

# **CHAPTER 13**

## **THE RIGHT TO REQUEST AN AMENDMENT OF PROTECTED HEALTH INFORMATION**

### **I. GENERAL RULE**

An individual, who is the subject of Protected Health Information (PHI) maintained by DMH in a Designated Record Set, or his/her Personal Representative (PR), if any, has the right to request an amendment to his/her PHI, if it is incomplete or inaccurate. This right exists for so long as the PHI is maintained by DMH and it can be exercised at any time.

### **II. DMH PROCEDURES FOR RESPONDING TO REQUESTS TO AMEND PHI**

#### **A. Who May Request an Amendment to PHI**

Any individual who is the subject of PHI that is maintained by DMH in a Designated Record Set has the right to request an amendment of his/her PHI. However, if an individual has a PR, only the PR may make such a request, with the following exceptions that are applicable to Minors:

- 1. 16 and 17 Year Olds Who Voluntarily Admit Themselves to a Facility Pursuant to 104 CMR 27.06.** A 16 or 17 year old who voluntarily admits him or herself to a Facility pursuant to 104 CMR 27.06 may request to amend his/her PHI that concerns his/her admittance, but not to PHI that concerns treatment, unless the exception below is applicable. The Minor's PR may request to amend all of the Minor's PHI maintained by DMH, including the PHI concerning the Minor's admittance.
- 2. Minors Who Consent to Treatment.** If a Minor legally consented to treatment (minor was emancipated, was specifically permitted by Massachusetts law to consent to treatment, or was determined to be a mature Minor), the Minor, rather than the Minor's PR, has the right to request an amendment to the PHI that DMH maintains relevant to such treatment.

#### **B. The Required Format of the Request**

A request must be made in writing using the Request to Amend Protected Health Information Form at the end of this Chapter. It must be signed,

dated and provide a reason for the request. Documentation can be submitted in support of said request. The Request to Amend Protected Health Information Form shall be available, upon request, at each DMH Area and Site Office, Facility and State-Operated Program. It also shall be posted on DMH's Intranet and Internet web pages.

If reasonable accommodations are needed, DMH will honor requests for alternative methods of making requests for amendments. Such requests shall be made to the Administrator-in-Charge of the DMH location where the applicable PHI is maintained.

**C. Where Requests May Be Filed**

A request to amend PHI may be submitted at any DMH Area or Site office, Facility or State-Operated Program. A request shall be date-stamped on receipt and forwarded immediately to the Records Coordinator, or designee, for that office, Facility or State-Operated Program. A request also may be filed directly with the DMH Privacy Officer.

**D. DMH Workforce Members Responsible for Processing a Request to Amend PHI**

A request to amend PHI shall be processed by the DMH Privacy Officer or by the DMH Record Coordinator who first receives the request, or their designees. Nothing in this Chapter shall preclude the Administrator-in-Charge of an Area, Site, Facility or Program from processing a request to amend PHI that is received by his/her respective Area, Site, Facility or Program and/or from designating another to do so.

**E. Procedures for Processing a Request to Amend PHI**

The DMH Workforce Member processing a request to amend PHI shall take the steps listed below. Documentation of the completion of such steps shall be made on page 2 of the Request to Amend Protected Health Information Form.

- 1. Query if the Request Format Is Correct.** Determine if the request is made in the proper format and by the proper individual. (See Sections II.A and B.) A request should be denied if it was not made correctly.
- 2. Query if the PHI is Maintained by DMH.** Determine if the relevant PHI is maintained by DMH in a Designated Record Set and if so, in what Record Set(s) and in what location(s). If the PHI is not maintained by DMH in a Designated Record Set, the request should be denied.

3. **Query if the PHI Was Created by DMH.** Determine if the relevant PHI was created by DMH or a third party and, if created by a third party, if that third party still exists. If the PHI was not created by DMH and the creator still exists, the request should be denied. If the PHI was not created by DMH, but the creator does not still exist, the request shall be processed by DMH.
4. **Query if the Requester Has Access to the PHI.** Determine if the individual or PR has the right to access the PHI to be amended. See Section II.B. of Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH. If the individual making the amendment request does not have the right to access the PHI, the request should be denied.
5. **Query if the PHI is Accurate and Complete.** Determine if the PHI is accurate and complete. At a minimum, the following individuals must be consulted:
  - a. The creator of the PHI, or the person currently in the same or similar position as the creator; and
  - b. The creator's supervisor or the person in the same or similar position as the creator's supervisor.

If the PHI is accurate and complete, the request should be denied.

**6. Obtain Required Sign-Offs.**

- a. **All Requests.** All requests for amendments must be approved by:
  - i. The Area Director, or designee, if the applicable PHI is maintained by an Area Office; or
  - ii. The Site Director, or designee, if the applicable PHI is maintained by a Site Office; or
  - iii. The Administrator-in-Charge and the Facility Medical Director, or their designees, if the applicable PHI is maintained by a Facility; or
  - iv. The Program Director; or
  - v. The Division Head, or designee, if the applicable PHI is maintained by a Division of Central Office.
- b. **Additional Requirements for Medical Record.** If the applicable PHI is maintained in a medical record (See Chapter 5, Designated Record Sets), a request can be approved only if reviewed and agreed to by the applicable Area or Facility medical director or a

Licensed Health Care Professional designated by the Facility or Area medical director.

7. **Coordination with Other DMH Locations.** If a request involves PHI that is maintained in several different DMH locations, the DMH Work Force Member processing the request must work with the Records Coordinators and the Administrators-in-Charge of the other applicable locations and/or the DMH Privacy Officer, to determine what will be the DMH response to the request and, if required, to amend the PHI maintained by such locations.
8. **Response to the Request.** The response to the request must be made in the manner as set forth in Sections II.G. And H. and within the time frame set forth in Section II.F.

**F. Time Frame for Processing a Request**

Within sixty (60) days of receiving a request, the DMH Workforce Member processing the request must take one of the following actions:

1. Send an approval notice (Section II.G.).
2. Send a denial notice (Section II.H.).
3. Send a notice of an extension (Section II.F.3). DMH can extend the time to act on a request for up to 30 days if the requester is notified in writing within 60 days of receiving the request, which includes:
  - a. the reason for the delay; and
  - b. the date when a responsive action will be taken.

Only one extension may be made per request. However, a response must be provided in all cases within 90 days of the receipt of the request. The Request to Amend Protected Health Information Extension Letter at the end of this Chapter can be used for this purpose.

4. A combination of the above, as is appropriate.

**G. Request Approved in Full or in Part**

**1. Notice of Approval**

- a. **Approved in Full.** If the proposed amendment is approved in full, the DMH Workforce Member who processed the request, or designee, shall notify the requester using the Request to Amend

Protected Health Information Approved in Full Letter at the end of this Chapter. The notification also shall ask the requester to identify the persons or organizations he/she want DMH to notify of the amendment and shall identify those persons or organizations that DMH knows previously received the relevant PHI from DMH, if any, to determine if the requester wants DMH to notify any or all of them of the amendment.

- b. **Approved in Part and Denied in Part.** If the proposed amendment is approved in part and denied in part, the individual who filed the request shall be notified using the Request to Amend Protected Health Information Approved/Denied in Part Letter, that is included at the end of this Chapter.

- 2. **Amending the PHI.** The appropriate DMH Workforce Member, physician, medical records clerk, case manager, etc. as determined by the applicable Administrator-in-Charge, shall amend the PHI as requested by inserting the amendment or providing a link to the amendment at the site of the original PHI that is the subject of the request. If done by link, the amendment must be documented in the same section of the record as the original PHI.

By either method, the disputed PHI must be clearly identified, so that a person reviewing the applicable record knows that the PHI has been amended.

With regard to inpatient records and case management records, the integrity of the original record is to be maintained.

- 3. **Notifying others of PHI Amendment.** The DMH Workforce Member who processed the request, or designee, shall make a reasonable effort to inform and provide a copy of the amendment within a reasonable time frame to:
  - a. The persons and organizations identified by the requester as having received the original PHI from DMH and whom the requester agrees shall be provided a copy of the amendment by DMH. The requester may identify such persons and organizations in his/her original request for amending the PHI and/or in response to DMH notice approving the amendment.
  - b. The persons and organizations, including Business Associates, that are known by DMH to have the PHI that is the subject of the amendment and that may have relied upon or could foreseeably rely upon such information to the detriment of the individual who is the subject of the PHI.

## **H. Denied in Full or in Part**

- 1. Grounds for Denial.** A request to amend PHI may be denied if the request was not made in the proper format or by the proper individual. A request also may be denied if the PHI:
  - a. was not created by DMH, unless the creator is no longer available to act on the request;
  - b. is not part of a DMH Designated record Set;
  - c. is not accessible to the individual who is requesting the amendment; and/or
  - d. is accurate and complete.
- 2. Notice.** If a request to amend PHI is denied in full, the requester shall be notified of the denial using the Request to Amend Protected Health Information Denied in Full Letter located at the end of this Chapter. If the request is approved in part and denied in part, the Request to Amend Protected Health Information Approved/Denied in Part Letter, located at the end of this Chapter shall be used to notify the requester. The denial must be written in plain language and contain the following:
  - a. The reason for the denial.
  - b. A statement that the requester may submit a written disagreement of the denial.
  - c. A statement that if the requester does not submit a statement of disagreement, he/she may request that DMH provide a copy of the original request for amendment and the denial with any future disclosures of the PHI that was the subject of the request.
  - d. A description of how the individual may file a complaint with DMH and/or the U.S. Secretary of Health and Human Services.

## **I. Statement of Disagreement and Rebuttal**

If a request to amend PHI is denied, the individual or PR who made the request may submit a written statement to DMH disagreeing with the denial. DMH may prepare a written rebuttal to any statement of disagreement that it receives.

1. **Format of Statement of Disagreement.** The statement must be in writing, signed and dated. It cannot exceed one page in length, unless agreed to in writing by the Administrator-in-Charge of the DMH location where the PHI in dispute is maintained. The one-page limit should be waived only if necessary to accommodate a situation that cannot be addressed sufficiently by one page (e.g. the existence of supporting documentation). If the condition is waived, a new reasonable page limit shall be established by the Administrator-in-Charge.
2. **Rebuttal by DMH.** A rebuttal to the statement of disagreement may be filed if determined necessary by:
  - a. The Area Director, or designee, if the PHI at issue is maintained by the Area.
  - b. The Site Director, or designee, if the PHI at issue is maintained by the Site.
  - c. The Administrator-in-Charge in consultation with the Facility Medical Director, if the PHI at issue is maintained at a Facility.
  - d. The Program Director, if the PHI at issue is maintained at a State-Operated Program.
  - e. The Division Head, if a Division of the Central Office maintains the PHI.

If a rebuttal is prepared, a copy must be sent to the individual or PR who filed the statement of disagreement. The individual and PR also must be informed of his/her right to file a complaint with DMH and/or the U.S. Department of Health and Human Services. The Sample Letter Notifying an Individual of the Filing of a Rebuttal included at the end of this Chapter shall be used for this purpose. The rebuttal must be appended or linked to the disputed PHI, as described above in Section II.G.2.

3. **Filing or Recording the Statement of Disagreement and or Rebuttal.** If a statement of disagreement is filed, a notation shall be made as to where the disputed PHI is located, identifying the PHI that is the subject of the dispute, and the following documents shall be appended or linked to the PHI: the original request to amend the PHI, the denial, the statement of disagreement, and the DMH rebuttal to the disagreement, if any. Whenever the PHI in dispute is disclosed by DMH, all appended or linked documents must be disclosed with it.

**J. Request to Include the Request to Amend and DMH's Denial of the Request with all Future Disclosures of the PHI**

If a request to amend PHI is denied, the individual or PR who made the request in lieu of submitting a written statement of disagreement to DMH may request that DMH include the request for amendment and its denial with any subsequent disclosure of the disputed PHI by DMH. If such a request is made, it must be granted. A notation shall be made as to where the disputed PHI is located, identifying the PHI that is the subject of the dispute, and the request for amendment and the denial shall be appended or linked to the PHI. Whenever the PHI in dispute is disclosed by DMH all appended or linked documents must be disclosed with it.

**K. Future Disclosure of the PHI if a Request to Amend is Denied**

- 1. Statement of Disagreement Filed.** If a statement of disagreement is filed, upon any subsequent disclosure of the PHI in dispute, DMH must disclose with the PHI a copy of the request for an amendment, the denial, the statement of disagreement and the DMH rebuttal, if any.
- 2. Request to Include the Request to Amend and the Denial with any Subsequent Disclosure of PHI.** If a statement of disagreement is not filed, but a request is made for DMH to include the request for amendment and its denial with any subsequent disclosure of the PHI by DMH, then such action must be taken.
- 3. Standard Transaction.** When subsequent disclosure is made using a standard transaction that does not permit the additional material to be included, DMH must transmit separately the material required. This includes all additional material: amendments, requests to amend, denials, and statement of disagreements and/or rebuttals.

**L. Documentation and Retention**

All documentation relating to requests by individuals or PRs must be maintained in the individuals' applicable DMH file for so long as the relevant PHI is maintained by DMH in accordance with DMH record disposal schedules.

**III. PROCESSING A NOTIFICATION OF AMENDMENT RECEIVED FROM ANOTHER COVERED ENTITY.**

If DMH receives notification of an amendment of PHI from another Covered Entity, the PHI from said Covered Entity that is maintained by DMH in a Designated Record Set must be amended in the manner as stated above in Section



II.G.2. This applies to all written documentation of the PHI and all electronic documentation. In addition, DMH must inform all Business Associates who might have received such PHI and relied upon it. The notification of the Covered Entity must be in writing and shall be maintained in the applicable individual's DMH record.

#### **IV. LEGAL REFERENCE AND ATTACHMENTS**

HIPAA 45 CFR 164.526

104 CMR 28.09

Request to Amend Protected Health Information Form

Request to Amend Protected Health Information Approved in Full Letter.

Request to Amend Protected Health Information Approved/Denied in Part Letter

Request to Amend Protected Health Information Denied in Full Letter

Sample Letter Notifying an Individual of the Filing of a Rebuttal