

Explanation of Sample HIPAA Privacy Policy Number 5: Patient Rights

In addition to providing for the protection of the privacy of patient information, the HIPAA Privacy Rule also gives patients certain rights. This explanation and Sample HIPAA Privacy Policy Number 5 discusses the patients' right to request restrictions on uses and disclosures of protected health information, the right to request alternative means of communications, the right to access information, and the right to request amendments to medical information.

Right to Request Restrictions

HIPAA gives patients the right to request that restrictions be placed on the use and/or disclosure of his or her patient information in connection with uses and disclosures for treatment, payment, and operations and when disclosing to family members. Prior to the passage of the HITECH Act, practices had the right to refuse all patient requests for restrictions. However, the HITECH Act created a right for patients who pay out of pocket for a service (and don't want the payment to be counted toward a deductible) to restrict the practice from disclosing information regarding the treatment to a health plan.

For those restrictions that the practice has agreed to, the practice may not terminate a request that was previously granted unless a patient agrees. However, the practice can terminate the agreement with respect to patient information created by the practice or received by the practice after it has informed the patient that it has terminated the agreement (except, as discussed above, where the patient requests restrictions on disclosures to a health plan where the patient has paid out of pocket).

Right to Request Confidential Communications:

The HIPAA Privacy Rule also gives patients the right to request that the practice communicate with a patient by alternate means or at an alternate location. For example, the patient might request to be contacted on a cell phone rather than home phone. If a patient makes such a request, the practice is required to accommodate the request so long as it is a reasonable request (i.e., administratively feasible).

The practice is permitted to require the patient to make all requests for accommodations in writing and can condition the provision of a reasonable accommodation on inquiring with the patient, as appropriate, how payment will be handled.

Access to Medical and Billing Records by the Patient or the Patient's Personal Representative

The HIPAA Privacy Rule requires, with a few exceptions, that practices allow patients to see and copy their own health information including medical records, billing records, and other records which the practice uses to make decisions about the patient. The rule requires that the practice allow patients to inspect their information on-site or receive a copy of the information. If the practice does not maintain the requested information, but knows where the requested information is kept, the practice must inform the patient where to direct the request for access.

A practice is not required to permit the patient access to the following information and can deny the patient access outright without giving the patient an opportunity to appeal the denial of access:

- Psychotherapy notes
- Information compiled by the practice in reasonable anticipation of a civil, criminal or administrative proceeding, such as expert reports or the results of independent medical examinations prepared solely for litigation or an administrative hearing
- Information obtained by the practice from another person (not a health care provider) under the promise of confidentiality if the access requested by the patient would likely reveal the identity of the source of information; and
- Information collected and maintained in the course of research that includes treatment where the patient agreed to the denial of access when consenting for the research study (*Please note that denial under these circumstances can only be temporary and the patient must be afforded access once the research study has been completed*).

If the practice has an in-office laboratory that is governed by CLIA, then the laboratory is required to continue to follow the CLIA rules with respect to providing access of lab results to patients. Also, to the extent that a practice provides services to prisoners at the direction of a correctional institution, the practice may deny access in certain circumstances to protect the health, safety and security of the inmate and/or the correctional facility employees.

A practice is also permitted to deny access to patients for the following reasons, but only if the patient is given an opportunity to appeal the practice's denial:

- A licensed professional has determined that the access requested by the patient is reasonably likely to endanger the life or safety of the patient or another person or to cause substantial harm to another person;
- The request is made by a personal representative and a licensed professional has determined that the requested access to the personal representative is reasonably likely to cause substantial harm to the patient or another person.

If the patient appeals a denial in these circumstances, the denial must be reviewed by a health care professional who was not involved in the original denial.

The practice may charge reasonable fees for copying, postage, and preparation of a summary, but cannot charge for costs of searching for the records.

Covered entities may also comply with HIPAA by providing a summary of the requested information, but only if the patient agrees to accept a summary and agrees ahead of time to accept any charges imposed by the practice for preparation of the summary.

Patients also have the right to request electronic copies of information in a designated record set that is maintained electronically by the practice. If the patient requests that the information be

provided in a particular format, the practice must comply if the information can be readily made available in the format requested by the patient. If the practice cannot readily provide the requested format, the practice can ask the patient to agree to a different format or provide the information in hard copy format for the patient. The practice can charge the patient a reasonable cost based fee for creating the electronic copy (including, for example, the cost of media such as CDs or USB drives).

If the patient wishes to inspect the paper based information instead of receiving a copy, the practice is required to arrange for a convenient time and place for the inspection. The practice would be permitted to have a member of its staff stay with a patient who is on-site inspecting his/her records. However, a practice cannot charge the patient for such supervision.

The practice must act on all patient requests for access or inspection within thirty (30) days of the request by either sending a denial letter or providing the requested access. If the practice cannot meet these time frames, the practice can receive one thirty (30) day extension by sending the patient a letter including the reason for the delay and the date by which the practice will comply with the request.

Requests for Amendments

The HIPAA Privacy Rule also gives patients the right to request that the practice amend the information in a designated record set, including the medical record, billing record or other records used to make decisions about the patient.

The practice may require that the patient submit the request to amend in writing and that the patient provide a reason to support the requested amendment. The practice must either accept or deny a patient's request within sixty (60) days of the request. The practice can obtain one thirty (30) day extension if it provides the patient with written notice of the reason for the delay and the date upon which the information will be provided.

Covered entities are not required to make all amendments requested by the patient. Covered entities are permitted to deny patient requests for amendments in the following circumstances:

- The practice believes that the record is accurate and complete as is;
- Access to the medical record has been denied for one of the reasons discussed above under the access section;
- The information is not part of a designated record set (i.e., not part of the medical records, billing records, or other records used to make decisions about the patient);
- The information was not created by the practice (e.g., medical records from another provider). Please note that in rare circumstances, the practice may amend the information if the provider who created the record is no longer available (e.g., physician retired) and the practice had reason to believe that the record was not accurate or complete.

If the request is denied, the practice is required to provide the patient with a written denial letter explaining the basis for the denial, the right of the patient to submit a written statement disagreeing with the practice, and the right of the patient to ask that his/her statement be included with any future disclosures of the record at issue. The letter must also describe the process for the patient to request the practice to review the denial and describe the process for the patient to file a complaint with the Secretary of the Department of Health and Human Services if the patient chooses.

If the patient submits a written statement of disagreement, the practice is permitted to prepare a rebuttal statement and add the rebuttal to the disputed record at issue. The practice must also provide a copy of its rebuttal directly to the patient. If the practice *agrees* to the requested amendment, the practice must do the following within the 60-day time frame (or 90-days if the extension is requested):

- Make the requested amendment;
- Inform the patient that the amendment has been accepted;
- Obtain from the patient the names of all individuals who received the protected health information, obtain the patient's agreement to notify these individuals of the amendments, and inform the individuals of the amendments;
- Identify and inform all persons or entities who have the information that is the subject of the request who have relied upon this information, or can be expected to rely upon this information in the future to the detriment of the patient.

If a practice receives a notice from another provider that it has amended its medical records in connection with a patient request and the practice has copies of such records within its records, the practice is required to also make the correction in its records. It is important for providers to note that corrections can only be made as legally permitted, e.g., as a properly dated amendment to a medical record.