In an effort to help covered entities navigate through the requirements for HIPAA patient access to records, the Office for Civil Rights (OCR) released a fact sheet on its website, "Individuals' Right under HIPAA to Access Their Health Information 45 CFR § 164.524." The topic covered in this article should help clarify aspects of when and how it is acceptable to deny patients access to their medical records.

Under certain limited circumstances, a covered entity may deny an individual's request for access to all or a portion of the personal health information (PHI) requested. In some circumstances, an individual has a right to have the denial reviewed by a licensed health care professional designated by the covered entity who did not participate in the original decision to deny.

Unreviewable Grounds for Denial (45 CFR 164.524(a)(2))

- The request is for psychotherapy notes or information compiled in reasonable anticipation of, or for use in, a legal proceeding.
- An inmate requests a copy of their PHI held by a covered entity that is a correctional institution, or health care provider acting under the direction of the institution, and providing the copy would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or other inmates, or the safety of correctional officers, employees, or other persons at the institution or responsible for transporting of the inmate. However, in these cases, an inmate retains the right to inspect their PHI.
- The requested PHI is in a designated record set that is part of a research study that includes treatment (e.g., clinical trial) and is still in progress, provided the individual agreed to the temporary suspension of access when consenting to participate in the research. The individual's right of access is reinstated upon completion of the research.
- The requested PHI is in Privacy Act protected records (i.e., certain records under the control of a federal agency, which may be maintained by a federal agency or a contractor to a federal agency), if the denial of access is consistent with the requirements of the Act.
- The requested PHI was obtained by someone other than a health care provider (e.g., a family member of the individual) under a promise of confidentiality, and providing access to the information would be reasonably likely to reveal the source of the information.
Reviewable Grounds for Denial (45 CFR 164.524(a)(3))

A licensed health care professional has determined in the exercise of professional judgment that:

- The access requested is reasonably likely to endanger the life or physical safety of the individual or another person. This ground for denial does not extend to concerns about psychological or emotional harm (e.g., concerns that the individual will not be able to understand the information or may be upset by it).
- The access requested is reasonably likely to cause substantial harm to a person (other than a health care provider) referenced in the PHI.
- The provision of access to a personal representative of the individual who requests such access is reasonably likely to cause substantial harm to the individual or another person.

Note that a covered entity may not require an individual to provide a reason for requesting access, and the individual's rationale for requesting access, if voluntarily offered or known by the covered entity or business associate, is not a permitted reason to deny access. In addition, a covered entity may not deny access because a business associate of the covered entity, rather than the covered entity itself, maintains the PHI requested by the individual (e.g., the PHI is maintained by the covered entity's electronic health record vendor or is maintained by a records storage company off-site).

Procedures for Denial

If the covered entity denies access, in whole or in part, to PHI requested by the individual, the covered entity must provide a denial in writing to the individual no later than 30 calendar days of the request (or no later than 60 calendar days if the covered entity notified the individual of an extension). See 45 CFR 164.524(b)(2). The denial must be in plain language and describe the basis for denial. The written denial must also include how the individual may submit a complaint to the covered entity or OCR, and if applicable, the individual's right to have the decision reviewed and how to request such a review. See 45 CFR 164.524(d).

If the covered entity (or one of its business associates) does not maintain the PHI requested, but knows where the information is maintained, the covered entity must inform the individual where to direct the request for access. See 45 CFR 164.524(d)(3).

Review of Denial

If the denial was based on a reviewable ground for denial and the individual requests review, the covered entity must promptly refer the request to the designated reviewing official. The reviewing official must determine, within a reasonable period of time, whether to reaffirm or reverse the denial. The covered entity must then promptly provide written notice to the individual of the determination of the reviewing official, as well as take other action as necessary to carry out the determination. See 45 CFR 164.524(d)(4).

Along with a fact sheet, OCR has posted several questions and answers about HIPAA's Access Right on this website https://bit.ly/2HKiNuS.

The FAQs contain several questions with answers to everyday release of information questions. We encourage you to read through the entire list. Here is an example question and answer:

Is a health care provider permitted to deny an individual's request for access because the individual has not paid for health care services provided to the individual?
No. A covered entity may charge an individual who has requested a copy of her PHI a reasonable, cost-based fee for the copy. See 45 CFR 164.524(c)(4). However, a covered entity may not withhold or deny an individual access to her PHI on the grounds that the individual has not paid the bill for health care services the covered entity provided to the individual.

Reference:
https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html