

## WHITING FORENSIC HOSPITAL OPERATIONAL PROCEDURE MANUAL

<b>SECTION II:</b>	ORGANIZATION FOCUSED FUNCTIONS
<b>CHAPTER 9:</b>	Management of Information/HIPAA
<b>PROCEDURE 9.15:</b>	<b>Access To Protected Health Information</b>
<b>Governing Body Approval:</b>	April 27, 2018
<b>REVISED:</b>	

**PURPOSE:** To inform Whiting Forensic Hospital (WFH) clinical staff and Health Information Management (HIM) staff, that the patient (or conservator), the Administrator/ Executor, or Next-of-Kin for deceased patients have the right to access, inspect or obtain a copy of their Protected Health Information (PHI) for as long as WFH maintains the information.

**SCOPE:** All Clinical Staff, HIM and Unit Clerks

### **POLICY:**

It is the policy of Whiting Forensic Hospital (WFH) in accordance with state and federal laws, that all patients have the right to access, inspect or obtain a copy of their Protected Health Information (PHI) for as long as WFH maintains the information.

### ***Definitions:***

1. *Correctional Institutions:* Any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody include juvenile offenders adjudicated delinquent; aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system,

witnesses, or others awaiting charges or trial.

2. Disclosure: The release, transfer, provision of access to, or the divulging in any other manner of information outside the agency holding the information.
3. Individually Identifiable Health Information: Information that is a subset of health information, including demographic information collected from an individual, and that: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and (3) which identifies the individual, or (4) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Note: Individually identifiable health information is to be treated as protected health information.
4. Personal Representative: A person who has authority under applicable law to make decisions related to health care on behalf of a patient.
5. Protected Health Information (PHI): Individually identifiable information relating to past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual.
6. Use: With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

## **PROCEDURE:**

### **A. General Information**

1. The Director of Health Information Management (HIM) provides oversight for patient access to PHI.
2. HIM staff receives all patient requests to access, inspect or copy PHI in writing.
3. HIM staff acts on all requests for access no later than 30 days after receipt of the written request as follows:
  - a. If WFH grants the request, in whole or in part, the patient will be informed and provided the access requested.
  - b. If the request for access is for PHI that is not maintained at WFH, or is not accessible to WFH, HIM staff will notify the patient of the status of access.
  - c. If WFH does not maintain the PHI that is the subject of the patient's request, and knows

where the requested information is maintained, HIM staff will inform the patient where to direct the request for access.

**B. Request to Access or to Inspect PHI: Active Inpatient Status**

1. The patient completes the Medical Record Examination Request form (WFH-131) which is sent to Health Information Management (HIM) for processing.
2. HIM staff forwards the request to the appropriate Attending Psychiatrist for approval or denial of the request. The Attending Psychiatrist records a decision on the Medical Record Examination Request form (WFH-131) and returns the form to HIM for further processing.

**C. Granting of Request to Access or to Inspect PHI**

1. If the request to review the medical record is approved by the Attending Psychiatrist;
  - a. HIM sends a copy of the Medical Record Examination Request form (WFH-131) to the patient and the Head Nurse to notify them that the request to review the medical record has been granted; and
  - b. HIM files the original WFH-131 in the Correspondence section of the medical record.
2. The Head Nurse provides the Medical Record Examination Appointment form (WFH-131a) to the patient for notification of an appointment to review the medical record, provides a copy to the treatment team member, and places a copy in the Correspondence section of the medical record.
3. WFH provides access to inspect the requested PHI in a timely manner, and in a location that is convenient to the patient.
4. The treatment team member designated to review the record with the patient ensures that he/she and the patient signs the Medical Record Examination form (WFH-131b) attesting to the review.
5. The treatment team member sends a copy to HIM for data entry purposes and files the original WFH-131b, Medical Record Examination Form in the Correspondence section of the medical record.
6. HIM staff works with the Attending Psychiatrist to provide the patient with a summary of the requested PHI, or to provide an explanation of the PHI to which access has been approved, in lieu of providing access to the medical record if:
  - a. the patient agrees in advance to such a summary or explanation; and,

- b. the patient agrees in advance to fees imposed, if any, by WFH for such summary or explanation.
- 7. WFH documents and retains the following for a period of 10 years:
  - a. the designated record sets that are subject to access by patients; and,
  - b. the titles of the persons or offices responsible for receiving and processing requests for access by patients.

#### D. Request for a Copy of PHI

- 1. Active Inpatient:
  - a. The patient completes the Request for Copy of Medical Record Documentation form (WFH-151) which is sent to HIM for processing.
  - b. HIM forwards the request to the appropriate Attending Psychiatrist for approval or denial of the request. The Attending Psychiatrist records a decision on the Request for Copy of Medical Record Documentation form (WFH-151) and returns the form to HIM for further processing.
- 2. Discharged or Deceased Patients:
  - a. HIM staff has the requester complete the Authorization For Use And Disclosure Of Protected Health Information form (WFH-184) to examine or receive copies of medical records. The patient (or conservator) signs the authorization for patients that have been discharged and the Administrator/Executor or Next-of-Kin for deceased patients. The requester sends the form to HIM for processing.

#### E. Granting of Request to Obtain a Copy of Medical Record Documentation

- 1. Active Inpatient:
  - a. HIM processes the request within 30 days of receipt, as approved by the Attending Psychiatrist.
  - b. HIM staff ensures that the patient signs the Request for Copy of Medical Record Documentation form (WFH-151) to indicate receipt of the information and to acknowledge understanding that information is being released under the provisions of the Connecticut General Statutes and Federal Regulations. HIM staff also advises the patient that he/she assumes responsibility for the confidentiality of the documents and WFH is released from legal responsibility or liability for the release of the information to the extent indicated and authorized by the patient.
- 2. Discharged or Deceased Patients:
  - a. HIM processes the request according to State and Federal Regulations within 30 days of receipt.
  - b. HIM sends the requester a cover letter (WFH-269) stating information is sent as requested or otherwise limited. The information is mailed to the patient, conservator,

or next-of-kin by Certified, Return Receipt Mail to verify receipt of the confidential PHI.

3. If the patient receives copies of his/her PHI, or agrees to a summary or explanation of such information, WFH may impose a reasonable, cost-based fee, not to exceed \$.66 per page that includes:
  - a. copying, including the cost of supplies for and labor of copying the PHI requested;
  - b. postage when the patient has requested the copy or the summary or explanation be mailed; and
  - c. preparing an explanation or summary of the PHI, if this method is agreed to by the patient.

#### F. Denial of Access

1. HIM does not release the following PHI for inspection according to state and federal law:
  - a. psychotherapy notes; (notes not maintained in the medical record);
  - b. information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action or proceeding;
  - c. PHI used for research;
  - d. PHI received from correctional institution records; or,
  - e. information obtained from other health care providers.
2. WFH denies a patient access, without providing the patient an opportunity for review, in the following circumstances:
  - a. the patient has agreed to the denial of access when consenting to participate in research that includes treatment, and the covered health care provider has informed the patient that the right of access may be reinstated upon completion of the research; or,
  - b. the PHI was obtained from someone other than a health care provider under a promise of confidentiality and access requested would be reasonably likely to reveal the source of the information.
3. WFH may deny a patient access, provided that the patient is given a right to have such denial reviewed, in the following circumstances:
  - a. the Attending Psychiatrist or Chief Medical Officer (CMO) has determined, in the exercise of professional judgement, that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person;
  - b. the PHI makes reference to another person (unless such other person is a health care provider) and the Attending Psychiatrist or CMO has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or,
  - c. the request for access is made by the patient's personal representative and the Attending Psychiatrist or CMO, in the exercise of professional judgement, determines that the provision of access to such personal representative is reasonably likely to cause substantial harm to the patient or another person.

4. If the Attending Psychiatrist or CMO denies access to PHI, in whole or in part, efforts will be made to make other information accessible, by giving the patient access to any other PHI requested after excluding the PHI which WFH has grounds to deny.
5. If access to PHI is denied, in whole or in part, the Attending Psychiatrist or CMO provides a timely, written denial to the patient which must be in clear language and contain:
  - a. the basis for the denial; and
  - b. a description of how the patient may exercise his/her right to have the denial reviewed by an Alternate Physician.
6. HIM notifies the patient of the decision and provides the patient with a Denial of Access and Request for Alternate Review of your Medical Record form (WFH-184d) which instructs the patient that he/she may request an Alternate Physician to review his/her medical record.
7. The Alternate Physician reviews the patient's request and makes a determination.
  - a. If the determination is that the information may be released, then the Alternate Physician notifies HIM, who releases the information following notification of the CMO.
  - b. If the determination is to deny access, the Alternate Physician notifies HIM, who advises the patient that he/she has the right to appeal the denial to the Office of Healthcare Information (OHI), using WFH-666, Request for Appeal of Denial Form.
8. HIM staff files the original WFH-666 in the Correspondence section of the medical record, gives a copy to the patient, and sends a copy to the Privacy Officer.
9. The Privacy Officer forwards the request for appeal to OHI, who has 30 days to make a determination.
10. If OHI does not uphold the denial, WFH will grant access.
11. If OHI denies access, HIM informs the patient using Denial of Access To Your Medical Record By Alternate Physician Form (WFH-184g) that he/she may seek a review through the Judicial System, by filing a petition with the Superior Court.

Illustrations/Examples:

*Example 1:* A patient signs an authorization to obtain his own record for a particular episode of care, specifically requesting copies of his psychotherapy notes. Upon review of the chart, the Attending Psychiatrist believes releasing this information would create a reaction that would cause a substantial risk that the patient would inflict life-threatening injury to his/her self or to others or experience a severe deterioration in mental state. The patient is informed that his/her request has been denied, the reason for that denial, and the process for requesting further review by a physician of their choice. Upon review, the denial of access is upheld. The patient is informed of his/her right to further judicial relief as outlined in CGS 4-104 and his/her right to

file a complaint with the WFH Privacy Officer as outlined in the Notice of Privacy Practices.