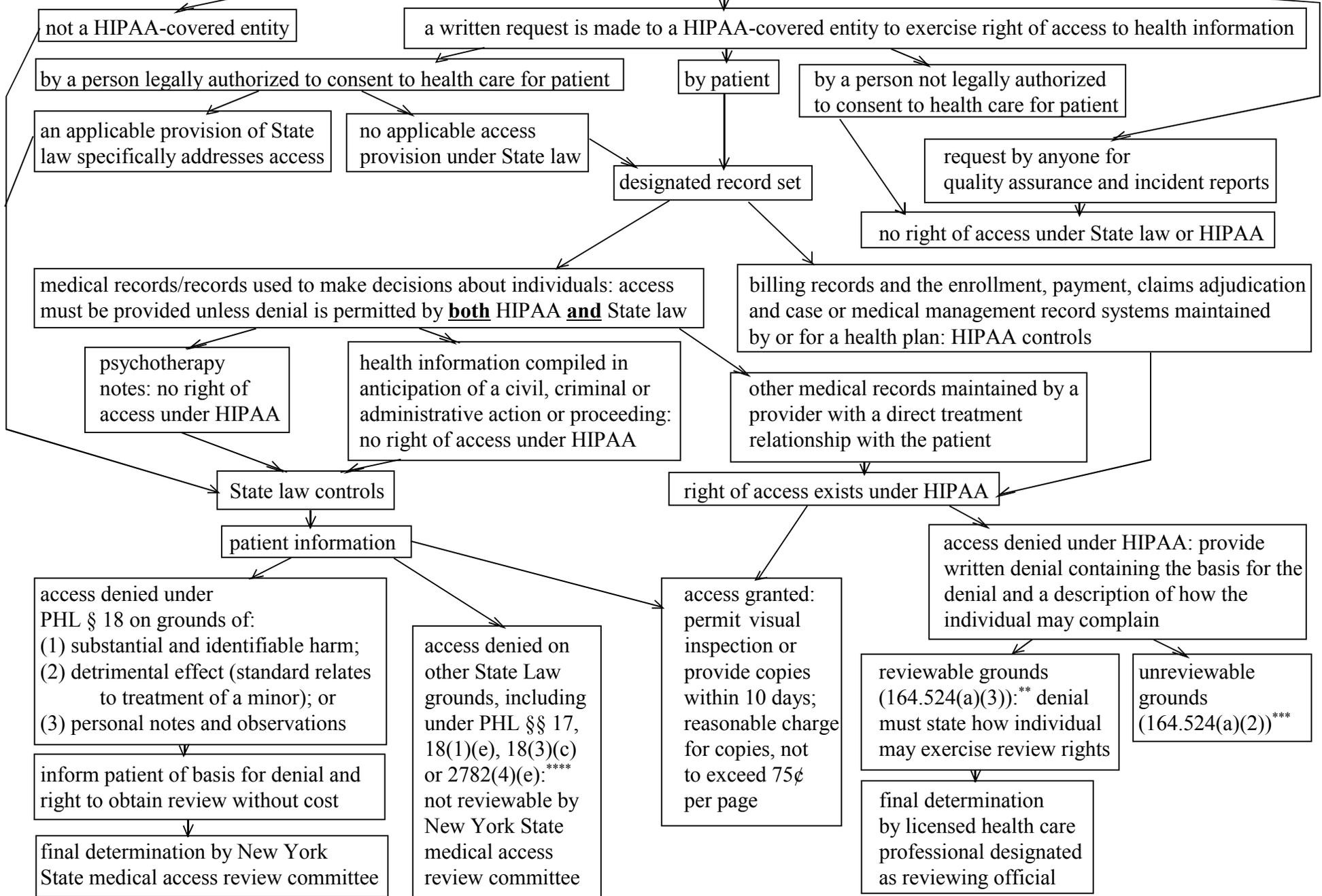


Quick Reference Guide to Rights of Patients to Access Their Own Health Information From Providers* 10/3/02 rev



- *. PHL § 18(1)(b) defines a "health care provider" as a health care facility (hospital, home care services agency, hospice, health maintenance organization or shared health facility) or a health care practitioner (physician, physician assistant, specialist assistant, chiropractor, dentist, dental hygienist, physical therapist, physical therapist assistant, nurse, podiatrist, optometrist, ophthalmic dispenser, psychologist, social worker, occupational therapist, speech-language pathologist, speech-language audiologist or midwife).
- ** The following are reviewable grounds for denial: (1) 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; (2) the protected health information makes reference to another person (unless such other 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 (3) 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.
- *** The following are unreviewable grounds for denial: (1) there is no right of access under HIPAA; (2) a covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate; (3) an individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research; (4) an individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law; and (5) an individual's access may be denied if the protected 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.
- **** Under PHL § 17, "records concerning the treatment of an infant patient for venereal disease or the performance of an abortion operation upon such infant patient shall not be released or in any manner be made available to the parent or guardian of such infant."

PHL § 18(1)(e) excludes from the definition of "patient information" clinical records maintained or possessed by an OMH, OMRDD or OASAS facility; information maintained by a practitioner, concerning or relating to the prior examination or treatment of a subject received from another practitioner; diagnostic services, except mammography, performed by a practitioner at the request of another health care practitioner; and data disclosed to a practitioner in confidence by other persons on the basis of an express condition that such data would never be disclosed.

Under PHL § 18(3)(c), if a request is made to access information concerning a subject over 12 years old, the practitioner may notify the subject and if the subject objects to disclosure, may deny the request.

Under PHL § 2782(4)(e), a physician shall not make a disclosure of confidential HIV related information to a person consenting to health care for the protected individual if, in the judgment of the physician: (A) the disclosure would not be in the best interest of the protected individual; or (B) the protected individual is authorized pursuant to law to consent to such care and treatment.

This guide is not comprehensive and is not intended to be legal advice. All persons are urged to seek legal guidance when developing HIPAA compliance strategies or when considering specific legal questions.