

Long Distance Records: Requesting and Managing the Records of Foreign Nationals

Save to myBoK

By Barry S. Herrin, JD, CHPS, FACHE

There have been many articles written about the increase in "medical tourism" and the practice of US citizens traveling to other countries for organ transplants and other procedures, often at costs vastly lower than those likely to be incurred in the United States. However, there are a significant number of foreign nationals traveling to the United States to receive medical treatment, particularly if a country's national health service has long waiting lists and the potential patients have sufficient funds to pay for the costs of care.

In remarks in December 2011 at the University of Texas at Arlington, Deepak Datta, CEO of Medical Tourism Corporation, told students in the executive MBA program that, notwithstanding the number of Americans that go overseas for medical treatment, the United States "probably benefits the most from the medical tourism industry, as thousands of patients from different parts of the world visit leading American hospitals."

According to Datta, "most of these patients are either wealthy individuals or sponsored by their home governments."¹ In one highly publicized case in 2010, the premier of the Canadian province of Newfoundland flew to Miami to have heart surgery.²

With such patients come health information issues related to the treatment of foreign nationals in the United States-how US providers can obtain health information on foreign patients, the treatment of that information as a part of the US provider's official patient record, and any restrictions on the further use or disclosure of that information due to US or foreign privacy rules.

Accessing Medical Information in Foreign Countries

Many countries have limitations on how treating professionals may exchange health information. For example, Canadian healthcare providers are governed by the Personal Information Protection and Electronic Documents Act, which requires patient consent to release any personal information.

The European Union's Privacy Directive, Directive 95/46/EC, prohibits release of any medical information from a "controller" (all healthcare entities that collect personal information on patients are controllers) to any country without "adequate safeguards"-the United States is such a country-unless an "unambiguous" informed consent of the patient is obtained in advance of the release of the information.

In April 2011 India adopted new privacy regulations known as the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which prohibit the transfer of "sensitive personal information" (including medical information) to any person or entity whose privacy and security standards are not as stringent as the Indian regulations, regardless of the specific informed consent of the person whose information is to be transferred.

The impact of these and similar rules in other countries may mean that direct provider-to-provider transfers of medical information for purposes of treatment may be unavailable. Consequently, domestic providers may be forced to rely on patient-provided records, the completeness and veracity of which may certainly be questionable.

Lack of access to complete records may also result in duplicative testing and delays in treatment while confirmatory diagnostics and evaluations are performed, a situation which in most cases could have been avoided had the domestic provider felt comfortable in relying on the existing patient record.

Incorporating Information from Foreign Records

Records received from a foreign provider are considered part of the domestic provider's designated record set, as defined in the HIPAA privacy rule, if they are used to make decisions about patient care.

This does not mean, necessarily, that these records will be included in the domestic provider's official record of patient care. Some providers believe that only records created by or at the request of its employees and staff members should be included in the official patient record; others believe that all records used in developing a plan of care and in treating the patient, regardless of source, should be included in the official patient record.

State law may require the inclusion of external records in certain circumstances.³ Regardless, information in the designated record set must be disclosed to the patient upon request, and all information in the designated record set will be subject to the HIPAA privacy rule.

Transferring Medical Information to Foreign Providers

Once a foreign patient returns home, his or her local providers may wish to coordinate follow-up care. In this circumstance, the provisions of the HIPAA privacy rule (or more stringent provisions of applicable state laws) will govern the release of information.

There are no distinctions made in HIPAA regarding the nationality of the person whose protected health information is being used or disclosed. Consequently, a domestic provider will be free to make disclosures to foreign providers for treatment, consistent with the provisions of HIPAA, without regard to the strictures of the foreign providers' own privacy laws-unless, of course, the patient has specifically requested a restriction on such disclosures.

It would be a mistake to assume that foreign nationals receiving medical care from domestic providers do not enjoy the same protections and privileges regarding the privacy of their health information. Indeed, the creation of separate systems to handle the records of such individuals would be inviting problems providers do not need and should not court.

However, it would also be a mistake to assume that the ease with which domestic providers routinely obtain medical information from others would exist when requesting records from foreign providers.

Providers treating foreign nationals should establish procedures by which pertinent medical records are received far enough in advance to evaluate them for patient care purposes, and they should be sensitive to the fact that the patient may be seeking care in the United States for reasons beyond the quality of care, including that of seeking medical privacy.

Notes

1. "Medical Tourism Seminar at the University of Texas, USA." Press release. January 4, 2012. www.prweb.com/releases/2012/1/prweb9062631.htm.
2. Pipes, Sally C. "Why Canadian Premier Seeks Health Care in U.S." *San Francisco Chronicle*, February 25, 2010. http://articles.sfgate.com/2010-02-25/opinion/17955314_1_canadian-medicaid-patients-health-care.
3. AHIMA. "Fundamentals of the Legal Health Record and Designated Record Set." Available in the AHIMA Body of Knowledge at www.ahima.org.

Barry Herrin (barry.herrin@smithmoorelaw.com) is an attorney and partner in the Atlanta office of Smith Moore Leatherwood LLP.

Article citation:

Herrin, Barry S.. "Long Distance Records: Requesting and Managing the Records of Foreign Nationals" *Journal of AHIMA* 83, no.4 (April 2012): 32-33.

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.