ACCESS TO PATIENT PROTECTED HEALTH INFORMATION (PHI) BY THE PATIENT, PARENT, GUARDIAN OR PERSONAL REPRESENTATIVE POLICY

POLICY
Access to Patient Protected Health Information (PHI) by the Patient, Parent, Guardian or Personal Representative

PURPOSE
It is the policy of Saint Louis County Department of Health (DOH) to protect the privacy of Individual Identifiable Health Information (IIHI) in compliance with federal and state laws governing the use and disclosure of Protected Health Information (PHI). Saint Louis County DOH recognizes the rights of patients to access health information pertaining to them in a designated record set as set forth in 45 CFR 164.524. Saint Louis County DOH further recognizes that access to PHI may be limited or restricted as defined in this policy, in the Notice of Health Information Practices and allowed by law. In cases where the patient is a minor, or has been civilly adjudicated incapacitated, the parent (if a minor) or legal representative or personal representative may request access. An exception to this statement occurs when a minor is treated for substance abuse, family planning, STD or pregnancy without parental consent, and in situations when parents shall not have access to the PHI. There may be additional exceptions as allowed by law.

APPLICATION
Saint Louis County DOH, its facilities and workforce.

DEFINITIONS
1. Patient
   Any individual who has received or is receiving services from Saint Louis County DOH.
2. Designated Record Set
   A group of any records under the control or a covered entity from which PHI is retrieved by the name or the individual or by identifying number.
3. Direct Access
   An in-person review of the medical record and/or obtaining a copy of the record.
4. Personal Representative
   Person with a court order appointing them as guardian or with a valid power of attorney (POA) signed by the patient specifying the authority to review and make decisions regarding treatment.

Reference: 6.4.1 Request for Patient Access to Protected Health Information (PHI) Form 041403
5. **Protected Health Information (PHI)**
   Individually identifiable health information that is:
   A. Transmitted by electronic media,
   B. Maintained in any medium described in the definition of electronic media, and
   C. Transmitted or maintained in any other form or medium.

6. **Individually Identifiable Health Information (IIHI)**
   Any information, including demographic information collected from an individual that:
   A. Is created or received by a healthcare provider, health plan, employer, or health care clearinghouse,
   B. Relates to the past, present, or future physical or mental health or condition of an individual or the past, present, future payment for the provision of health care to an individual, and identifies the individual or,
   C. With respect to which there is reasonable basis to be that the information can be used to identify the individual.

7. **Psychotherapy Notes**
   Notes recorded in any medium by a healthcare provider who is a mental health professional documenting or analyzing the contents of a 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. Such notes exclude medication prescriptions 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:
   A. Diagnosis,
   B. Functional status,
   C. The treatment plan,
   D. Symptoms,
   E. Prognosis and
   F. Progress notes.

**REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION (PHI)**

- A patient who has or is receiving services from St. Louis County DOH, a parent of a minor, and personal representative or legal guardian must request in writing for access to inspect, or receive copies of, PHI except in those instances covered by Federal regulations and outlined in the 6.10 Notice of Health Information Practices acknowledged at the point of registration.
- The 6.4.1 Request for Patient Access to Protected Health Information (PHI) Form shall be provided to the patient to facilitate the request. Medical record staff will assist in initiating the process.
Medical records staff will inform the Privacy Officer or designee of the request to inspect patient PHI.

A date, not to exceed more than thirty (30) days, will be determined when the patient, parent, or legal representative may inspect or receive copies of their PHI. If the medical record cannot be accessed in thirty (30) days the timeframe may be extended an additional thirty (30) days with notification in writing, to the patient, outlining the reasons for the delay.

The request for access to PHI may be denied **without a right to review** as follows:

1. If the information conforms to one of the following categories:
   A. Psychotherapy notes,
   B. Information for use in a civil, criminal or administrative action or proceeding, or
   C. Information that would be prohibited from use of disclosure under the Certified Laboratory Information Act (CLIA) laws and regulations,
   D. If the access is otherwise precluded by law,
   E. If the information was obtained from someone other than a health care provider under the promise of confidentiality and the access would be reasonably likely to reveal the source of information. All Victim Notification and Duty to Warn Forms, as well as any other documentation that contains demographics of the victim or potential victims shall be removed before any review of the record by anyone not employed by Saint Louis County DOH.
   F. If the facility has been provided a copy of a court order from a court of competent jurisdiction that limits the release of PHI,
   G. If the patient is participating in a research related treatment and has agreed to the denial of access to records for the duration of the study.

Request for access to protected information may be denied provided the individual is **given a right to have the denial reviewed** as follows:

1. A licensed health care professional, based on an assessment of the particular circumstances, determines that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person,
2. The facility may deny the patient access to PHI if the information requested makes reference to someone other than patient and a licensed health care professional has determined that the access requested is reasonably likely to cause substantial harm to the other person,
3. The request is made by the individual’s personal representative and a licensed health care professional has determined, that access to the personal representative is reasonably likely to cause substantial harm to the patient.
ACCESS DENIAL

- Upon denial of any request for access to PHI, in whole or in part, a letter shall be sent to the patient or other valid representative making the request for access, stating in plain language the basis for the denial.
  1. The letter should contain a statement how to make an appeal of the denial including the name, title, address, and the telephone number of the person to whom an appeal should be addressed.
  2. This letter shall address the steps to file a complaint with the County Counselor’s office.
  3. If the information requested is not maintained by Saint Louis County DOH, but it is known where the patient may obtain access, Saint Louis County DOH must inform the patient where to direct the request to access.

APPEAL AND REVIEW OF DENIAL OF REQUEST

- A patient, parent of minor, or legal representative has the right to appeal the decision to withhold portions or all of the record for safety or confidentiality reasons.
  1. The appeal shall be submitted in writing to the Medical Director of Saint Louis County DOH, who will designate a licensed health care professional to review the request for access to PHI.
  2. The designated health care professional who did not participate in the original decision to deny access shall review the record and the request for access to the patient’s record (See referenced 6.4.1 Request for Patient Access to Protected Health Information (PHI) Form).
    A. The reviewer must determine if the request for access is appropriate.
    B. If the reviewer determines that the initial denial is appropriate, the patient must be notified in writing, using plain language, that the review resulted in another denial of access. The notice must describe the process to make a complaint to the Secretary of Health and Human Services (HHS).
    C. If the denial was not appropriate, the licensed health professional who acts as the reviewer shall refer the request to the Privacy Officer or designee for action.
    D. If access is denied to any portion of the PHI, access must still be granted to those portions of the PHI that is not restricted.
    E. Saint Louis County DOH is bound by the decision of the County Counselor’s office.

PROVISION OF ACCESS AND FEES

- If Saint Louis County DOH provides a patient or legal representative with access, in whole or in part, to PHI, we must comply with specifications as outlined in federal regulations.
  1. Requested information must be provided in designated record sets.
2. If the requested information is maintained electronically and the patient requests an electronic or faxed copy, the facility must accommodate the request if possible and should explain to the patient the risk to security of the information when transmitted.

3. If the information is downloaded to a computer disk, the patient should be advised in advance of any charges for the disk and for mailing the disk. Saint Louis County DOH shall establish a reasonable fee for duplication of the information on the disk.

4. If the information is not available in the format requested, the facility must produce a hard copy document or other format agreed upon by the patient and the facility.

- The facility shall provide the access requested in a timely manner and arrange for a mutually convenient time and place for the patient to inspect the PHI or obtain copies. Any request for accommodations shall be sent or given in writing to the Privacy Officer or designee.
- The fee will be in compliance with the Missouri State Statute (See Section 191.227, RSMO) and federal law.

RELEASE OF PROTECTED HEALTH INFORMATION (PHI) OF A DECEASED PATIENT

- The PHI of a deceased patient may only be released via a Probate Court Order from the County Circuit Clerk where the deceased resided or from another Probate Court in the State of Missouri.
  1. Upon request to obtain information, the Privacy Officer or designee shall ask for a copy of the Probate Court Order.

SANCTIONS

Failure of staff to comply or assure compliance with this policy shall result in disciplinary action up to and including dismissal.