



**Americare Certified Special Services**  
*Policy, Procedures and Information*

<b>Title: Access to Patient Health Information</b>	<b>Effective Date: 9/23/13</b>
	<b>Last Revision: N/A</b>
<b>Issued By: Miri, Bank RN - Director of Compliance/ HIPAA Security Officer</b>	<b>Approved by: Professional Advisory Committee</b>

**SCOPE OF POLICY**

This policy applies to Americare staff members in the Medical Records Department, Billing Department, other designated departments and the Privacy Officer who is authorized to respond to requests for access to patient health information.

**STATEMENT OF POLICY**

Patients generally have a right to access their own health information contained in records that may be used to make decisions about them (called “designated record sets”). It is Americare’s policy to treat all patient requests in a respectful manner. Americare has policies and procedures about how and when patients may access Americare records. Therefore, patients should be directed to submit any requests for access to medical records, billing records or any other records (whether or not they contain patient health information) to Medical Records Department. Patients should be directed to submit any requests for access to billing records to the Billing Department. All staff members in the Medical Records Department or designated departments are expected to respond to such patient requests in a timely and respectful manner in accordance with the procedures below.

Americare staff members, Billing Department staff, designated departments and the Privacy Officer responsible for complying with this policy should be aware that special privacy protections apply to HIV/Aids related information, alcohol and substance abuse information, genetic information, sexually transmitted disease information, mental health information and minor information. Some steps, which are permitted or required under this policy, may not be permitted when using or disclosing these types of information. Medical Records Department, Billing Department, and the Privacy Officer are expected to be aware of the requirements for allowing access to sensitive information.

**IMPLEMENTATION OF POLICY**

## **1. Right To Access Records**

**Who Can Access:** A patient, a patient's guardian or a patient's personal representative must submit a written request to physically inspect the medical record. A patient or patient's personal representative is any patient, parent, guardian or committee of an incompetent.

**What Information:** Our patients have the right to inspect and obtain a copy of the protected health information that Americare, or one of its business associates, maintains in "designated record sets." "Designated record sets" are sets of records that may be used to make decisions about the patients or their treatment.

The designated record set for each patient generally includes the patient's medical record.

**For How Long:** Patients have the right to access their protected health information for as long as the information is contained in their designated record set.

**Exceptions:** In some circumstances, a patient's right to access protected health information in his or her designated record set may be denied. These circumstances include:

**In Writing:** All requests for access must be made in writing. Medical Records Department, Billing Department, and the Privacy Officer request the guardian, conservator or personal representative to complete the request form provided in Appendix A of this policy or to write a letter that covers the same information requested on that form.

**Proper Identification:** In the interest of protecting the confidentiality of the record, the person requesting access should present identification such as a government issued picture card, a driver's license or ID card that carries a valid signature. Individuals requesting access in the capacity of guardian or conservator of the person should send a copy of their appointment papers when requesting copies or present such papers at the time of inspection. The signature will be compared with the signature on the consent for treatment and any discrepancy clarified.

**Follow up Questions:** Although a patient's request must be made in writing, Medical Records Department, Billing Department, and the Privacy Officer should follow up on a patient's request by phone if necessary to clarify what information the patient is seeking to access. Medical Records Department, Billing Department, and the Privacy Officer should record on the patient's request form the content of that discussion and initial or sign his or her notes.

## **2. Response Time**

Medical Records Department, Billing Department, and the Privacy Officer must respond to a patient's requests for access to their protected health information (by either granting or denying the request) as soon as possible after the request is received. At the very latest, a response to a patient's request should be responded to in accordance with the following

deadlines. To ensure that these deadlines are met, Medical Records Department, Billing Department, and the Privacy Officer should complete the information at the bottom of the patient's request form provided in Appendix A. If the patient's written request is made on a letter or other document instead of the form provided in Appendix A, Medical Records Department, Billing Department, and the Privacy Officer will contact the requester and document the equivalent information on the letter or other document.

**Inspection of Records:** If the patient is seeking to inspect his or her information, Medical Records Department, Billing Department, and the Privacy Officer is expected to respond to the request within 10 days from the date the request was received by Medicare.

**Copies of Records:** If a patient is seeking a paper or electronic copy of his or her information, Medical Records Department, Billing Department, and the Privacy Officer is expected to respond within 10-14 days, but no greater than 30 days of the date of the request. Medical Records Department, Billing Department, and the Privacy Officer may have a one-time extension of 30 days to respond if the department is experiencing unusual difficulty responding within the 30 day time frame.

- If a 30-day extension is needed, Medical Records Department, Billing Department, and the Privacy Officer must notify the patient in writing within the initial 30-days to explain the reason for the delay and the date when Medicare expects to answer the patient's request. A copy of Medicare's standard notice letter for this purpose is provided in Appendix B of this policy.

### **3. Granting Patient Requests For Access**

A patient's request to access their protected health information may only be granted according to the following procedures.

**Notify The Patient:** Medical Records Department, Billing Department, and the Privacy Officer or designee responsible for copying records must notify the patient that his or her request for access is being granted. The patient may be notified by phone, or in writing. If the patient requested an opportunity to inspect his or her records, Medical Records Department, Billing Department, and the Privacy Officer must explain how the patient may arrange an appointment to visit Medicare and review the information.

**Requests for Inspection of Records:** If Medicare is granting a patient's request to inspect his or her protected health information; Medical Records Department, Billing Department, and the Privacy Officer will arrange an appointment with the individual to review their records. Copies cannot be provided in lieu of inspection unless: (1) the patient agrees, or (2) a reason for denial in Section 4 of this policy justifies providing copies instead of inspection.

- **Proper Identification:** The person requesting access must present government issued picture identification such as a driver's license or ID card which carries a valid signature. Individuals requesting access in the capacity of guardian or

conservator of the person should send a copy of their appointment papers when requesting copies or present such papers at the time of inspection. The signature will be compared with the signature on the consent for treatment and any discrepancy clarified.

- **Assisting Patient with Review:** Medical Records Department, Billing Department, and the Privacy Officer may ask the patient whether staff member may assist the patient in reviewing the information requested. The patient is free to refuse any assistance, and cannot be penalized or denied access for doing so.
- **Supervising Patient's Independent Review:** If the patient is not reviewing his or her information jointly with a physician or nursing staff member, Medical Records Department, Billing Department, and the Privacy Officer will be present in the room at all times to ensure that the integrity of the records is maintained. Medical Records Department, Billing Department, and the Privacy Officer should remain in view of the patient to prevent inappropriate tampering, but far enough so that the patient is afforded appropriate privacy when reviewing the content of his or her records. Medical Records Department, Billing Department, and the Privacy Officer will not answer any questions regarding the content of the medical record. If the patient wishes to be completely alone, he or she must request copies of the records.
- **Miscellaneous:** A patient's review of his or her information should take place only where the patient will not be able to view information or records concerning other patients. A patient may be accompanied by a family member or other individual and may view their records with that companion.

**Requests for Copies:** Whenever possible, copies of records should be provided in the form or format requested by the patient. If the patient requests an electronic copy of the record, Americare must provide the records in the electronic form and format as requested, as long as the records can be readily produced in such form and format. Otherwise, Americare will cooperate with the patient to provide a readable electronic form and format of the records as agreed between Americare and the patient.

Copies should be delivered to the patient in the method specified on the patient's request form or letter. The patient may pick up the copies or request that the copies be delivered by mail to the address provided on the Authorization of Use and/or Disclose PHI form.

**Providing Summaries:** If the patient's request to access his or her information is granted, Medical Records Department may also provide the following:

- An abstract/summary of the requested information instead of, or in addition to, providing access to inspect or copy the information.
- An explanation of the protected health information contained in the requested records. This explanation is delivered to the patient when he or she inspects the records, or would accompany the copies of records that are provided to the patient.

If a patient's request to access his or her information is denied (in whole or in part) for one of the reasons provided in Section 4, Medical Records Department must provide the patient with a summary of the information which the patient is not permitted to access.

**Duplicate Information:** If the same protected health information is maintained in more than one designated record set, Medical Records staff need only produce the protected health information once in response to the patient's request. Access need not be provided to records that merely duplicate identical information. However, if a second record provides additional information in any form, that record must be provided.

**Collection of Fees:** Americare may charge for copies of the records requested, supplies, mailing and preparation of summaries and explanations. The procedure for the collection of fees varies depending on the items or services provided.

- Copies Under New York law, the fee may not exceed \$0.75 per page when patients or their personal representatives request copies. *See* NY Public Health Law § 18(2)(e). A copying fee of \$1.00 may be charged to attorneys or insurers.
- Under New York law, Americare may not deny a request for copies solely because of an inability to pay the fees. NY Public Health Law § 18(2)(e).
- Medical Records Department, Billing Department, and the Privacy Officer will notify the patient (or patient's guardian or conservator or patient personal representative) requesting information of the fees to be charged. These fees may be collected at the time the copies are provided.

**Recording The Access Provided:** If access is granted, Medical Records Department, Billing Department, and the Privacy Officer will notify the patient by phone or mail. The Authorization for Use/Disclosure of PHI will be added to the medical record.

#### **4. Denying Access**

**Reasons for Denial:** In the following circumstances, a patient's request to access his or her health information should be denied:

- (1) The request is not in writing;
- (2) The information requested is not contained in a designated record set maintained by Americare or any of its business associates;
- (3) The information was obtained from someone other than a healthcare provider, and
  - (1) Americare agreed to keep the identity of that person confidential, and (2)

Medical Records staff determines that providing the patient with access to the information requested would reveal the identity of that person;

- (4) A licensed health care professional (such as a physician, or nurse) at Americare has determined that granting the patient's request is reasonably likely to endanger the *life or physical safety* of the patient or another person. The danger must be to life or physical safety. The request cannot be denied simply because the information is sensitive or has the potential to cause emotional or psychological harm to the patient or another person;
- (5) The information requested refers to another person, and a licensed health care professional (such as a physician, or nurse) has determined that granting the patient access to this information is reasonably likely to cause substantial harm to that other person. However, access may not be denied if the person who may be harmed is a health care provider.

Information obtained from other physicians who are still in practice. That information should be requested directly from those practitioners.

**Summaries In Lieu of Access:** If the patient's request for direct access to his or her information is denied for one of these reasons, Medical Records Department must provide the patient with a summary of the information in lieu of direct access. This summary must be prepared in accordance with Section 3 of this policy.

**Partial Denial:** If there are grounds to deny the patient's access to only part of the protected health information requested, Medical Records Department, Billing Department, and the Privacy Officer is expected to do their best to provide the patient with access to the rest of the information after excluding the parts of the record Americare cannot let the patient inspect or copy. The excluded parts should be summarized for the patient as provided above.

**Notice of Denial:** If the patient's request is being denied, the patient must be notified, within the time frame applicable in Section 2 of this policy, using the denial notice provided in Appendix C of this policy. The following procedures should be followed when completing these notices:

**Appeals of Denials to Access:** If Americare denies access to part or all of a record, the patient or patient's legal representative has the right to appeal the denial and the law requires Americare to inform the patient or patient's legal representative of that right in writing. Appeals will be reviewed by Medical Records Access Review Committee. The committee is composed of peers of the licensed practitioner who denied access to the records.

Under the law, the Committee is appointed by the Commissioner of Health and the appeals process is conducted under regulations established by the Commissioner.

## **5. Requests For Access By A Patient's personal representative**

If a patient's personal representative requests access to the patient's records, Medical Records Department, Billing Department, and the Privacy Officer generally should grant or deny access according to the procedures in this policy as though the patient personal representative were the patient, *unless one of the following exceptions applies.*

**Patient Lacking Capacity:** When a patient lacks capacity to make health care decisions and the patient's personal representative must be given access to the patient's information in order to make health care decisions on behalf of the patient, Medical Records Department, Billing Department, and the Privacy Officer should grant such access to the patient personal representative, *even if the patient would otherwise be denied access under Section 4 of this policy.*

**Harm To Patient:** A patient's personal representative may be denied access to a patient's information if a licensed health care professional at Americare (such as a physician, or nurse) has determined that granting such access is reasonably likely to cause substantial harm to the patient or a third person. The patient's personal representative should be notified in writing of the reason for this denial, and given the opportunity to seek review of the decision as provided in Section 4 of this policy.

**Patients Who have Expired:** The right to inspect and obtain copies of patient information is extinguished with the death of the qualified person. A duly appointed or qualified estate representative will be reviewed by Americare counsel to determine if that individual has the right of access to the medical record.

**Documentation:** Privacy Officer must keep the following documentation in connection with any request by a patient or a patient's personal representative to access protected health information. These documents must be maintained by Americare for six years from the date of their creation. When possible, these documents will be kept in the patient's medical record, or they will be kept in a designated files within the Medical Records Department, Billing Department, or the designated departments file.

Documentation to be maintained includes:

- Copies of any notices explaining that Americare requires an extension of time to arrange for the access requested;
- Copies of any notices advising that a fee may be charged to recover the costs of providing copies, summaries or explanations of the information requested;
- Information about any access provided to the patient, recorded in the computerized correspondence database. Each department will maintain data information required to document all disclosure;
- A copy of any notice of denial sent to the patient.

## **VIOLATIONS**

Americare's Privacy Officer has general responsibility for implementation of this policy. Members of Americare staff who violate this policy will be subject to disciplinary action up to and including termination of employment or staff privileges with Americare. Anyone who knows or has reason to believe that another person has violated this policy should report the matter promptly to his or her supervisor or Americare's Privacy Officer. All reported matters will be investigated, and, where appropriate, steps will be taken to remedy the situation. Where possible, Americare will make every effort to handle the reported matter confidentially. Any attempt to retaliate against a person for reporting a violation of this policy will itself be considered a violation of this policy that may result in disciplinary action up to and including termination of employment or contract with Americare.

## **QUESTIONS**

If you have questions about this policy, please contact your department supervisor or Privacy Officer immediately. It is important that all questions be resolved as soon as possible to ensure that protected health information is used and disclosed appropriately.