

# **PATIENT'S RIGHT TO ACCESS HIS/HER OWN PROTECTED HEALTH INFORMATION**

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## **PURPOSE:**

To ensure that each patient may exercise the right to access his or her own protected health information, and that the staff of Generations Family Practice knows the procedures for providing that access, where appropriate, in compliance with federal and state laws.

## **RELATED POLICY:**

Policy on Use/Release of Psychotherapy Notes

## **POLICY:**

Generations Family Practice patients have entrusted their personal and clinical information to us. This information contains highly sensitive material and requires thoughtful and attentive management by those who have access to it. All Generations Family Practice staff are committed to protecting our patients' rights to privacy and safeguarding their protected health information. Accordingly, patients are entitled to know which information about them is in [Entity's] possession and to review that information, with certain limited exceptions.

## **PROCEDURES:**

1. The patient or the patient's representative must make a written request for access to the patient's protected health information to Generations Family Practice's Health Information Manager.
  - a. The patient must state whether he or she wants a paper or electronic copy of the information and whether he or she wants to pick up or have the copy mailed or e-mailed to him or her.
  - b. If the information is readily producible in the requested form and format, Generations Family Practice should provide the information in that form and format. If it is not able to be produced in the form and format requested, Generations Family Practice should contact the patient, explain the options available for reproduction, and obtain the patient's choice. Generations Family Practice also should explain the cost of each available copy/duplication option.
  - c. The patient also has the right to direct Generations Family Practice to transmit information that is available in electronic form to another particular person or entity, and Generations Family Practice must provide the copy to the person designated by the patient. The patient must submit a signed, written request that clearly identifies the designated person and where to send the copy.
2. Generations Family Practice must act on each access request within 30 days of receipt of a written request, even if the information requested is not located on site.
3. If for some reason Generations Family Practice is unable to meet the request within the time stated above, Generations Family Practice may have another 30 days within which to comply

with the request. Generations Family Practice must notify the patient in writing of the reasons for the delay before the expiration of the initial 30-day period.

4. If Generations Family Practice approves a request for access, in whole or in part, Generations Family Practice must so notify the patient and provide the access requested.
5. Generations Family Practice may offer to provide the patient with a summary of the protected health information requested, in lieu of providing access to the protected health information, or to provide an explanation of the protected health information to which access has been provided in lieu of a copy. Generations Family Practice must obtain the patient's agreement in advance to accept such a summary or explanation and to pay any fees for Generations Family Practice's preparation of the summary or explanation. **[Although HIPAA provides that Generations Family Practice may offer to provide a summary or explanation, it is not required to do so. Consider, from a practical standpoint, the likelihood that a patient would prefer a summary or an explanation over access to or a copy of the record and also, if a patient made such a request, who would prepare that summary or explanation and at what cost to Generations Family Practice.]**
6. Generations Family Practice may impose a reasonable, cost-based fee for each request, provided that the fee includes only the cost of:
  - a. Copying, including the cost of supplies (paper, CD, or flash drive if the patient asks for the copy on portable media) and labor (including skilled technical staff time spent to create and copy an electronic file, such as compiling, extracting, scanning, and burning protected health information onto media);
  - b. Postage, when the individual has requested that the copy, or the summary or explanation, be mailed; and
  - c. Preparing an explanation or summary of the protected health information.
7. If Generations Family Practice denies a request for access, Generations Family Practice will inform the patient in writing of the reasons for the denial, the patient's right to have the decision reviewed, if applicable, instructions on how to exercise his or her review rights, and information on how to file a complaint with Generations Family Practice or the Secretary of Health and Human Services. The description of how to file a complaint with Generations Family Practice must include the name, or title, and telephone number of the contact person or office.
8. If the portion of the record on which the denial of access is based reasonably can be segregated, the patient (or patient's representative) must be allowed access to the remainder of the record.
9. A patient has no right of access to the following:
  - a. Psychotherapy notes;
  - b. Information in the patient's medical record in the event that the attending physician has determined that such information, if disclosed to the patient, would be injurious to the patient's well-being (N.C.G.S. § 122C-53(c) and 10 N.C.A.C. 3C.3302(o));
  - c. Information compiled in reasonable anticipation of, or specifically for use in, a civil, criminal, or administrative action or proceeding; and
  - d. Information that may not be disclosed under CLIA.

10. Generations Family Practice may deny a patient access to his or her protected health information, in whole or in part, in the following circumstances:
  - a. Where the patient has no right of access to the information (see section 9, above).
  - b. Where the protected health information was created or obtained by Generations Family Practice in the course of research that includes treatment and the patient has agreed to the denial of access to the information while the research is in progress. The patient's right to access will be reinstated upon completion of the research.
  - c. Where the protected health information requested is contained in records that are subject to the Federal Privacy Act of 1974.
  - d. Where the minor patient's parent or guardian has submitted a request for access to the patient's protected health information regarding treatment of the minor patient for sexually transmitted diseases, pregnancy (not including abortion or sterilization), abuse of controlled substances or alcohol, or mental health treatment, and the minor patient, not the parent or guardian, consented to such treatment. (N.C.G.S. § 90-21.5(a).)
  - e. Where Generations Family Practice does not maintain the protected health information requested, except that if Generations Family Practice knows where such information is maintained, it must inform the patient.
11. Patients have the right to request review of a denial of access in the circumstances listed in sections 9(b) and 10(d), above. An appeal must be submitted in writing and be received within 30 days of the patient being notified of the denial.
12. If a patient requests a review of a denial, Generations Family Practice will provide a designated licensed health care professional, who was not directly involved in the denial, to review any decision to deny access. This designated reviewing official must decide, within a reasonable period of time, whether to uphold the denial of the access requested. Generations Family Practice will promptly provide written notice to the patient of the reviewer's decision and take other action as required by this policy to carry out the designated reviewing official's determination.
13. Generations Family Practice must document the protected health information that is subject to access by patients and the titles of the persons or offices responsible for receiving and processing requests for access by individuals. This documentation must be retained by Generations Family Practice for six (6) years.

**RESPONSIBILITY:**

Responsibility for the content and administration of this policy resides with Generations Family Practice's Health Information Manager.

**ENFORCEMENT:**

Violation of patient confidentiality policies will be grounds for disciplinary action, up to and including termination. In addition, persons violating patient confidentiality practices may be subject to civil and criminal liability under applicable law.

**APPROVED FORMS:**

- Form \_\_\_\_\_, Authorization for Use/Disclosure of Protected Health Information
- Form \_\_\_\_\_, Request for Access of Health Information
- Form \_\_\_\_\_, Letter Approving Requested Access to Record
- Form \_\_\_\_\_, Letter Denying Requested Access to Record
- Form \_\_\_\_\_, Letter of Reviewing Official's Approval of Request for Access to Records
- Form \_\_\_\_\_, Letter of Reviewing Official's Denial of Request for Access to Records
- Form \_\_\_\_\_, Letter Explaining Delay in Processing Request