relating to timeliness of answering requests.

⁷ Comment: See [Appendix A](#) at the end of this policy relating to documentation required relating to individual access.

Access, Inspection and/or Copy Request is Granted

1. The individual and the organization will arrange a mutually convenient time and place for the individual to inspect and/or obtain a copy of the requested PHI.
 - A. Inspection and/or copying of PHI will be carried out within the organization with staff assistance.
 - B. If inspection is taking place virtually or electronically, it must be done with documented consent from the individual including any notice about security of the sharing platform.
2. The individual may choose to inspect the PHI, copy it, or both, in the form or format requested. If the PHI is not readily producible in the requested form or format, the organization must provide the individual with a readable hard copy, electronic format, or other form as agreed to by the organization and the individual.
 - A. If the individual chooses to receive a physical copy of the PHI, the organization may offer to provide copying services. The individual may request that this copy be mailed or provided to them in an electronic format.
 - i. The organization shall process requests for an electronic format as outlined in additional organizational policy/procedures addressing this individual right.
3. Upon prior approval of the individual, the organization may provide a summary of the requested PHI.
4. The organization may charge a reasonable fee for labor, supplies, and postage to prepare copies or a summary of PHI issued to the individual in the form or format defined in Wis. Stat. §146.83 (3f), if the individual has been informed of such a charge in advance and is willing to pay the charge.⁸
 - A. The organization may charge
 - i. actual costs as set forth in Wis. Stat. §146.83 (3f), or
 - ii. average costs.
 - B. Fees should not be charged if the records are provided electronically.⁹
 - C. The fee should not be charged if the financial situation of an individual requesting access would make it difficult or impossible for the individual to afford the fee.¹⁰

⁸ Comment: OCR guidance limits expenses that may be included in the “cost of labor” to only labor of producing the copy. Specifically, labor can only include creating and delivering the electronic/paper copy, not labor time spent retrieving, collecting, compiling, and/or collating records for a request when records are ready to be copied or burned. Per page fees are permitted for records maintained and delivered in paper, but not permitted for records maintained electronically.

⁹ CASE NO.: 2020AP1582 COMPLETE TITLE: Beatriz Banuelos, Plaintiff-Appellant, v. University of Wisconsin Hospitals and Clinics Authority, Defendant-Respondent-Petitioner. REVIEW OF DECISION OF THE COURT OF APPEALS Reported at 399 Wis. 2d 568, 966 N.W.2d 78 PDC No: 2021 WI App 70 - Published <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=641018>

¹⁰ FAQs on Individuals’ Right under HIPAA to Access their Health Information 45 CFR § 164.524. *Fees That Can Be Charged to Individuals for Copies of their PHI.*

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html#newlyreleasedfaqs>

5. If upon inspection of the PHI the individual feels it is inaccurate or incomplete, the individual has the right to request an amendment to the PHI.
 - A. The organization shall process requests for amendment as outlined in additional organizational policy/procedures addressing this individual right.
6. Where an individual directs PHI to be sent directly to a third party, the organization shall reasonably validate the nature of the PHI requested and the third party recipient without undue delay.
 - A. The organization shall issue communications to a third party as outlined in additional organizational policy/procedures addressing disclosure of PHI, interoperability and electronic communications.
 - B. If the request is to direct PHI to a third party, the aforementioned fee limitations in Section 9 need not be applied.¹¹

Access, Inspection and/or Copy Request is Denied in Whole or in Part

1. The organization must provide a written denial to the individual. The denial must be in plain language and must contain:
 - A. The basis for the denial;
 - B. A statement, if applicable, of the individual's review rights; and
 - C. A description of how the individual may complain to the organization and/or to the Secretary of Health and Human Services.
2. If access is denied because the organization does not maintain the PHI that is the subject of the request, and the organization knows where that PHI is maintained, the organization must inform the individual where to direct the request for access.
3. The organization must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI for which the organization has grounds to deny access.
4. If access is denied by a covered entity, who is a provider, on a ground permitted under HIPAA¹², the individual has the right to have the denial reviewed by a licensed healthcare professional who is designated by the provider organization to act as a reviewing official and who did not participate in the original decision to deny.
5. The individual must initiate the review of a denial by making a request for review to the organization.
 - A. If the individual has requested a review, the organization must provide or deny access within a reasonable period of time through written notice.
 - B. If the covered entity is a provider, this will include the determination of the reviewing professional who was assigned the review .

¹¹ [2029-How can covered entities calculate the limited fee that can be charged to individuals to provide them with a copy of their PHI? | HHS.gov](#)

¹² 45 CFR §164.524

NOTE: the tables below should incorporate the IBR, as they concern rules governing access to PHI (which presumably includes some EHI). This is likely most effectively done by adding a column for the IBR and inserting the relevant information.

References:

- “*Checklist of Individual Rights Under HIPAA*,” Report on Medicare Compliance, April 25, 2002
- Reinhart, Boerner, Van Deuren, Attorneys at Law
- 2002 WEDI – SNIP Security and Privacy Workgroup Privacy Policies and Procedures
- Wisconsin Stat§146.83.
- Chapter 146 HIPAA Privacy Standards Matrix
- “Individuals’ Right under HIPAA to Access their Health Information 45 CFR § 164.524,” Office of Civil Rights Guidance, February 25, 2016
- Making Amendments to Health Records (2017 Update)
- CASE NO.: 2020AP1582 COMPLETE TITLE: Beatriz Banuelos, Plaintiff-Appellant, v. University of Wisconsin Hospitals and Clinics Authority, Defendant-Respondent-Petitioner. REVIEW OF DECISION OF THE COURT OF APPEALS Reported at 399 Wis. 2d 568, 966 N.W.2d 78 PDC No: 2021 WI App 70 - Published

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Prepared by:	Reviewed by:	Content Changed:
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Based on Final HIPAA Security Rule & HITECH Interim Rules (8/24/09)

	System, Co-Chair Privacy Networking Group	
Carrie Aiken, CHC Cherri Fields, RHIT Catherine J. Hansen, RHIA Kathryn Krenz	Nancy Davis, MS, RHIA, Co-Chair Privacy Networking Group Chrisann Lemery, MSE, RHIA, CHPS; Mercy Care Health Plans, Co-Chair Privacy Networking Group	This policy was updated to define scope as the designated record set; expand to any entity type and capture current information on charging fees, electronic records format, directing information to third parties.

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Appendix A ([Based on Procedure 1](#))

An individual must make a request to access and inspect PHI. Whenever possible, this request shall be made in writing and documented in the individual's designated record set.

146.83(1)	HIPAA	Interface
An individual may inspect or copy their records upon the submitting of a statement of informed consent.	HIPAA allows access upon request.	Follow HIPAA. No statement of informed consent is required for individual access. Only request for access is required.
Requires written informed consent.	HIPAA allows organization to require request to be in writing provided CE informs individual of such requirement. The organization may not apply any unreasonable measures on an individual requesting access.	Organization may require request in writing and this requirement is at the discretion of the organization. Organization must notify individual of "in writing" requirement provided it does not serve as a barrier or unreasonably delay the individual from obtaining access.
Implies written informed consent submitted to health care organization maintaining the requested records.	Request made to organization.	Organization designates who receives the request.

146.83(3)	HIPAA	Interface
The organization ¹³ shall note <ul style="list-style-type: none"> the time and date of each request, the name of the inspecting person, the time and date of inspection, and identify the records released for inspection. 	There are no specific requirements for documentation of a disclosure to individual under the right of access other than documentation of the designated record sets that are subject to access and the titles of the persons/offices responsible for receiving and processing requests for access. HIPAA does not require that an organization provide an	State law controls. State law requires greater recordkeeping. Disclosures made to the individual must be documented as required by state law.

¹³ Wisconsin Stat. §146.81 defines "health care provider" and "patient health care records". The organization may need to evaluate whether it qualifies under these definitions to apply this documentation standard.

Based on Final HIPAA Security Rule & HITECH Interim Rules (8/24/09)

146.83(3)	HIPAA	Interface
	individual with an accounting of disclosures made to the individual.	
There is no requirement relating to where the documentation of the disclosure to the individual must be maintained.	No requirement.	Location of the required documentation is at the discretion of the organization and is not regulated by law.

Appendix B ([Based on Procedure 3](#))

Determination permit access or denial of the information shall be based on State and Federal laws.

If the requested health care information is regulated by Wisconsin statute §146.83, the following grid may be used to determine whether the requested information is accessible by the individual.

Wisconsin Stat. §146.83 and HIPAA - Interface based on 146 Matrix

146.83	HIPAA	Interface
Access to health care records of a health care provider pertaining to that individual.	Access to PHI about the individual in a designated record set with the following exceptions.	HIPAA provides a greater right of access to a greater amount of information. HIPAA will regulate the information available through the designated record set definition.
Does not exempt any records from individual access.	Does not allow individual access to psychotherapy notes.	If psychotherapy notes are 51.30 records, 51.30 will control access. If psychotherapy notes are 146 records, access will be provided by state law, 146, superceding HIPAA.
Does not exempt any records from individual access.	Does not allow access to information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative proceeding.	Follow state. Accessible by individual.
Does not exempt any records from individual access.	Does not allow access to protected health information that is subject to CLIA or exempt from CLIA.	Follow state. Accessible by individual.
Does not exempt any records from individual access.	Unreviewable grounds for denial.	Follow state. Disregard unreviewable process.
Does not exempt any records from individual access.	Reviewable grounds for denial.	Follow state. Disregard reviewable process.
Does not exempt any records from individual access but practice would limit access to what has been maintained/retained.	Limits access to information maintained within the record set.	May limit access to what organization maintains/retains.

Based on Final HIPAA Security Rule & HITECH Interim Rules (8/24/09)

146.83	HIPAA	Interface
Does not exempt records from individual access due to incompleteness of records.	Limits access to information within the designated record set.	If Wisconsin law provides greater access, Wisconsin law will control.

Appendix C ([Based on Procedure 4\(B\)](#))

The organization must take action within 30 days after receipt of the request. One 30-day extension is permitted, if the organization provides the individual with a written statement of the reasons for the delay and the date by which the access request will be processed.

146	HIPAA	Interface
Upon reasonable notice.	Requires action within 30 days of receipt of request (b)(2)(i).	The HIPAA time limits control unless the WI standard of reasonable notice may be deemed to be shorter and provide a greater right of access. Suggest HIPAA language and “upon reasonable notice”, whichever is of shorter duration.
	Allows 30 day extension to above if certain procedural steps are taken (b)(2)(iii).	As above.