

# Privacy Procedure



**POLICY:** See L-01 Client Access to Protected Health Information Policy, at [www.cosdcompliance.org](http://www.cosdcompliance.org).

**DEFINITIONS:** See HHS Agency Policy L-30.

**PROCEDURES:**

A. Requests for Access:

1. An individual's request may include a review and/or copy of Protected Health Information (PHI).
2. An individual may request their PHI by using the County's approved form (HHS Agency Form 23-01) or by otherwise submitting their request in writing. A request via email or emailing of a scanned form shall suffice. Programs shall not require individuals use a specific form.
3. A request for access to PHI may only be granted to the individual with authority (see HHS Agency Policy L-27).
4. Programs shall reasonably ensure the identity of the individual making the request before providing the PHI, such as verifying information or photo ID via phone, email, or in person.

B. The Program receiving the request must follow through on the request by:

1. Providing access to the PHI within five (5) working days of receipt of the written request. Inspection of original records must be done under the direct observation of Program staff; OR
2. Providing a summary of some or all of the PHI, if the individual agrees to this, within ten (10) working days. If the PHI is extensive or the patient was discharged within the prior ten (10) days, the Program may notify the individual that it needs more time, but may take no more than thirty (30) calendar days from the original request date. If a summary is provided, it shall include:
  - a. Chief complaint/s, including pertinent history
  - b. Findings from consultations and referrals to other health care providers
  - c. Diagnosis (when determined)
  - d. Treatment plan and regimen
  - e. Medications prescribed, including dosage and any drug sensitivities or allergies
  - f. Progress of treatment
  - g. Prognosis, including significant continuing problems
  - h. Pertinent reports of diagnostic procedures, tests, and all discharge summaries; and
  - i. Objective findings from the most recent physical exam, such as blood pressure, weight, and values from routine labs; OR
3. Providing copies of the PHI within fifteen (15) calendar days of the written request.

C. What PHI to provide:

1. Records Created by Another Provider – If a Program has copies of PHI created by another provider, these must be given to the individual. If the Program does not maintain the PHI that the individual is requesting, and the Program knows where the PHI is maintained, the Program shall inform the individual where to direct the request.

2. Old Information – Individuals can access their PHI regardless of when it was created; Programs must provide access to all PHI it maintains.
3. Duplicative information – Programs must only provide non-duplicative information, meaning that if the same PHI is kept in multiple places, the Program need only produce one copy.

D. Form of Access:

1. The Program shall provide the individual with access to the PHI in the form and format requested by the individual, if the Program is reasonably able to do so.
2. If the Program is not able to provide the PHI in the form or format requested, the Program and the individual shall discuss the forms and formats reasonably available and agree to a form and format.
3. If the request directs the Program to transmit the PHI to a third party, see HHS Policy L-09.
4. Fees may be charged for making copies in accordance with the County's fee schedule. However, individuals are entitled to one free copy of their PHI if needed for a public assistance appeal for Medi-Cal, Social Security disability insurance benefits, or Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled. If the patient is represented by a private attorney who is paying the costs of the appeal pending its outcome (i.e. not a nonprofit legal service entity), the patient is not eligible for the free copy.
5. The Program shall arrange for a mutually convenient time and place to inspect or provide the PHI to the individual. PHI may be provided in-person, by first class mail, or via email, at the reasonable discretion of the individual. If client requests the PHI via email, the email should be encrypted unless the individual has specifically asked for the PHI in an unencrypted format (See HHS Policy L-05).

E. Denying a Request for Access:

1. Programs may deny a request for access in limited circumstances, including:
  - a. Access to Mental Health records may be denied if a licensed health professional believes the access requested is reasonably likely to endanger the life or physical safety of the patient.
  - b. Access to Psychotherapy note may be denied if a licensed health care provider determines there is substantial risk of significant adverse or detrimental consequences to a patient. Psychotherapy notes are different from Mental Health records. Psychotherapy notes are those notes taken by a mental health professional that are kept separate from the official chart or mental health record.
  - c. If the PHI is not a mental health record, and a Program believes provision of the record will endanger the life or safety of the patient, Program should consult HHS Privacy Officer and County Counsel.
  - d. The PHI was provided in confidence to the Program by someone other than another health care provider and the access requested would likely reveal the source of the PHI;
  - e. If the PHI contains a reference to another person and a licensed health care professional has determined that the access is reasonably likely to cause substantial harm to such other person, the Program should consult with HHS Privacy Officer and County Counsel.
  - f. Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative actions or proceedings should be kept separate from the medical record and thus should not apply to a request for PHI.
  - g. Programs may not deny records due to unpaid bills.
2. If a Program denies access, the Program still must provide the individual a copy of the remaining PHI after excluding the PHI to which the Program has denied access.

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3. If a Program denies access, it must give the individual written notice within five (5) working days. The written notice must be reviewed by HHS Privacy Officer prior to sending.
4. The individual may request the denial be reviewed by the Agency Compliance Office, which will review and provide individuals with written decision within thirty (30) days of the receipt of the review request.

F. Documentation: The Program must document and retain the following according to the retention schedule for the Program's medical record:

1. The written request for access and any written response from the County regarding the request.
2. The records subject to the access request; and
3. The titles of the persons or offices responsible for receiving and processing such requests.
4. The date and format of the PHI provided.

**QUESTIONS/INFORMATION:** HHS Privacy Officer at 619-338-2808