

Stark County Board of Developmental Disabilities

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| HIPAA Procedure 9: HIPAA Denial of Access | Effective: 4/14/2003 |
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Subject: HIPAA Denial of Access

The Compliance Committee Member receiving the completed [HIPAA-1 form](#), is responsible for reviewing the Request to determine if the request should be denied under one of the following reasons.

These situations fall into two (2) broad categories reflected below as A, and B, below:

(A) ***Unreviewable grounds for denying access***: If the Board denies an Individual Served access to the information for one of the following reasons, the Individual Served is not given a right to have the denial reviewed.

- (1) There is no right of access to psychotherapy notes;
- (2) PHI that is compiled in reasonable anticipation of legal proceedings against the Board where the Board has created information/documentation attempted to be accessed. The Privacy Rule is not intended to provide an individual access to documents which would otherwise be protected by the attorney-work product privilege or alter the rules of discovery. Thus, if the PHI is compiled in anticipation of, or for use in, a civil, criminal, or administrative action or proceeding, the Individual Served does not have a right of access to the PHI. NOTE: Notwithstanding, however, the Board cannot use this exception to deny an Individual Served access to their PHI that was contained in the underlying documents used to create the new documentation in anticipation of legal proceedings. Only the newly created documents are protected.
- (3) PHI maintained by a covered entity that is subject to or is exempted from the Clinical Laboratory Improvements Amendments of 1988 ("CLIA"). The Board is not subject to CLIA, consequently, this is inapplicable.
- (4) A correctional institution has the limited right to deny the copying of certain information. This reason does not apply to the Board.
- (5) The Board may deny access to PHI that is obtained in the course of research that includes treatment for the participants when the research is still in progress. Prior to this denial being applicable, the Individual Served must have first agreed to the denial of access when the Individual Served consented to participation in the research, and the Board must have informed the Individual Served that he or she would have a right of access upon completion of the research. If both of these requirements are met, the Board may thereafter deny access to the PHI during the course of the research. Upon completion of the research, the Individual Served must be given the right to inspect and copy the PHI. All research may only be undertaken in compliance with [HIPAA Procedure 23, Use/Disclosure of PHI for Research](#).
- (6) The Board may deny an Individual Served access to PHI if the PHI is contained in records which are also subject to the Federal Privacy Act. This reason does not apply to the Board.

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(7) The Board, in rare circumstances, may deny access to PHI if the information is obtained from someone other than a healthcare provider and that information was obtained under a promise of confidentiality. For example, such information may be gained during group therapy consultation, etc. If granting access to the PHI would be reasonably likely to reveal the source of the information, thus breaching the promise of confidentiality, the Board may deny such access. This provision may not be used to protect information gained from a healthcare professional, even if the health care professional promised confidentiality.

(B) **Reviewable grounds for denying access:** The Board may deny access for the following reasons but the Board must also thereafter grant the Individual Served a review of the denial.

- (1) The Compliance Committee Member, or designee, determined that the access is reasonably likely to endanger the life or physical safety of the individual or another person. The denial must be based on a belief that the access is reasonably likely to result in the individual committing some type of physical violence. The denial may not be made on the basis that the information contained in the PHI is sensitive or there is a potential for emotional or psychological harm if the access is granted.
- (2) The Compliance Committee Member, or designee, may also make a determination to deny access if the PHI makes reference to someone other than the individual, and the access is reasonably likely to cause serious harm to that other person. As with the above circumstance involving confidential sources, the individual referenced in the PHI must be someone other than a healthcare professional. If the PHI makes reference to a second person, and in the exercise of professional judgment, the Compliance Committee Member, or designee, believes the access may likely lead to serious harm to that second individual, the access may be denied.
- (2) The Compliance Committee Member, or designee, may deny the request of a personal representative of a client for access to PHI in certain limited circumstances. The Privacy Rule allows the Board to refuse access to a personal representative if there is a reasonable belief that the individual has been or will be subject to domestic violence, abuse, or neglect by the personal representative, or may be in danger from the personal representative. Additionally, the Compliance Committee Member, or designee, may deny the request if such access is reasonably likely to cause substantial harm to another person. If there is a belief that the personal representative having access to the PHI may cause substantial harm to either the individual or to another person, the Board may deny such access.

If the Board is going to deny the request for access based upon one or more of the reasons discussed above and those reasons include ones for which a review of the denial is granted, the Individual Served has the right to have the denial reviewed by the Privacy Officer, or designee.

