

What Physicians and Healthcare Providers Need to Know About Record Requests

What you don't know can hurt you.

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You would be surprised how often physicians and other healthcare providers routinely ignore record requests, ignoring the need for the help of an attorney, only to dig a hole for themselves that requires help from an attorney. There are multiple types of record requests and the source of the request governs the response, including:

- **State Licensing Boards:** Depending upon the state, requests to provide patient records are usually accompanied with a letter providing a deadline of by when the records are needed. A failure to provide the records within the stated amount of time is a violation of the state regulation that can and does result in license sanctions. Often, an initial letter of representation by a healthcare attorney stops the clock, thereby avoiding carelessness.

- **An insurance company with which you participate:** You must provide the requested records according to your signed agreement with the carrier or plan with which you participate. If you are about to be audited, contact your health law attorney at once, prior to sending the records. When you are a participating provider, no HIPAA signed form by the patient is required for you to provide the records. If an insurance company is asking for an unreasonable number of charts, your health-

care attorney can handle the matter with the requesting entity.

- **An insurance company with which you are a non-participating provider:** You can still be audited, and the company can still request patient records. Many practitioners make the mistake of thinking that being a “non-par” prevents the insurance company from auditing you. In

If the requested patient charts concern patients covered under a group plan where it is an employer or a union, this encompasses a unique set of laws. You are dealing with the world of the Employee Retirement Income Security Act of 1974 (ERISA), which is regulated by the U.S. Department of Labor. ERISA law pertains to the entirety of group

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fact, many insurance companies will go after a “non-par” because he or she is a “non-par.” That is because they pay non-pars more than participating providers for various procedures and treatments.

- **A previously paid insurance claim:** First you need to determine if the request is from Medicaid or Medicare as opposed to a private insurance company.

Federally Funded Programs

If it involves Medicare or Medicaid, seek legal counsel with experience in this area of the law. Federally funded healthcare systems have their own set of federal laws that apply.

health insurance plans, both self-insured or insured. The next step in the analysis is to establish if the patients are in an insurance network in which you either do or do not participate. If you participate, also known as “in-network,” ERISA law provides for legal arguments that might make part of your agreement with the insurance company illegal. It might also disallow the provider’s manual as running afoul of ERISA law.

- From an attorney in a malpractice or personal injury lawsuit: Unlike a state board request, these must be accompanied by a HIPAA compliant form, signed by the requesting patient, for a copy of the

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records. Be careful—if this is the first step of a malpractice action, your malpractice insurance carrier needs to be notified in writing or you risk your insurance carrier disclaiming coverage.

- Criminal cases and investigations: Criminal cases and investigations have a different set of rules. You are often dealing with subpoenas. Suffice it to say, immediately contact an attorney and provide no additional information, other than that you are represented by an attorney who will contact the requestor(s) as soon as possible.

State Laws Vary

It is helpful to see a couple of examples of different state laws regarding the production of medical records.

In New York, pursuant to Sections 17 and 18 of the Public Health Law, a medical provider may ask for the following to produce their medical records pursuant to a HIPAA compliant request:

- No more than \$0.75 per page for paper copies
- Actual reproduction costs for radiographic materials, such as X-rays or MRI films plus postage
- The NY Department of Health considers 10-14 days to provide a copy of the records to be consistent with the law. However, a patient may request access to inspect the records in your office. Inspection has no charge and must be done within 10 days. If you are dealing with inspecting EMR or paper records, be careful that the “inspector” does not have access to any unauthorized patient information.

- You cannot refuse to give the patient a copy of their records if they cannot afford the copy fees.

In Florida, a different set of regulations apply:

- Florida Statute 395.3025 provides that if the records requested are by someone other than the patient:
- Exclusive charge for copies may include sales tax and actual postage
- Non-paper records not to exceed \$2.00 per page

- Paper records not to exceed \$1.00 per page

- A fee of up to \$1.00 may be charged for each year of records requested

- Florida Statutes 395.301, Itemized Patient Bill

- The facility may not charge the patient for making such verification records available; however, the facility may charge its usual fee for providing copies of records as specified in s. 395.3025.

- Rule 64B8-10.003, Florida Administrative Code

Insurance Company Requests

Addressing insurance company requests, the costs are the same, but if a considerable records request is made, consider the possibility of the insurance company scanning the requested records. The downside is that when they come to your office, make sure that your attorney is present! Especially if you have paper records, you must balance the cost of copying your records and charging the insurance company. Do you really want to agitate them during an audit?

First, you must consider what

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- Records requested by the patient or governmental entities:

- For the first 25 pages, the cost shall be \$1.00 per page.

- For each page in excess of 25 pages, the cost shall be \$0.25.

- Actual cost of reproducing non-written records such as x-rays. The phrase “actual costs” means the cost of the material and supplies used to duplicate the record, as well as the labor costs and overhead costs associated with such duplication.

- “Recognizing that patient access to medical records is important and necessary to assure continuity of patient care, the Board of Medicine urges physicians to provide their patients a copy of their medical records, upon request, without cost, especially when the patient is economically disadvantaged.”

Each state has its own rules. However, all states must abide, at the least, with HIPAA laws. Most important, no patient can be denied access to his or her records due to an inability to pay.

All About Producing the Records Requested

After you have received the request, then comes production of the requested documents (and the cost of producing the records).

records to provide and in what format. With the advent of Electronic Medical Records (EMRs), the answer is not always so easy. If you practice in a multidisciplinary practice, the EMR of any particular patient might include other records besides your individual chart.

Additionally, the format of the information within the chart may differ due to how it is accessed. The information can be made into a graph, say of chronological sizes of a decubitus ulcer over many months, blood pressure, or interval stat Blood Glucose levels. Information might be made into spreadsheets. The key is providing the totality of the chart asked for and present it in the most accessible format. The easier it is for the auditor to figure out what is going on, the easier it is to potentially defend the audit. In case of a medical malpractice request for records, the reasoning is the same. Make it easy for their expert to review your records so that he/she can come to the conclusion that (hopefully) your treatment was properly performed and appropriate.

Although a records request might be limited to a certain period, it is important to provide any information in the totality of the record that will contextualize your treatment of the patient. For example, various

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consultation reports might be crucial in affirming your treatment of a patient. Such a report might explain your choice of treatment even if it is

their own rules of how much a medical provider may ask for the production of the medical records pursuant to a HIPAA-compliant request. Sometimes, physicians want the insurance company to pay a lot of money to ob-

lines. Failure to do so could create even bigger issues down the road. If you receive a records request, contact a healthcare attorney for assistance for help making the process much easier. Whatever you do, do not ignore the request. **PM**

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on the periphery of the standard of care. Your intake sheet might provide very pertinent information as to why you subsequently did what you did, or why you did not do what you did not do. Of course, it would be better, if the body of your record referred to the prior tests, consults, or history, but not every chart is at that level.

Then comes the cost of producing records. As before, each state has

tain the multitude of charts that they are requesting. Though this may be allowed, depending upon the state, it usually is not in the best interest of the physician. It is likely to annoy the insurance company and potentially make a bad situation even worse.

Regardless of from whom a records request comes, physicians and healthcare providers need to be sure to comply with all rules and dead-



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