

**EMPLOYEE GROUP INSURANCE
TREATMENT OF PROTECTED HEALTH INFORMATION**

Section 7.2: Right to Access Protected Health Information	Page: 1 of 4
Effective Date: April 14, 2003	

POLICY

EGI shall recognize an individual's right to inspect and/or obtain copies of his own PHI contained in a Designated Record Set, to the extent the individual is entitled to such access.

7.2(1) An Individual's Right to Make Written Request for Access to Designated Record Set

- a. Individuals requesting an opportunity to inspect and/or obtain copies of their PHI shall submit a written request to the Contact Person. If an individual orally notifies EGI of his desire to make such a request, the Contact Person shall supply the individual with a copy of the form Request for Access to Protected Health Information, which is in the Appendix to this Manual, in order to assist the individual with making a written, complete request.
- b. An individual shall have access to PHI for as long as it is maintained in a Designated Record Set, subject to this Section. The Contact Person shall be responsible for receiving and processing requests for access by individuals. The Privacy Officer shall have ultimate authority regarding whether such requests shall be granted or denied.

7.2(2) Verification of Requestor's Identity

- a. Before PHI is released under this section, the requesting person's identity shall be verified in accordance with Section 4.10 of this Manual.
- b. An individual's personal representative shall have the right to access PHI to the same extent the individual has such right under this Section.

7.2(3) Time Period for Responding to a Request for Access.

EGI shall provide access or a written denial to the designated record set, as applicable, in response to an individual's request for access within 30 days of EGI's receipt of the request, unless:

- a. The PHI is maintained off-site (including records held by a Business Associate), in which case access or written denial must be provided within 60 days; or
- b. EGI extends the deadline by providing the individual, within the 30-day or 60-day deadline, as applicable, a written statement of the reasons for the delay and the date by which action on the request will be completed, but in no case may this extension be for

more than 30 days. EGI is allowed only one extension for a decision on a request for access.

7.2(4) Providing Access to Records in the Designated Record Set

- a. If an individual makes a valid request for access to some or all of the requested PHI, such access shall be provided as follows:
 - i. if the form requested by the individual is readily producible, EGI shall provide the individual with access to the information in the form or format requested;
 - ii. if the form requested by the individual is not readily producible, the information may be produced in a readable hard copy format;
 - iii. if the individual is requesting personal access to inspect, arrangements shall be made with the individual to establish a convenient time for him to inspect the records;
 - iv. if an individual requests copies of PHI, EGI shall honor that request if fees for copying and mailing are paid in advance (if the requested PHI may be provided more quickly and inexpensively in an electronic format, the individual shall be notified of this option); and
 - v. an individual may be provided with a summary of the information rather than the information itself if (i) the individual agrees to receive a summary and (ii) the individual agrees in advance to any fees that will be imposed in preparing the summary.
- b. If access to PHI is granted in part and denied in part, EGI shall provide the individual with the granted access to the PHI, excluding (through redaction) the PHI for which access has been denied.
- c. EGI shall charge a reasonable cost-based fee for providing access/copies, which includes (i) the cost of copying (supplies and labor), (ii) postage, and (iii) the cost of preparing a summary or explanation (if applicable) if the individual agrees to a charge in advance.

7.2(5) Denial of Access to PHI

- a. Access to PHI may be denied if:
 - i. the PHI requested is not part of the Designated Record Set;
 - ii. the PHI requested is Psychotherapy Notes;
 - iii. the PHI requested was compiled by EGI in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;

- iv. the PHI requested was received from a source, other than a health care provider, under a promise of confidentiality, and providing access would be reasonably likely to reveal the source of the information;
 - v. a designated health care professional has decided to deny access because in his or her professional judgment he or she believes that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person—this would *not* include the potential for causing emotional or psychological harm;
 - vi. a designated health care professional has decided to deny access because in his or her professional judgment he or she believes that the PHI contains a reference to a third person, and it is reasonably likely that access may cause substantial physical, emotional, or psychological harm to that other person; or
 - vii. a designated health care professional has decided to deny access because the person requesting the PHI is the personal representative of the individual and in the professional's judgment the provision of access is reasonably likely to cause substantial harm to the individual who is the subject of the information or to another person.
- b. It is expected that the exceptions to open access will be employed rarely. The reasons for denial listed set forth in paragraphs 7.2(5)(a)(i)-(iv) are not reviewable. Reasons for denial listed in paragraphs 7.2(5)(a)(v)-(vii) may be reviewed in accordance with subsection 7.2(7) of this Section.

7.2(6) Notice of Denial.

If access is to be denied in part or in whole, EGI shall provide written notice, in plain language and within the timeframes established by this Section to the requesting person of the following:

- a. the specific grounds for the denial;
- b. the individual's right to protest the denial to the Contact Person and to the Secretary and the name or title and phone number of the Contact Person as well as a contact source for the Secretary;
- c. if the denial is reviewable, the individual's right to have the decision to deny access reviewed by another licensed health care provider, designated by EGI, who did not participate in the initial decision to deny access (the individual may exercise this right by notifying the Contact Person); and
- d. if the PHI is not in EGI's Designated Record Set but EGI knows where the information is maintained, where the individual should direct the request for access.

7.2 (7) Review of Denials

- a. If an individual is entitled to, and has requested, review of a denial of access, EGI shall designate a licensed health care professional who was not directly involved in the decision to deny access to be the designated reviewer and shall promptly refer such request to that reviewer. The reviewer shall determine within a reasonable period of time whether to deny access based upon the criteria listed in Subsection 5 of this Section. The decision of the official shall be final.
- b. EGI shall promptly notify the individual in writing of the determination of the reviewer, and if the reviewer finds that the individual should be given access to inspect and/or copy his PHI, EGI shall provide that access as described in Subsection 7.2(4) of this Section.

7.2(8) Document Retention

EGI shall retain documentation of the Designated Record Sets that are subject to access by individuals in paper or electronic form in accordance with Section 9.2 of this Manual.

For each request, as applicable, EGI shall retain (i) the individual's written request for access; (ii) EGI's written response to the request including a notice of deadline extension (if any); (iii) if the request is denied, the individual's written request for review, if any, and written notice of the reviewer's determination on review; and (iv) if the request is granted, a description of how access was provided and any summaries or explanations prepared by EGI. Such documents shall be retained in accordance with Section 9.2 of this Manual.

REFERENCES/CITATIONS

45 C.F.R. § 164.524

65 Fed. Reg. at 82538, 82547, 82554-58, 82731-36 (Dec. 28, 2000)

OCR Guidance at 28 (July 6, 2001)