

# Release of Information: Costs Remain High in a Hybrid, Highly Regulated Environment

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*Release of information will get easier as health IT advances. But for now, it can be a labor-intensive effort requiring more expenses than many outside the process may realize.*

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Healthcare organizations may perform their release of information function internally with employed staff, externally through a vendor, or with a blended approach that utilizes both employed and contracted staffs. Depending on the organization's needs, any of these models may be appropriate.

Once a request for a copy of a patient's medical record is received, a series of steps are involved. The process continues to be labor intensive, requiring staff check for documents in multiple places for some requests.

Added to the regulatory nuances and the processing challenges is the request type. Different request types require different work efforts.

Managing release of information requires an advanced understanding of HIPAA and state privacy rules as they relate to authorizing the release of and logging the disclosure of patient information to the patient or another party. Determining whether a disclosure may or may not occur can be complicated by the legal status of the patient, the age of the patient, the reason the patient had healthcare services, whether the requestor is married or divorced, and whether the records pertain to a deceased patient.

Additionally, an organization's internal policies may further complicate the release of information process. Working through the maze of regulations that often are not recorded in a single section of law challenges the most experienced ROI staff member. Increasingly, managing ROI optimally requires credentialed staff with a credentialed professional providing oversight. Finally, it is not uncommon for the organization's legal counsel to be consulted for some unusual cases. Legislative changes that provide an added layer of protection for patient information also have added cost to the ROI function.

There continue to be costs involved to validate the authorization, retrieve the appropriate portions of the record, copy to media or print them, and forward the copies to the requestor.

## Hybrid Systems Complicate the Process

Health IT is making its way into healthcare facilities; however, right now many healthcare organizations continue to maintain paper records or a hybrid combination of paper and electronic media that can encompass health records, microforms, photos, and lengthy continuous strips of graphic documentation. Healthcare organizations that continue to foster a paper medical record may have implemented a scanning function.

Further, healthcare organizations maintain multiple information systems. They may have a variety of secondary or feeder information systems that are integrated, but more often these systems are interfaced with the primary information system. Documentation for patient care thus is housed in many systems in many forms and may not be stored in, or under the auspices of, the HIM department.

Films or digital images may be stored in radiology or cardiology. Patient documentation stored on strips may be housed in cardiology or obstetrics. Outpatient testing such as respiratory therapy may be stored in that department. The same is true for wound care and various therapy services, which may be stored at the service location due to their recurring nature. Finally,

space constraints may require that the organization purchase or lease its own storage facility or contract with a vendor to store materials.

## Sample Request Scenarios

Some requests are relatively simple to fulfill; others require considerable effort. Patients may ask for a single radiology report and film to take to a physician, or an attorney or a payer may request “any and all” records and claims for a patient. In between those two extremes are a multitude of requests. Each request requires a different level of effort, as illustrated by the following scenarios.

A patient asks for a single radiology report and film of a recently conducted test. This request requires coordination between the HIM department and the radiology department. If the CT exam report has been dictated and transcribed, the report may be available online to print out. If transcribed documents are not stored online, pulling, copying, and returning the record must be done by hand.

An attorney requests “any and all records” on a patient. This request is the most difficult to address. Records for a patient who has had multiple encounters at the facility will be stored on a variety of media, possibly in a variety of departments, including off-site storage. Further, staff must assess requests for “any and all” records against HIPAA’s minimum necessary provision. Requests that exceed the minimum necessary must be sent back to the requestor or further validated.

An insurance company requests copies of physician orders, operative report, and discharge summary. The operative report and discharge summary are likely to be available online. However, finding all physician orders often is a hurdle. If the organization does not use computerized physician order entry (CPOE), the ROI specialist must retrieve the record and copy the orders. Even organizations with CPOE may not use it for all orders. The discharge summary presents another complication if the request arrives before the summary is complete (federal and state laws, and even organizational policies, set varying deadlines for completion). The ROI specialist may need to continually check for the document before being able to fulfill the request.

A state disability determination agency asks for copies of cardiology reports, labs, therapy reports, histories, and discharge summaries. If the records are paper, staff must copy the cardiology reports; print the laboratory reports from the laboratory information system; print the histories and discharge summaries from the transcription system; and copy records housed in the physical therapy department.

A spouse asks for the autopsy report for his deceased wife. The ROI challenge with this request is the time it takes to complete an autopsy report, often up to 90 days. The ROI specialist will be routinely checking the record or system for the report.

## Proposed Changes to the HIPAA Privacy Rule

Each of these scenarios poses unique challenges; however, changes to the HIPAA privacy rule proposed by the Office for Civil Rights would add additional considerations. In July OCR published a notice of proposed rulemaking to enact modifications to HIPAA called for in the American Recovery and Reinvestment Act.<sup>1</sup> Also included were changes OCR had been compiling over the years.

One change proposed would remove protected health information status from health records 50 years following the patient’s death. Another proposal would permit covered entities to disclose decedent records to family members and others involved in the patient’s care or payment of care unless doing so is inconsistent with any known preference of the patient. While both changes may add flexibility to ROI, both would also require changes to process, including a means to establish a requestor’s relationship to the deceased.

OCR also proposes modifications that would require documents electronically stored to be released or disclosed within 30 days. HIPAA currently permits extensions for certain purposes. In the case of an autopsy report or a discharge summary, meeting the new requirement may be difficult or impossible. At press time OCR had not indicated when it would publish a final rule.

## Federal Initiatives Promote Electronic ROI

State and federal requestors have begun to request electronic transmission of copies of records. State disability determination agencies have asked that copies be electronically conveyed to the agencies rather than mailed. The Social Security Administration (SSA) is pursuing a similar requirement using health information exchange. It has awarded 15 contracts funded through the American Recovery and Reinvestment Act to access patient records.

The contract awards extend nationwide an application SSA began testing three years ago with Virginia-based HIE MedVirginia to electronically pull health records of disability applicants from local health practices, sort them through a state health information exchange, and get them rapidly into the hands of SSA adjudicators.<sup>2</sup>

CMS's esMD (electronic submission of medical documentation) project will allow all records for audits (such as RACs and MACs) to be provided electronically through the developing Nationwide Health Information Network.<sup>3</sup> Prior to the esMD phase 1 pilot, providers had three choices when responding to these documentation requests: mail paper copies, mail a CD containing a PDF or TIF image, or transmit a fax.

The voluntary meaningful use EHR incentive program also promotes the electronic release of information. To be eligible for the program's incentive payments, participants must, if requested, provide patients with certain information in electronic form and within three to four business days.

While all of these endeavors have efficiency as a primary goal, healthcare facilities are not able to create fully electronic files without converting existing paper to a digital format such as a PDF. The efficiency for the governmental agencies will be the result of additional efforts by healthcare employees until such time that healthcare providers create all documentation electronically and have installed systems with health information exchange functionality.

## What Costs Should Be Compensated?

Attorneys often argue that the fees healthcare providers charge to reproduce records are excessive compared to the fees charged at local copy stores. The argument overlooks differences that make the comparison unreasonable, including the following:

- When an individual takes a document to the local copy store, the effort of finding, retrieving, and transporting the copy has been incurred by the individual; there is no cost to the copy store.
- An individual who makes a copy without the use of the store's labor may or may not comply with federal copyright regulations. Healthcare facilities must ensure their compliance with federal and state copyright regulations.
- When the individual returns to his or her home or office, the time spent again accrues to the individual, not the store. Additionally, the store or the individual is not required to re-file the original document, which a healthcare entity must do.

To protect the public from unreasonable charges, many states have regulated how much healthcare providers may charge for copies and retrieval fees to cover the labor costs associated with responding to a request. HIPAA prohibits charging retrieval fees for some requests, but not all. As noted, retrieval may be the most costly component of responding to a request for copies.

The new meaningful use program pays bonuses for the use of health IT, but it also adds costs to ROI with requirements to provide greater access to information within shorter periods of time than that allowed by HIPAA or state law.

Organizations that participate in the program may need to add staff and likely implement technology. Providing data in an electronic form may necessitate converting data to a new format, purchasing peripheral technologies to copy images to media such as DVDs, and providing the media.

Finally, there are other costs that must be factored into making a copy. These include:

- Systems and hardware (such as additional workstations) to accommodate the ROI function
- Applications such as ROI tracking systems
- Peripherals such as copiers, printers, and fax machines
- Forms such as ROI release forms and fax cover sheets

- Routine supplies including staples, pens, paper, envelopes, toner, etc.
- Postage
- Fees for off-site storage and retrieval
- Overhead such as utilities, space, furnishings, maintenance, housekeeping, human resources, payroll, etc.

## A Possible Solution for Recovering Cost

Documents that are electronically available are less cumbersome to retrieve, and perhaps there should be a reduced fee structure when they are available.

Meanwhile, in this transitional state where release of information must navigate paper and multiple information systems, the following considerations could lead to fees that reflect true ROI costs and help effectively manage the overall ROI process:

- The electronic retrieval fee should be retitled electronic registration fee and incorporate the initial receipt, logging, and review of the request for legitimacy and completeness.
- Added to the registration fee should be the retrieval fee, including labor time and associated costs, based on the minute timer of the computer screen from the point of identifying the patient in the system until the documents that are needed are printed or written to an alternative media. This would require that organizations develop a per-minute fee that is defensible and based on cost accounting principles.
- There should remain a per-page copy fee to cover the cost of the paper, toner, and maintenance on the printer or copier if the requestor asks for paper copies.
- If the electronic documents can be written to an alternative media such as DVD without first printing the documents and scanning them, then the posted cost of the DVD should be added. The timer component will apply in terms of covering the labor and associated costs to do this step.
- For security concerns, including the spread of computer viruses, media supplied by requestors should not be used.
- Finally, if the items are to be mailed, the cost of postage and a reasonable labor fee for handling should be accommodated to offset the cost of providing and addressing an envelope, calculating and applying postage, and delivering the envelope to the designated postal pick-up location.

For all other request types that may include electronic, paper, microform or any combination of documents, the traditional fee-for-service charges permitted by state law should prevail until such time that the healthcare industry's use of a fully electronic health record is commonplace.

## Notes

1. Department of Health and Human Services. "Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act; Proposed Rule." July 2010. Available at <http://edocket.access.gpo.gov/2010/pdf/2010-16718.pdf>.
2. Mosquera, Mary. "SSA Awards 15 Contracts to Expand HIE Nationwide." *Government Health IT*, Feb. 1, 2010. Available at [www.govhealthit.com/newsitem.aspx?nid=73073](http://www.govhealthit.com/newsitem.aspx?nid=73073).
3. Nationwide Health Information Network. "Electronic Submission of Medical Documentation. Profile Definition-V 1.0.0. 5/26/10." Available at [www.cms.gov/ESMD](http://www.cms.gov/ESMD).

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