

	Privacy	Rio Grande Valley HIE	Policy: P3
	Effective Date 01/15/2014	Last Date Revised/Updated 01/14/2014	Date Board Approved: 01/14/2014
Subject: Right to Access Protected Health Information			

FEDERAL and STATE LAWS AND REGULATION:

HITECH Act, Section 13405(e)

NPRM July 10, 2010, amending 45 CFR Section 164.524, Privacy Rule Regulations

45 C.F.R. § 164.502(g)(1) re right of personal representatives to request access

Office of Civil Rights Guidance *“The HIPAA Privacy Rule’s Right of Access and Health Information Technology.”*

Texas Health & Safety Code § 181.102

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

POLICY:

RGV HIE intends to give patients electronic access to their PHI, through a simple and timely means for requests. RGV HIE’s policy will comply with HIPAA and HITECH provisions related to the right to access PHI. RGV HIE will consider implementing a patient portal and PHR at some point in the future, for direct access to information by patients.

RGV HIE is not a direct provider of care and therefore does not keep or retain any individual patient’s original health record. RGV HIE shall provide access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets over which RGV HIE has control or access. If the same protected health information that is the subject of a request is maintained in more than one designated record set or at more than one location, RGV HIE produces the protected health information only once in response to a request for access.

RGV HIE acknowledges that individuals have a right of access to inspect and obtain a copy of Protected Health Information (PHI) about them in the HIE, with limited exclusions for as long as the PHI is maintained in the HIE. It shall be the policy of RGV HIE and its Participating Providers

to make requested information available as quickly and conveniently as possible in order to enhance communications with individuals, for the purpose of improved quality of care and strengthened consumer satisfaction. Both RGV HIE's and the Provider Members' 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.

RGV HIE will not make independent decisions with respect to the denial of access to Protected Health Information (PHI) in the HIE. The provider that exchanged the patient record with RGV HIE has the authority to determine whether RGV HIE shall make the requested data available in cases where the person requests data that is excepted from access or to which access may be denied under 45 C.F.R. Section 164.524. RGV HIE will comply with the decision of the Participating Provider's Privacy Officer to deny access. If the Participating Provider's Privacy Officer decides to deny access, then RGV HIE will provide the patient notice of that denial in accordance with the procedures below. If the patient contacts RGV HIE after first contacting a Participating Provider with a request for records and receiving a decision to deny access from the Provider, RGV HIE will refer the individual back to the Provider.

Upon written request from a Participating Provider of RGV HIE for copies of Protected Health Information in RGV HIE records in response to a patient's request, the RGV HIE Privacy Officer will follow the same procedures regarding providing copies, but shall send the requested information to the Participating Provider. It shall be the Participating Provider's responsibility under such circumstances to respond to the patient's request and provide the information to the individual.

It shall be the policy of RGV HIE to comply with all statutes, rules and regulations regarding individual's access to records including requirements related to the form in which copies of records are provided and the timeliness of responses to individual requests

RGV HIE acknowledges that personal representatives of individual patients have the same right of access that the individual has and will follow the same procedures for providing access when the request is made by a personal representative. A "personal representative" is defined as someone who is legally authorized under state law to act on behalf of the individual regarding health care matters, and includes parents and individuals with valid power of attorney.

Form of access requested

- 1) RGV HIE provides the individual with access to the protected health information in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by RGV HIE and the individual.
- 2) If the individual requests an electronic copy of the information, the RGV HIE Privacy Officer will provide the individual with access to the protected health information in the electronic

form and format requested by the individual, if it is readily producible in such form and format;

- a) If the requested information is not readily producible in the electronic form and format requested, then the RGV HIE Privacy Officer will provide the information in a readable electronic form and format as agreed to by RGV HIE and the individual.
 - b) If an individual requests that an electronic copy be sent via unencrypted e-mail, the RGV HIE Privacy Officer will advise the individual of the risks associated with unencrypted email, but RGV HIE will not require the individual to instead purchase a USB flash drive or other portable media.
- 3) RGV HIE may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:
- a) The individual agrees in advance to such a summary or explanation; and
 - b) The individual agrees in advance to the fees imposed, if any, by RGV HIE for such summary or explanation.
- 4) RGV HIE may make information available to individuals through a web-based portal or Personal Health Record at some point in the future. At that time, this Policy and Procedure will be amended with specific provisions for addressing the following:
- a) Notifying patients in advance of the types of PHI which are not available through a portal or PHR
 - b) Specifying which of these types of PHI that are not available through the portal or the PHR the patient has a right to request review of the denial to make available and which the Privacy Rule does not provide a right of review.
 - c) Notifying patients of the process for requesting a review
- 5) If RGV HIE provides the individual with an electronic copy of protected health information through a web-based portal, e-mail, on portable electronic media, or other electronic or paper-based means, RGV HIE will ensure that reasonable safeguards are in place to protect the information.

Time and manner of access

RGV HIE provides access to the requested protected health information in a timely manner, including mailing a copy of the information at the individual's request. RGV HIE may discuss the scope, format, and other aspects of the request with the individual as necessary to provide timely delivery of the requested information.

If an individual's request for access directs RGV HIE to transmit the copy of protected health information directly to another person designated by the individual, the RGV HIE Privacy Officer will provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information

Fees

If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, RGV HIE may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

1. Copying the protected health information requested by the individual, including the costs of supplies for and labor of copying.
 - a. RGV HIE will not charge for the supplies that are used to create an electronic copy of the individual's protected health information, such as the hardware (computers, scanners, etc.) or software that is used to generate an electronic copy. RGV HIE may charge reasonable and cost-based charge for the supplies for creating the electronic media if the individual requests that the electronic copy be provided on portable media such as an encrypted USB flash drive and does not provide their own.
 - b. RGV HIE will not include in the labor cost of copying paper copies, the costs associated with searching for and retrieving the requested information. With respect to electronic copies, RGV HIE will include in labor costs the costs attributable to the labor involved to review the access request and to produce the electronic copy, but will not include a standard "retrieval fee" that does not reflect the actual labor costs associated with the retrieval of the electronic information or that reflects charges that are unrelated to the individual's request.
2. Postage, when the individual has requested the information, including portable media such as a CD or flash drive containing an electronic copy, be mailed; and
3. Preparing an explanation or summary of the protected health information, if agreed to by the individual.

RGV HIE may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement through the Notice of Privacy Practices

Timely action by RGV HIE

- 1) RGV HIE acts on a request for access no later than 15 days after receipt of the request or as otherwise required by law.
- 2) If RGV HIE is unable to take an action within the time required, RGV HIE may extend the time for such actions by no more than 30 days, provided that, within the time limit, RGV HIE provides the individual with a written statement of the reasons for the delay and the date by which its action on the request will be complete. Only one extension of time for action on a request for access may be used.

Denial of Access

- 1) If RGV HIE denies access to certain requested protected health information at the direction of the Participating Provider, RGV HIE must, to the extent possible, give the individual access to any other protected health information requested. The decision to provide or deny requested information shall be made by the Participating Provider's Privacy Officer in accordance with federal and state law requirements.
- 2) RGV HIE provides a timely, written denial to the individual. The denial is in plain language and contains:
 - a) The basis for the denial;
 - b) If applicable, a statement of the individual's review rights including a description of how the individual may exercise such review rights; and
 - c) A description of how the individual may complain to RGV HIE or to 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.
- 3) When RGV HIE does not maintain the requested protected health information and knows where the requested information is maintained, RGV HIE informs the individual where to direct the request for access.

An individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set.

RGV HIE may deny an individual access, if directed by RGV HIE Participating Provider's Privacy Officer, without providing the individual an opportunity for review, in the following circumstances:

- 1) The protected health information is excepted from the right of access by:
 - a) Psychotherapy notes;
 - b) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
 - c) Protected health information maintained by RGV HIE that is:
 - Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law; or
 - Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).
- 2) RGV HIE, acting under the direction of a correctional institution, may deny in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution responsible for the transporting of the inmate.
- 3) An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.
- 4) An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. § 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.
- 5) An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

RGV HIE may deny an individual access, at the direction of the RGV HIE Participating Provider's Privacy Officer, provided that the individual is given a right to have such denials reviewed, in the following circumstances:

- 1) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
- 2) The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has

determined, in the exercise of their professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

- 3) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

If access is denied, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by RGV HIE to act as a reviewing official and who did not participate in the original decision to deny. RGV HIE provides or denies access in accordance with the determination of the reviewing official.

Documentation

RGV HIE retains the documentation listed below for six years from the date of its creation or the date when it last was in effect, whichever is later:

- 1) The designated record sets that are subject to access by individuals; and
- 2) The titles of the person or office responsible for receiving and processing requests for access by individuals.

PROCEDURE:

The RGV HIE Privacy Officer shall be responsible for the review of requests for access and ensure the integrity of the record is not compromised during the time the patient/participant/individual has access to the record.

If RGV HIE receives a written request from an individual for access to his/her own PHI in the HIE, it shall be the policy of RGV HIE for the RGV HIE staff person receiving the request to refer the request to the RGV HIE Privacy Officer and record the time and date that the request was received. The RGV HIE Privacy Officer will then be responsible for responding to the patient's request, at the direction of the Participating Provider's Privacy Officer, according to these procedures.

Processing of Individual's Request

1. A request must be made in writing. The RGV HIE Privacy Officer may use the attached sample form, "Request for Access of Protected Health Information", or may accept an email request with the same information. RGV HIE may receive an individual's written request for information electronically, through email, or paper-based. RGV HIE will verify the identity of any person who requests protected health information in accordance with RGV HIE's policies and procedures.

2. An individual can request access to the respective PHI and the RGV HIE Privacy Officer will provide the access (if granted) within 15 days after receipt of the request and completion of the form or within an earlier timeframe if required by law.
3. The RGV HIE Privacy Officer will provide the request to the RGV HIE Participating Provider's Privacy Officer, who will make the determination whether the PHI should be provided to the individual.
4. If RGV HIE is unable to take an action within the time required, the RGV HIE Privacy Officer may extend the time by no more than 30 days, provided that, the individual is provided with the reason for the delay and the date by which the action on the request will be complete. Only one extension of time for completion of the request is allowed.

Denial of Access

1. If access is denied by the Participating Provider's Privacy Officer, then the RGV HIE Privacy Officer will provide a letter to the person requesting the information to include:
 - a. A reason for denial.
 - b. If applicable, a statement of the individual's right to review (including a description of how the individual may exercise such rights).
 - c. A description of how the individual may file a complaint with RGV HIE or to the Secretary of the U.S. Department of Health and Human Services. The description will include the name, or title and telephone numbers of the contact person or office.
2. The RGV HIE Participating Provider's Privacy Officer may deny an individual access without providing an opportunity for review under the circumstances listed in this policy under section "Denial of Access".
3. If access is denied the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the RGV HIE Privacy Officer in conjunction with the Participating Provider's Privacy Officer, to act as a reviewing official. RGV HIE shall provide or deny access in accordance with the determination of the reviewing professional.

Documentation

The RGV HIE Privacy Officer will retain the "Request for Access of Protected Health Information" form, and if applicable a copy of the Denial letter, for a period of six years from the date of the final determination concerning access or denial has been made.

In addition, the RGV HIE Privacy Officer shall retain the documentation listed below for six years from the date of its creation or the date when it last was in effect, whichever is later:

- The designated record sets that are subject to access by individuals; and
- The titles of the person or office responsible for receiving and processing requests for access by individuals.

SAMPLE FORM
REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION

Date _____

Patient's Name _____

Social Security Number _____ Date of Birth _____

Patient's Address _____

Phone _____

Individual Requesting Access to PHI _____

Relationship to Patient _____

Protected Health Information to Which Access is Being Requested _____

I understand that RGV HIE is not a direct provider of care and will consult with my providers regarding this request. I also understand that my providers may deny my request for access to PHI under certain circumstances, and that I will be notified of such denial and my rights to appeal if this occurs.

Signature of Patient / Parent / Personal Representative

Date