

Legal Brief

Medical Record Privacy – Patient Right of Access

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of February 1, 2013; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

Subject to limited exceptions, a patient has a right of access to his or her medical records. Practitioners may withhold records under certain circumstances, including when the practitioner believes the release of records could harm the patient or others. The decision to withhold records may be subject to review.

Discussion

Generally, both state law and the HIPAA mandated privacy rules provide that a patient has a right to access his or her medical records as long as they are maintained by the provider. The exceptions to this general rule include: psychotherapy notes, information compiled in anticipation of litigation, and information exempted from access under the Clinical Laboratory Improvements Amendments of 1988 (found at 42 USC §263a and 42 CFR §493.3).

Prior to granting access, the provider may require the patient to make a written request, and if the requested information is maintained and accessible on site, the provider must act on the request within thirty (30) days. Additionally, the information must be provided to the individual in the form or format requested by the individual unless otherwise agreed to by the provider and the patient. The parties may also agree to the production of a summary of the records versus copies of all records. Reasonable copying, postage, and summary preparation costs are all recoverable by the covered entity from the requesting individual.

A provider may refuse to provide the patient access to records, and the patient has no right to seek a review of that denial if: (i) the records are of a kind expressly excluded as described above, or (ii) the records relate to an inmate in a correctional institution and obtaining such records would jeopardize the health, safety, security, custody, or rehabilitation of the individual or any other at the institution, or (iii) the records relate to research and the patient agreed to suspension of access rights prior to participation in the research, or (iv) the records were received by the practitioner from a third party under a confidentiality agreement. 45 CFR §164.524.

Under some circumstances, a provider may refuse to provide the patient access to records, but the patient has a right for the denial to be reviewed as described below. Refusals subject to review include: (i) when the practitioner believes, in the exercise of professional judgment, that access would be reasonably likely to endanger the life or physical safety of the patient or some other person, (ii) if the record makes reference to another person other than a health care provider and the practitioner believes that such access is reasonably likely to cause substantial harm to the other person, or (iii) if the request is made by a patient's personal representative and the practitioner believes that such access is likely to result in

substantial harm to the patient or another person. If a review is requested, it must be conducted by a licensed care professional who is designated by the provider to act as a reviewing official and who did not participate in the original decision to deny.

The HIPAA privacy rules also permit an individual to request that the provider amend protected health information. A provider must act on such a request within sixty (60) days. The provider may deny the amendment request only under the following circumstances: (i) if the records were not created by the provider to which the request is directed, (ii) if the subject records are not part of records maintained by a provider that are used to make decisions about the care of an individual, or part of a provider's billing records, (iii) if the records are not of the kind available for inspection by the patient, or (iv) if the records are found to be accurate and complete.

Conclusion

If a patient complies with the provider's access protocols, protected health information is generally accessible by the patients. The rule of accessibility has limited exceptions. The ability of a provider to deny a request for access is also limited and may be subject to review.

Cross-References

Medical Record Privacy – Covered Entities
Medical Record Privacy – Disclosure with Patient Consent
Medical Record Privacy – Protected Health Information



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