

4010.0.0 REQUEST AMENDMENT OF PROTECTED HEALTH INFORMATION

4010.1.0 Purpose

To insure Department of Human Services (DHS) compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations regarding a patient's right to request an amendment or correction to their protected health information.

4010.2.0 Authority

HIPAA Standards for Privacy of Individually Identifiable Health Information 45 CFR Part 164 Section 164.526 Amendment of protected health information. To issue instructions to all DHS offices, facilities, programs and workforce members ("entities") regarding the Department's obligations relating to the implementation of HIPAA, 42 U.S.C. §§ 1320d-1329d-8, and regulations promulgated hereunder, 45 CFR Parts 160 and 164.

4010.3.0 Applicability

This rule applies to all DHS employees. DHS offices, facilities, programs and workforce members are directed to follow all applicable policies and procedures found in the HIPAA Policies and Procedures Manual. Failure to comply with this rule and its reference documents may result in disciplinary sanctions as defined in DHS 1084, Employee Discipline: Conduct/Performance.

4010.4.0 Definitions

4010.5.0 Protected Health Information (PHI) – is health information which:

- A. Identifies the individual or offers a reasonable basis for identification
- B. Is created or received by a covered entity or an employer; and
- C. Relates to past, present, or future
- D. Physical or mental health or condition
- E. Provision of health care or
- F. Payment for health care
- G. Or has been electronically transmitted or electronically maintained by a covered entity and includes such information in any other form.

4010.6.0 Workforce Members - employees, volunteers, trainees, and other persons whose conduct, in the performance of work for DHS, its offices, programs or facilities, is under the direct control of DHS, regardless of whether they are paid by the entity.

4010.7.0 Procedures

4010.7.1 These procedures are in addition to procedures set out in other rules or implemented by the Office of Administrative Services (OAS).

4010.7.2 Patient requests for amendment of protected health information shall be made in writing to the covered entity and clearly identify the information to be amended, as well as the reasons for the amendment. These requirements are detailed in the Notice of Privacy Practices.

4010.7.3 Requests may be denied if the material requested to be amended:

- A. Was not created by DHS, unless the originator is no longer available to act on the request
- B. Is not part of the individual's health record
- C. Is not accessible to the individual because federal and state law do not permit it
- D. Is not accurate and complete

4010.7.4 DHS must act on the individual's request for amendment no later than 60 days after receipt of the amendment. DHS may have a one-time extension of 30 days for processing the amendment if the individual is given a written statement of the reason for the delay, and the date by which the amendment request will be processed.

4010.8.0 Amendment Request is Granted

If the individual responsible for the entry to be amended grants the request after review and approval, DHS must:

- A. Insert the amendment or provide a link to the amendment at the site of the information that is the subject of the request for amendment
- B. Inform the individual that the amendment is accepted
- C. Obtain the individual's identification of and agreement to have DHS notify the relevant persons with whom the amendment needs to be shared
- D. Within a reasonable time frame, make reasonable efforts to provide the amendment to persons identified by the individual, and persons, including business associates, that DHS knows have the protected health information that is the subject of the amendment and that may have relied on or could foreseeably rely on the information to the detriment of the individual

4010.9.0 Amendment Request is Denied

4010.9.1 If the request is denied, DHS must provide the individual with a timely written denial in plain language that contains:

- A. The basis for the denial (see section 4010.5.3 above)
- B. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement
- C. A statement that if the individual does not submit a statement of disagreement, the individual may request that DHS provide the individual's request for

amendment and the denial with any future disclosures of the protected health information that was the subject of the request

- D. A description of how the individual may complain to DHS or the Secretary of Health and Human Services
- E. The name or title, and the telephone number of the designated contact person who handles complaints for DHS

4010.9.2 DHS must permit the individual to submit to DHS, a written statement disagreeing with the denial of all or part of the requested amendment and the basis of such agreement. DHS may reasonably limit the length of a statement of disagreement.

4010.9.3 DHS may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, DHS must provide a copy to the individual who submitted the statement of disagreement.

4010.9.4 DHS must, as appropriate, identify the record of protected health information that is the subject of the disputed amendment and append or otherwise link the individual's request for amendment, DHS denial of the request, the individual's statement of disagreement, if any, and DHS's rebuttal, if any.

4010.9.5 If the individual has submitted the statement of disagreement, DHS must include the material appended or an accurate summary of such information with any subsequent disclosure of the protected health information to which the disagreement relates.

4010.9.6 If the individual has not submitted a written statement of disagreement, DHS must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of protected health information only if the individual has requested such action.

4010.9.7 When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included, DHS must separately transmit the material required.

4010.9.8 A covered entity that is informed by DHS of an amendment to an individual's protected health information must amend the protected health information in written or electronic form.

4010.9.9 DHS must document the titles for the persons or offices responsible for receiving and processing requests for amendments.

4010.10.0 Additional Considerations of Amendments From Other Covered Entities

When a provider receives notification from another health care provider or health plan that a patient's protected health information has been amended, the receiving provider:

- A. Must ensure that the amendment is appended to the patient's health record
- B. Will inform its business associates that may use or rely on the patient's protected health information of the amendment (as agreed to in the business

associate contract) so that they may make the necessary revisions based on the amendment

4010.11.0 Originating Section/Department Contact

Office of Chief Counsel
Donaghey Plaza South
P. O. Box 1437, Slot S260
Little Rock, AR 72203-1437
Telephone: (501) 682-8934