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

<https://www.hhs.gov/hipaa/for-professionals/special-topics/mental-health/index.html>

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 records maintained by their health care providers and health plans.

Individuals have a right to a broad array of health information about themselves maintained by or for covered entities, including: medical records; billing and payment records; insurance information; clinical laboratory test results; medical images, such as X-rays; wellness and disease management program files; and clinical case notes; among other information used to make decisions about individuals.

In responding to a request for access, a covered entity is not, however, required to create new information, such as explanatory materials or analyses, that does not already exist in the designated record set.

Personal Representatives

An individual’s personal representative (generally, a person with authority under State law to make health care decisions for the individual) also has the right to access PHI about the individual in a designated record set (as well as to direct the covered entity to transmit a copy of the PHI to a designated person or entity of the individual’s choice), upon request, consistent with the scope of such representation and the requirements discussed below. See 45 CFR 164.502(g) and http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreps.html for more information about the rights that can be exercised by personal representatives.

Requests for Access

Requiring a Written Request

A covered entity may require individuals to request access in writing, provided the covered entity informs individuals of this requirement. See 45 CFR 164.524(b)(1). Covered entities also may offer individuals the option of using electronic means (e.g., e-mail, secure web portal) to make requests for access. In addition, a covered entity may require individuals to use the entity’s own supplied form, provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to his PHI, as described below.

Verification

The Privacy Rule requires a covered entity to take reasonable steps to verify the identity of an individual making a request for access. See 45 CFR 164.514(h). The Rule does not mandate any particular form of verification (such as obtaining a copy of a driver’s license), but rather generally leaves the type and manner of the verification to the discretion and professional judgment of the covered entity, provided the verification processes and measures do not create barriers to or unreasonably delay the individual from obtaining access to her PHI, as described below. Verification may be done orally or in writing and, in many cases, the type of verification may depend on how the individual is requesting and/or receiving access – whether in person, by phone (if permitted by the covered entity), by faxing or e-mailing the request on the covered entity’s supplied form, by secure web portal, or by other means. For example, if the covered entity requires that access requests be made on its own supplied form, the form could ask for basic information about the individual that would enable the covered entity to verify that the person requesting access is the subject of the information requested or is the individual’s personal representative. For those covered entities providing individuals with access to their PHI through web portals, those portals should already be set up with appropriate authentication controls, as required by 45 CFR 164.312(d) of the HIPAA Security Rule, to ensure that the person seeking access is the individual or the individual’s personal representative.

**RECORDS vs NOTES** <https://www.icanotes.com/2018/06/15/how-to-give-patients-access-to-their-mental-health-records/>

Patients’ mental health records contain extremely private information, so properly granting access to them is important. Here are some pointers to keep in mind and assist you in staying HIPAA-compliant:

* **Rules of Access:**Only patients or their legal representatives may have access to their mental health records, and you must obtain a patient’s permission before sharing a copy of their record with a health plan or other provider to assist with billing or continued treatment.
* **Permitted Fees:**As a healthcare provider, you cannot deny a patient’s access to his or her record, even if that patient has not paid for services you rendered. Moreover, you may not charge a separate retrieval fee for searching for a record. However, you may bill a reasonable price for any costs you incur concerning copying or mailing a record.
* **Psychotherapy Notes:**While patients have the right to access their mental health records, **psychotherapists’ notes are not part of those records and should not be shared with patients.** Therapists’ notes should always be kept separately from the patients’ health records. This, of course, is just another reason to use ICANotes, since the software is designed for the safe, HIPAA-compliant management of all data related to your behavioral health practice.
* **Corrections:**Patients may request that you correct any incorrect information in their mental health records. It’s then your responsibility to make the necessary corrections promptly.