



PENINSULA RSN

HIPAA AND MEDICAID COMPLIANCE POLICIES AND PROCEDURES

Policy Name: HIPAA CONSUMER PROTECTED HEALTH INFORMATION RIGHTS

Policy Number: 5.08

Reference: 45 CFR Parts 160, 162 and 164

Effective Date: 5/2005

Revision Date(s):

Approved by: PRSN Executive Board

CROSS REFERENCES

- Policy: Confidentiality, Use and Disclosure of Protected Health Information, HIPAA
- Policy: Designated Record Set, HIPAA

PURPOSE

The Peninsula Regional Support Network (PRSN), in an effort to be compliant with the Privacy Rules of Health Insurance Accountability and Portability Act's (HIPAA) Administrative Simplification provisions, sets out in this policy, the consumer rights regarding their protected health information.

These rights fall into six (6) general categories:

1. The right of adequate notice of:
 - a. Uses and disclosure of Protected Health Information (PHI) that may be made by PRSN.
 - b. The consumer's rights and PRSN's legal duties with respect to the consumer's PHI.
2. The right to access PHI.
3. The right to request amendment and/or correction of PHI.
4. The right to request and receive an accounting of disclosures of PHI.
5. The right to request restrictions on the use and/or disclosure of PHI.
6. The right to request confidential communication.

PROCEDURE

1. Adequate Notice

PRSN recognizes that the most important consumer right provision in the HIPAA regulations is the right to notification of PRSN's privacy practices. This right affords consumers the opportunity to become aware of and understand how their PHI will be used and disclosed. This notice becomes the portal through which consumers are able to further access their information and to control the uses and disclosures of such information. PRSN, in its efforts to meet compliance with these regulations, has developed its privacy notices to conform to the requirements as described in the regulations. Additionally, the Privacy Notice will be posted in the Region Office. For consumers entering services after April 14, 2003, the PRSN Privacy Notice will be made available through the PRSN provider network and posting at the Region Office.

2. Access to PHI

- a. PRSN considers all requests from our consumers, or previous consumers, for access to their PHI that is maintained in the designated record set and that is dated after April 14, 2003 (see policy on Designated Record Set). PRSN will consider consumer requests to either inspect or obtain a copy of their PHI for as long as their PHI is maintained in the designated record set.
- b. PRSN will require that consumers make their request in writing. The request should address the following:
 - Identification of the specific PHI that the client wishes to access.
 - The reason for their request (this is optional for the client).
 - Whether they wish to inspect or obtain copies of the PHI.
 - Notification of the cost we will charge for copying and postage.
 - Notification of their right to obtain a summary or explanation of their information, along with the cost of that service.
- c. PRSN will deny a client access to PHI, and that denial will not be subject to review, if the PHI requested is contained in:
 - Records or documents compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - The PHI is subject to the Federal Privacy Act.
 - The information was obtained under the promise of confidentiality from another person (not a healthcare provider), and the access requested would be reasonably likely to reveal the source of that information.
 - The information was created or obtained in the course of research that

involves treatment when the individual agreed to the denial of access for the duration of the research (that includes treatment) when consenting to participate in the research, and the consumer has been informed that access will be reinstated upon completion of the research.

- An inmate requests a copy of PHI and it is determined that such a copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates or the safety of an officer or other person responsible for transporting the inmate. PRSN will provide an inmate with the right to inspect his PHI unless other grounds for denial exist.
- d. PRSN will deny access to any PHI that a licensed healthcare professional determines:
- Exercising professional judgment is reasonably likely to endanger the life or physical safety of the consumer or another person
 - Exercising professional judgment, makes reference to another person (not a health care provider), and access is reasonably likely to cause substantial harm to that other person
 - Has been requested by a personal representative, and access by that person is reasonably likely to cause substantial harm to the consumer or another person
- e. When denying a consumer access for any of these three reasons, these denials will be subject to review as described below. In addition, if access to the entire record is denied and the consumer requests a review of the decision, PRSN will make the entire record available to the consumer's attorney, with the consent of the consumer, or to a psychotherapist designated by the individual.
- f. It is PRSN's policy to deny consumers access to their PHI only infrequently and in unusual circumstances and, when access is denied, it must be for one of the reasons listed above. Furthermore, PRSN will provide access, to the extent possible, to any other requested PHI that is not part of the PHI to which access has been denied.
- g. When a consumer has been denied access for one of the reasons that is subject to review, it will be PRSN's policy to respond in writing giving the basis for denial in plain language within the time period set forth below. PRSN will also inform the consumer of their right to request a review of the denial of access and provide a description of how the consumer may file a complaint with us or with the Secretary of DHHS.
- h. In any case where the consumer requests a review, PRSN will promptly refer the denial to another licensed healthcare professional, who has not been directly involved in the denial, for their review. PRSN will also promptly inform the consumer, in writing, if the reviewer upholds the denial. In those cases where the reviewer permits access, the consumer will be informed.

- i. When PRSN has agreed to grant access to PHI, the consumer will be notified and arrangements made to do so within thirty (30) days from the date of the request. Should the PHI requested be maintained off-site, PRSN can take longer to respond, but no more than sixty (60) days from the date of the request. In either case, PRSN can obtain a single, thirty (30) day extension of time in those rare cases where we are unable to respond in the initial time period. PRSN will notify the consumer of the reasons for delay and the date of completion by means of a written statement.
- j. When PRSN has agreed to inspection of the designated record set, PRSN will arrange a mutually agreeable time and place for the inspection.
- k. When PRSN has agreed to provide copies of the requested PHI, PRSN will confer with the consumer and determine their preference for the media in which to receive it – paper or electronic (where available). If PRSN cannot agree on how the PHI will be produced, then PRSN will produce the PHI in readable hard copy.
- l. PRSN will charge a fee for copying the material and for postage, if the copies are to be mailed, and the consumer will be notified of that charge prior to PRSN copying the material. However, if the individual is requesting the PHI for the purpose of supporting a claim or appeal under the Social Security Act or any federal or state financial need-based benefit program, PRSN will furnish the PHI within thirty (30) days of the request at no charge to the individual.
- m. It will be PRSN's policy to charge for the cost of making the copies (both the labor and machine and paper cost), but we will not include in our charges the cost of the retrieval and handling of information, nor will we charge for the costs of processing the request.
- n. PRSN will provide summaries of PHI in those cases where the individual has requested them. PRSN will charge for the costs associated with producing the summary, and the consumer will be notified of that charge prior to completing the summary.
- o. In those cases where PRSN receives a request for PHI that PRSN does not maintain, but know where it is maintained, the consumer will be informed of the location of the PHI.

3. Amendment/Correction

- a. PRSN will consider all requests from consumers, or former consumers, to amend their PHI that is maintained in a designated record set for as long as it

is maintained at the Region Office. PRSN requires that all requests for amendment be in writing, and to include the reason for the amendment. PRSN will notify our consumers of our policies for requesting amendments in our Privacy Notice.

- b. PRSN will respond to requests for amendment within thirty (30) days from the date of the request. Should, in rare circumstances, PRSN be unable to respond within thirty (30) days, the consumer will be notified prior to the expiration of the thirty (30) day period, in writing, and provided the reason that additional time is needed and given a date (no more than 30 days beyond the original 30 days) by which the consumer can expect action on their request be completed.
 - 1) In those instances where PRSN grants the request for amendment, the following steps will be completed:
 - Inform the consumer in writing
 - Obtain their agreement about the list of people or organizations that they, and you, believe should be informed of the amendment
 - Notify the list identified above of the amendment (Note: PRSN will identify anyone who may have relied upon the subject PHI in the past, or who might reasonably be expected to rely upon it in the future and attempt to obtain agreement from the consumer about their notification.)
 - 2) In those instances where PRSN denies the request for amendment, the following steps will be completed:
 - Provide the consumer with a written denial that is in plain language and that:
 - a) Contains the basis for the denial
 - b) The notification that the consumer has the right to provide a written statement disagreeing with the denial and how they might file such a statement.
 - Describe to the consumer the procedure for filing a complaint either with:
 - a) DHHS or
 - b) with the person or office in our organization who is responsible for receiving complaints, including their name or title and their telephone number
 - Inform the consumer that they may file a statement of disagreement with the PRSN denial that does not exceed two hundred and fifty (250) words.
 - Inform the consumer that they may request, should they not file a statement of disagreement, that their request for amendment and the related denial be attached to all future disclosures of the subject PHI.

- c. PRSN will prepare rebuttals in those instances where a licensed healthcare professional determines that a rebuttal is necessary to add clarity to the other material created around this request for amendment.
- d. Designated Record Set
It is the PRSN policy to take the following actions with respect to the designated record set in amendment situations:
 - 1) When the amendment request has been granted:
 - Identify the subject PHI in the designated record set; and
 - Append the amendment to the PHI or
 - Provide a link to the location in the file of the amendment.
 - 2) When the amendment request has been denied and the client requests it:
 - Identify the subject PHI in the designated record set; and
 - Append the request for amendment and the denial to the PHI or
 - Provide a link to the location in the file of the request and the denial.
 - 3) When the amendment request has been denied and the client has filed a statement of disagreement and we have or have not prepared a rebuttal:
 - Identify the subject PHI in the designated record set; and
 - Append the request for amendment, the denial, the statement of disagreement, and, if prepared, our rebuttal to the PHI or
 - Provide a link to the location in the file of all of the items listed in b.

4. Accounting of Disclosures

- a. PRSN will consider all requests from consumers, or former consumers, to receive an accounting of certain disclosures of their PHI that have occurred in the six (6) year period prior to their request, or from the effective date of the Privacy Rule, whichever is shorter. PRSN requires that all requests for an accounting be in writing. PRSN will notify consumers of policies for requesting an accounting in the PRSN Privacy Notice.
- b. PRSN will respond to requests for an accounting within thirty (30) days from the date of the request. Should, in rare circumstances, PRSN be unable to respond within thirty (30) days, the consumer will be notified, in writing during the initial thirty (30) day period, and provided with the reason(s) additional time is needed and given the date (no more than 30 days beyond the original 30 days) by which the consumer can expect action on their request be completed.
- c. PRSN will account for all uses and disclosures of our consumers' PHI except for those in the following categories:
 - 1) Disclosures made to the individual

- 2) Disclosures made to carry out treatment, payment, or operations
 - 3) Disclosures made to persons involved in the client's care (relatives and/or friends)
 - 4) Disclosures made for notification purposes to family or personal representatives
 - 5) Disclosures for national security or intelligence purposes
 - 6) Disclosure to correctional institutions or law enforcement officials when the client is an inmate
- d. In those situations where PRSN has made disclosures to a health oversight or law enforcement agency as permitted and, the agency has provided PRSN with a written statement that inclusion of such disclosures would be reasonably likely to impede with their activities and, the agency has provided a specific time period, our policy will be to exclude those disclosures from any accounting requested by the subject consumer. At the end of that period, the PRSN policy will be to include any disclosures made to the agency during that period in any future accountings.
- e. Should the health oversight or law enforcement agency provide PRSN with an oral statement that a disclosure would be reasonably likely to impede their activities, the PRSN policy will be to withhold disclosures for a 30-day period after which PRSN will include the disclosures in requested accountings unless a written statement requesting a longer time period has been provided during the 30-day period.
- 1) The PRSN policy will be to include the following items in every accounting:
 - The date of the disclosure
 - The name and address of the person or organization receiving the PHI
 - A brief description of the PHI disclosed
 - A brief statement that reasonably informs the client of the purpose for the disclosure
- f. PRSN's policy with respect to multiple disclosures of a consumer's PHI to the same person or entity for the same purpose will be to present all of the information listed above for the first disclosure in the accounting period. In addition, PRSN will present the frequency, periodicity, or number of disclosures made during the accounting period and the date of the most recent disclosure.
- g. PRSN will provide the first accounting in each twelve (12) month period, beginning with the consumer's first request for an accounting, at no charge. Any additional request for accounting from the same consumer during their twelve (12) month period will be made subject to the consumer's agreement to pay a reasonable, cost-based fee for the additional accounting. PRSN will inform the consumer of the fee and obtain their written agreement to pay the

fee prior to preparing the accounting. PRSN will offer the consumer an opportunity to withdraw or modify their request in order to avoid or reduce the fee.

5. Restrictions

- a. PRSN will consider a consumer's request for restriction of the uses and disclosures that PRSN makes for purposes of treatment, payment, and operations. PRSN will require consumers make their request in writing. PRSN will discuss with the consumer the potential difficulties that are inherent in the restrictions that the consumer requests.
- b. PRSN will document the request and, ultimately, whether the restriction has been granted to the consumer. While PRSN is not required by the Privacy Rule to agree to consumer-requested restrictions, PRSN will grant those restrictions that PRSN believes, in its judgment, to be in the best interests of consumers.
- c. PRSN will abide by all of the restrictions that are granted, except as described below.
 - 1) When the individual is in need of emergency treatment and the restricted PHI is needed to provide the emergency treatment, PRSN policy will be to make disclosure of the PHI that is required for treatment and to send along with the PHI the requirement that there be no further uses or disclosures of the restricted PHI. In non-emergency situations, when we receive a request for PHI that is restricted but required for appropriate treatment, PRSN will discuss with the consumer the need to send the PHI and attempt to obtain their agreement. The consumer's agreement should be documented by a note in their record.
- d. In any case where PRSN believes the consumer's restriction can no longer be honored, PRSN will terminate the restriction. It will be PRSN's policy to discuss the change of circumstance with the consumer and ask for their agreement and to document that agreement in the record.
- e. Should the consumer refuse to agree to the termination of the restriction, PRSN will implement a unilateral termination. This will also be documented in the record. The PHI that PRSN created or received during the term of the restriction will be flagged to assure that futures uses and disclosures of it are made in accordance with the restrictions in place for that period.

6. Confidential Communications

- a. PRSN will consider a consumer's written request for confidential communications upon request for same. PRSN will document the alternative

information and the approval. Documentation will be placed in the record or noted in an electronic database. PRSN will grant reasonable requests. Reasonableness will be judged by the administrative difficulty of complying with the request.

- b. PRSN will not ask the consumer to explain why they wish to have PRSN communicate with them by alternative means or to alternative locations.
- c. PRSN will not comply with the consumer's request unless they have provided PRSN with complete information to enable us to communicate with them, i.e., a complete address or other method of contact.
- d. PRSN will provide adequate notice of the request to those employees who may need to contact the consumer by flagging the record and, where possible, other databases.

MONITORING

This policy is mandated by contract or statute.

1. This policy will be monitored through use of PRSN:
 - Annual PRSN Provider and Subcontractor Administrative Review
2. If a provider performs below expected standards during the review listed above, a Corrective Action will be required for PRSN approval. Reference PRSN Corrective Action Plan Policy.