
SUBJECT: AMENDMENT

GENERAL STANDARD (PRIVACY RULE SECTION 164.526):

AHS health care providers and health plans are generally required to permit individuals (and their personal representatives) to seek amendments to PHI maintained in designated record sets. AHS health care providers and health plans are not required to accept every requested amendment. For example, AHS can deny a requested amendment if it believes that the PHI at issue is already accurate and complete.

In all cases, AHS may require that access requests be made in writing, and that the person seeking the amendment identify a reason to support the requested amendment.

There are very detailed requirements that must be followed when an amendment request is made, and is subsequently accepted or denied by AHS. For example, if AHS accepts an amendment request, it must make the amendment, notify the individual (or his/her personal representative) that the amendment has been accepted, and then take the necessary steps to ensure that others who might need the amendment receive it. If AHS denies an amendment request, it must send a written denial letter that informs the individual (or his/her personal representative) of the right to submit a statement of disagreement, and of other available rights (e.g., the right to have the original request and AHS denial included in any subsequent disclosure of the PHI at issue).

AHS will ensure it appropriately responds to all requests for amendment to PHI covered by the Privacy Rule, and will incorporate the requirements of any other law (e.g., AHS Rule 96-23) in its response.

PRIVACY RULE:

I. Request for Amendment to PHI

- A. An individual has the right to have a CE amend PHI or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record set.
- B. A CE may require individuals to make requests for amendment in writing and to provide a reason to support a requested amendment, provided that it informs individuals in advance of such requirements.
- C. A CE must permit an individual to request that the CE amend the PHI maintained in the designated record set. The CE must act within 60 days after receipt of a request for an amendment to an individual's PHI, as follows:

1. If the CE grants the requested amendment, in whole or in part, it must take the actions required below;
 2. If the CE denies the requested amendment, in whole or in part, it must provide a written denial to the individual, in accordance with the requirements set forth below.
- D. If a CE is unable to act on the amendment within the 60 day time period, then the CE may extend the time for action by no more than 30 days, provided that:
1. Within 60 days from receipt of the request for amendment, the CE provides the individual with a written statement indicating the reasons for the delay and the date by which the CE will complete its action on the request; and
 2. The CE may have only one such extension of time for action on a request for an amendment.

II. Accepting an Amendment

- A. If a CE accepts the requested amendment, in whole or in part, then the CE must comply with the following requirements:
1. The CE must make the appropriate amendment to the PHI or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment, and appending or otherwise providing a link to the location of the amendment;
 2. The CE must inform the individual in a timely manner (i.e., 60-day original or 30-day extended) that the amendment has been accepted, and obtain the individual's identification of and agreement to have the CE notify relevant persons with whom the amendment needs to be shared, in accordance with Paragraph 3 below; and
 3. The CE must make reasonable efforts to inform and provide the amendment within a reasonable time to:
 - a. Persons identified by the individual as having received PHI about him/her and needing the amendment **and**
 - b. Persons, including business associates, that the CE knows have the PHI that is the subject of the amendment and that may have relied (or could foreseeably rely) on such PHI to the detriment of the individual.

III. Denying the Amendment

- A. A CE may deny an individual's request for amendment, if the CE determines that the PHI or record that is the subject of the request:
1. Was not created by the CE, unless the individual provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the requested amendment;
 2. Is not part of the designated record set;
 3. Would not be available for inspection under Section 164.524 of the Privacy Rule (see AHS Standard and Guidelines on "Access"); or
 4. Is accurate and complete.
- B. If the CE denies the requested amendment, in whole or in part, the CE must provide the individual with a clearly stated written denial (in plain language) within the required timeframes (i.e., within the 60-day original or 30-day extended time period). The denial letter must include the following elements:
1. The basis for the denial; and
 2. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement; and
 3. A statement that, if the individual does not submit a statement of disagreement, he/she may request that the CE provide the request for amendment and the denial with any future disclosures of the subject PHI; and
 4. A description of how the individual may formally complain about the denial to:
 - a. The CE (See, the AHS Standard and Guidelines on "Complaints": the description must include the name, or title, and telephone number of the appropriate contact person or office); or
 - b. The Secretary of the Department of Health and Human Services.
- C. A CE must permit an individual to submit to the CE a written statement disagreeing with the denial of all or part of a requested amendment and the basis for the disagreement. The CE may reasonably limit the length of a statement of disagreement.
- D. A CE may prepare a written rebuttal to an individual's statement of disagreement, and must provide a copy of such rebuttal to the individual at issue.

- E. A CE must, as appropriate, identify the record or PHI in the designated record set that is the subject of the disputed amendment and append or otherwise link the following to the designated record set:
 - 1. The individual's request for amendment;
 - 2. The CE's written denial of the request for amendment;
 - 3. The individual's statement of disagreement, if any; and
 - 4. The CE's rebuttal statement, if any.

IV. Future Disclosures

- A. If a statement of disagreement has been submitted by an individual, the CE must include with any subsequent disclosure of PHI to which the disagreement relates, the appended material per Paragraph III E, or at the CE's election, an accurate summary of any such information.
- B. If an individual has not submitted a written statement of disagreement, then the CE must include with any subsequent disclosure of PHI (but only if the individual has requested such action):
 - 1. The individual's request for amendment and its denial; or
 - 2. An accurate summary of such information.
- C. When a subsequent disclosure as described in Paragraphs A or B is made using a standard transaction that does not allow for the additional material to be included with the disclosure, the CE may separately transmit the additional material required by Paragraphs A or B, as applicable, to the recipient of the standard transaction.

V. Actions on Notices of Amendment

If the CE is informed by another covered entity of an amendment to an individual's PHI, then the CE must amend the PHI in designated record sets at the CE.

VI. Documentation Requirements for an Amendment

- A. With respect to amendments, the CE must:
 - 1. Document the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals; and

2. Retain the documentation in written and/or electronic form for a period of six years from the date of its creation or the date when it last was in effect, whichever is later.

GUIDELINES:

1. AHS is aware that Section 4.4. Client Access to Records, of AHS Rule 96-23 generally addresses the right of AHS clients (as defined in Rule 96-23) to amend their health information (“[e]ach department within the Agency shall have written procedures which permit clients to verify personal information they have provided for accuracy and completeness and for placing amendments to the information in their files”). This section of Rule 96-23 is fundamentally consistent with Section 164.526 of the Privacy Rule, and as a result, no separate preemption analysis is required.
2. AHS will require that all requests for amendment to PHI by a patient, beneficiary or his/her personal representative be made in writing, and that they include a reason to support the requested amendment.
3. AHS will contact a patient, beneficiary or his/her personal representative in any situation where the amendment request is not clear from the writing submitted to AHS.
4. AHS will review each written request for amendment with the appropriate persons within AHS to determine whether an amendment request should be granted. All decisions to deny an amendment, in whole or in part, must be reviewed with the Assistant Attorney General or other counsel providing services to the health care provider or health plan desiring to deny a requested amendment.
5. AHS will attempt to respond to each request for amendment to PHI within thirty (30) days, though, if necessary, AHS may have more time, in accordance with the Privacy Rule (as set forth above).
6. AHS has documented the titles of the persons/offices responsible for receiving and processing amendment requests. The Privacy Official maintains such documentation.
7. If an amendment request is denied, in whole or in part, AHS will notify the patient, beneficiary or his/her personal representative of the denial, in writing. A form denial letter is attached to this Standard and Guidelines. The letter has blanks that must be completed to tailor the letter to a specific situation.
8. If an amendment request is accepted, AHS will notify the patient, beneficiary or his/her personal representative of that fact, in writing. A form acceptance letter is attached to this Standard and Guidelines. The letter has blanks that must be completed to tailor the letter to a specific situation.

9. AHS will review the Privacy Rule excerpts set forth above when denying or accepting an amendment request, to ensure that all necessary steps are taken (e.g., disclosing an accepted amendment to all the appropriate persons).

Form Denial Letter

Date

Participant's Name

Address

City, State, Zip

Dear _____,

Thank you for your request to amend your health information, received by _____ on _____. After careful review, we are not able to grant your request for the following reason(s):

- o The information you requested to amend was not created by the _____. Contact the originator of the health information to act upon your request;
- o The information you requested to amend is accurate and complete;
- o The information you requested to amend is not a part of the record you requested be amended; and/or
- o The information you requested to amend includes information you are not permitted to change: *[state type of information - e.g., psychotherapy notes, information compiled in anticipation of civil, criminal or administrative proceedings]*.

You have the right to submit a written statement of disagreement with this decision. Please send it to my attention at the address below. You should include in your statement the reason(s) for your disagreement with our decision. We reserve the right to prepare a rebuttal to your statement of disagreement. If we choose to do so, you will receive a copy of it.

Your statement of disagreement and our rebuttal, if any, will be included in any future disclosures of the disputed health information (as will your original request for amendment, and this letter).

Please be advised that if you choose not to submit a statement of disagreement, we will not provide a copy of your request for amendment and this letter denying your request with any future disclosures of the disputed health information, unless you request that we do so.

If you are dissatisfied with our decision and wish to lodge a formal complaint, you may contact: *[Insert name or title and telephone number of person designated to receive privacy complaints]* or, alternatively, you may file a complaint with the Secretary of the Department of Health and Human Services, at Office for Civil Rights U.S. Department of Health and Human Services, JFK Federal Building - Room 1875, Boston, MA 02203.

Please let me know if you have any questions or concerns.

Sincerely,

Form Acceptance Letter

Date

Participant's Name

Address

City, State, Zip

Dear _____,

Thank you for your request to amend your health information, received by the _____ on _____. Your request has been granted. Your health information has been amended as follows [*at minimum, specify records affected and information appended or linked thereto*]:

Because the accuracy of your health information is so important, we need to know what other individuals or health care entities have received your health information and need to be informed of the above amendment(s). Your identification of individuals/entities who need to be informed of the amendment(s) to your health information will indicate that you give _____ permission to disclose the amended information to them. Please provide their name(s) and addresses to us.

We will also provide the amended information to other persons and Business Associates who we know have the disputed health information and need the amended information for your benefit.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,