

	<b>Privacy</b>	<b>Rio Grande Valley HIE</b>	<b>Policy: P4</b>
	<b>Effective Date</b> 01/15/2014	<b>Last Date Revised/Updated</b> 01/14/2014	<b>Date Board Approved:</b> 01/14/2014
<b>Subject: Right to Amend Protected Health Information</b>			

**FEDERAL REGULATION:**

45 CFR 164.526

ONC-HIE-PIN-003. Privacy and Security Framework Requirements and Guidance for the State Health Information Exchange Cooperative Agreement Program.

**POLICY:**

RGV HIE will implement clearly defined processes for patients to request corrections to their PHI, resolve disputes about information accuracy, and document denied requests. RGV HIE's policy will comply with HIPAA provisions related to the right to amend PHI.

Because RGV HIE does not provide services directly to patients, the provider who created the disputed record and provided the information that is the subject of the amendment is responsible for determining whether to accept or deny the requested amendment, when discretion is allowed by HIPAA.

For purposes of this policy, automatic updates of information in patient records in the RGV HIE database, once implemented, that occur through the normal course of business will not be considered amendments of protected health information, and will not be subject to these provisions. These provisions are intended to cover only specific requests made outside of the normal course of updating system records, regarding changes in clinical or demographic information that would not otherwise be made as part of the usual exchange of information via the established interfaces with participating providers. These provisions will apply to the extent and once RGV HIE implements a clinical data repository that stores protected health information.

An individual has the right to amend his/her Protected Health Information (PHI) or information in the RGV HIE database, once implemented, for as long as the PHI is maintained in the database. Individuals must make requests for amendment in writing, either to RGV HIE directly or to a RGV HIE participating provider and must include the reason for making the request. It will be the policy of RGV HIE not to make any amendments to the database unless a

participating provider requests that one be made. The RGV HIE participating provider that created the record and provided the information that is the subject of the amendment will be responsible for determining to accept or deny the requested amendment.

Both RGV HIE's and the Participating Providers' Notice of Privacy Practices shall inform individuals of the process for requesting information and the requirement that their request be in writing. RGV HIE's Notice of Privacy Practices will be posted on the RGV HIE website.

### **Timely Action by RGV HIE**

- 1) RGV HIE acts on the individual's request for an amendment no later than 60 days after receipt of such a request:
- 2) If the RGV HIE participating provider accepts the requested amendment, in whole or in part, RGV HIE complies with the following:
  - a) RGV HIE makes the appropriate amendment to the protected health information or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
  - b) RGV HIE or the RGV HIE participating provider informs the individual, in a timely manner, that the amendment is accepted and obtains the individual's identification of and agreement to have RGV HIE or the RGV HIE participating provider notify the relevant persons with which the amendment needs to be shared.
- 3) RGV HIE or the RGV HIE participating provider makes reasonable efforts to inform and provide the amendment within a reasonable time to:
  - a) Persons identified by the individual as having received protected health information about the individual and needing the amendment; and
  - b) Persons, including business associates, that RGV HIE knows have the protected health information that is the subject of the amendment and that may have relied, or could reasonably rely, on such information to the detriment of the individual.

### **Denial of Amendment by RGV HIE Participating Provider**

When a RGV HIE participating provider informs RGV HIE that it has denied the requested amendment, in whole or in part, RGV HIE complies with the following:

- 1) RGV HIE or the RGV HIE participating provider provides the individual with a timely, written denial. The denial uses plain language and contains:

- a) The basis for the denial;
  - 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 RGV HIE provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment; and
  - d) A description of how the individual may complain to RGV HIE or the Secretary of the U.S. Department of Health and Human Services. The description must include the name, or title, and telephone number of the contact person or office designated.
- 2) RGV HIE permits the individual to submit to RGV HIE a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. RGV HIE may reasonably limit the length of a statement of disagreement.
  - 3) The RGV HIE participating provider may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, RGV HIE provides a copy to the individual who submitted the statement of disagreement.
  - 4) RGV HIE, as appropriate, identifies the record or protected health information in the designated record set that is subject of the disputed amendment and appends or otherwise links the individual's request for an amendment, RGV HIE Participating providers; denial of the request, the individual's statement of disagreement, if any, and RGV HIE rebuttal, if any, to the designated record set.

### **Actions on Notices of Amendment**

When RGV HIE is informed by the RGV HIE participating provider of an amendment to an individual's protected health information, RGV HIE amends the protected health information in designated record sets.

RGV HIE documents the titles of the person or office responsible for receiving and processing requests for amendments by individuals and retains the documentation for six years from the date of its creation or the date when it last was in effect, whichever is later.

### **PROCEDURE:**

RGV HIE has identified the Privacy Officer as the individual responsible for managing the process of responding to patient requests for amendment to protected health information, so that all appropriate action may occur within the designated time period.

In the event that the request is made directly to a RGV HIE participating provider, RGV HIE will comply with the following procedure for recording changes in the database:

- RGV HIE will add a notation to the record in the database that some or all of the information in the record is disputed, and keep this notation with the record until the request is acted upon. Once action is formalized, the record will indicate whether the request was denied or granted.
- If the participating provider, after review, requests that the PHI in the database be amended, then RGV HIE will make the recommended changes as soon as possible, generally within one business day. RGV HIE will not alter the original records. Rather, RGV HIE will add to the record any additional information provided by the participating provider, or indicate after the disputed information in the record, that the participating provider has, pursuant to a request by the individual, agreed to delete the disputed information. RGV HIE will also keep a record of the changes made, and make this information available to appropriate parties. The RGV HIE Participating provider will notify the individual that the amendment has been granted.
- If the RGV HIE participating provider, after review, denies the request, RGV HIE will keep a record of this denial, and the reason for the denial, and make this information available to all interested parties upon request. The participating provider will directly inform the individual of the basis for the denial, and the individual's right to submit a statement of disagreement or a complaint in accordance with the HIPAA Privacy Rule requirements.
- If the individual disagrees with the denial, and submits a written statement of disagreement, RGV HIE will append this information to the record. If the individual disagrees with the denial, but does not provide a written statement, RGV HIE will still note this on the record, and make this information available to all RGV HIE participating providers.

In the event that RGV HIE receives a request for amendment directly from the patient, RGV HIE will comply with the following procedure:

- Upon receipt of the request for amendment to protected health information, the RGV HIE Privacy Officer will notify the appropriate RGV HIE participating providers' Privacy Officer by email return/receipt of the request and will record the date and time of receipt of the request and referral. The appropriate participating provider will be defined as the participating provider that *originally* put the PHI for the encounter at issue into the RGV HIE database. In the event that RGV HIE cannot determine the identity of this participating provider, RGV HIE shall refer the request to the participating provider with the most recent encounter captured in the database.
- The RGV HIE Privacy Officer shall inform the patient/patient's representative within 5 business days of the need to contact the RGV HIE participating provider to request any amendment(s) to the record.

- RGV HIE will then follow the same procedures outlined above for making amendments and documenting amendments and denials to the patient's record.
- In the event that the appropriate participating provider does not respond to RGV HIE within 30 days, RGV HIE will send a follow-up written request to the participating provider and extend the time period for responding to the request by no more than 30 days. RGV HIE shall notify the individual of this in writing at the same time that it sends a follow-up request to the participating provider, and indicate both the reason(s) for the delay and the date by which the request will be completed.