Policy Number: HC-10	Page: 1	Of: 3
Title: Individual's Right to Access Records		
Regulatory Authority: HIPAA Regulations, FERPA Regulations, ORC, OAC		
Effective Date: 01/19/2021		
Reviewer/Job Title: Director of Operations		

(A) INDIVIDUAL'S RIGHT TO ACCESS RECORDS

Individuals, served by HCBDD, and their personal representatives, have the right to access and/or inspect the PHI contained in the designated record set, subject to any limitations imposed by law.

Audience

Privacy Officer, Supervisors

Authority

45 CFR 164.524(e) individual's right to access PHI

45 CFR 164.524(b) Time limits on response to access

45 CFR 164.524(c) Form of access

ORC § 1347.08(A)(2) individual's right to access records

OAC § 3301-51-04 Confidentiality, for Education of Students with Special Needs

OAC § 5123:2-1-02(I)(7)(d) County Board Administration – Record Policy – Right of Access

OAC § 5123:2-1-02(I)(7)(a)(iv) County Board Administration – Records policy – Informing individuals receiving services about types and locations of records kept

LEGAL NOTES:

- State laws, HIPAA, and FERPA all provide that individuals receiving services have access to their records.
- State law offers greater right of access than HIPAA, which includes exceptions; consequently the state law applies with no restrictions to an individual's access.

1) **Who May Access Records**
   a) An individual served by the board above the age of 18, the parent/guardian of a child,

the guardian of an adult not able to act on their own behalf, or any "personal representative", of any of those individuals may access the records. See Policy 1070 Minors, Personal Representatives and Deceased Individuals.

b) **3rd Party Review.** An individual or parent may include any 3rd party of their choosing, including an attorney, to review the records.

c) **Presumption of Parental Right to Access Records.** HCBDD may presume that either parent of a minor may have access unless presented with documentation that the parent does not have authority under applicable state law governing such matters as guardianship, separation, or divorce.

2) **Procedure, form and method of access**

a) **Requests for Access.** Requests for access to records shall be directed to the Privacy Officer or his/her designee.

b) **Verification Procedure.** The Privacy Officer shall follow the Verification Procedure to verify the identity of the requestor. For any grant of access to someone other than the parent, the authority of the requestor to access the information shall also be verified. This might include documentation of guardianship or documentation that the individual was appointed a "Personal Representative" under HIPAA.

c) **Forms of Access Requested by the Individual**. The HCBDD shall provide the individual with access to their records in any of the following ways requested by the individual:

i) **By inspection**. HCBDD shall provide a private room for the individual to review the records under the supervision of a HCBDD staff member who will insure that the record is not altered, or

ii) **Photocopy**. HCBDD shall provide a photocopy of the entire record or portion of the record requested.

iii) **Electronic format**. HCBDD shall provide an electronic copy of the information requested if this is feasible; if not, the Privacy Officer or his/her designee shall negotiate an electronic format and transmission method acceptable to both parties and fulfill the request.

1) If the individual requests the information via email and only unsecured email is available, the individual shall be notified that this method is subject to electronic eavesdropping. If the individual is willing to accept the risks, the info shall be sent via email.

2) The board shall honor requests for commonly used media, such as USB Flash drives.

d) **Record of Parties Accessing Records.** The Privacy Officer or his/her designee shall maintain a record of parties accessing records (except the access by the individual or their parent) including the name of the party, the date access was given, and the purpose of access.

3) **Other services/rights of individuals, parents, and guardians**

a) **Explanation and Interpretation of Records.** HCBDD will respond to reasonable requests for explanation and interpretation of the records.

b) **List of Types and Locations of Records Maintained by HCBDD.** Upon request, HCBDD must provide individuals, parents and guardians a list of the types and

locations of records maintained or used by HCBDD.

c) **Known Records Not Maintained by HCBDD**. If the HCBDD does not maintain the PHI that is the subject of the individual's request for access, and the HCBDD knows where the requested information is maintained, the HCBDD must inform the individual where to direct the request for access.

4) **Time for response to request for access**

a) Access shall be granted without unnecessary delay. In particular, requests should be honored prior to any scheduled IEP meeting, hearing, or administrative procedure. Requests in all cases shall be honored within 5 business days.

5) **Fees for copying/electronic media**

a) HCBDD at present has no fees for photocopies, postage or electronic media used to provide records.