

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: Is the 15-day time frame only for release to patients?

A: The 15-day time frame applies to all records requests.

Q: What if a facility has a policy in place against photo & video recording within the facility?

A: You will need to review and update your policy if this patient right is granted in the Final Rule. For now, you can continue with your existing policy. You will be updated when the rule is made final.

Q: Is it okay to ask specifically for a military ID for purpose of billing to Tricare?

A: You may not specifically request any particular identification. You are obligated to properly identify an individual, but you may not request specific identification.

Q: The spreadsheet in the webinar was for a specific state. How do we look the info up for our own state?

A: There is a State Limit tab, you can look up your state limit there.

Q: Can the patient take a photo with their phone showing their x-ray film or a surgical procedure? Can they take a picture of a wound while they are under care?

A: Yes.

Q: Video during treatment or visit at clinic too?

A: Video during treatment will not be a right granted. The OCR cited video in the commentary as a means for patients to gain access to their records. You do not have to permit video. If this makes it into the final rule, you will have to permit notes and photos.

Q: So just a clarification, as we participate in a grant with state university and Mental Health resource facility on SUD patients, other than BAA we now also have to have a Part 2 Agreement. Where can samples of this be found?

A: This has been required since the 1980's. An attorney can help you create a combined QSOA and BAA. SAMHSA might have a sample QSOA agreement.

Q: Does the last section on TRS apply to all interpreter services or only those that use TRS?

A: TRS only

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: Is there a list somewhere that we can review the proposed changes versus the clarifications that are in effect right now?

A: Most law firms that handle healthcare law, will have summaries posted on their websites. Here is a link to the published proposed modifications:

<https://www.federalregister.gov/documents/2021/01/21/2020-27157/proposed-modifications-to-the-hipaa-privacy-rule-to-support-and-remove-barriers-to-coordinated-care>

Q: We cannot withhold records from an individual based on their ability to pay - any idea if we have any recourse for those who request the same records several times and who cannot pay?

A: You are not permitted to withhold the records for non-payment. You are also not permitted to withhold records for non-payment of medical services. You could place the patient in collections, other than that, there is no recourse.

Q: Can a patient video the entire appointment with a provider?

A: This would be dependent on state law as well as permission from the provider. The new proposed modifications will not have a requirement to allow video. The video statement is in the commentary as a suggestion for patients to gain access to their records.

Q: If the State has a published fee schedule for Workers Compensation Record requests can we charge based on that fee schedule rather than the calculated rate?

A: The fee for workers comp can only be used to calculate workers comp records.

Q: If a patient is on pain meds and these meds are listed in the patient's Current Medication List, this information is printed on every progress note. Is this an issue regarding disclosure?

A: This is regular PHI and not Part 2 covered data. It is permissible to disclose under the normal disclosure rules.

Q: Can you clarify the retrieval fee? Is it allowed or not?

A: Retrieval fees are not permitted by HIPAA. Although some states allow retrieval fees, HIPAA expressly prohibits it, so you are NOT permitted to charge for retrieval.

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: We currently use the same NPP for our Rural Health Clinics that we use for our hospital, with the proposed rule changes would we need a separate NPP for our RHC's?

A: No.

Q: We are working on transitioning our Notice of Privacy Practices to one of the model notices on the HHS website. Should we pause that? Do you think they'll adjust those with the new NPP requirements?

A: The OCR's sample NPP is amazing! I think you should absolutely continue the process of transitioning. The OCR will update their sample NPP once these rules are made final. It will make it easier to make the changes if you are already using their template. Not to mention, their NPP is written in plain language, which helps you stay in compliance with that requirement.

Q: We had a Probation Officer call asking for the results of a Covid-19 test for a patient. I reiterated to her that we cannot share that information with her because it is not considered continuation of care unless the Judge were to subpoena for the records. Is this correct?

Clarification: They were trying to arrest the patient, but he told them he was pending a Covid-19 test.

A: You are permitted to disclose PHI to law enforcement to help them locate a fugitive or suspect. Now, if you are a Part 2 covered program, you are not permitted to disclose. However, since I believe you are an RHC, you are permitted to disclose without a subpoena. You are only permitted to disclose minimal information needed for them to locate the patient; you are not permitted to disclose the entire medical record to law enforcement.

Q: In regards to patients being able to video their records if they ask during a visit...is the requirement that we allow them to stay and keep the visit going to do that, or can we have them leave the visit and have medical records help them to facilitate that?

A: You will be able to create your own process/policy for this once the rule is final. If you wanted to do it the way you described, that should be fine. We will have to see what the final rule says.

Q: Will the provider have the right to object to having a video taken of them? They may not like having a video taken of them performing a procedure.

A: Yes. Video is not a right, merely a suggestion in the commentary by the OCR as a means for the patient to access their records.

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: Can you confirm the requirement related to presenting identification when requesting release of information?

A: You are required to verify the identity. You are not permitted to say, "let me see your driver's license". They are permitted to identify themselves in a reasonable manner.

Q: Does the fee-for-records cost apply to electronic records or only for paper?

A: Both

Q: Are there guidelines for how we can share patient information with other providers (e.g., encrypted email; specific HIEs; mail)

A: Information may be shared in any of those formats. Here is some guidance from the OCR:

<https://www.hhs.gov/hipaa/for-professionals/faq/482/does-hipaa-permit-a-doctor-to-share-patient-information-for-treatment-over-the-phone/index.html>

Q: Would a pain management agreement fall under Part 2 data?

A: It would depend. Probably not, but it could.

Q: When a patient requests records be emailed do they still need to sign a release of records if they can be identified verbally?

A: A patient does not need to sign a ROI to receive their own records. You need to employ a reasonable verification process, verbally is fine.

Q: Are we allowed to charge Medi-Cal patients? I thought if they had Medi-Cal we could not.

A: Some Medicaid agencies prohibit charging patients for records, you will need to verify with your Medicaid agency if they permit fee for records.

Q: If there is a minor that is seeing a Doctor and mom or dad is unavailable to bring the child in, how do we properly identify the adult that is bringing the minor in?

A: This is the million-dollar question! Mom or dad should have given consent for the minor to be seen by another adult. The adult's identity should be verified in the same method you verify everyone's ID.

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: I listened to another webinar on this same subject and they mentioned part of the proposed rule that would make EHR's have to have the ability to download information to a patient's health app- can you speak to this?

A: This is true. There is more information on our HIPAA Huddle. Here is the recording:

<https://youtu.be/2Xzz9CH4TJE>

Q: How is identification verified if we outsource our medical records copying?

A: It would depend on the process. If you send your BA the request for them to process, you are required to verify ID. If the patient is contacting your BA for the request, your BA would be required to verify the ID.

Q: Our RHC is located within a CAH. Are there any changes to any of these proposals given that dynamic?

A: Not at all!

Q: Question on MR Fee: We use this state fee for paper copy -

<https://law.justia.com/codes/louisiana/2011/rs/title40/rs40-1299-96/>.

does it need to be replaced?

Louisiana Revised Statutes 40:1299.96 For records, a reasonable charge not to exceed:

\$1.00 per page for first 25 pages

\$0.50 per page for pages 26-350

\$0.25 per page thereafter

Plus handling charge of \$25.00

A: Although the state permits a handling charge, HIPAA does not. You are not permitted to charge the handling fee. You would charge the lesser fee either state or federal.

Q: When you said the provider and patient have to give consent to authorize video or pictures. There is also a memo voice recorder. Does this require consent also?

A: It would depend on your state regulation. HIPAA will never require, only permit when permissible under state law the use of recording devices. Pictures will be of medical records only.

Q: If a patient cannot pay for records to obtain would the RHC still be allowed to bill them for the records services?

A: You may bill them even if they are not able to pay. Regardless, if they are able to pay, you must disclose the records to the patient upon request.

Q&A: New HIPAA Privacy Rule: What RHCs Need to Know

Q: If we get a request for HEDIS review and it contains multiple patients, can we charge fees? If we can, do we charge individually per patient or for the request as a whole?

A: You are typically not able to charge for HEDIS records requests. Verify your contract with your payers for their policy on paying for HEDIS records.

Q: Clarification on the changes to NPP: this no longer has to be signed but must be available to patients via website? Are we required to notify patients it is on website at time of service?

A: This is a proposed change to eliminate the need to sign the acknowledgement of the NPP. You must still provide a paper copy upon request.