

HARTSOUGH DERMATOLOGY

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Inspect and Copy PHI Individual Rights

Introduction

One section of the Privacy Rule addresses the right of individuals to inspect and copy PHI.¹ In general, a covered entity – including a physician – is required to allow an individual access to inspect and obtain a copy of protected health information (PHI) about the individual for as long as the information is maintained. The information must be maintained in a “designated record set.” A “designated record set” is a group of records maintained by or for a covered entity that is 1) the medical records and billing records about individuals maintained by or for a covered health care provider; 2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or 3) used, in whole or in part, by or for a covered entity to make decisions about individuals. “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

This right does not extend to:

- psychotherapy notes;
- information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
- information maintained by a covered entity that is subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law, or exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).

A covered entity may also deny access for several specific reasons listed in the Privacy Rule (see below).

Policy

The practice allows individuals to inspect and copy their protected health information (PHI), documents all requests, responds to those requests in a timely fashion, informs individuals of their appeal rights when a request is rejected in whole or in part, and charges a reasonable fee for the copying of records.

¹ § 164.524 – Access of Individuals to Protected Health Information.

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Procedure

Submission of Requests for Inspection and Copying of PHI: Requests for the inspection and copying of records must be sent to the practice in writing. They must be sent to the attention of the practice's Privacy Officer.

Receipt of Request: Upon receipt of a request the practice records the request on the Inspect and Copying Request Log. The log includes, among other things, the date of receipt, the name of the requestor, and the information requested. The Privacy Officer maintains the request with the log.

Review of Request: The practice reviews the request in a timely fashion and acts on a request for access generally within 30 days. The practice may have a single extension of 30 days, if needed to act on the request. The practice will comply with, to the extent required, the requirements relating to the provision of access to certain PHI in electronic format under the HITECH Act § 13405(c). Specifically, if PHI is maintained electronically in a designated record set as defined above and if an individual requests an electronic copy, the practice will provide the individual with access to the PHI in the electronic form and format requested by the individual, if it is readily producible. If the PHI is not readily producible in the form and format requested, the practice will provide access to the PHI in another readable electronic form and format as agreed to between the practice and the individual.

Each request will be accepted or denied and the requestor notified in writing. If a request is denied, the requestor is informed if the denial is "reviewable" or not. In any case, the requestor is informed of how to appeal any denial.

If the individual's request for access directs the practice to send a copy of PHI directly to another person, the practice will provide a copy to the person designated by the individual, subject to payment of an appropriate fee (see Appendix ISMS Medical Record Fees Under HIPAA and Illinois Law (updated annually)). The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of PHI.

Unreviewable Grounds for Denial: The practice denies a requestor access to PHI without the opportunity to appeal the decision in the following cases:

- requests for psychotherapy notes;
- information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
- information maintained by the practice that is subject to the Clinical Laboratory exemptions, as provided by the Privacy Rule;
- treatment information created or obtained in the course of research may be temporarily suspended for as long as the research is in progress;
- records that are subject to the Privacy Act, 5 U.S.C. § 552a [records held by the federal government], access may be denied, if the denial of access would meet the requirements of that Act; and

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- if the 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.

If a request falls into one of these categories, the practice will deny the request.

Reviewable Grounds for Denial: When the practice denies access to inspect and copy for any of the following reasons, the requestor is allowed to appeal the decision:

- the practice 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;
- the information makes reference to another person (who is not a health care provider) and the practice has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
- the request for access is made by the individual's personal representative and the practice 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 a request falls into one of these categories, the practice will deny the request and inform the requestor of their right to appeal the decision.

Notification of Denial: If the practice denies access, in whole or in part, to requested information, the practice:

- makes information not denied accessible;
- provides a timely, written denial to the individual in plain language that contains:
 - the reason for the denial;
 - if applicable, a statement of the individual's right to review;
 - a description of how the individual may complain to the practice or to the Secretary, including the telephone number of the practice's Privacy Officer; and
 - if the practice does not maintain the information requested, and the practice knows where the information is maintained, where to direct the request for access.

See Request For Inspection or Copying of Confidential Information Denial Form.

The Privacy Officer maintains the notification with the Inspection and Copying Request Log.

Review of Denial of Access: The practice's Privacy Officer determines, within a reasonable period of time, whether or not to grant the access. A reasonable time period for review of records is no more than 30 days. Further, the practice allows an individual to appeal a "reviewable" denial. The requestor has the right to have the denial reviewed by a licensed health care professional who is designated by the practice as a reviewing official and who did not participate in the original decision to deny. The practice informs the requestor of the decision of the reviewing official and adheres to the decision.

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Charging for Request: The practice charges a reasonable fee based on actual cost of labor, supplies and postage in fulfilling the request. The practice will determine the appropriate charge for providing the requested records and inform the requestor in advance of providing the records. If the requestor agrees to pay the fee in advance, the records will be provided. Otherwise, the records will not be provided, unless the Privacy Officer determines that the charge is burdensome to the requestor.

Illinois law prohibits charges that exceed specified amounts. See Appendix ISMS Medical Record Fees Under HIPAA and Illinois Law (updated annually).

In addition, HIPAA limits the amount that can be charged when a patient requests a copy of his or her medical records to “a reasonable, cost-based fee, provided that the fee includes only the cost of: (i) copying...; (ii) postage...; and (iii) preparing an explanation or summary....” Further, the HITECH Act provides that if the copy (or summary or explanation) is in an electronic form, the fee imposed for providing such information shall not be greater than the practice’s labor costs in responding to the request. HIPAA regulations provide that the fee may include labor for copying the PHI (whether in paper or electronic form) and supplies for creating a paper copy.

The practice calculates the reasonable, cost-based charges allowed under HIPAA.

The practice charges the lesser of the amount allowed under Illinois law and the amount allowed under HIPAA.

Documentation

In accordance with § 164.524(e) the practice allows an individual to inspect and copy all information in the designated record set, except as otherwise provided above. The designated record sets include:

- the patient’s medical record; and
- the patient’s billing record.

The practice will document requests for inspection and copying of PHI on the Inspection and Copying Request Log. This information, along with the request of the PHI, the response from the practice, and any related correspondence, will be retained as required under section §164.630(j) for a period of six years from the date of its creation.