

COMPLIANCE CONNECTION

Patient Right of Access Rule

Connecting the dots to patient right of access...



HIPAA Privacy Rule Recap

In 2003, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule established *patient privacy rights* with regard to protected health information (PHI).

The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.

PHI – FURTHER DEFINED

"Individually identifiable health information" is information, including demographic data, that relates to:

- ◆ the individual's past, present or future physical or mental health or condition,
- ◆ the provision of health care to the individual, or,
- ◆ the past, present, or future payment for the provision of health care to the individual,
- ◆ that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

Who and What is a Covered Entity (CE)?

HIPAA covers both individuals and organizations. Those who must comply with HIPAA are known as HIPAA-covered entities (CEs).

- ◆ HIPAA-covered entities include health plans, clearinghouses, and certain health care providers (hospitals, clinics, physicians, pharmacies, nursing homes, etc.)

The Patient Privacy Rights: The right to access, inspect, and copy their PHI

Except in certain circumstances, individuals have the right to review and obtain a copy of their PHI in a CE's designated record set.

- ◆ The "designated record set" is that group of records maintained by or for a CE that is used, in whole or part, to make decisions about individuals, or that is a provider's medical and billing records about individuals or a health plan's enrollment, payment, claims adjudication, and case or medical record systems.

Reminder: The rule excludes from the right of access psychotherapy notes and/or information compiled for civil, criminal, or legal proceedings **Important note:** The HIPAA Privacy Rule defines psychotherapy notes as notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the patient's medical record

Office of Civil Rights (OCR) Focus on Patient Right of Access

OCR created this initiative in 2019 in order to support patients' right to timely and cost-effective access to their health records.

Settlements have underscored OCR's focus on enforcing the HIPAA Privacy Rule's right of access standard, and involved a civil monetary payment.

"OCR will continue its enforcement actions by holding covered entities responsible for their HIPAA compliance and pursue civil money penalties for violations that are not addressed."

The clock starts when the patient makes the request for access to their own medical records

The CE must provide inspection or copies as requested and must provide PHI in the form and format requested (when feasible) and must provide PHI in a timely manner (within 30 days or sooner)

If access to their own PHI is denied: Appeal rights of the patient

- ◆ The CE must provide access to other PHI *where access was not denied* and provide a timely denial in plain language, including the basis for the denial, listing review rights and complaint procedures.
- ◆ If requested, designate a licensed professional to review the decision to deny, and inform the individual of that review decision in a timely way.