

Polk County Wisconsin
CLIENT RIGHT TO ACCESS, INSPECT AND COPY PROTECTED HEALTH
INFORMATION

Policy 601.D

Effective Date: April 15, 2003

Current Revision Date:

Background

In compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), providers must have in place and implemented policies and procedures to ensure clients' right to access, inspect and copy protected health information (§164.524). An individual has the right to access their information in all but a limited number of situations, which include:

- Psychotherapy notes;
- Information compiled in anticipation of or use in a civil, criminal, or administrative action or proceeding;
- Protected health information subject to the Clinical Laboratory Improvements Amendment (CLIA) of 1988.
- Protected health information exempt from CLIA, pursuant to 42 CFR 493.3(a)(2). In other words, protected health information generated by 1) facilities or facility components that perform testing for forensic purposes; 2) research laboratories that test human specimens but do not report client-specific results for diagnosis, prevention, treatment, or the assessment of the health of individual clients; 3) laboratories certified by the National Institutes on Drug Abuse (NIDA) in which drug testing is performed that meets NIDA guidelines and regulations.

In the situations above, Polk County may deny the individual access without providing an opportunity for review.

Polk County may also deny an individual access without providing an opportunity for review when:

- Polk County is a correctional institution or a healthcare provider acting under the direction of the correctional institution and an inmate's request to obtain a copy of protected health information would jeopardize the individual, other inmates, or the safety of any officer, employee, or other person at the correctional institution, or a person responsible for transporting the inmate;
- The individual, when consenting to participate in research that includes treatment, agreed to temporary denial of access to protected health information created or obtained by a healthcare provider in the course of research, and the research is not yet complete;
- The records are subject to the Privacy Act of 1974 and the denial of access meets the requirement of that law;
- The protected health information was obtained from someone other than a healthcare

provider under a promise of confidentiality and access would likely reveal the source of the information.

Polk County may also deny an individual access under the following circumstances, provided that the individual is given a right to have such denials reviewed:

- A licensed healthcare professional has determined that the access is likely to endanger the life or physical safety of the individual or another person;
- The protected health information makes reference to another person who is not a healthcare provider, and a licensed healthcare professional has determined that the access request is reasonably likely to cause substantial harm to such other person;
- The request for access is made by the individual's personal representative and a licensed healthcare professional has determined that access is reasonably likely to cause substantial harm to the individual or another person.

Detailed requirements for denial review are outlined in Section 45 CFR, Section 164.524. See also below, the section entitled "Access, Inspection and/or Copy Request is Denied in Whole or in Part."

Policy

It is the policy of Polk County to honor a client's right of access to inspect and obtain a copy of their protected health information (PHI) in Polk County's designated record set, for as long as the PHI is maintained in compliance with HIPAA and Polk County's retention policy.¹

Procedures

1. A client must make a request to a designated employee to access and inspect their protected health information. Whenever possible, this request shall be made in writing and documented on either the "Authorization for Disclosure" form or in the notes of the client's health record.
2. Determination of accessibility of the information shall be based on:
 - a. Criteria outlined above, as supported by State and Federal laws;
 - b. Availability of protected client information (i.e., final completion of information, long term storage, retention practices, etc.)
3. Polk County must take action within 30 days after receipt of the request when the PHI is on-site, and within 60 days when the PHI is off-site. One 30-day extension is permitted, if Polk County provides the client with a written statement of the reasons for the delay and the date by which the access request will be processed.
4. Polk County must document and retain the designated record sets subject to access, and

¹In compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), providers must have in place and implemented policies and procedures to ensure the clients' right to access and amend protected health information in the designated record set (§164.524 and 164.526).

the titles of persons or offices responsible for receiving and processing requests for access.

Access, Inspection and/or Copy Request is Granted

5. The client and Polk County will arrange a mutually convenient time and place for the client to inspect and/or obtain a copy of the requested PHI. Inspection and/or copying of PHI will be carried out by Polk County employee assistance.
6. The client may choose to inspect the PHI, have it copied, or both, in the form or format requested whenever possible.
7. Upon prior approval of the client, Polk County may provide a summary of the requested PHI.
8. Polk County may charge a reasonable fee (\$0.25/page) for the production of copies or a summary of PHI, if the client has been informed of such charge and is willing to pay the charge.
9. If upon inspection of the PHI the client feels it is inaccurate or incomplete, the client has the right to request an amendment to the PHI. Polk County shall process requests for amendment as outlined in Policy 601.F Client's Right To Request Amendment Of Protected Health Information.

Access, Inspection and/or Copy Request is Denied in Whole or in Part

10. Polk County must provide a written denial to the client. The denial must be in plain language and must contain:
 - a. The basis for the denial;
 - b. A statement, if applicable, of the client's review rights; and
 - c. A description of how the client may complain to Polk County or to the Secretary of Health and Human Services.
11. If access is denied because Polk County does not maintain the PHI that is the subject of the request, and Polk County knows where that PHI is maintained, Polk County must inform the client where to direct the request for access.
12. Polk County must, to the extent possible, give the client access to any other PHI requested, after excluding the PHI as to which Polk County has grounds to deny access.
13. If access is denied on a ground permitted under (HIPAA) §164.524, the individual has the right to have the denial reviewed by a licensed health care professional who is designated

by Polk County to act as a reviewing official and who did not participate in the original decision to deny.

14. The client must initiate the review of a denial by making a request for review to Polk County. If the client has requested a review, Polk County must provide or deny access in accordance with the determination of the reviewing professional, who will make the determination within a reasonable period of time.
15. Polk County must promptly provide written notice to the client of the determination of the reviewing professional. See #10 above for denial requirements.

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Preemption Issues: There are several Wisconsin State Administrative Codes, Statutes and also Federal Laws that address client rights to access, inspect and/or copy PHI. These include: HFS 61, 92, 94, 124, 132, 133, 134; WI Stat 146.81-83, 51.30; 42CFR483.10(j), and 29CFR2560.503-1.

References

- "Checklist of Individual Rights Under HIPAA," Report on Medicare Compliance, April 25, 2002
- AHIMA Practice Brief: Client Access and Amendment to Health Records, 2002
- Reinhart, Boerner, Van Deuren, Attorneys at Law
- 2002 WEDI – SNIP Security and Privacy Workgroup Privacy Policies and Procedures

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