

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

<b>Policy: HPP 1.5</b>	<b>Effective Date:</b> January 15, 2015
<b>Access to Inspect – Granting, Denying Access</b>	<b>Last Revision Date:</b> <del>January 23</del> <u>October 1</u> , 2024
<b>References:</b> 45 CFR §164.52, <a href="https://www.hhs.gov/ocr/index.html">https://www.hhs.gov/ocr/index.html</a> ; Texas Administrative Code Title 22, Part 9, Chapter 165.2	

### **Policy Statement**

Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) recognizes that individual rights are a critical aspect of maintaining quality care and service and is committed to allowing individuals to exercise rights under 45 CFR §164.524 and other applicable federal state and/or local laws and regulations. To support this commitment, TTUHSC El Paso will maintain and update, as appropriate, written policies and procedures to guide employee and organizational responsibilities regarding the rights of individuals to access, inspect, and obtain a copy of their protected health information (PHI) that is maintained in a designated record set in a timely and professional manner. However, situations may arise when the requested information is not readily accessible. Therefore, the period for responding may be extended.

### **Scope**

This policy applies to all healthcare clinical service areas owned and/or operated by TTUHSC El Paso.

### **Procedure**

- A. Individuals, parents, or guardians may request to access, inspect, and/or obtain a copy of his/her (or a minor child, or those they are the appointed guardian of) PHI maintained in a designated record set. In instances where the PHI is in more than one record set or at more than one location, TTUHSC El Paso will produce the PHI only once in response to a request for access.
  
- B. Individuals do not have the right to access the following types of information (see “Denial of Access” section):
  1. Psychotherapy notes;
  2. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
  3. Protected health information that is:
    - a. Subject to the Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, to the extent the provision of access to the individual would be prohibited by law or
    - b. Exempt from the Clinical Laboratory Improvement Amendments of 1988, pursuant to 42 CFR §493.3(a)(2).
  
- C. Employees should not access their ~~own or a member of their~~ family’s PHI nor request other employees to access the PHI through the TTUHSC El Paso computer

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systems. When wanting to look at their information, employees follow the same process as other patients (see D. below).

### D. Patient authorizations to access records:

1. Individuals requesting access to their medical records will be directed to the Medical Record Department. The Medical Records Department will request a signed authorization from the patient or patient representative before releasing complete copies of the medical records.
2. If the individual does not appear in person but makes a request over the phone, transfer the call to the Medical Records Department.
3. If the individual's spouse or parent of an adult child requests copies of PHI, the individual must have a signed authorization from the patient.
4. The Institutional Privacy Officer shall prepare, review, and update All HIPAA Authorization forms required under this policy. HIPAA Authorization forms can be accessed by going to the HIPAA website (<http://elpaso.ttuhscc.edu/hipaa/forms.aspx>) and from the left navigation menu selecting "HIPAA Approved Forms"

Upon receipt of a request for PHI, TTUHSC El Paso Medical Record staff will:

1. Confirm the identity of the person requesting the PHI with a picture ID, such as a driver's license or employee badge.
2. Provide the requested PHI, or
3. Provide the individual with a written denial. To determine whether a request should be denied, see further information in this policy on denials of access.

### E. Action taken pursuant to request must be taken:

1. No later than 15 days after the request is made and payment received for copying the medical record if payment is required.
2. Inform the authorized requestor no later than 15 days after the request is made if the information does not exist or cannot be found.

### F. The individual will be allowed access, inspection, and/or copies of the requested PHI in a secure and confidential manner.

### G. TTUHSC El Paso will provide the individual with access to the PHI in a readable electronic form and format requested by the individual. If the requested format is not readily producible in the electronic form and format requested by the individual or the

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individual requests, TTUHSC El Paso will provide the individual with access to the PHI in a readable hard copy form or such other form as agreed to by the individual.

- H. Any fees imposed on the individual for a copy of the PHI or a summary or explanation of such information will:
1. Be collected by personnel at the time of receipt of the request and the proper completion of the request form;
  2. Will be only for the following:
    - Copying. Reasonable fees for providing paper copies of medical records as determined by the Texas Medical Board ([www.tmb.state.tx.us](http://www.tmb.state.tx.us)) are no more than \$25 for the first twenty pages and \$.50 per page for every copy thereafter. A reasonable fee for providing copies of medical records in electronic format is a charge of no more than \$25 for 500 pages or less and \$50 for more than 500 pages;
    - TTUHSC El Paso shall charge a flat fee of \$6.50 for a copy of medical records, whether in paper or electronic format. In addition, the cost of postage may be charged if the copy is to be mailed. If affidavits are requested, certifying that information is a true and correct copy of the records, a reasonable of \$15.00 will be charged for executing the affidavits (Texas State Board of Medical Examiners Rule 165.2).
    - A fee of \$15.00 will be charged for completing affidavit questions.
- I. A denial of access will be issued and will not be reviewed in the following circumstances:
1. The protected health information is:
    - a. Psychotherapy notes;
    - b. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
    - c. Subject to the Clinical Laboratory Improvement Amendment of 1988, 42 USC §263a, to the extent the provision of access to the individual would be prohibited by law or exempt from the Clinical Laboratory Improvements Amendment of 1988, pursuant to 42 CFR §493.3(a)(2);
  2. TTUHSC El Paso is acting under the direction of a correctional institution upon an inmate's request for a copy of the protected health information and obtaining a copy would jeopardize the health, safety, security, custody, or rehabilitation of the individuals or other inmates, or any officer, employee, or other person at the correctional institution or anyone responsible for transporting the inmate;
  3. Access to protected health information that was created or obtained by TTUHSC El Paso 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, and has been informed that his/her right of access will be reinstated upon completion of the research;

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4. The individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 USC §552a, may be denied if the denial of access under the Privacy Act would meet the requirements of that law;
  5. The individual's access may be denied if the protected health information was obtained from someone other than a healthcare provider under a promise of confidentiality, and the access requested would be reasonably likely to reveal the source of the information.
- J. In denying access in whole or in part, to the extent possible, the medical record personnel will give the individual access to any other protected health information requested after excluding the protected health information denied.
- K. TTUHSC El Paso will review a denial for access to protected health information when requested by an individual in the following situations;
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 refers to another person (unless such other person is a health care provider), and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
  3. The access request is made by the individual's personal representative, and the 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.
- L. All denial reviews will be conducted by a licensed health care professional designated by TTUHSC El Paso to act as reviewing officials who did not participate in the original denial decision.
1. The designated reviewing official will be determined on a case-by-case basis by the Institutional Privacy Officer.
  2. The medical record personnel will promptly refer a request for review to the designated reviewing official.
  3. The designated reviewing official will determine within a reasonable period whether or not to deny the access requested based on applicable standards.
  4. Medical records personnel will promptly provide written notice to the individual of the determination of the designated reviewing official and take action as requested to carry out the designated reviewing official's determination.

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M. When denying individual access to protected health information, the denial will:

1. Be written in plain language;
2. Contain the basis for the denial; and
3. Contain the following statement, if applicable:

The individual has the right to have the denial reviewed by a licensed health care professional, designated by TTUHSC El Paso to act as reviewing official and who did not participate in the original denial decision.” Individuals may exercise their review rights by requesting a review of the denial in written form and forwarding it to the campus’ Medical Records Department;

4. Contain a description of how the individual may complain to TTUHSC El Paso according to its complaint procedures or the HHS Secretary and
5. The description of how the individual may complain will include the name, title, and telephone number of the contact person or office designated to receive such complaints.

N. This policy and procedure will be documented and retained for six years from the date of its creation or the date when it last was in effect, whichever is later.

O. Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or the Fraud and Misconduct hotline at (866) 294-9352 or [www.ethicspoint.com](http://www.ethicspoint.com) under Texas Tech University System.

### **Frequency of Review**

This policy will be reviewed on each even-numbered (ENY) by the Institutional Privacy Officer, and the HIPAA Privacy and Security Committee, but may be amended or terminated at any time.

Questions regarding this policy may be addressed to the Institutional Privacy Officer or Institutional Compliance Officer.

**Review Date:** January 18, 2024, ~~September 17, 2024~~

**Revision Date:** Sept 30, 2016, Sept 18, 2018, January 25, 2022, January 23, 2024, ~~October 1, 2024~~