

VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: Access to Individual Information

APPLIES TO: VNS Health Home Care, including the Home Care, and Care Management Organization (CMO) divisions;
VNS Health Personal Care;
VNS Health Behavioral Health, Inc.;
VNS Health Health Plans;
VNS Health Hospice Care; and
Medical Care at Home, P.C. (collectively, “VNS Health”)

POLICY OWNER: Corporate Compliance Department

FIRST ISSUED: August 9, 2005

NUMBER: HIPAA.12

PURPOSE

Each VNS Health entity referenced above, as a covered entity, is required by the Health Information Portability and Accountability Act of 1996, Health Information Technology for Economic and Clinical Health Act, and their respective implementing regulations (“HIPAA”) to provide individuals and their personal representatives with an opportunity to inspect and obtain copies of individuals’ health care information and to request corrections to such health information. The New York Public Health Law contains similar requirements applicable to health care providers. This Policy and Procedure outlines the procedures VNS Health will follow to allow individuals and their personal representatives to access and amend the individual’s health care information.

POLICY AND PROCEDURE

I. ACCESS TO INDIVIDUAL RECORDS

A. Requirements for Individual Access.

1. **General Rule.** VNS Health will provide individuals and their personal representatives with an opportunity to inspect and obtain copies of the individual’s health information contained in (a) medical and billing records, (b) enrollment, payment, claims adjudication, and case or medical management records maintained by or for VNS Health Health Plans, and (c) any other records used in whole or in part to make

decisions about the individual.

2. **Completion of a Written Request.** To obtain access to and/or copies of protected health information (“PHI”), individuals and personal representatives must send a signed written request. All written requests for access to and/or copies of individual health information should be appended to the individual’s medical or member record or scanned or uploaded into the medical record, depending on how the record is maintained. In the case of a request from an individual’s personal representative, either a copy of the individual’s written authorization or the name and address of the personal representative and a notation for the purpose of the disclosure should be appended to the individual’s medical or member record or scanned or uploaded into the medical record, depending on how the record is maintained.
3. **Response Required Within 30 Days or 10 Days.** All requests from individuals or their personal representatives for access to and/or copies of the individual’s health information will be received and processed by VNS Health’s Chief Compliance and Privacy Officer (“Privacy Officer”) or designee. VNS Health will respond to the request and provide the individual or personal representative with the requested access/copies, or written notice of denial, as soon as practicable and in all cases within thirty (30) days of VNS Health’s receipt of the request; provided that VNS Health Providers must allow individuals and their personal representatives to inspect the individual’s medical records within ten (10) days of a request and to provide copies of the individual’s records within a “reasonable time” after the request.
4. **Manner of Access.** VNS Health typically provides requested health information to individuals and their personal representatives by secure email (with a link and instructions to download the requested information in PDF format) or fax via VNS Health’s email-to-fax solution. These methods are provided at no charge to the individual or personal representative. Alternatively, VNS Health may arrange a convenient time for the individual or the individual’s personal representative to inspect a copy of the individual’s health information. An individual or his or her personal representative may also request a copy of the individual’s health information in paper or encrypted flash drive format, subject to payment of a reasonable, cost-based copying or hardware charge (see Section I.A.6. below).
 - (a) If the records requested are maintained electronically and the individual or the individual’s personal representative requests the records electronically, VNS Health will provide copies of the records in the electronic form and format

requested, if readily producible.

(b) If the electronic form and format requested is not readily producible, VNS Health will offer to provide the information in the first of the following alternative manners that it is technically able to support:

- Using certified health IT specified by the individual or the individual's personal representative (such as Certified Electronic Health Record Technology ("CEHRT"));
- Using content and transport standards specified by the individual or the individual's personal representative and published by the federal government or a standards developing organization accredited by the American National Standards Institute; or
- Using an alternative machine-readable format (such as a CSV, JSON, or XML file), including the means to interpret the electronic health information, agreed upon with the individual or the individual's personal representative.

5. **Providing a Written Summary/Explanation.** VNS Health may provide an individual or the individual's personal representative with a summary of health information in lieu of access to the actual records, if the individual or the individual's personal representative agrees in writing to receive such a summary and pay reasonable fees based on the cost of preparing the summary. VNS Health also may provide an individual or the individual's personal representative with a written explanation of the health information to which they are given access, if the individual or the individual's personal representative agrees in writing to receive such an explanation and pay reasonable fees based on the cost of preparing the explanation.

6. **Fees.** Individuals or their personal representatives will not be charged for access to the individual's information (i) through email or other internet-based methods that do not require manual effort (such as personal health apps or standalone/untethered personal health records); (ii) by fax via VNS Health's email-to-fax solution; or (iii) when the information is requested for the purpose of supporting an application, claim or appeal for any government benefit or program, provided that where VNS Health maintains patient information in electronic form, it shall provide the copy in either electronic or paper form, as required by the government benefit or program, or at the request of the individual or the individual's personal representative. VNS Health will charge the individual or the individual's personal representative a reasonable, cost-based fee for

paper or encrypted flash drive copies of the individual's health information, not to exceed \$0.75 per page for paper copies and not to exceed a flat fee of \$6.50 for copies on an encrypted flash drive. However, an individual or the individual's personal representative will not be denied access to the individual's health information solely because of an inability to pay.

Fees charged to attorneys for copies of health information may only include the cost of:

- (a) Copying (either in paper or encrypted USB flash drive format), including the cost of supplies for creating or obtaining the paper copy or encrypted USB flash drive and the labor of copying;
- (b) Postage, when the individual has requested that a copy of individual information or a summary/explanation be mailed; and
- (c) Preparing an explanation or summary of health information, if agreed to by the individual or the individual's personal representative (See Section I.A.5 above).

B. Denial of Individual Access.¹

1. Grounds for Denying Individual Access Without Review By Licensed Health Care Professional.

VNS Health may deny an individual or the individual's personal representative access to the individual's health information based on the following grounds, and the individual or the individual's personal representative will not have a right to have the grounds for this denial reviewed by a licensed health care professional. Therefore, the Privacy Officer or designee must be consulted prior to denying an individual or the individual's personal representative access.

- (a) The information requested is or was compiled in reasonable anticipation of, or for use in, legal or administrative actions or proceedings;

¹ **Note:** Section B lists the grounds for denial of individual access to records under the HIPAA privacy regulations, although this list has been tailored to reflect certain provisions of New York law which may apply. In some instances, the grounds for denial under New York law may be different and may supersede HIPAA requirements. In addition, relevant provisions of New York law or HIPAA may change over time. Therefore, if VNS Health personnel intend to deny an individual access to their individual records, they should first consult with VNS Health's Privacy Officer and/or attorney.

(b) The individual is an inmate in a correctional institution, VNS Health is acting under the direction of the institution, provided that obtaining a copy of the individual's health information would jeopardize the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for transporting the inmate. While VNS Health may deny a request for a copy of the individual's health information in the foregoing circumstances, it will not deny a request to review health information;

(c) The requested health information is or was created or obtained during research that involves treatment. The request may be denied if the research is in progress, provided that the individual agreed to the denial of access when they consented to participate in the relevant research. Additionally, the individual must be informed that their right of access will be reinstated upon completion of the research;

(d) The requested health information is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, and the denial of access meets the requirements of that law; or

(e) The requested health information was obtained from someone other than a health care provider under a promise of confidentiality, and the access requested would be reasonably likely to reveal the source of the information.

2. **Review of Denial of Access By Licensed Health Care Professional.** VNS Health will allow the individual or the individual's personal representative to have a denial of access to the individual's health information reviewed by another licensed health care professional designated by VNS Health who was not consulted on the initial denial of access, if the denial was based on one of the following grounds:

(a) 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;

(b) The protected health information refers to another person (unless such person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

(c) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

If the individual or the individual's personal representative requests a review of a denial, VNS Health will, within ten (10) days of its receipt of the request, transmit the records and necessary information to the designated reviewing party. VNS Health will promptly provide the individual or the individual's personal representative with written notice of the determination by the reviewing health professional and inform the individual or the individual's personal representative that VNS Health must abide by the professional's decision.

3. Requests by Parent and Guardians.

HIPAA requires that a VNS Health treat a "personal representative" as the individual for purposes of the privacy regulations. For unemancipated minors, a "personal representative" includes a parent or legal guardian who has the authority to act on behalf of the minor in making decisions related to health care, except that a parent or guardian may not access a minor's information in the following circumstances:

(a) The minor consents to a health care service, no other consent to such service is required by law (regardless of whether the consent of another person has also been obtained) and the minor has not requested that such person be treated as a personal representative;

(b) The minor may lawfully obtain a health care service without the consent of a parent or guardian and the minor, a court, or another person authorized by law consents to such health care service; or

(c) A parent or guardian assents to an agreement of

confidentiality between a covered health care provider and the minor with respect to a health care service.

Notwithstanding the foregoing, VNS Health may disclose or allow access to health information to a parent or guardian, if an applicable provision of state or other law (including case law) permits or requires the disclosure. VNS Health may not disclose the health information (or grant access to the health information) to a parent or guardian, if an applicable provision of state or other law (including case law) prohibits the disclosure (or the granting of access).²

4. **Determinations by Health Care Professional to Disclose to a Personal Representative.** For purposes of this policy, “personal representative” includes parents and legal guardians, distributees of any deceased subject for whom no personal representative (as defined in the estates, powers and trusts law) has been appointed, or an attorney for any of the foregoing or for the patient’s estate who holds a power of attorney explicitly authorizing the holder to execute a written request for the patient’s information.³ However, it is important to note that, notwithstanding any requirement of HIPAA or any applicable state law, VNS Health may not treat a person as a personal representative of an adult or minor individual if: (a) VNS Health has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse or neglect by such person, or treating such person as a personal representative could endanger the individual; and (b) VNS Health, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative.

Any questions regarding access to health records by personal representatives, parents, guardians or other persons acting *in loco parentis* should be referred to VNS Health’s Privacy Officer or to VNS Health’s attorney.

5. **Extent of Denial.** When denying an individual or the individual’s personal representative access to the individual’s health information for any of the reasons described in this Section above, VNS Health

² **Note:** N.Y. Public Health Law § 18.2(c) prohibits the access of parents or legally appointed guardians to a minor’s health information when a health care provider determines that access to the health information would have a detrimental effect on: (a) the provider’s professional relationship with the minor; (b) the care and treatment of the minor; or (c) the minor’s relationship with his or her parents or guardian. Finally, Public Health Law § 18.3(c) allows VNS Health to notify an adult or minor individual over the age of twelve (12) years old of a parent, guardian or other personal representative’s request for health information, and VNS Health may deny the request if the individual objects to it.

³ See 45 C.F.R. §§ 164.502(g)(1)-(2)); New York Public Health Law § 18.1(g).

will, to the extent possible and legally permissible, give the individual or the individual's personal representative access to any other health information requested.

6. **Written Notice of Denial.** If an individual's or the individual's personal representative's request for access to the individual's health information is denied, in whole or in part, VNS Health will provide the individual or the individual's personal representative with a written denial within ten (10) days of receiving the request. The denial will be in plain language and will describe the reasons for the denial as well as any review rights the individual or the individual's personal representative may have. The written denial also will contain a description of the steps and complaint procedures that the individual or the individual's personal representative may follow to file a complaint with VNS Health (including the name and telephone number of the Privacy Officer or their designee), the New York State Department of Health, and the U.S. Department of Health and Human Services. If VNS Health does not maintain the health information requested by an individual but knows where the requested information is maintained, the written denial should inform the individual where to direct their request.

II. DOCUMENTATION.

VNS Health will maintain documentation of compliance with this policy for six (6) years.

REFERENCES: 45 CFR §§ 164.502(g), 164.524 and 45 CFR §164.526

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|--------------------------------|---------|---------|--------|------------------------------|-----------------------------|---------|--------|---------|
| Reviewed: | 9/2005 | 11/2007 | 9/2013 | 10/2013 | 1/2015 | 11/2016 | 4/2018 | 11/2019 |
| Revised & Approved: | 9/2005 | 11/2007 | 9/2013 | 10/2013 (non-substantive) | 1/2015 (non-substantive) | 11/2016 | 1/2019 | 1/2020 |
| | | | | | | | | |
| Reviewed: | 10/2020 | 10/2021 | 6/2023 | | | | | |
| Revised & Approved: | 3/2021 | 6/2022 | 9/2023 | | | | | |

Attachment A
Sample Letters

Denial Letter to Individual or Individual's Personal Representative

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Denial of Request for Access to Protected Health Information for Patient/Member
Medical Record Number: _____

Dear _____:

Thank you for submitting your request to access the information referenced above. We received your request on _____ [insert date]. The Privacy Office has reviewed and is denying your request because:

- ⚙ We do not maintain this information. Instead, you can contact: [name and address of the health care provider who does maintain the information]
- ⚙ Federal or state law prohibits disclosure of this information to you.
- ⚙ We are unable to verify that you are the personal representative of the individual who is the subject of the information. Please provide proof that you are the individual's personal representative, or provide a completed copy of the following authorization form signed by the individual or the individual's parent, guardian, or other verified personal representative:
https://www.health.ny.gov/health_care/medicaid/redesign/docs/mltc_policy_13-24.pdf.
- ⚙ The information you are trying to access is not a part of the individual's patient/member record, and you do not have a right to access it.
- ⚙ The record no longer exists or cannot be found.
- ⚙ We are denying your request for one of the unreviewable grounds for denial specified at 45 C.F.R. § 164.524(a)(2) because:
_____.
_____.
- ⚙ We are denying your request for one of the reviewable grounds for denial specified at 45 C.F.R. § 164.524(a)(3) because:
_____.
_____.
- ⚙ In accordance with 45 C.F.R. §164.524(a)(4), you have the right to have this decision reviewed by another licensed health care professional. If you wish to make this request, please return this letter to the Privacy Officer and sign here _____. VNS Health will then find a licensed health care professional who was not involved in the original decision to review the denial.
- ⚙ We are denying the request of a parent, legal guardian, or other individual acting in loco parentis of a minor who is the subject of the health information consistent with 45 C.F.R. § 164.502(g)(3) because:
_____.
_____.
- ⚙ We are denying the request of a parent or legally appointed guardian of a minor who is the subject of the information because the requested access would have a detrimental effect on (a) the provider's professional relationship with the minor; (b) the care and treatment of the minor; or (c) the minor's relationship with his or her parents or guardian because:
_____.
_____.
- ⚙ The individual who is the subject of the information is over the age of 12 years old and has objected to disclosure of the requested information to you.

You may file a complaint with VNS Health by contacting the Privacy Office at [ADDRESS] or by calling (212) 609-7884.

If you feel that you would like to appeal this decision to the New York State Department of Health, you may complete the following form: <https://www.health.ny.gov/forms/doh-1989.pdf> and send it to the following address: Access to Patient Information Coordinator; New York State Department of Health; Riverview Center; 150 Broadway Suite 355; Albany, New York 12204-2719.

If you feel that you would like to file a complaint with the Secretary of the U.S. Department of Health and Human Services, you can address your complaint to 200 Independence Avenue, S.W.; Washington, D.C. 20201, or reach the Secretary by phone at (202) 690-7000.

Sincerely,

VNS Health Medical Records Department

Letter of Acceptance to Individual or Individual's Personal Representative (Paper or Encrypted Flash Drive) – Payment Not Yet Received

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Acceptance of Request for Access to Protected Health Information for Patient/Member
Record Number _____

Dear _____:

Thank you for submitting your request to access the information referenced above, which was received _____ [insert date]. The Privacy Office has reviewed and is hereby granting your request, on _____ as specified herein.

In accordance with 45 C.F.R. § 164.524(c)(4) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a fee of [\$0.75 per page] [\$6.50 for an encrypted flash drive that contains the information] has been assessed for copying the information you requested. The associated cost of your request is: _____.

Enclosed please find a copy of the requested protected health information and an invoice for the services stated above. Please provide a check or money order payable to VNS Health for the amount of _____ and submit it to the following address: _____

_____.

Thank you for your

cooperation.

Sincerely,

VNS Health Medical Records Department

Letter of Acceptance to Individual or Individual's Personal Representative (Electronic Protected Health Information in Other Format) – Payment Not Yet Received

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Acceptance of Request for Access to Electronic Protected Health Information for
Patient/Member Record Number _____

Dear _____:

Thank you for submitting your request to access the information referenced above, which was received on _____ [insert date]. The Privacy Office has reviewed and is hereby granting your request, as specified herein. The information you requested is now available for you in the following format [that you requested]⁴: _____

[Consistent with our prior communications with you regarding your request, we have provided the information you requested in the manner above because we were technically unable or could not reach agreement with you to provide the information in the manner you requested.]⁵

You can access the information by _____.

[In accordance with 45 C.F.R. § 164.524(c)(4) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a fee of \$ _____ has been assessed for providing the information you requested.

Please provide a check or money order payable to VNS Health for the amount of _____ and submit it to the following address: _____
_____.]⁶

Thank you for your

cooperation. Sincerely,

⁴ Include the bracketed clause if you are providing the information in the manner that it was requested.

⁵ Include the bracketed clause if you are providing the information in an alternative manner. Please refer to Section I.A.4(b) of this policy for a list of permissible alternative manners in which electronic health information may be provided under the Content and Manner Exception to information blocking.

⁶ Include the bracketed clause if charging a fee. However, as explained in Section I.A.6 of this policy, VNS Health should not charge an individual for electronic access to his or her information through internet-based methods that do not require manual effort, including without limitation through personal health apps, standalone/untethered personal health records, and email.



VNS Health Medical Records Department

Letter of Acceptance to Individual or Individual's Personal Representative (Paper or Encrypted Flash Drive) – Payment Received

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Acceptance of Request for Access to Protected Health Information for Patient/Member
Record Number _____

Dear _____:

Thank you for submitting your request to access the information referenced above, which was received _____ [insert date]. The Privacy Office has reviewed and is hereby granting your request, on _____ as specified herein.

In accordance with 45 C.F.R. § 164.524(c)(4) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a fee of [\$0.75 per page] [\$6.50 for an encrypted flash drive that contains the information] has been assessed for copying the information you requested. The associated cost of your request is: _____. We hereby confirm receipt of your payment of this amount.

Sincerely,

VNS Health Medical Records Department

Letter of Acceptance to Individual or Individual's Personal Representative (Electronic Protected Health Information in Other Format) – Payment Received

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Acceptance of Request for Access to Electronic Protected Health Information for
Patient/Member Record Number _____

Dear _____:

Thank you for submitting your request to access the information referenced above, which was received on _____ [insert date]. The Privacy Office has reviewed and is hereby granting your request, as specified herein. The information you requested is now available for you in the following format [that you requested]⁷: _____

[Consistent with our prior communications with you regarding your request, we have provided the information you requested in the manner above because we were technically unable or could not reach agreement with you to provide the information in the manner you requested.]⁸

You can access the information by _____.

[In accordance with 45 C.F.R. § 164.524(c)(4) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a fee of \$ _____ has been assessed for providing the information you requested. We hereby confirm receipt of your payment of this amount.]⁹

Sincerely,

VNS Health Medical Records Department

⁷ Include the bracketed clause if you are providing the information in the manner that it was requested.

⁸ Include the bracketed clause if you are providing the information in an alternative manner. Please refer to Section I.A.4(b) of this policy for a list of permissible alternative manners in which electronic health information may be provided under the Content and Manner Exception to information blocking.

⁹ Include the bracketed clause if charging a fee. However, as explained in Section I.A.6 of this policy, VNS Health should not charge an individual for electronic access to his or her information through internet-based methods that do not require manual effort, including without limitation through personal health apps, standalone/untethered personal health records, and email.

Requesting Extension from Individual or Individual's Personal Representative¹⁰

[Date]

Via Certified Mail

Patient/Member/Personal Representative Name and Address

Re: Need for Extension in Processing Request for Access to Protected Health Information for
Patient/Member Record Number _____

Dear _____:

Thank you for submitting your request to access the information referenced above, which was received on _____ [insert date].

We are notifying you of the need for a thirty (30) day extension in processing your request for access to the information. This extension is necessary for the following reason(s):

(Insert Explanation/Reason for Extension)

We will notify you of our decision about your request within the next thirty (30) days.

Sincerely,

VNS Health Medical Records Department

¹⁰ Only use this template when VNS Health *cannot* fulfill the request within the original timeframe. Delaying responses when it is not necessary to do so may pose Information Blocking risk. Also note that the Infeasibility Exception to Information Blocking requires you to respond to the requestor within 10 business days if you deny the request due to infeasibility in accordance with the exception.