

PHYSICIAN OBLIGATIONS WITH RESPECT TO PATIENT MEDICAL RECORDS

Patient Access to Medical Records:

A patient is entitled to inspect or receive a copy of his or her medical record, not the original. Patients often assume that the original record belongs to them since the information in the medical record is about them; however, the Board requires that a physician maintain the original to ensure that a patient's medical history will be available to assist any future health care provider.

The records can be requested by a patient, the patient's parent (if a minor) or legal guardian, or, with patient authorization, by another physician or any person authorized by the patient. Health care providers must provide patients, upon request, with an opportunity to inspect their records, receive a copy of their records, or receive a copy of any previously completed report required for third party reimbursement.

Patients are entitled to a copy of their complete records, including records transferred from previous physicians.

Under HIPAA a physician has 30 days to provide the patient or the patient's representative with a copy of the requested medical records; however, if the medical records are not maintained or are not accessible on-site, then a physician has 60 days to provide the records. A physician may extend the time for production once—for an additional 30 days by providing the requestor with a written statement of the reason(s) for the delay and the date by which the physician will produce the records. In the case of a medical emergency or Social Security claims, records should be provided as soon as possible.

Physicians not covered by HIPAA must produce medical records in a "timely manner." The Board has interpreted "timely manner" as being two to three weeks.

Psychotherapy Records:

Physicians who are providing psychotherapy services should, when appropriate, provide full records to their patients. However, if, in the physician's reasonable judgment, providing the entire medical record would adversely affect the patient's well-being, the provider may provide a summary of the record. If the patient continues to request the entire record, the physician may make it available to either the patient's attorney, with the patient's consent, or to another psychotherapist, as designated by the patient. G.L. c. 112, § 12CC and 243 CMR 2.07 (13)(e).

Permissible Rates for Copying Records:

Under HIPAA a physician may only charge a "reasonable, cost-based fee," which can only include the cost of copying (including supplies for and labor of copying) and postage, if the records are mailed. The fee may not include the cost associated with searching for and retrieving the records. Massachusetts law allows physicians not covered by HIPAA to charge a base fee of \$15.00 for each request, as well as a copying charge of \$0.50 per page for the first 100 pages, and \$0.25 per page in excess of 100. (The cost may be adjusted according to the Consumer Price Index.)

It should also be noted that a HIPAA covered entity, including a physician, that uses an electronic record is now required to provide an electronic copy of the record if the patient requests that it be provided electronically. Again, the physician is allowed to charge the cost of providing it.

The physician may not charge a fee if the request for copies is being made by or on behalf of a beneficiary for the sole purpose of supporting a claim under any provision of the Social Security Act or any federal or state financial needs-based benefit program. The provider can request reasonable documentation to confirm the request for medical records is for a needs-based purpose. G.L. c. 111, § 70 and 243 CMR 2.07(13)(d).

Providers may not withhold medical records from a patient with unpaid medical services. Providers may require that the patient pay the copying costs before providing records.

Records Retention:

- Records for adult patients must be maintained for a minimum of seven years from date of last patient encounter. If a patient is a minor on the date of the last visit, then the physician must maintain the pediatric patient's records for a minimum period of either seven years from the date of the last patient encounter or until the patient reaches the age of eighteen, whichever is the longer retention period.
- A retiring physician or his successor must maintain patient records for seven years from the date of the last patient encounter.

Providing Records to the Board:

Unless the law provides otherwise, physicians must turn over patients' medical records to the Board, upon the Board's request. G.L. c. 112, § 5.

- A physician who provides a patient's medical records to the Board, in response to the Board's request, shall not be liable in any cause of action arising out of the receiving of such information.
- Although the HIPAA privacy rule generally requires that health care providers obtain patient consent prior to releasing identifiable health care information, there is an exemption when the Board requests medical records from physicians. In those instances, the physician is not required to seek patient approval prior to providing records to the Board. In addition, the physician may produce the records to the Board without the Board providing a release from the patient. 45 C.F.R. § 164.512(d)(1)(i).