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"TIPS" Newsletter HIPAA Privacy Series FAQ's

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You need to know about HIPAA Privacy and Security. This is the second in a series of FAQ's about HIPAA Privacy and Security to help you understand your responsibilities under the HIPAA Rules. Are you HIPAA compliant?

HIPAA Privacy and Security, FAQ'sContinued

Amending Health Records

Under HIPAA, can patients change their medical records?

The privacy portion of HIPAA gives patients the right to **request** to amend their records. An individual has the right to have a practice amend protected health information (PHI) or a record about the individual in a designated record set for as long as the information is maintained in the designated record set.

Can the practice deny the request to amend the record?

The request can be denied for one of the following reasons:

The record was not created by the practice, unless the individual provides a reasonable basis to believe that the originator of the protected health information (PHI) is no longer available to act on the request.

The information is not a part of the designated record set.

It would not be available under inspection § 164.524.

It is accurate and complete.

Is there any time limitation for response to a request to amend a record?

The practice must act on an individual's request for an amendment no later than 60 days after the request is received.

Are there requirements if a request to amend a record is approved?

The practice must make the appropriate amendment to the protected health information (PHI) or record that is the subject of the request for amendment by identifying the records in the designated data set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

The practice must inform the individual that the amendment was accepted and obtain the individual's identification of an agreement to notify the relevant persons.

The practice must make reasonable efforts to inform and provide the amendment to appropriate persons within a reasonable time.

Persons, including business associates, who the practice knows have the affected PHI and who may have relied on that information or could foreseeably rely on that information, or has been identified by the individual as needing the amendment, must receive the amendment.

REMEMBER THE ONLY DIFFERENCE BETWEEN APPROVING A REQUEST AND DENYING A REQUEST IS THE WRITTEN DOCUMENTATION. All requests whether denied or approved go into the patient file with the outcome stated. Always maintain the original record whether approved or denied.

Disclosing PHI

Under what circumstances can I use and disclose protected health information (PHI) without authorization?

You are permitted to use or disclose PHI:

To the individual.

To carry out treatment, payment, and health care operations (TPO).

Without written authorization but with an opportunity to agree or disagree prior to the use or release (e.g., a patient directory listing).

When data is de-identified.

When public good permits the use/disclosure.

You are **REQUIRED** to disclose information:

To the individual who is the subject of the records (except as noted in the authorization section).

To the U.S. Department of Health and Human Services (HHS) to investigate compliance with the regulations.

Do I have to tell a patient that I have disclosed his/her protected health information (PHI) without authorization?

While you do not have to tell the patient, sometimes it is appropriate to do so. In the instance where you will be reporting a communicable disease to the authorities, you could inform the patient that you are doing so.

If you make a non-authorized disclosure of PHI, you **MUST** keep track of this disclosure and make the list of such disclosures available to the patient upon written request for six (6) years. You must list the date of disclosure, to whom you disclosed and for what purpose. All disclosures that are not related to treatment, payment, and health care operations (TPO) and disclosed without patient authorization outside of the organization must be accounted for. This accounting of disclosures does not apply to any disclosure prior to (effective date).

What if a patient asks for frequent accounts of disclosure?

The first request in a 12-month period is free of charge, but your practice may charge for additional requests. You should have this practice clearly stated in your Notice of Privacy Practices (NPP) and you should inform the patient of the approximate charge prior to completing the additional requests for disclosure.

Can a patient restrict the use or disclosure of his/her protected health information (PHI)?

A patient has the right to **REQUEST** that the use and disclosure of his/her PHI be restricted for treatment, payment, and health care operations (TPO) as well as restricting disclosure to only certain people, such as certain family members only. **YOU DO NOT HAVE TO AGREE TO THE PATIENT'S REQUEST.** Your patient's restriction request must be in writing, be specific as to what information is covered by this request, whether it covers use, disclosure or both, and to whom these limitations apply.

If your practice agrees to the request, it must honor the request except when overriding laws or emergencies apply.

Patient Access to their Records

Do the doctors have to allow patients to read their own charts?

No. A patient has the right to read his/her own record, but you have the right to refuse this request for the reasons listed below. You may also provide the patient with a chart summary instead of the actual chart. There are specific provisions under HIPAA that give patients the right to inspect or obtain a copy of their health record. In most states, this is already in place under state law.

Are there any exceptions to the provisions allowing patients to read their own charts?

Yes.

Psychotherapy notes.

Information compiled in reasonable anticipation of or for use in a civil, criminal, or administrative action proceeding.

Protected health information (PHI) maintained by a practice subject to Clinical Laboratory Improvements Amendments (CLIA) (to the extent access to an individual would be prohibited by law).

Can the doctors deny patients access to their charts?

Yes, in certain circumstances, which are listed below.

Unreviewable denial:

As limited in exceptions.

Correctional facility can deny part or total access.

In research situations.

If the information was obtained from someone other than a health care provider and if access would compromise an individual providing information under a promise of confidentiality.

Does the patient have the right to appeal a denial?

Yes. They have the right to review by another licensed health professional designated by the practice and who was not a part of the original decision to deny access.

Are there exceptions to the right to appeal a denial?

Yes. There are several circumstances including correctional facilities, Clinical Laboratory Improvements Amendments (CLIA) required information, and certain research situations if access would compromise individual providing information under a promise of confidentiality.

If access is denied, are there any other requirements to be met by the practice?

Yes, the individual must be informed of how to make a formal complaint to the practice and the Secretary of Health and Human Services (HHS).

Can a summary of the information instead of the complete record be provided and meet the access requirement?

Yes, if you believe the information would be difficult to interpret (e.g., billing codes) and you and the requestor agree on the charge in advance.

Can I charge patients for copies of their health care record?

Yes, you can charge reasonable, cost-based fees. The fee, however, may only include the cost of copying (supplies and labor) and postage (if germane). The fee may not include the cost of retrieving the record. You may want to check your respective state statutes or an existing law on charging for copies.

Can I provide access to information from another health care provider that is part of my health care record?

Yes, there is no exclusion.

(to be continued)

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Please visit my website that further explains the HIPAA rules and more about the compliance manuals available.

http://www.iccom.org/index_files/ICCOMProducts.html

email me with any questions you may have: edie@iccom.org