

Both federal and Maryland law must be followed:

Federal Law

Per 45 C.F.R. § 164.502, a covered entity or business associate may disclose an individual's protected health information to that individual.

45 C.F.R. § 164.524 states that:

A covered entity is required to disclose that to the individual unless that information is:

- Psychotherapy notes;
- Information compiled in anticipation of/for use in a legal proceeding; or
- Protected health information that is subject to and exempt from the Clinical Laboratory Improvements Amendments. (*More information on this rule may be provided, upon request.*)

A covered entity may deny access to protected health information, **without an opportunity to review the denial** if:

- The information falls under any of the categories listed above;
- The covered entity is a correctional institution or the provider is acting under the direction of the correctional institution **and**
 - that information would jeopardize the health, safety, security, custody, or rehabilitation of the individual or another inmate
 - or threaten the safety of anyone at the correctional institution or anyone responsible for inmate transportation;
- The protected health information was created or obtained in the course of research, the individual consented to the denial beforehand, and the individual's access will be reinstated upon the completion of research;
- The individual's health records are subject to the Privacy Act (*More information on this rule may be provided, upon request*); or
- The health information was obtained by a non-provider, under a promise of confidentiality, and access would reveal the confidential source.

A covered entity may deny access to protected health information, but **must provide an opportunity to review the denial** if:

- A licensed health care professional reasonably determines that access would endanger the life or physical safety of the individual or another person;
- The protected health information references a non-provider and a licensed health care professional reasonably determines that access would cause substantial harm to said non-provider; or

- The request for access is made by the **individual's personal representative** and a licensed health care professional has reasonably determined that access would cause substantial harm to the individual or another person.

Per 45 C.F.R. §164.502:

A **personal representative** is a person who has the legal authority to act on behalf of an adult individual in making decisions related to health care. **A personal representative will be treated as the individual himself** for purposes of protected health information. Thus, if the personal representative requests access to the protected health information, the covered entity must act as if the individual had requested the information **EXCEPT** in the following circumstance:

Abuse, Neglect, Endangerment

- The covered entity reasonably believes that the individual is or has been subject to domestic violence, abuse, or neglect by the personal representative;
- Treating the personal representative as the individual would endanger the individual; and
- The covered entity determines that it is not in the individual's best interest to give the personal representative access to the protected health information.

Denial procedures may be provided, upon request.

Maryland Law

MD Code, Health §4-301; MD Code, Health §4-303; MD Code, Health §4-308

Generally, a provider who receives an authorization of disclosure by the "person in interest" must disclose the medical records. The "person in interest" can either be the adult to whom the record pertains, or a person authorized to consent to health care for said adult. Therefore, if the adult or a person authorized to consent to health care for the adult authorizes the disclosure, then the provider shall disclose the record.

However, according to §4-308 of the Maryland Code: Health, if a health care provider, in good faith, does not disclose a medical record, the provider is not liable in any legal proceeding that arises from the nondisclosure.