

EVMS Medical Group		
POLICY: Access To Protected Health Information – Patient	DATE: 3/2003	
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PURPOSE: To ensure that EVMS Medical Group complies with applicable laws that grant individuals or an individual’s legal representative the right to request and/or obtain access to their protected health information.

POLICY: It is the policy of EVMS Medical Group that individuals have the right to request access to inspect and/or obtain a copy of their protected health information for as long as the information is maintained by EVMS Medical Group.

PROCEDURE:

1. **Request for Access:**
 - a. **Oral Request for Access:** If an individual orally requests access to or a copy of his or her protected health information, the department or division will provide the individual with a Request for Access to Protected Health Information form. The Request form must be completed, signed and dated by the individual.
At the discretion of the provider, copies of Protected Health Information (for example, results of diagnostic procedures) may be provided to the patient without a written request.
 - b. **Written Request for Access:** If an individual submits a written request for access the department or division will determine whether the request is adequate based on the information provided. The EVMS Medical Group Request for Access to Protected Information Request Form may be used.
 - c. **Incomplete Request:** If the individual’s request for access is incomplete, the department or division will send the individual a written Notice of Access Denial form requesting the necessary outstanding information so that the request can be processed.

2. **Determining Right of Access:** The department or division must determine whether a request for access should be granted or denied, in whole or in part, for reasons acceptable under Virginia and federal law.

3. **Access Granted:**
 - a. **Written Notice:** If it is determined that access will be granted, the department or division will provide the access and/or copies within 15 days of receipt of the request.
 - b. **Fees for Copies:** The department or division may impose a reasonable cost-based fee which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed and preparation of an explanation or summary of such information as agreed to by the individual. When providing an electronic copy of protected health information that is maintained in the electronic health record, any fee shall not be greater than the cost in providing such copy. See Fees.

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- c. **Form of Access:** The department or division will evaluate the form or format requested by the individual and determine if such format is readily producible. If the requested format is not available the department or division will contact the individual and agree upon another format.

Upon request of the individual, a copy of the individual's protected health information that is maintained in the electronic health record will be provided in an electronic format.
 - d. **Summary or Explanation:** If the department or division grants the request for access, and the individual has agreed in advance to a summary or explanation of their protected health information and the applicable fee (if any), the summary or explanation may be provided in lieu of access. Such summary or explanation must be provided within 15 days of receipt of the request.
 - e. **Transmission of Electronic Copy to a Person or Entity Designated by the Individual:** Upon the written request of the individual, the department or division must transmit an electronic copy of the individual's protected health information maintained in the electronic health record directly to an entity or person clearly designated by the individual.
4. **Access Denied:** If it is determined that the request for access will be denied, in whole or in part, the department or division must determine whether the individual must be given an opportunity for review of the denial of access.
- a. **Unreviewable Access Denial:** If access is denied on unreviewable grounds, the department or division will provide the following information to the requesting individual within 15 days of receipt of the request.

 - i. Notice of Access Denial form; containing a
 - ii. Statement of Rights upon Denial of Access.

Unreviewable grounds for denial include: situations involving psychotherapy notes, information compiled for use in legal proceedings and certain information held by clinical laboratories; certain requests made by inmates of correctional institutions; information created or obtained during research that includes treatment if certain conditions are met; denials permitted by the Privacy Act and information obtained from non-health care providers pursuant to promises of confidentiality.
See 45 C.F.R. 164.524(a)(2).
 - b. **Reviewable Access Denial:** If access is denied on grounds subject to review, the department or division will provide the following information to the requesting individual within 15 days of receipt of the request.

 - i. Notice of Access Denial form; containing a
 - ii. Statement of Rights upon Denial of Access; and
 - iii. Request for Review of Access Denial form.

Reviewable grounds for denial include: disclosures which would cause endangerment of the individual or another person; situations where the PHI refers to another and disclosure is likely to cause substantial harm; and requests made by a personal

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representative where disclosure is likely to cause substantial harm. See 45 C.F.R. 164.524(a)(3).

- c. **Request for Review of Access Denial:** In the event that a request for review of access denial is received, records will be reviewed by a physician or psychologist whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based.
- i. The reviewing physician or psychologist may be selected by the patient at the patient's expense; or
 - ii. The patient may request that the reviewing physician or psychologist be selected by the department or division at the department/division's expense. The reviewing physician/psychologist may not have participated in the original decision to deny access.
 - iii. The records in question will be provided to the reviewer accompanied by a statement that the individual's treating physician or psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider. See Code of Virginia 32.1-127.1:03.
- d. **Review Determination:** The determination of the reviewing physician or psychologist is binding on the department/division. Once the determination has been made the department/division will notify the individual by sending a Notice of Review Determination form. If it is determined that access will be granted, the procedures above for Access Granted will be followed.
- e. **Alternative Access:** If access is denied because the department/division does not maintain the information that is the subject of the request, and knows where the requested information is maintained, the department/division will inform the individual where to direct the request for access by providing the individual with such information on the Notice of Access Denial form.