

Patient Right – Access to PHI

Understanding Recent OCR Guidance

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OCR Guidance – Why Now?

- While the HIPAA Privacy Rule has always allowed patients to access their own health information, the Standards not fully understood by covered entities.
- Confusion around:
 - Fees, particularly limits on what can be charged
 - Requests by individuals to direct a copy of their information to a third party
 - Type of authorization to use and avoidance of unreasonable delay to patient
 - Access in the form or format of patient's choosing

OCR Guidance – General Right

- The Privacy Rule generally requires HIPAA covered entities to provide individuals, upon request, with access to the protected health information about them in one or more “designated record sets” maintained by or for the CE. This includes:
 - Right to inspect or obtain a copy, or both
 - Right to direct the CE to transmit a copy to a designated person or entity of the individual’s choice
 - Right to access this PHI for as long as the information is maintained by CE (or by a Business Associate) regardless of the date the information was created, the format of the information, or where the PHI originated

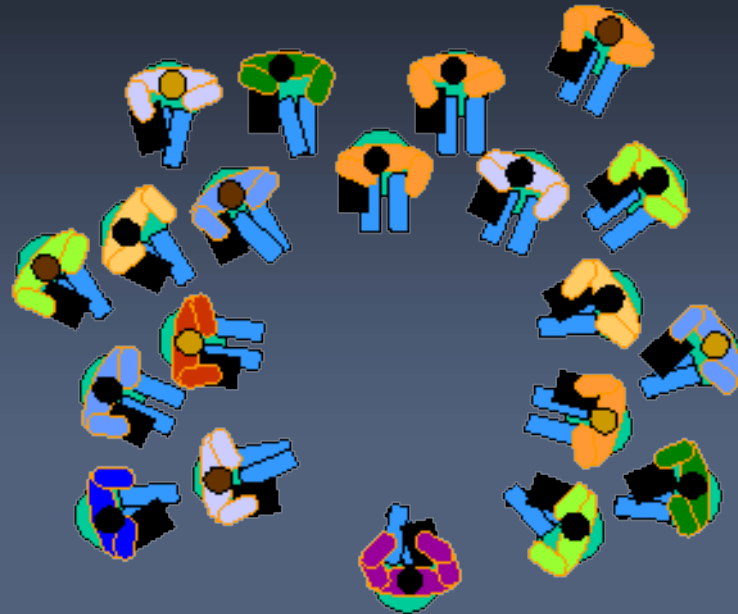
Definition – Designated Record Set

45 CFR 164.501 Designated Record Set

- 1) A group of records maintained by or for a covered entity that is:
 - The medical records and billing records about individuals maintained by or for a covered health care provider;
 - The enrollment, payment, claims, adjudication, and case or medical management record systems maintained by or for a health plan; or
 - Used, in whole or in part, by or for the covered entity to make decisions about individuals

- 2) The term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for a CE

What Would You Include in the Designated Record Set? (Group Discussion)



OCR Guidance – Designated Record Set

- Key Point – Individuals have a right to access a *broad array* of health information about themselves maintained by the CE including, their medical records, billing and payment records, insurance information, test results, images, wellness and disease management program files, and clinical notes.
 - Photos, videos, recordings
 - Orders
 - Tasks
 - Secondary records

"Secondary Records"

- Records created by another provider that we have received and relied upon for our treatment purposes become part of the Designated Record Set within our legal medical record
- HIPAA allows for the release of all records specified in a valid authorization signed by the patient that are part of our legal medical record or requested as part of the Individual's request for Access to PHI

Impact on WU Workforce

- Expect updates to Policy #2 – Access to PHI by Individuals
 - Description of Designated Record Set (DRS) will be expanded
- Patient requests for “any and all records”
 - Need to review patient appointment history to see if any records could be in storage.
 - If patient is seen in a department where photos/videos/recordings are used for clinical care, images and recordings will need to be included in records released to patient.
 - HIRS and HIPAA Privacy Office will be reaching out to you to develop an inventory of clinic sites who may have clinical photos/videos stored on a department server.

Privacy Rule Standard – Form and Format and Manner of Access

45 CFR 164.524©(2)(i)

- The Privacy Rule requires a covered entity to provide the individual with access to the PHI in the form and format requested, if readily producible in that form and format, or if not, in a readable hard copy form or other form and format as agreed to by the covered entity and the individual.

OCR Guidance – Form and Format and Manner of Access Key Points

- Requests for Paper Copies
 - We provide a paper copy
- Requests for Electronic Copies of Records maintained only on paper
 - If we are able to scan a paper copy of the record into an electronic format (i.e., pdf), we are required to provide it to patient in an electronic format
- If records are electronic and patient requests an electronic copy, we must provide it in electronic format
 - PDF copy sent electronically (email)
 - PDF burned to CD or flash drive

Impact on WU Workforce



- If your area releases records to patients, how are you meeting the patient's right to receive an electronic copy?

OCR Standard – Individual's Right to Direct the PHI to Another Person

45 CFR 164.524(c)(3)(ii)

- If an individual's request for access directs the covered entity to transmit the copy of protected health information directly to another person designated by the individual, the covered entity must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.

OCR Guidance – Individual's Right to Direct the PHI to Another Person

- Request must be in writing
- Request must be signed by the individual and/or their personal representative
- Request must clearly identify the designated person and where to send the PHI
- *Same fees for patient access apply*
- *Form and format apply*
- *Must take action within 30 days of request*

OCR Guidance – Individual’s Right to Direct the PHI to Another Person

- Example:
 1. A patient sends a written request to the HIM Department indicating they are a patient of Dr. XYZ and would like a copy of their medical record, including all notes, labs, procedures, radiology and pathology reports. The patient indicates that he/she would like an electronic copy (pdf) on a CD and would like for HIM to send the CD to:

AttorneyABC
1234 Any Street
Your City, State, and Zip

Right to Direct PHI to Another Person – Why not use an Authorization?

HIPAA Authorization	Right of Access
Permits, but does not require, a CE to disclose PHI	Requires a CE to disclose PHI, except in those rare cases where an exception applies
Requires a number of elements and statements (core elements), right to revoke, inability to condition treatment, etc. for auth to be valid	Must be in writing, signed by individual, and clearly identify the designated person and where to send the PHI
No timeliness requirement	CE must act on request <u>no later than</u> 30 days after request received
Reasonable safeguards apply (e.g., ePHI must be sent securely)	Reasonable safeguards apply, including a requirement to send securely; <u>however</u> , the individual can request transmission by unsecured medium
No limitations on fees that may be charged to the person requesting the PHI	Fees limited & CE must inform individuals <u>in advance</u> of the approximate fee

Impact on WU Workforce



OCR Standard CFR 164.524(c)(4)

– Permitted Fees

- The Privacy Rule permits a CE to impose a reasonable, cost-based fee if the individual requests a copy of the PHI (or agrees to a summary or explanation of the information). The fee may include only the cost of:
 1. Labor for copying the PHI requested
 2. Supplies (paper or electronic media)
 3. Postage
 4. Preparation of an explanation or summary of the PHI, if agreed to by individual
- **May not include costs associated with verification, documentation, search for and retrieval of, or other costs not listed above**

OCR Guidance – Permitted Fees

- HIPAA permitted fees take precedence over fees allowed by State (see previous slide)
- CE must inform individual in advance of approximate costs
- Fee limits apply when an individual directs the CE to send the PHI to the third party.
- Per page fee is not applicable to electronic copies

Impact on WU Workforce



- Per page fees are not permitted for paper or electronic copies of PHI maintained electronically. WU will develop a schedule of costs for labor based on average labor costs to fulfill standard types of access requests.
- Electronic copies – CE may charge a flat fee for electronic copies of PHI maintained electronically, provided the fee does not exceed \$6.50, inclusive of all labor, supplies, and applicable postage.


Impact on WU Workforce

Greatest challenge will be with the access requests where individual directs us to send their PHI to a third party.

- Attorneys are already using this standard to get records faster and cheaper.
- Are asking patient's to request records per Right of Access and direct to them.



New Request for Access Form

 **Washington University Physicians**[®] Health Information Release Services
Washington University School of Medicine in St. Louis Campus Box 1219 | Suite 301
4240 Duncan Ave.
St. Louis, MO 63110
Office Phone: 314.273.0453

REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION BY INDIVIDUAL PATIENTS

Please check (✓) the appropriate box(es) (☐) and fill in the blank(s) as needed.

Individual Patient Name (Last, First): _____
Patient's Former Names (where applicable): _____
Patient's Date of Birth: _____ SSN: _____
Telephone Number: (Home) () _____ (Work) () _____

I request only the following information to be released:

Please Check Specific Information Requested		
<input type="checkbox"/> All Records	<input type="checkbox"/> Images/Videos/Recordings	<input type="checkbox"/> Pathology Reports
<input type="checkbox"/> Abstract of record (Office Notes, Procedures, & Test Results Only)	<input type="checkbox"/> Laboratory Reports	<input type="checkbox"/> Operative Report
<input type="checkbox"/> Discharge Summary	<input type="checkbox"/> Medication Records	<input type="checkbox"/> Operative Notes
<input type="checkbox"/> History & Physical	<input type="checkbox"/> Nurses Notes	<input type="checkbox"/> Other Procedure Report
<input type="checkbox"/> Other (specify) _____	<input type="checkbox"/> Nuclear Medicine Report	<input type="checkbox"/> Radiology (X-ray) reports
	<input type="checkbox"/> Progress Notes	<input type="checkbox"/> Itemized Billing Statement

Requests for Billing Records should be sent to Physician's Billing Services (Phone: 314-273-0763)
Requests for Radiology Films should be sent to the Radiology Film Library (Phone: 314-362-2850)

Date(s) of Treatment: Specific Dates: _____ thru _____ All dates

In what format would you like to receive your records: Paper Copy Electronic Copy

If paper copy, Release or Mail To:
Individual/Legal Guardian/Personal Representative _____
Street Address _____
City, State and Zip Code _____

If electronic copy, Release or Email To:
Individual/Legal Guardian/Personal Representative _____
Email Address _____

Email is not a secure means of communication. We will encrypt email communications of your records; unless you tell us you prefer us to use unencrypted email. If you prefer we not encrypt our communications to you, please initial here: _____

Processing Your Requested Information:
Washington University Physicians may charge a fee for the copying (currently \$0.56/per page) of requested health information plus postage for mailing the copies to you. If you would like a copy of your record to be provided on portable media such as a CD or USB drive, we may charge you the actual cost of the portable media.

Washington University Physicians will respond to your request for health information within 30 days of our receipt of your request. If, however, your health information is not readily accessible by Washington University Physicians or is maintained in an off-site storage location, Washington University Physicians has an additional 30 days to respond to your request. If we require additional time to respond to your request, we will contact you to inform you of this extension of time.

We appreciate your patience while we process your request.

Signature of Patient/Legal Guardian/Personal Representative _____ Date: _____

- On website: <http://hipaa.wustl.edu>
Information for Patients Page
WUSTL Community - Forms
- Allows patient to request ePHI to be sent via unencrypted email
- Allows patient to direct us to send records to a third party

Odds and Ends

- May a health care provider withhold a copy of an individual's PHI from the individual if the individual has an outstanding balance?
 - Yes/No?
 - Why or Why Not?

- Can we make the patient sign up for a portal account and access their PHI via the portal?
 - Yes/No?
 - Why or Why Not?

References and Resources

- 45 CFR Parts 160 and 164 – Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule
- 45 CFR § 164.524 Individuals' Right Under HIPAA to Access their Health Information (www.hhs.gov/hipaa/for-professional/privacy/guidance/access/index.html)
- HIPAA Policies, Procedures, HIPAA HINTS – HIPAA website
 - <http://informationsecurity.wustl.edu/>

Questions?