

## Maricopa Integrated Health System Administrative Policy & Procedure

**Effective Date:** 03/03

**Reviewed Dates:** 08/06, 04/09, 06/11, 11/11, 06/16, 06/17, 10/17

**Revision Dates:** 08/06, 06/16, 06/17, 10/17

**Policy #: 01287 S**

**Policy Title: Compliance/HIPAA: Patient Requests for Records**

**Scope:** [ ] **District Governance (G)**  
[X] **System-Wide (S)**  
[ ] **Division (D)**  
[ ] **Multi-Division (MD)**  
[ ] **Department (T)**  
[ ] **Multi-Department (MT)**

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**Purpose:** The purpose of this policy is to describe the process followed by Release of Information (ROI) for determining whether to provide access to and a copy of Protected Health Information (PHI) to a patient or patient representative or surrogate; denying disclosure and copying in certain circumstances; and provide for an appeal of that denial in certain circumstances in accordance with the Health Insurance Portability and Accountability Act (HIPAA), as well as State and Federal laws, allowing patients access to their PHI.

**Definitions:**

Designated Record Set (DRS): a group of records maintained by or for MIHS that is: (i) The medical records and billing records about individuals maintained by or for MIHS; (ii) the enrollment, payment, claims, adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for MIHS to make decisions about individuals.

Legal Health Record (LHR) A.R.S. 12-2291; 12-2291 Effective: July 20,2011: All communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including medical records that are prepared by a health care provider or by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to § 36-441, 36-445, 36-2402, or 36-2917. Medical records do not include recorded telephone and radio calls to and from publicly operated emergency dispatch offices relating to requests for emergency services or reports of suspected

criminal activity, but include communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a person.

Minor: any patient under the age of eighteen (18) years who is not emancipated.

Emancipated Minor: A minor is considered emancipated by either a determination from a Court or DES. Factors to consider whether a minor is emancipated is where there is strong evidence the minor lives away from parents and is self-supporting or otherwise free of parental care, custody or control), married, or homeless (lives away from parents and either has no regular nighttime residence or is living in a shelter or other similar temporary housing accommodation).

Patient: a person whose treatment occasioned the making of the medical record.

Patient Representative: an individual who is authorized, either by the patient or by Arizona law, to make health care treatment decisions for the patient. The personal representative of a minor child is usually the child's parent or legal guardian. In cases where a custody decree exists, the personal representative is the parent(s) who can make health care decisions for the child under the custody decree.

Protected Health Information (PHI): any information about health status, provision of health care, or payment for health care this is created or collected by or for MIHS, and can be linked to a specific individual/patient.

Psychotherapy notes: notes recorded (in any medium) by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session; they are separated from the rest of the individual's medical record. These are records that are kept as private records of a mental health professional.

***Note: Psychotherapy notes do not include medical records concerning psychiatric or psychological consultations at MIHS, or records made by MIHS personnel concerning the mental health, well-being, or complaints by patients. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies or treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.***

Quick Disclosure: a simplified method for users outside of HIM to release patient information from Epic. Epic users are required to enter the core pieces of required data for appropriate disclosure tracking, such as who received the information, the purpose for the release, and the information released through the quick disclosure functionality.

Record: any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for MIHS.

Release of Information (ROI): the process by which MIHS discloses any and all protected health information upon authorized request by a patient, patient representative or third party.

**Policy:** Patients are permitted in most circumstances to inspect and obtain copies of their protected health information ("PHI"). This policy describes MIHS's process for: (1) determining whether to provide access to and a copy of PHI to a patient or patient representative or surrogate; (2) making such disclosures; (3) denying disclosure and copying in certain circumstances; and (4) providing for appeal of that denial in certain circumstances.

**Procedure:**

**1. Right to Inspect and Copy Records**

Except as set forth in this policy, a patient or patient's representative is entitled to inspect or have copies made of PHI in the designated record set.

**2. Processing Requests to Inspect and Copy Records**

- a. The Health Information Management (HIM) Department will handle requests for the medical record, and Patient Financial Services will handle requests for the billing record. Requests by phone to inspect and copy records are not permitted.
- b. All requests for all or part of a patient's designated record set will be logged into the electronic health record with a reminder that a response must be made thirty (30) days after the date of receipt of the request.
- c. Verification of the identity of an individual making a request for access may be done orally or in writing and is dependent on how the individual is requesting and/or receiving access whether in person, through MyChart, by mail, fax, or e-mail. Obtaining a copy of a State/Government issued identification or confirmation that such identification has already been obtained is preferred. If the requestor is not the patient, follow the procedures set forth in Section 3, below.
  - (i) Disclosures requiring a signed authorization by the patient or the patient's personal representative are acceptable in both handwritten and electronic format. If signature is completed electronically it must be an electronic representation of the patient or patient representative's actual signature. An electronic signature statement is not acceptable. (*Signature Statement Example: Patient Full Name signed on 01/01/2017 11:43*)
  - (ii) If not otherwise specified, authorizations are valid for a period of ninety (90) days from the date of signature.
- d. Before MIHS is able to copy or otherwise allow access to psychotherapy notes, a review of the record must be performed to determine whether the record set contains such notes.

- (i) If the record set contains psychotherapy notes, HIM must obtain physician/psychologist written approval of access, if feasible, in accordance with Section 5, below.
- (ii) If the physician/psychologist is not available within a reasonable time, the Chief of Staff for Psychiatric Services may review and decide whether access can be granted or denied in accordance with Section 5, below.
- (iii) If the physician/psychologist or administrator advises you that patient access to all or a portion of the record should be denied, follow the instructions in Section 5, below.

### **3. Requestors Who Identify Themselves as Patient Representatives**

When the requestor is not the patient, but identifies him or herself as representing the patient, access to records and copying is permitted in the following circumstances:

- a. The requestor has a written authorization from the patient to obtain access, and the authorization meets the requirements set forth in Form #11719: Authorization to Use or Disclose Protected Health Information and/or Form #45643 Patient Request for Access to Protected Health Information. Requests to inspect or copy records are not permitted.
- b. The requestor is an adult patient's guardian: A copy of the court order appointing the requestor as guardian, or a written and notarized statement that a court appointed the requestor as the patient's guardian and that the appointment is still valid must be obtained and reviewed prior to approving the request.
- c. If a guardian has not been appointed, and the requestor is the patient's agent under a health care power of attorney or mental health care power of attorney, the signed, valid medical power of attorney naming the requestor as the patient's agent must be obtained and reviewed prior to approving the request. The patient's physician must confirm that the patient is unable to make his or her own health care decisions.
- d. If a guardian has not been appointed and the patient does not have a health care or mental health care power of attorney, the requestor is the patient's health care decision-maker under state law. The patient's physician must confirm that the patient is unable to make his or her own health care decisions prior to approving access to one of the following list of patient representatives. MIHS may approve access once it is confirmed that a person at a higher level of priority is not immediately available:
  - (i) The spouse, unless the patient and spouse are legally separated;
  - (ii) An adult child;
  - (iii) A parent;
  - (iv) If the patient is unmarried, the patient's domestic partner if no other person has assumed any financial responsibility for the patient;
  - (v) An adult brother or sister; or
  - (vi) A close friend of the patient. This must be an adult who has exhibited special care and concern for the patient, who is

- familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interests.
- e. The requestor is a minor patient's parent or guardian.
    - (i) A review of the records to determine whether the patient has been considered emancipated, married, homeless, is otherwise competent to give informed consent, or per Federal and State law could competently consent to the treatment provided and therefore must consent to the release of records pertaining to that treatment must be performed. If so, a written consent from the patient is required prior to providing the parent or guardian access to the records.
    - (ii) Before approving access to records, a review of the records is required to determine whether the patient received reproductive health services. If so, approval from the HIM Director or designee is required or, if necessary, contact the Legal Department, prior to granting access to or copying records.
    - (iii) Verification that the requestor is the parent or guardian permitted access to the records must be obtained prior to granting access to or copying requested records.
  - f. The requestor is a person entitled to access records belonging to a deceased patient in accordance with A.R.S. § 12-2294. See MIHS Policy: 01272 S Uses and Disclosures of Protected Health Information Concerning Decedents and Cadaveric Organ, Eye and Tissue Donations for a list of authorized patient representatives who are authorized to access the deceased patient's records.

#### **4. Time Frames for Responding to Requests to Inspect and Copy Records**

- a. Copies of records will be provided, or a written denial made, in response to requests from patients or their representatives for access to all or part of the patient's designated record set within thirty (30) days of receipt of the request.
- b. The thirty (30) day time limit in paragraph 4(a) above will be extended to sixty (60) days if the records requested are not accessible on-site. If this time extension is required, a written statement explaining the delay and setting forth the date by which MIHS will provide records or a response must be mailed to the requestor.
- c. If MIHS personnel cannot produce the records within the time limits in paragraphs 4(a) or 4(b), a written statement explaining the delay and setting forth the date which the Hospital will provide records or a response must be mailed to the requestor. MIHS personnel may have only thirty (30) extra days under this extension.
- d. HIM personnel processing a request for access will log these dates in the electronic health record.

## **5. Denial of Access to Inspect and Copy Records**

- a. A decision to deny access to or copying of a patient's designated record set, in response to a request by the patient or patient representative, may be made on the following grounds:
  - (i) MIHS does not maintain the records.
  - (ii) The requestor, if not the patient, is not authorized to receive the records under paragraph 3, and the patient has not authorized the disclosure.
  - (iii) The requestor is a parent or guardian but is not authorized to receive the records because the minor patient is emancipated, married, and/or homeless; or, per federal or state law the minor has the capacity to consent and the records relate to communicable disease, substance abuse or the records involve reproductive health care]; or, the parent is the subject of an investigation of a crime against the minor and law enforcement asks that the records not be releases;
  - (iv) The patient's physician or psychologist has determined that the release of the record to the patient is not in the patient's best interest due to the treatment of the patient for a mental disorder, and that the release of this information would be reasonably likely to endanger the life or physical safety of the patient or another person, or to cause substantial harm to such other person.
  - (v) The patient's physician or psychologist has determined that the patient's raw test data and psychometric testing materials should not be disclosed, and that the release of this information would be reasonably likely to endanger the life or physical safety of the patient or another person, or to cause substantial harm to such other person.
- b. In all cases in which access to records will be denied, HIM personnel will make reasonable efforts to provide access to all records that do not provide grounds for denial.
- c. The Procedure for denying access to a designated record set is as follows:
  - (i) In all cases, the requestor will be notified in writing of a decision to deny access to all or part of the designated record set, including a short statement of the basis for the denial.
  - (ii) The notice will contain a description of how the requestor may file a complaint with the Compliance Office, and with the Department of Health and Human Services.
  - (iii) In cases in which the requestor is entitled to an appeal of a denial, the requestor will be notified and receive written instructions for filing an appeal.
  - (iv) If MIHS does not maintain the requested records, but knows where the information may be obtained, the requestor will be notified of this information.
- d. Appeals of denials of access to designated record set:
  - (i) For denials based on the grounds set forth in Section 5(a) (iv) and (v), set forth above, the notice will give the requestor the right to an appeal.

- (ii) The appeal is an internal review process whose purpose is to review the initial decision to deny access to a record and determine whether that denial satisfied the grounds for denial set forth in Section 5(a)(iv) and (v) above.
- (iii) All appeals must be submitted in writing.
- (iv) Upon receipt of a written appeal, HIM personnel will log the appeal in the electronic health record.
- (v) The Director of HIM or designee will forward the appeal and the reason(s) for denial to the Compliance Office.
- (vi) If the Compliance Office has not previously participated in the matter, the Director of HIM or designee will confer with the Compliance Officer to review the matter.
- (vii) The appeal review will be completed in a reasonable time. The reviewer will provide a decision in writing to the Director of HIM or his/her designee.
- (viii) Upon receipt of the appeal review decision, the Director of HIM or his/her designee will notify the requestor promptly in writing.
- (ix) Documentation of the requestor's written appeal, the appeal reviewer's decision, and the notice to the requestor will be maintained in the patient's electronic health record.
- (x) The title of the person or office designated to receive and process requests for protected health information will be maintained by the HIM Department for a period of at least six (6) years.

## **6. Approval of Access to Inspect and Copy Records**

- a. The requestor will have access to the records in the format he or she requests if it is readily producible in that format.
- b. If an unsecure transmission is requested MIHS is required to explain the risks to the patient or their representative and obtain consent prior to completing the disclosure.
  - (i) E-mail disclosure may occur unless file size limitations exist.
  - (ii) MIHS is not required to accept media that creates security risks. (i.e. use of patient's USB device)
- c. The requestor may request a summary/abstract of the designated record set, in lieu of a copy of the entire record. A summary/abstract will include copies of all documentation created by the medical provider(s) in addition to any applicable ancillary test results.
- d. Documentation of the records disclosed to the requestor will be kept for a period of at least six (6) years.

## **7. Charges**

- a. In accordance with Arizona law (A.R.S. § 12-2295), MIHS may **not** charge for pertinent information contained in the medical records provided to the following:
  - (i) To the patient to whom the medical records pertain, the health care decision maker of the patient or the patient's representative for the demonstrated purpose of obtaining health care;

- (ii) To another health care provider for the purpose of providing continuing care to the patient to whom the medical records pertain; or,
  - (iii) To an officer of the Arizona Department of Health Services or the local health department requesting records related to an investigation of reportable communicable diseases, or to the medical boards.
- b. If a copy of the record is requested by the patient or the patient's representative for any other purpose including the release of records to a third party (i.e. disability, insurance, attorney), MIHS may charge a reasonable cost-based average fee for the labor for copying the PHI requested, supplies (paper/electronic media) and postage plus applicable Arizona tax to the patient or patient's representative for paper or electronic copies of records maintained electronically; records maintained on paper will be charged on a per-page basis as permitted by the HIPAA Privacy Rule or a reasonable cost-based fee to others consistent with A.R.S. § 12-351.
- c. MIHS will determine the purpose for the disclosure from the authorization or request completed by the patient or patient's representative prior to determining the appropriate charge for releasing the records requested. If the purpose falls within paragraph 7(a)(i-iii) above, MIHS will not charge a fee for the records requested.

**References:**

45 C.F.R. 164.524 – Access of individuals to protected health information

A.R.S. § 12-2291

A.R.S. § 12-2294

A.R.S. § 12-2295

A.R.S. § 12-351

A.R.S. § 36-662

MIHS Form #45643: Patient Request for Access to Protected Health Information

MIHS Form #11719: Authorization to Use or Disclose Protected Health Information

MIHS Policy #01272 S: Uses and Disclosures of Protected Health Information Concerning Decedents and Cadaveric Organ, Eye and Tissue Donations



**MIHS Policy & Procedure - Approval Sheet**  
(Before submitting, fill out COMPLETELY.)

**POLICY RESPONSIBLE PARTY: Manny Soto-Griego, RHIA**

**DEVELOPMENT TEAM(S): Caterina Whitus, Brooke Murray**

**Policy #: 01287 S**

**Policy Title: Compliance/HIPAA: Patient Requests for Records**

**e-Signers: Manny Soto-Griego, RHIA, HIM Director**

**Place an X on the right side of applicable description:**

**New -**

**Retire -**

**Reviewed - X**

**Revised with Minor Changes - X**

**Revised with Major Changes -**

**Please list revisions made below:** (Other than grammatical changes or name and date changes) Updated policy format added purpose language.

Added/revised definitions for Designated Record Set, Legal Health Record, Quick Disclosure, Patient Representative, Protected Health Information, Record and Release of Information. Deleted definitions for Medical Record and Representative.

Updated policy content throughout items 2-7 of the procedure in order to remain in compliance with HIPAA HITECH as well as Federal and State laws.

Added additional references.

**Reviewed and Approved by in Addition to Responsible Party and E-Signer(s):**

<b>Committee: System-wide P&amp;P</b>	<b>11/17</b>
<b>Committee:</b>	<b>00/00</b>
<b>Committee:</b>	<b>00/00</b>
<b>Reviewed for EPIC:</b>	<b>00/00</b>
<b>Other: Legal</b>	<b>10/17</b>
<b>Other: Compliance</b>	<b>10/17</b>