

<b>POLICIES AND PROCEDURES</b>
<b>TOPIC:</b> Patient Access to Protected Health Information
<b>DOCUMENT NUMBER:</b> 700
<b>EFFECTIVE DATE:</b> January 30, 2014



**I. BACKGROUND AND PURPOSE**

The purpose of this policy is to describe the role of the WVHIN in ensuring that Patients may seek access to their own Protected Health Information.

**II. POLICY**

Both federal and state laws require that Patients be provided with access to their own Protected Health Information, absent certain exceptions provided by these laws. Under the HIPAA Privacy Standards, this right of access applies to any Designated Record Set maintained by a Covered Entity, including a Health Care Provider, Health Plan, or Health Care Clearinghouse. A Designated Record Set simply means any grouping of medical or billing records used to make Treatment or Payment decisions about a Patient. Under West Virginia law, this right of access applies to records maintained by any licensed, certified, or registered Health Care Provider.

The WVHIN is neither a Covered Entity nor a licensed, certified, or registered Health Care Provider. It is not contemplated that the WVHIN will act as a depository of a Designated Record Set containing Protected Health Information for or on behalf of any of its Participating Organizations, but will instead facilitate the exchange of Protected Health Information between Participating Organizations for one or more Permissible Purposes. Participating Organizations are the originators of the Protected Health Information, and maintain the Designated Record Sets in which this information resides. As such, the Participating Organization whose Designated Record Set is being sought by a Patient is the only organization that can logically evaluate the request and determine whether access may be granted.

For example, under the HIPAA Privacy Standards, Patient access to his or her Protected Health Information may be denied if it is determined that such access is reasonably likely to endanger the life or physical safety of, or cause substantial harm to, the Patient or another person. Only the Participating Organization can make such a determination. Access may also be denied to Psychotherapy Notes, or to information compiled in reasonable anticipation of a legal proceeding.

Accordingly, if a Patient makes a request to the WVHIN for access to his or her Protected Health Information, the WVHIN will forward that request in writing to the Patient within 10

business days informing the patient to address the request to the applicable Participating Organization(s). The Participating Organization(s) will be solely responsible for making all determinations regarding the grant or denial of the request for access, and for ultimately providing such access, from its own Designated Record Set.

Should the WVHIN ever maintain a Designated Record Set containing Protected Health Information for or on behalf of a Participating Organization, the WVHIN will make that information available to the Participating Organization within 10 business days after receiving any Patient's request for access to allow the Participating Organization to determine whether to grant or deny the Patient's request for access. Again, it will ultimately be the responsibility of the Participating Organization to provide such access to the Patient.

Any Patient who elects to register for access to the WVHIN's Patient Portal will be registered as an Authorized User under the policy and procedures for Authorization (see Policy and Procedure Document Number 300). As an Authorized User, the Patient will be able to access his or her own Protected Health Information directly through the WVHIN's Patient Portal.

### **III. PROCEDURES**

#### **A. Patient Responsibilities.**

1. Absent access to the WVHIN's Patient Portal, a Patient must direct all requests for access to his or her own Protected Health Information to the applicable Participating Organization(s).

2. The Patient's right to access applies to his or her Protected Health Information maintained by a Participating Organization(s) in a Designated Record Set.

#### **B. Participating Organization Responsibilities.**

1. Absent access to the WVHIN's Patient Portal, all requests for access to Protected Health Information made by or on behalf of a Patient will be directed in writing to the applicable Participating Organization(s) by the Patient.

2. The applicable Participating Organization(s) will be solely responsible for determining whether to grant or deny a Patient's request for access in compliance with all federal and state legal requirements.

3. If a Patient is determined by the applicable Participating Organization(s) to be entitled to access to some or all of his or her Protected Health Information, then the applicable Participating Organization(s) will be solely responsible for the timely provision of the required access to the Patient.

4. The actual provision of access by the Participating Organization(s) must be accomplished in compliance with all federal and state legal requirements, including but not

limited to, the following requirements of the Health Information Technology for Economic and Clinical Health (HITECH) Act and its implementing regulations.

5. Each Participating Organization will handle a Patient's request to transfer his or her Protected Health Information from the Participating Organization's Designated Record Set to the Patient's Personal Health Record in the same manner as any other request for access by a Patient.

6. After executing a Patient Portal Agreement and being designated as an Authorized User of the WVHIN, a Patient may use the Portal to access his or her Protected Health Information that has been contributed to the Health Information Exchange by any Data Supplier or Full Service Participating Organization.

C. WVHIN Responsibilities.

1. The WVHIN will not directly provide a Patient with access to his or her own Protected Health Information, unless he or she registers for access to the Patient Portal on the WVHIN.

2. Absent access to the Patient Portal, any request for Patient access to Protected Health Information made to the WVHIN will be forwarded in writing to the Patient within 10 business days informing the patient to address the request to the applicable Participating Organization(s) for handling. The WVHIN will notify the Patient with the following message: "Your request to access your own medical records must be sent directly to your Health Care Provider/Plan. Your Health Care Provider/Plan will process this request, not the WVHIN, and any questions that you may have should be addressed to that Provider/Plan."

3. Should the WVHIN ever maintain a Designated Record Set containing Protected Health Information for or on behalf of a Participating Organization, the WVHIN will make that information available to the Participating Organization within 10 business days after receiving any Patient's request for access. The Participating Organization must then determine whether to grant or deny the Patient's request for access, and to ultimately provide the requested access.

4. The WVHIN will allow a Patient to access Protected Health Information contained in his or her Patient Portal directly through the WVHIN after the Patient has executed a Patient Portal Agreement and has been designated as an Authorized User of the WVHIN. A Patient may use the Portal to access his or her Protected Health Information contained within the Health Information Exchange.