



*Issuing Department:* Internal Audit, Compliance, and Enterprise Risk Management

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## **Right to Inspect and Obtain PHI**

### **Policy**

Patients have the right to access or inspect their Protected Health Information (“PHI”) contained in the Designated Record Set. Patients also have the right to obtain copies (paper or electronic) of their PHI contained in the Designated Record Set.

NYU Langone Health, in limited circumstances, may deny this right. Patients may also have the right to an internal and/or the New York State Medical Access Review Board review of a denial.

All patient requests to inspect and/or obtain a copy of PHI must be submitted in writing in accordance with NYU Langone Health procedures. NYU Langone Health will respond to all requests as soon as possible and in accordance with this Policy.

A reasonable, cost-based fee may be imposed for providing copies of the patient’s PHI. A reasonable, cost-based fee may be also be imposed for the creation of a summary or explanation of information in lieu of a patient exercising their right to inspect PHI. NYU Langone Health may not deny a patient’s request to access, inspect, or obtain copies of medical records solely because of the patient’s inability to pay for the requested copy or any outstanding medical treatment bills.

Workforce Members should be aware that special privacy protections apply to Confidential HIV-Related Information, alcohol and substance abuse information, mental health information, and genetic information.

### **Procedure**

1. All requests to inspect PHI must be made in writing, using the *Patient Request to Inspect PHI* form.
  - Where available, NYU Langone Health Workforce Members may also encourage the patient to access their medical information online via the patient portal, NYU Langone Health MyChart, available at: <https://mychart.nyulmc.org/mychart/>.
2. All requests to obtain copies of PHI must be made in writing, and should use a valid authorization that meets both New York State and HIPAA requirements. If providing request in writing is not feasible, an oral/verbal request can be accepted if a patients identity can be verified. The *NYU Langone Health Authorization for Use and Disclosure of*

*Protected Health Information* form is preferred; however, the New York State HIPAA form is acceptable. Any other authorization must be valid under both New York State and HIPAA regulations. Consult the Privacy Officer as necessary.

- The completed form may be mailed or hand delivered to the appropriate address as indicated on the form's directions. Forms may also be faxed or emailed, dependent on location and availability to receive such format.
  - Patient requests for copies of HIPAA-related Authorizations do not require a signed Authorization form and can be provided to the patient at any time.
3. A patient's Personal Representative may request access to inspect the patient's PHI. NYU Langone Health should generally grant or deny access in accordance with the procedures set forth in this Policy as though the Personal Representative were the patient, unless one of the following exceptions apply:
- If a physician has certified that the patient lacks the capacity to make health care decisions and a Personal Representative is designated, the NYU Langone Health must grant the Personal Representative full access to the patient's PHI, *even if the patient would otherwise be denied access under this Policy*. Full access is required under New York State law to allow the personal representative to make informed decisions regarding the patient's health care.
  - If a personal representative requests access to the PHI of a patient over the age of 12 years, NYU Langone Health may notify the patient and permit the patient the opportunity to object to such access by the Personal Representative. If the patient objects, NYU Langone Health may deny the Personal Representative's request for access. Consultation with the treating practitioner is required before rendering a decision. NYU Langone Health must provide written notice of the decision to the Personal Representative in accordance with the procedures set forth in this policy.
  - A parent or guardian is not entitled to inspect or obtain copies of any patient information concerning the care or treatment of a patient under the age of 18 (a "minor") if the treating physician certifies that such access would have a detrimental effect on:
    - the physician's professional relationship with the minor,
    - the care or treatment of the minor, or
    - the minor's relationship with his or her parents or guardian.

\*NYU Langone Health must provide written notification of such a decision.
  - A parent or guardian is not entitled to inspect or obtain copies of any patient information concerning the treatment of a minor patient for a venereal disease or the performance of an abortion operation (i.e., family planning services).
4. Workforce Members should forward the completed form to the appropriate unit as follows:
- requests to inspect PHI to: NYU Langone Health Privacy Officer, One Park Ave, 3<sup>rd</sup> Floor, NY, NY 10016.
  - requests to obtain copies of Tisch Hospital, Rusk Rehabilitation, and other NYU Langone Hospitals site records not listed below to: HIM, NYU Langone Hospitals, 650 First Ave, 6<sup>th</sup> Floor, NY, NY 10016 (212-263-5490).

- requests to obtain copies of NYU Langone Orthopedic Hospital records to: HIM, NYU Langone Orthopedic Hospital, 301 East 17<sup>th</sup> St, NY, NY 10003 (212-598-6790) (in person at 380 2<sup>nd</sup> Ave, Suite 640, NY, NY 10003).
- requests to obtain copies of NYU Langone Hospital-Brooklyn records to: HIM, NYU Langone Hospital-Brooklyn, 150 55<sup>th</sup> Street, Brooklyn, NY 11220 (718-630-7125).
- requests to obtain copies of NYU Langone Hospital- Long Island records to: HIM Department, 200 Old Country Road, Suite 580, Mineola, NY 11501 (516-663-2515, #4).
- requests to obtain copies of Perlmutter Cancer Center records to: HIM, Perlmutter Cancer Center, 160 E 34<sup>th</sup> St, NY, NY 10016 (212-731-6180).
- requests to obtain copies of Faculty Group Practice records to: the individual practice.
- requests to obtain copies of NYU Winthrop Certified Home Health Agency to: NYU Winthrop CHHA, 290 Old Country Road, Mineola, NY 11501 (516-663-8000).
- requests to obtain copies of the Family Health Centers at NYU Langone Health records to: the individual center.
- requests to obtain copies of Southwest Brooklyn Dental Practice records to: 219 54<sup>th</sup> Street, Brooklyn, NY (929-455-2099).

5. Determine, as appropriate, after consultation with the Attending Physician or similar, whether the request to inspect or obtain copies should be granted or denied, in whole or in part. Refer to the chart below for further explanation.

<b>Basis for Denial</b>	<b>Right to Internal Review of Denial?</b>	<b>Right to Review of Denial by the NYS Medical Access Review Board?</b>
<u>Incomplete</u> Request Form	No	No
The information requested is <u>not contained in a Designated Record Set</u> Maintained by NYU Langone or its Business Associate(s), for example the information was obtained from another provider	No	No
The information was obtained or created in the course of <u>Research</u> and the Research is still in progress (provided the patient agreed to this denial of access when consenting to the Research study)	No	No
The information requested are the <u>personal notes or observations</u> of the clinician	No	Yes
A licensed health care professional has determined, in the exercise of professional judgment, that granting access is <u>reasonably likely to endanger the life or safety of the patient or another person</u>	Yes	Yes; judicial review also available

The information <u>makes reference to another person</u> and a licensed health care professional has determined, in the exercise of professional judgment, that <u>granting access is reasonably likely to cause substantial harm to the referenced person</u>	Yes	Yes; judicial review also available
The information was <u>requested by the patient's Personal Representative</u> and a licensed health care professional has determined, in the exercise of professional judgment, that <u>granting access is reasonably likely to cause substantial harm to the patient or another person</u>	Yes	Yes; judicial review also available
The information was compiled in <u>reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding</u>	No	No
The information was obtained from someone other than a health care provider under an <u>agreement of confidentiality</u> and access to the information would reveal the identity of the person	No	No
Provision of the information to the requesting <u>inmate</u> would jeopardize the health, safety, security, custody, or rehabilitation of the requesting inmate, other inmates, officers or employees at the correctional institution, or other persons responsible for transporting the inmate	No	No
The information is a lab result that must be obtained directly from the ordering clinician; the clinician's authorization is required before release.	No	No

6. Respond to all requests, in the manner described in number 9 below, to inspect or obtain copies of PHI within 10 days from receipt of the form.
  - If a request obtain copies cannot be fulfilled within the timeframe, notify the requestor in writing of the reasons for the delay (e.g., records are located offsite) and the date by which the patient can expect a response. Only one 30 day extension is permitted (i.e., records must be provided within 60 days of receiving request).
  
7. Provide the records in the form and format requested by the patient.
  - When an individual requests an electronic copy of paper records, NYU Langone Health will provide the individual with an electronic copy in the format requested (e.g., PDF, Word Document) if it is readily producible (i.e., scan the paper documents).
  - When an individual requests an electronic copy of electronic records, NYU Langone Health will provide the individual with the information in the form and format requested if it is readily producible (e.g., MyChart).
  - For fax requests, confirm fax number prior to sending.

- For email requests, notify the recipient that the email will be sent using NYU Langone Health secure email, Send Safe.
    - If the file is too large (e.g., diagnostic images) notify the requestor and determine appropriate alternative method. Consult with the Privacy Officer as necessary.
  - If a patient requests that their medical records be sent via unencrypted email, the request **MUST** be sent to the Privacy Officer for review and fulfillment. The Privacy Officer will ensure that the requestor confirms, after receiving a notification message regarding the security of unencrypted email transmission that they still wish to receive their records in this manner. This message and confirmation of acceptance will be scanned into the medical record with the release form.  
Requests for records in other forms or formats (e.g., USB drive) will be honored when the form and format are readily producible. Consult the Privacy Officer as necessary.
8. Inform the patient where to direct their request to inspect or obtain copies of PHI, if NYU Langone Health does not maintain the record that is the subject of the patient’s request and the Workforce Member knows where the requested information is maintained.
  9. Inform the requestor of the decision.
    - Request Granted:
      - to inspect: inform in writing using the *Request to Inspect Protected Health Information-Granted* template.
      - to obtain copies: no written response required if available with timeframe, provide copies in the form and format requested.
    - Request Denied:
      - to inspect: inform in writing using the *Patient Request to Inspect Protected Health Information-Denied* template.
      - to obtain copies: inform in writing using the *Patient Request to Obtain a Copy of Protected Health Information-Denied* template.
      - include: the reason(s) for the denial, their right (if any) to seek further review, and a description of how the patient may complain to NYU Langone Health Privacy Officer, the U.S. Department of Health and Human Services, and New York State Department of Health, by including a “New York State Department of Health Denial of Access to Patient Information and Appeal Form”, available at: <http://www.health.ny.gov/forms/doh-1989.pdf>.
  10. Verify the requestor’s identity prior to providing access or copies.
  11. Remove any PHI to which the requestor is not permitted access **prior** to providing an opportunity to inspect or **prior** to providing copies of the requested records.
  12. During inspection:

- A Workforce Member will remain in the room to ensure that there is no tampering with any information, but remain at a reasonable distance to afford privacy.
  - Do not attempt to explain any information contained in the record, unless the Workforce Member is a licensed health care professional associated with the inspected record.
  - If the requestor asks to obtain copies, he/she must complete and submit the form.
13. Workforce Members need only produce the requested PHI once (for inspection and/or obtaining copies), even if it is maintained in more than one Designated Record Set, or at more than one location.
14. If the patient agrees in advance, NYU Langone Health may provide the patient with a written summary or explanation of the PHI that is the subject of the request to inspect or obtain in lieu of providing an opportunity to inspect or actual copies, even if the request would be denied under this policy. NYU Langone Health may charge the patient for the costs associated with preparing the summary or explanation, so long as the patient agrees in advance to such costs.
15. NYU Langone Health may charge fees as follows and the individual will be informed of any such approximate fee in advance:
- NYU Langone Health may charge a reasonable fee, not to exceed 0.75¢ per page plus postage for the reproduction and delivery of patient records. This fee is based on cost-based expenses, such as labor for copying, supplies, and postage if mailed.
    - Permissible fees for labor for ‘copying’ does not include labor costs to search, retrieve, review, identify, segregate, collect, compile, and prepare the information. Costs for outsourcing access cannot be the basis of fees charged.
    - Per page fees are not permitted for paper or electronic copies of PHI maintained electronically.
    - Patients will not be charged for records which are requested for the purpose of supporting an application, claim, or appeal for any government benefit or program, in compliance with New York State law. The patient must note on the Request Form this as the purpose for the release. “Government benefit or program” may include (but is not limited to) applications for Social Security disability or September 11<sup>th</sup> survivor health benefits or appeals.
  - For electronic copies of electronic PHI, NYU Langone Health may charge a flat fee not to exceed \$6.50 or, alternatively, calculate the average or actual allowable costs for these types of requests.
  - Copies of radiology films are provided on a password protected CD/DVD for a reasonable cost-based fee.
  - Patients will not be charged for the costs of producing an original mammogram (i.e., original as opposed to a copy of the mammogram), but may charge patients for the cost of delivering the original mammogram.

16. If the patient requests an internal review of a denial:

- Workforce Members must promptly refer the request for review to the Senior Director of HIM or the Privacy Officer who will refer the matter as follows:
  - The Chief Medical Officer will review the denial of a request to access NYU Langone Hospitals records.
  - The Chief Clinical Officer will review the denial of a request to access School of Medicine or Faculty Group Practice records.
  - The Medical Director at the respective site will review the denial of a request to access: the Family Health Centers at NYU Langone Health and the Southwest Brooklyn Dental Practice records.
  - If the above listed individuals participated in any manner in the decision to deny access, the Privacy Officer will appoint a reviewing official who is a licensed health care professional to review.
- The Reviewing Official must:
  - determine, within 15 days from receipt of the request whether or not to deny the patient's request to inspect based on the permitted grounds for denial.
  - promptly notify the referring department of his or her decision.
    - The referring department must provide written notice of the decision to the patient within 15 days of receipt of the reviewing official's decision.
    - If the Reviewing Official determines that access should be granted, NYU Langone Health must provide access as set forth in this Policy.

17. If the patient requests review of the denial by the appropriate New York State Medical Access Review Committee ("Committee"), NYU Langone Health must transmit the information, including personal notes and observations, within 10 days of the receipt of such request to the chairman of the appropriate Committee with a statement setting forth the basis of the denial. In the event that the Committee determines that the request for access shall be granted, in whole or in part, NYU Langone Health shall grant access pursuant to the Committee's determination and/or with the procedures set forth in this Policy.

18. If the patient seeks judicial review of the denial, Workforce Members will forward all such requests or subpoenas to the Office of Internal Audit, Compliance, and Enterprise Risk Management ("IACERM") or the Office of Legal Counsel.

### **Related Documents**

Designated Record Set

HIPAA Privacy Policies, Procedures, and Documentation

HIPAA Privacy Policies and Procedures Definitions

NYU Langone Health Authorization for Use and Disclosure of Protected Health Information form

Patient Request to Inspect Protected Health Information-Denied template

Patient Request to Inspect Protected Health Information form

Patient Request to Inspect Protected Health Information-Granted template  
Patient Request to Obtain a Copy of Protected Health Information-Denied template  
Verification of Identity and Authority Prior to Disclosure of PHI

**Legal Reference**

45 C.F.R. §164.524

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This version supersedes all NYU Langone Health (as defined in this Policy) previous policies, including but not limited to NYU Hospitals Center, New York University School of Medicine, Lutheran Medical Center, and Winthrop University Hospital.