

AGENCY POLICY:
ACCESS TO PROTECTED HEALTH INFORMATION FOR PEOPLE WE SUPPORT

SCOPE OF POLICY

This policy applies to all staff members.

STATEMENT OF POLICY

For the most part, the people we support have a right to see information that The Arc has about them. Mostly, they can see information we use to work with and support them.

If they have gotten some information already but can't find it, they can see it anytime. Examples: ISPs, hab plans, rights information, etc. If they ask for help, staff should help them understand what the information means.

Staff should talk to their manager if someone we support or their family member wants:

- Copies of information about them
- To see information that they haven't already gotten. The person might have to ask for what they want to see in writing. Procedures are below. Managers need to follow them.

PROCEDURE

1. Right To Access Records

What Information: The people we support can see PHI that we have in our designated record set. Please see that policy for more information. They can also get copies of that information. This includes PHI that our business associates have. Please see that policy for more information on business associates.

Except for information they've already gotten, people we support should ask in writing to see their PHI.

People have this right as long as we have their information in the designated records set.

There are some cases where we might not let people see their information. Those are talked about below.

If a guardian or committee for someone we support asks for information and the person is 18 or older, we will let them know about the request. We will make sure we understand what the person is asking for before we get it to them.

2. Response Time

Staff should respond to the request as soon as possible. There are timelines that need to be met. Staff need to meet those timelines. Here they are:

To inspect records: Respond to request in 10 business days of when we got the request.

To get copies of records that are on-site: Respond within 30 days. We can go another 30 days if we're having a hard time getting all the records together.

To get copies of records that are off-site: Respond within 60 days. We can go another 30 days if we're having a hard time getting all the records together.

3. Letting people we support have access to record:

We can only let people we support have access if we follow this policy. We need to let the person know that they will be able to have access to records. We can do this in person, by phone or in writing. If they want to just look at the records, we need to tell them how to schedule that. If they want copies, we need to tell them how we will do that for them. This includes how they will be able to get their copies.

Before they can look at records or get copies, they need to show ID that proves who they are. If it's a family member, we need to make sure they have a right to get the information. We'll do that before we let them see the PHI or get copies.

Staff should ask the person if they want support in looking through the records. If they say no, staff still needs to stay in the room. That is to make sure that the person doesn't do anything to the record, like take things out of it or change it. We can't charge people any money to look at records.

If someone wants copies of PHI, we need to give it to them in the way they want it. Example, if we have electronic PHI and they want it sent electronically, we need to do that. If staff need help to do that, they should ask their manager. If they want paper copies, we would do that for them. We can charge up to \$1.00 per page if we're making copies for a lawyer or an insurance company. We can charge up to \$0.75 per page for people or their family members.

Sometimes, people may want a summary of their PHI. Sometimes, it might make more sense to do that. In those cases, we need to ask if that's OK. If the person agrees, then we can give them a summary instead. If we are not allowed to give them copies of their actual PHI, we have to provide them a summary if they ask.

We have the right to ask the person to pay for postage if we mail information to them. We should tell them upfront so they know. At that time, they can decide if they want to pay or not.

If the person cannot pay for either the copies or the postage, we still have to give them the information they asked for.

4. Times when we would not let people see their PHI:

There are some times when we would not let people see their PHI. Here are the reasons:

- We asked them to put it in writing and they refused to
- We don't have the information they are looking for
- They are asking to see psychotherapy notes. Please see that policy for more information.

- We got the information from someone who wasn't a healthcare provider AND
 - We said that we wouldn't say where we got it AND
 - If we gave the person the information, they would be able to figure out who we got the information from
- Someone could get hurt if we share the information. Example, the information might make someone so mad that they go out and hurt someone. We need to make sure that we keep people safe. This includes the person we support, their family members, and others in the community. A doctor, nurse or other clinician is the only one who can decide if this is the case. Just because something might be upsetting isn't a good enough reason. Same thing if it's something they don't want to hear.
- If someone wants the information so they can sue us. We don't have to give them information to help them do that.

If we can provide some of the information but not all, we need to give them everything that we can. We would have to give them a summary of the rest of the information.

There is a form that staff should use if they are saying they can't give the information. This is called a Notice of Denial. You can find this at the end of the policy. We need to include the following in the notice:

- Check the box for why we can't share the info
 - If we can't share it because we don't have it, if we know someone who might, we need to tell them that.
 - If we can give them some but not all of the information, we have to tell them what information we can and what information we can't share.
 - How to schedule a time to look at (inspect) information
 - How to schedule a time to pick up copies
5. Review process. If we tell someone they can't get the information, they can ask us to take another look and see. This is a formal process called an appeal. There are 3 different levels of appeal.

First Level of Review. The first appeal would be with a licensed health care professional who was not part of the initial decision. They will get all the information they need to review the decision. They should do this as soon as possible. They have to do it within 30 days.

They will let the manager from the program know what their decision is. The manager is the one to let the person know. If the decision is to give them the information, then we need to do that.

If the decision is still to not share the information, the person or their family can ask for a second appeal.

Second Level of Review. If the decision from the first appeal is to not share the information, then the person can go to the OPWDD Clinical Record Access Review Committee.

- They do this by writing a letter to the Office of Counsel at OPWDD. They won't have to pay anything for this second review.
- If the committee says that we have to share the information, then we will.
- If the committee says that we don't have to share it, then the person can ask for a third appeal through the court system.

Third Level of Review. If the person we support does this, the VP for Quality and Compliance needs to be told. The VP for Quality and Compliance will look over all the information. He will decide if we should share the information or not. He will also talk to our lawyers about whether we can fight the court system. We should not give them the information unless the VP for Quality and Compliance says it's OK to do so.

5. When a family member or personal representative asks for access

Sometimes a family member or personal representative might ask to see PHI for a person we support. We should say it's OK if:

- An MD says that the person can't make their own health care decisions AND
- A family member or personal representative needs to see the information to make health care decisions for them.

We should say it's not OK if:

- A family member or personal representative has asked for information about sexual consent, HIV status, pregnancy information, information on STD/I/Cs, or anything that talks about the sexual behavior of anyone we support who is over age 12. We would need to ask the person if it's OK before we just share it.

If someone is a health care proxy for someone we support, they can have access to any health information unless we think they have been abusive in some way.

We should say it's not OK if:

- Someone could be hurt if the information is shared. Only an MD, nurse or licensed clinician can make this decision.
- An MD thinks that sharing the information about a minor:
 - Could hurt the MD's relationship with the person we support;
 - Could hurt the care that the person gets;
 - Could hurt the person's relationship with their family members

6. Documentation

We have to keep information about these requests for at least 6 years from when it was created.

Effective Date: 4/1/03

Revised:

9/12/08

8/6/10

10/21/11

8/5/15

8/4/17

11/20/18

Sample letter denying access

[Date]

[Name]

[Address]

[City, State, Zip]

Re: Request for access to protected health information

Dear []:

This letter responds to your request to access your protected health information, which we received from you on _____. For the reasons stated below, we are denying your request for access to all or part of this information:

- The request was not in writing
- The information requested is not available in records we use to make decisions about your treatment or benefits. However, this information may be available in records maintained by _____
- You have requested access to psychotherapy notes which are not available for inspection and copying by people served.
- We have obligations to other parties to keep the information you requested confidential. We have determined that granting your request would violate our confidentiality obligations.
- An authorized officer from a correctional institution has certified that granting your request to copy your information would jeopardize the health, safety, security, custody or rehabilitation of you or another person.
- We believe that granting your request is reasonably likely to endanger a person's life or physical safety.
- The information you have requested refers to another person (who is not a health care provider), and we believe that granting your request is reasonably likely to cause substantial harm to that other person.
- You are the personal representative of the person served and we believe that granting your request is reasonably likely to cause substantial harm to the person served or a third person.
- The information you requested was prepared in anticipation of civil or criminal litigation or an administrative proceeding.

This denial applies to all or part of the information you requested. We will provide you with a summary of any information we cannot permit you to access. If we are denying only part

of your request, you will be given complete access to the remaining information after we have excluded the parts which we cannot permit you to access.

You have the right to have this decision reviewed by a licensed health care professional who was not directly involved in our initial decision to deny your request. If you want to exercise this right, please contact the director of this program, the privacy officer, the CEO, the COO, or the VP for Finance and Business Operations. All requests can be mailed to:

The Arc of Monroe County
2060 Brighton-Henrietta Townline Road
Rochester, NY 14623

They can also be submitted by phone at (585) 672-2234. We will comply with the health care professional's decision. If the health care professional agrees with our decision, you will have the opportunity to seek further review by a special committee appointed by the State of New York.

If you believe that we have improperly handled your request to access your protected health information, you may file a complaint with us or with the Secretary of the United States Department of Health and Human Services. To file a complaint with us, please contact the director of this program, the privacy officer, the CEO, the COO, or the VP for Finance and Business Operations. All requests can be submitted at the address and phone number listed above. No one can retaliate against you for filing a complaint.

Thank you.

Sincerely,

[name of sender]