



American Professional Agency



RISK MANAGEMENT



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CONSIDER THIS ...

I've Received a Request to Release Patient Information, Now What?

It has become a routine part of healthcare to receive patient requests for medical records. Whether from the patient, parents of minors, or a third party, there are circumstances to consider prior to releasing the information. When you receive the request, can you release the information? The answer to this question depends on who and what information is requested. This article will address various situations surrounding confidentiality, release of patient information and how to manage the request.

Who Is Requesting the Information?

ADULT PATIENTS

Under HIPAA, adult patients are entitled to access or request a copy of their mental health records. However, there are exceptions, such as when a patient lacks capacity and has a legal representative requesting the information on their behalf.

REQUESTS BY MINORS AND MARRIED PARENTS OF MINOR CHILDREN

The age of consent to release medical records varies state-by-state from as young as 12 years old up to age 18. It is important to understand the age of consent and requirements for release of records in your state. Prior to the initial visit with the minor and their parents, discuss the requirements for protection of health information and management of medical record requests. Discuss the importance of maintaining privacy to allow the minor the ability to be open and forthcoming during care and obtain agreement prior to starting treatment regarding the limits of confidentiality.

It is important to understand that ultimately the parents may be entitled to the records. There are exceptions which vary by state including records related to pregnancy, sexually transmitted disease, emancipated minors, minors seeking care for their own children, and the age of minors to consent to their own mental health treatment.

REQUESTS BY DIVORCED OR LEGALLY SEPARATED PARENTS

It is important to obtain a copy of the custody agreement prior to the onset of care and follow the Court's mandate. In most situations, the custody agreement will spell out the conditions under which parents may access their children's medical information. It is important to read this document carefully to determine who has the right to consent to treatment and who may obtain copies of the medical record.

If the agreement states either that the parents have joint custody or that both are entitled to access their child's medical or mental health records, then the records can be released to the parent(s) or can be released to a third party with both parents' consent.



The agreement might state that one parent has the right to consent to treatment for their child, but both parents are allowed access to their child's records. The agreement may state that one parent can access the information and has the sole right to decide who has access to the records. If a parent represents that there is no custody agreement in place, document consent from the parent requesting treatment and that such parent is the only one that can request records for their child.¹

THIRD PARTIES

Prior to releasing medical records to third parties, obtain written consent from the patient or their legal representative/parent. Review the required steps provided in the "Information Needed to Release Medical Records" section of this article to avoid potential HIPAA violations. Please note that under the Privacy Rule, patient consent is not needed to release records to third parties, such as health insurers, for the purpose of payment, treatment, and operations.

COUPLES COUNSELING

Prior to the onset of couples counseling, it is important to have both individuals sign an informed consent regarding the office policy on release of records. The couple should be informed that a shared medical record will not be released to an individual or third party without *signed authorization from the couple*. If the couple has a shared medical record, both need to consent to have it released to anyone including themselves, with rare exceptions.

Information Needed to Release Medical Records

Upon receipt of the request for medical records, follow these steps before releasing information:

- The authorization for medical information should be in writing and specify the information being requested and include who is making the request, where the information should be sent and the method. The form should be dated and signed by the patient or their legal representative.
- If signed authorization is not provided, request one, including requests directly made by patients.



- When a third-party request is received, obtain informed consent to release the record from the patient, even if the request includes a signed authorization. Include in the discussion any limits to the release (entire record, subset, summary).
- The signed authorization should specify the request is for the release of **mental health** records and whether it should include the release of extremely sensitive information related to HIV, alcohol/drug abuse or other extremely sensitive information.
- The signed authorization should include the patient's name, date of birth, dates of treatment and other information to correctly identify the patient. It should be dated, signed, preferably witnessed, and specify the time limit the authorization is valid for (such as one year from the date of the signature).
- **Note that, under HIPAA, a provider is required to release requested records within 30 days; however, there are states with stricter requirements limiting the request to as little as 10 days. Please check your state statutes for details on compliance.**
- In general, providers can charge for duplicate medical records, especially when requested by a third party. Check your state statute for specific limits on fees.
- Who is the requestor? Were you retained by an attorney or the court to do a forensic or custody evaluation? The requestor may not (in certain situations) be the person undergoing the evaluation. If the requestor is a third-party, review the contract to determine who must consent to release the requested record or report.

What If the Release of Information Will Create Harm?

In the event you believe the release of a patient's medical record is likely to cause the patient or a third-party harm, assess which portions of the records can be safely released and consult with an attorney or risk management professional regarding the information being requested. The reason for withholding the release of the records must be more substantial than a patient 'may not be happy with what they read.' While there are specific steps required when redacting information to comply under HIPAA, the patient retains the right to engage a potential third-party to confirm the information redacted was properly withheld.²

What Happens If I Do Not Release the Information?

If a provider decides not to honor a request for medical records or takes longer to respond than legally allowed, the provider may be subject to significant civil and criminal fines and penalties enforced by Health and Human Services (HHS) and the Office of Civil Rights (OCR) under HIPAA. It is best to respond timely and appropriately to all requests.

Risk Management Tips for Handling Mental Health Records Requests

- Confirm:
 - the identity of the patient and determine who is considered the patient, especially for forensic evaluations.
 - the patient or their legal representative has provided written consent to release information.
 - who the information should be released to, how to send it and what information should be included or excluded.
- Validate that the requestor has the legal right to the information, especially when treating couples or for requests from parents of minor patients.

- Follow all state and federal laws and regulations regarding the release of HIPAA-protected information.
- Consider whether a subpoena or court order is required prior to the release of information, provided it does not violate state or federal law or requires an undue burden on the patient.
- Consult an attorney or risk management professional if you have questions prior to releasing records.

Resources

1. U.S. Department of Health and Human Services. Health Information Privacy. Individuals' Right Under HIPAA to Access their Health Information 45 § CFR 164.524 - <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>
2. U.S. Department of Health and Human Services. Health Information Privacy. How timely must a covered entity be in responding to individuals' requests for access to their PHI? - <https://www.hhs.gov/hipaa/for-professionals/faq/2050/how-timely-must-a-covered-entity-be/index.html>
3. American Psychological Association. HIPAA – what you need to know – The Privacy Rule – A primer for psychologists - <https://www.apaservices.org/practice/business/hipaa/hippa-privacy-primer.pdf>

End Notes:

- ¹ U.S. Department of Health and Human Services. Does the HIPAA Privacy Rule allow parents the right to see their children's medical records? - [227-Does the HIPAA Privacy Rule allow parents the right to see their children's medical records | HHS.gov](#)
- ² U.S. Department of Health and Human Services. Health Information Privacy. Individuals' Right Under HIPAA to Access their Health Information 45 § CFR 164.524, Denial of Access - <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>



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