Patient Access and Amendment to Health Records (2001)

Save to myBoK

This practice brief has been updated. See the latest version here. This version is made available for historical purposes only.

Background

Generally, consumers should be able to view, copy, and amend information collected and maintained about them. Until recently, however, the legal right to access and amend health records was afforded only to patients at healthcare organizations operated by the federal government or patients in states that had passed specific legislation affording them that right.

The Privacy Act of 1974

The Privacy Act of 1974 was designed to give citizens some control over the information collected about them by the federal government. It grants people the right to find out what information has been collected about them, to see and have a copy of that information, and to correct or amend the information. Healthcare organizations operated by the federal government, such as Veteran Administration and Indian Health Services, are bound by the act's provision.

Standards for Privacy of Individually Identifiable Health Information

More recently, the standards for privacy of individually identifiable health information (also known as the HIPAA privacy rule), which applies to healthcare plans, healthcare clearinghouses, and healthcare providers who transmit specific transactions electronically, established an individual's right to access and amend their information in all but a limited number of situations. Essentially, these regulations state that:

An individual has the right to inspect and obtain a copy of the individual's protected health information in a designated record set except for:[1]

- psychotherapy notes
- information compiled in anticipation or use in a civil, criminal, or administration action or proceeding
- protected health information subject to the Clinical Laboratory Improvements Amendments (CLIA) of 1988. CLIA, 42 USC 263a, is the federal law that spells out the requirements for the certification of clinical laboratories
- protected health information exempt from CLIA, pursuant to 42 CFR 493.3(a)(2). In other words, protected health information generated by:
    - facilities or facility components that perform testing for forensic purposes
    - research laboratories that test human specimens but do not report patient-specific results for diagnosis, prevention, treatment, or the assessment of the health of individual patients
    - laboratories certified by the National Institutes on Drug Abuse (NIDA) in which drug testing is performed that meets NIDA guidelines and regulations. However, other testing conducted by a NIDA-certified laboratory is not exempt

In the cases above, the covered entity may deny the individual access without providing an opportunity for review.

A covered entity may also deny an individual access without providing an opportunity for review when:

- the covered entity is a correctional institution or a healthcare provider acting under the direction of the correctional institution and an inmate's request to obtain a copy of protected health information would jeopardize the individual, other

inmates, or the safety of any officer, employee, or other person at the correctional institution, or a person responsible for transporting the inmate
- the individual agreed to temporary denial of access when consenting to participate in research that includes treatment, and the research is not yet complete
- the records are subject to the Privacy Act of 1974 and the denial of access meets the requirements of that law
- the protected health information was obtained from someone other than a healthcare provider under a promise of confidentiality and access would likely reveal the source of the information

A covered entity may also deny an individual access for other reasons, provided that the individual is given a right to have such denials reviewed under the following circumstances:

- a licensed healthcare provider has determined that the access is likely to endanger the life or physical safety of the individual or another person
- the protected health information makes reference to another person who is not a healthcare provider, and a licensed healthcare professional has determined that the access requested is likely to cause substantial harm to such other person
- the request for access is made by the individual's personal representative and a licensed healthcare professional has determined that access is likely to cause substantial harm to the individual or another person

Detailed requirements for denial review are outlined in section 45 CFR, section 164.524.

An individual has the right to request a covered entity amend his or her health information. Covered entities may require individuals to make such requests in writing and to provide a reason to support the amendment, provided that it informs individuals in advance of such requirements.

The covered entity may deny the request if the health information that is the subject of the request:

- was not created by the covered entity, unless the originator is no longer available to act on the request
- is not part of the individual's health record
- would not be accessible to the individual for the reasons stated above
- is accurate and complete

The covered entity must act on the individual's request for amendment no later than 60 days after receipt of the amendment. Provided the covered entity gives the individual a written statement of the reason for the delay, and the date by which the amendment will be processed, the covered entity may have a one-time extension of up to 30 days for an amendment request.

If the request is granted, the covered entity must:

- insert the amendment or provide a link to the amendment at the site of the information that is the subject of the request for amendment
- inform the individual that the amendment is accepted
- obtain the individual's identification of and agreement to have the covered entity notify the relevant persons with whom the amendment needs to be shared
- within a reasonable time frame, make reasonable efforts to provide the amendment to persons identified by the individual, and persons, including business associates, that the covered entity knows have the protected health information that is the subject of the amendment and that may have relied on or could foreseeably rely on the information to the detriment of the individual

If the covered entity denies the requested amendment, it must provide the individual with a timely, written denial written in plain language that contains:

- the basis for the denial
- the individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement
- a statement that if the individual does not submit a statement of disagreement, the individual may request that the covered entity provide the individual's request for amendment and the denial with any future disclosures of protected health information

- a description of how the individual may complain to the covered entity or the secretary of Health and Human Services
- the name or title, and telephone number of the designated contact person who handles complaints for the covered entity

The covered entity must permit the individual to submit to the covered entity a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The covered entity may reasonably limit the length of a statement of disagreement.

The covered entity may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the covered entity must provide a copy to the individual who submitted the statement of disagreement.

The covered entity must, as appropriate, identify the record of protected health information that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the covered entity's denial of the request, the individual's statement of disagreement, if any, and the covered entity's rebuttal, if any.

If a statement of disagreement has been submitted by the individual, the covered entity must include the material appended or an accurate summary of such information with any subsequent disclosure of the protected health information to which the disagreement relates.

If the individual has not submitted a written statement of disagreement, the covered entity must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of protected health information only if the individual has requested such action.

When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included, the covered entity may separately transmit the material required.

A covered entity that is informed by another covered entity of an amendment to an individual's protected health information must amend the protected health information in written or electronic form.

A covered entity must document the titles for the persons or offices responsible for receiving and processing requests for amendments.

State Law

Individual states may also have laws or regulations that address how amendments should be processed, and healthcare organizations must comply with these requirements if they are more stringent than those outlined under the federal standards.

Recommendations

In order to comply with the standards for privacy of individually identifiable health information, it is necessary to:

1. **Study federal and state requirements** for patient access and amendments.

2. **Draft an amendment form, policy, and procedure** that complies with applicable provisions of federal and state law and regulation.

A sample is provided below.

3. To simplify processing and maintain positive patient-provider relationships, consider a **protocol in which amendments are generally accepted**. The form below could serve as a vehicle wherein the individual could submit an amendment and the amendment could be accepted, even when the author disagrees with the amendment. The author of the disputed entry could note why he or she disagrees with the individual on the amendment form.

4. **Educate staff** as to the new policy, procedure, and forms.

5. **Implement the new policy**, procedure, and forms.

6. **Monitor compliance** and implement corrective action where indicated.

Sample Amendment Policy and Procedure

Policy

Patients who believe information in their health records is incomplete or incorrect may request an amendment or correction to the information as outlined below:

Procedure

The patient may approach the author of the entry, point out the error, and ask the author to correct it.

The entry author can correct the entry or add a progress note to clarify content.

Alternatively, the patient can contact the HIM professional.

The HIM professional will assist the patient in completing the health record correction/amendment form.

Upon completion of the form, the HIM professional will give the last copy of the form to the patient, place the third copy in the patient's health record immediately, and route the original and first copy with the record to the author.

If the author chooses to add a comment to the amendment/correction form, the second copy of the form will be routed to the patient with the author's comments.

The original correction/amendment with the author's signature will replace the copy previously placed in the patient's record.

Copies of the correction/amendment form will be furnished to those individuals or organizations the patient deems necessary and documents on the correction/amendment form.

Copies of the correction/amendment form will also be furnished to the facility's business associates or others who have the information subject to the amendment and that may have relied or could might rely on that information to the detriment of the patient.

Disclosures will be noted on the correction/amendment form with a short notation indicating to whom the correction/amendment form was sent, the date, and the staff member processing the disclosure.

When a correction/amendment form is used, the HIM professional will make an entry at the site of the information that is being corrected or amended indicating, "See correction/amendment," and will date and sign that entry. The correction/amendment form will be attached to the incorrect or amended entry.

Whenever a copy of the corrected/amended entry is disclosed, a copy of the correction/amendment form will accompany the disclosed entry.

Sample Health Record Correction/Amendment Form

Request for Correction/Amendment of Health Information

Patient Name: _____ Birth date: _____

Patient Number: _____

Patient Address: _____

Date of Entry to be amended: _____

Type of entry to be amended: _____

Please explain how the entry is incorrect or incomplete. What should the entry say to be more accurate or complete?

_____

_____

_____

Would you like this amendment sent to anyone to whom we may have disclosed the information in the past? If so, please specify the name and address of the organization or individual.

_____ _____

Name Address

_____ _____

Signature of Patient or Legal Representative Date

For Healthcare Organization Use Only:

Date Received _____ Amendment has been: ☐ ✌♍♍♏☐♦♏♎ ☐ 👎♏■♓♏♎

If denied, check reason for denial:

☐ ⌲☝ ♦♋♦ ■☐♦
♍❒♏♋♦♏♎ ♌⍓ ♦♒♓♦
☐❒♑♋■♓⌘♋♦♓☐■
☐ ⌲☝ ♓♦ ■☐♦
♋❖♋♓●♋♌●♏ ♦☐ ♦♒♏
☐♋♦♓♏■♦ ↗☐❒
♓■♦☐♏♍♦♓☐■ ♋♦
❒♏❑◆♓❒♏♎ ♌⍓ ↗♏♎♏❒♋●
●♋♦ ☎♏🖒♑🖒🖃
☐♦⍓♍♒☐♦♒♏❒♋☐⍓ ■☐♦♏♦◑

☐ ⌲☝ ♓♦ ■☐♦ ☐♋❒♦ ☐↗
☐♋♦♓♏■♦’♦ ♎♏♦♓♑■♋♦♏♎
❒♏♍☐❒♎ ♦♏♦
☐ ⌲☝ ♓♦ ♋♍♍◆❒♋♦♏ ♋■♎
♍☐❍☐●♏♦♏

Comments of Healthcare Practitioner:

_____

_____

_____ _____

Name of Staff Member Title

_____ _____

Signature of Healthcare Practitioner Date

Note: This sample form was developed by AHIMA for discussion purposes only. It should not be used without review by your organization's legal counsel to ensure compliance with local and state laws.

Prepared by

Gwen Hughes, RHIA, HIM practice manager

Acknowledgments

Mary Brandt, MBA, RHIA, CHE
Jill Callahan Dennis, JD, RHIA
Simone Handler Hutchinson, Esq.
Cheryl M. Smith, BS, RHIT, CPHQ

Note

1. Medical or billing records about individuals maintained by or for a covered healthcare provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or records used in whole or in part by or for the covered entity to make decisions about individuals.

References

Brandt, Mary. *Release and Disclosure: Guidelines Regarding Maintenance and Disclosure of Health Information*. Chicago: American Health Information Management Association, 1997.

"Standards for the Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 through 164. *Federal Register* 65, no. 250 (December 28, 2000). Available at http://aspe.hhs.gov/admnsimp/.

Article citation:
Hughes, Gwen. "Patient Access and Amendment to Health Records (AHIMA Practice Brief)." *Journal of AHIMA* 72, no.5 (2001): 64S-V.