



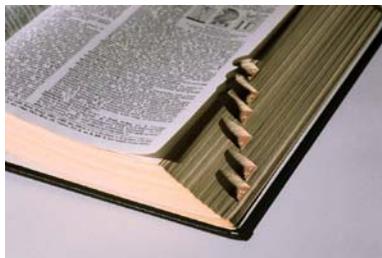
Releasing PHI to Individuals & Others

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September 2017



Important terms



- Protected health information (PHI)
- Individual
- Personal representative



Protected health information (PHI)



Information or records in any form (paper, electronic, spoken) that identifies an individual and relates to any of the following:

- Physical or mental health status or condition
- Provision of health care
- Payment for provision of health care



Individual



- A person who is the subject of PHI (also known as the patient or client)

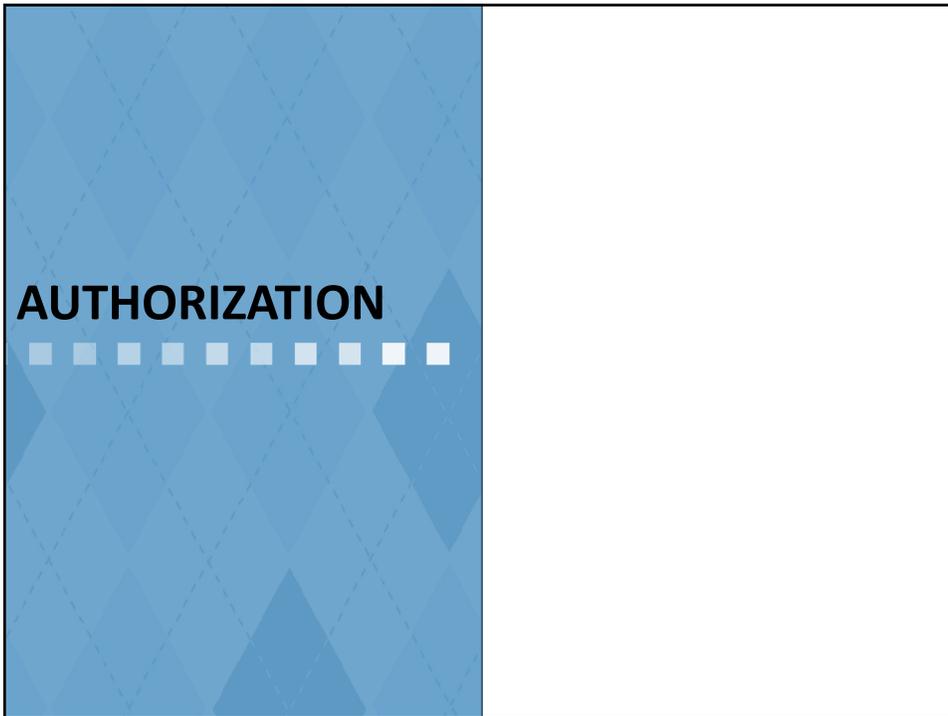
Personal representative

- A person who is legally authorized to make health care decisions for another person
- Examples (not an exhaustive list):
 - Parent of minor child (with some exceptions)
 - Legal guardian
 - Executor or next of kin of deceased person



When can you release information?

- With authorization (45 CFR 164.508)
- Without authorization
 - Treatment, payment, health care operations (45 CFR 164.506)
 - Friends/family involved with care; emergency circumstances; directories (45 CFR 164.510)
 - Disclosures required by law and certain other purposes specifically allowed by privacy rule (45 CFR 164.512)
- When individual exercises the right of access (45 CFR 164.524)



Authorization

- Must be in writing
- Form must include specific elements
- 45 CFR 164.508

<p>Last Name: _____ First Name: _____ MI: _____</p> <p>Patient SSN: _____</p> <p>Date of Birth: ____/____/____</p>	<p>NC Department of Health and Human Services Public Health Nursing and Professional Development</p> <p>PATIENT AUTHORIZATION to Permit Use and Disclosure of Health Information</p>
<p>I am either the patient named above or the patient's legally authorized representative.</p> <p>By signing this form, I authorize _____ [1] Person or class of persons authorized to use or disclose the information to use or disclose to _____ [2] Person or class of persons to whom use or disclosure would be made the following protected health information (identify the information in a specific and meaningful fashion): _____</p> <p>The purpose of the use or disclosure is [3] (describe each purpose of the requested use or disclosure): _____</p> <p>I understand that, with certain exceptions, I have the right to revoke this Authorization at any time. If I want to revoke this authorization, I must do so in writing. The procedure for how I may revoke the authorization, as well as the exceptions to my right to revoke, are explained in _____ [4] Name of covered entity.</p> <p>Notice of Privacy Practices, a copy of which has been provided to me.</p>	

Authorization: Required content

- Description of PHI to be used or disclosed
- Name/specific identification of person/class of persons requesting use or disclosure
- Name/specific identification of person/class of persons to whom use or disclosure may be made
- Description of each purpose of the requested use or disclosure
- Expiration date or event
- Signature and date
- Required statements:
 - Individual may revoke authorization in writing; info about how to do that
 - Whether treatment, payment, enrollment or eligibility for benefits may be conditioned on the authorization
 - Potential for information to be subject to redisclosure by recipient and no longer subjected to HIPAA

Who signs?

- General rule: the “individual”
 - The person who is the subject of the protected health information
 - In other words, the patient or client
- Exception: If individual can’t make their own health care decisions, a “personal representative”
 - A person who is authorized by law to make health care decisions for an individual
 - Includes parents of minor children UNLESS minor’s confidentiality applies
- If personal representative signs, form must include a description of the personal representative’s authority to act for the individual (e.g., parent, legal guardian, etc.)

Minor is treated as “individual” if:	
Minor consents to health care service and no other consent is required by law	Ex: Minor’s consent law (G.S. 90-21.5)
Minor may lawfully obtain care without parental consent and the minor, a court, or another person gives the consent	Ex: NC law allows certain adults other than parents to consent to minor’s abortion, or court may waive parental consent
Minor’s parent agrees to confidentiality between minor and HCP for a health care service	Ex: Pediatrician may ask a parent for permission to examine and/or consult with an adolescent privately

RIGHT OF ACCESS: THE BASICS



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HIPAA for Individuals Filing a Complaint HIPAA for Professionals Newsroom

HHS > HIPAA Home > For Professionals > Privacy > Guidance > Individuals' Right under HIPAA to Access their Health Information

HIPAA for Professionals Text Resize A A A Print Share

Privacy - Summary of the Privacy Rule Guidance Combined Text of All Rules

Security + Breach Notification + Compliance & Enforcement + Special Topics + Patient Safety + Covered Entities & Business Associates +

Individuals' Right under HIPAA to Access their Health Information 45 CFR § 164.524

[Newly Released FAQs on Access Guidance](#)
[New Clarification – \\$6.50 Flat Rate Option is Not a Cap on Fees for Copies of PHI](#)

Introduction

Providing individuals with easy access to their health information empowers them to be more in control of decisions regarding their health and well-being. For example, individuals with access to their health information are better able to monitor chronic conditions, adhere to treatment plans, find and fix errors in their health records, track progress in wellness or disease management programs, and directly contribute their information to research. With the increasing use of and continued advances in health information technology, individuals have ever expanding and innovative opportunities to access their health information electronically, more quickly and easily, in real time and on demand. Putting individuals "in the driver's seat" with respect to their health also is a key component of health reform and the movement to a more patient-centered health care system.

The regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protect the privacy and security of individuals' identifiable health information and establish an array of individual rights with respect to health information, have always recognized the importance of providing individuals with the ability to access and obtain a copy of their health information. With limited exceptions, the HIPAA Privacy Rule (the Privacy Rule) provides individuals with a legal, enforceable right to see and receive copies upon request of the information in their medical and other health

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Right of access

- An individual has a right to inspect and obtain a copy of the individual's PHI that is in a *designated record set*, which includes:
 - Medical records
 - Financial records
 - Other records used to make decisions about the individual
- Includes (but not limited to) patient notes, medications, lab results, x-rays, procedure and discharge notes, billing and payment records, *information that originated with other providers*
- Right may be exercised by a personal representative, consistent with the scope of personal representation

Exceptions to the right of access

- *Psychotherapy notes* – personal notes of a mental health care provider that document or analyze counseling session and are maintained separately from medical record
- Information compiled in anticipation of litigation or administrative proceedings
 - But underlying information still accessible

When can right of access be denied?

Unreviewable grounds

- PHI requested is under one of the exceptions
- PHI associated with research, if individual has agreed in advance to temporary denial as part of research consent
- PHI was obtained from someone other than a health care provider under promise of confidentiality
- Inmate of a correctional institution can be denied a copy (but not access) in some circumstances

Reviewable grounds

- Licensed HCP determines access requested is likely to endanger life or physical safety of individual or other person
- PHI makes reference to another person and licensed HCP determines access is likely to cause substantial harm to that person
- Access request is made by personal representative and licensed HCP determines provision of access is likely to cause harm to individual or another person

What happens if access is denied?

- Make other PHI accessible after excluding denied PHI
- Provide written denial within 30 days containing:
 - Basis for denial
 - Description of CE's complaint procedures, including name, title and phone number of person to call
 - Statement of review rights, if applicable
- What are review rights?
 - Unreviewable ground → no review rights
 - Reviewable ground → Individual has right to have denial reviewed by licensed HCP who is designated by CE to act as a reviewing official and who did not participate in original decision to deny



FAQs about scope of the right

- What if we don't have the PHI requested?
- What if we have it, but it's in storage?
- What if the records requested include records or information received from another provider?
- Can you deny access rights to someone with an unpaid balance?

Individual requests for access

- A CE may require requests for access to be in writing (electronic format counts as written)
- The CE must verify the person's identity
 - Consider alternate methods to accommodate different ways access requested
- However, procedures must not create a barrier to access or cause unreasonable delays

Form and format

- PHI must be provided in the form the individual specifies, if the CE is capable of producing that form
 - If CE maintains the information electronically, at least one type of electronic format
- Individual has right to specify mode of transmission
 - This includes right to have it sent to an unsecured email account, but before doing this CE should give “light warning” about security risks (per HHS advice)

Summary in lieu of records

- CE may provide a summary or an explanation in lieu of records if:
 - The individual agrees in advance to a summary or explanation
 - The individual agrees in advance to any fees that are imposed for creating a summary or explanation

Timeliness

- No later than **30 calendar days** after request
- HHS expectation is it will be “much sooner” if possible
- Possibility of one 30-day extension, but only if the CE is ***unable*** to provide access or a written denial within 30 calendar days

Fees for copies

HIPAA

Allows cost-based fees:

- For labor required to make copies or to create a summary or explanation (but not labor required for search and retrieval of records)
- For supplies and postage, if applicable

Individuals must be informed of fees in advance.

NC GS 90-411

Allows fees for copies of medical records ***but:***

- Applies only to liability claims for personal injury and claims for social security disability
- If applicable:
 - Pay attention to maximum fees it establishes
 - Disregard the part that says you can charge for record searches; HIPAA preempts that provision

Required administrative documentation

CE must document:

- The designated record sets that are subject to individual access
- The title of the person or office responsible for receiving and processing requests for access by individuals.

RIGHT OF ACCESS: DIRECTING PHI TO A THIRD PARTY



45 CFR 164.524(c)(3)(ii)

“If the individual’s request for access directs the covered entity to transmit the copy of protected health information directly to another person designated by the individual, the covered entity must provide the copy to the person designated by the individual. 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 protected health information.”

What does that mean?

- Individual who wants to direct PHI to a third party can use the right of access to do so, rather than an authorization

- The CE must follow the requirements in the right of access rule regarding:
 - Timeliness (30 days)
 - Form and format (paper, electronic)
 - Fee limitations

Form

- Can require it to be in writing, but must:
 - Notify in advance that request must be in writing
 - Accept electronic submission of written forms
 - Have procedures that don't create a barrier to access or cause unreasonable delays
- What about using an authorization form?
 - ??? Authorization form requires some elements that right of access does not. Could that be barrier?
 - Some NC entities still using authorization for this; others have created new form that includes only what's required by right of access

Contents of access form

- Identify the PHI requested
- Clearly identify to whom PHI is to be sent
 - Could be to self or to a third party
- Clearly identify where it is to be sent, in what form (paper, electronic, etc.), and by what method (mail, email, fax, patient pick-up)
 - Not required but good idea: Include statement with caution about requests to send by email on the form
- Signature

Who signs?

- General rule: the “individual”
 - The person who is the subject of the protected health information
 - In other words, the patient or client
- Exception: If individual can’t make their own health care decisions, a “personal representative”
 - A person who is authorized by law to make health care decisions for an individual
 - Includes parents of minor children UNLESS minor’s confidentiality applies
- If personal representative signs, form must include a description of the personal representative’s authority to act for the individual (e.g., parent, legal guardian, etc.)

HIPAA Authorization	Right of Access
<p>Permits, but does not require, a covered entity to disclose PHI</p>	<p>Requires a covered entity to disclose PHI, except where an exception applies</p>
<p>Requires a number of elements and statements, which include a description of who is authorized to make the disclosure and receive the PHI, a specific and meaningful description of the PHI, a description of the purpose of the disclosure, an expiration date or event, signature of the individual authorizing the use or disclosure of her own PHI and the date, information concerning the individual's right to revoke the authorization, and information about the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization.</p>	<p>Must be in writing, signed by the individual, and clearly identify the designated person and where to send the PHI</p>
<p>No timeliness requirement for disclosing the PHI Reasonable safeguards apply (e.g., PHI must be sent securely)</p>	<p>Covered entity must act on request no later than 30 days after the request is received</p>
<p>Reasonable safeguards apply (e.g., PHI must be sent securely)</p>	<p>Reasonable safeguards apply, including a requirement to send securely; however, individual can request transmission by unsecure medium</p>
<p>No limitations on fees that may be charged to the person requesting the PHI; however, if the disclosure constitutes a sale of PHI, the authorization must disclose the fact of remuneration</p>	<p>Fees limited as provided in 45 CFR 164.524(c)(4)</p>

Source: HHS Guidance on Right of Access, at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>