

# Understanding and Implementing New Guidance on Patient Right of Access

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# HIPAA COW Mission

- ▶ Assist HIPAA Covered Entities, Business Associates, and other interested parties in implementing HIPAA's Privacy, Security and EDI Standard Transaction provisions, as amended over time.
- ▶ Foster public education about HIPAA.
- ▶ Facilitate and streamline HIPAA implementation through identification of best practices.
- ▶ Reduce duplicate efforts among entities obligated to comply with HIPAA.
- ▶ Offer opportunities for partnering and collaborating between entities implementing HIPAA.
- ▶ Identify and evaluate new or difficult HIPAA interpretation issues.



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# Today's Hosts



- ▶ **Nancy Davis, MS, RHIA, CHPS**
- ▶ Director of Compliance and Safety
- ▶ Door County Medical Center



- ▶ **Chrisann Lemery, MS, RHIA, CHPS, FAHIMA**
- ▶ Director of Compliance & Audit
- ▶ MercyCare Insurance

# Objectives

- ▶ Review the 2016 HHS Guidance on the Individual's Right Under HIPAA to Access Their Health Information – Including:
  - *Individual's Right to Direct PHI to Another Person*
- ▶ Discuss Challenges Related to Guidance
- ▶ Address AHIMA's Patient Request for Health Information Form (July, 2017)
- ▶ Identify Compliance and Implementation Steps



# HHS Issues New Guidance

- ▶ Issued in January, 2016; last updated on HHS.gov in February, 2016
- ▶ Focused on Patient Access – And Elimination of Barriers to Access
- ▶ Identifies \$6.50 as Reasonable Cost-Based Patient Fee

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>





# Introduction

*“Providing individuals with easy access to their health information empowers them to be more in control of decisions regarding their health and well-being.*

*Individuals with access to their health information are better able to monitor chronic conditions, adhere to treatment plans, find and fix errors in their health records, track progress in wellness or disease management programs, and directly contribute their information to research.”*



# General Right of Access

The Privacy Rule generally requires HIPAA covered entities (health plans and most health care providers) to provide individuals, upon request, with access to the protected health information (PHI) about them in one or more “designated record sets” maintained by or for the covered entity. This includes the right to inspect or obtain a copy, or both, of the PHI, *as well as to direct the covered entity to transmit a copy to a designated person or entity of the individual’s choice.*



# UNREASONABLE MEASURES – BARRIERS TO ACCESS

While the Privacy Rule allows covered entities to require that individuals request access in writing and requires verification of the identity of the person requesting access, a covered entity may not impose *unreasonable measures* on an individual requesting access *that serve as barriers to or unreasonably delay* the individual from obtaining access.



# Electronic Copy/Format

- ▶ Where an individual requests an electronic copy of PHI that a CE maintains only on paper, the CE is required to provide the individual with an electronic copy if it is readily producible electronically.
- ▶ Where an individual requests an electronic copy of PHI that a CE maintains electronically, the CE must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format.



# Fees for Copies

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 receive a summary or explanation of the information). The fee may include only the cost of: (1) labor for copying the PHI requested by the individual, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive) if the individual requests that the electronic copy be provided on portable media; (3) postage, when the individual requests that the copy, or the summary or explanation, be mailed; and (4) preparation of an explanation or summary of the PHI, if agreed to by the individual.



# Fees for Copies

- ▶ HHS Guidance: Optional charging a flat fee not to exceed \$6.50 per request if entities do not want to calculate actual or average costs to provide the requested copy. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html#maximumflatfee>
- ▶ Wisconsin State health care record copy fees are released annually in July by the Wisconsin Department of Health Services. 2017 fees: <https://www.dhs.wisconsin.gov/wisact146/medical-records-fee.pdf>



# Right to Direct PHI to Another Person

An individual also has a right to direct the covered entity to transmit the PHI about the individual directly to another person or entity designated by the individual.

The individual's request to direct the PHI to another person must be in writing, signed by the individual, and clearly identify the designated person and where to send the PHI.



# Authorization Form VS. Right of Access Form





# Authorization Form

- ▶ PERMITS but does not REQUIRE CE to disclose PHI.
- ▶ Complex form with multiple requirements and fields to be completed.
- ▶ No time limit for disclosing PHI.
- ▶ No limitations on fees.



# Right of Access Form

- ▶ REQUIRES CE to disclose PHI (except where exception may apply).
- ▶ Must be in writing – but far less required data fields.
- ▶ CE must act on request no later than 30 days after receipt of request.
- ▶ Fees are limited to reasonable, cost-based fee.



# AHIMA Form – July 2017

The American Health Information Management Association (AHIMA) is pleased to provide a model **Patient Request for Health Information Form** to assist patients and providers in understanding and complying with patients “individual right of access” to their information as required by the Health Insurance Portability and Accountability Act (HIPAA).



# AHIMA Patient Request for Health Information Model Form

- ▶ The “Explanation for Use of AHIMA Patient Request for Health Information Model Form” – the reverse side of the model form – contains additional information, including links to related HIPAA specific requirements and resources to assist in a better understanding by patients and providers.
- ▶ AHIMA hopes you find this model form to be helpful in connecting patients with their health information.



# AHIMA Patient Request for Health Information Model Form

## **Purpose**

This form is intended to provide a plain language tool that provides patients a standardized mechanism to access their health information from a provider or organization. The form is written at an 8<sup>th</sup> grade reading level. The patient may or may not have knowledge of their ability to obtain copies of their information in the format of their choosing. The Office of Civil Rights (OCR) guidance indicates “*a covered entity may require individuals to use the entity’s own supplied form, provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to his PHI*”\*. This form, created by the American Health Information Management Association (AHIMA) is a suggested template but should not be required.

## **This model form IS:**

- Exclusively for access to the patient’s health information by the patient or their designated personal representative. Intended to streamline the request to assist providers in complying with the 30 day timeframe for patient access addressed by OCR guidance.
- A suggested model form.

## **This model form IS NOT:**

- Intended to replace, nor is it the same as, a third party authorization form.
- Intended to address state specific laws. Users will need to consider any state-specific regulations (e.g. for specific types of sensitive health information, such as, mental health and HIV). The impact of these regulations may be significant when processing other requests.
- A required HIPAA form.



# AHIMA Patient Request for Health Information Model Form

## **Why you need a Patient Request Form in addition to a HIPAA Authorization Form**

In January of 2016, the Office for Civil Rights (OCR) released "[Individuals' Right under HIPAA to Access their Health Information 45 CFR § 164.524](#)" which provided new interpretive [guidance](#) on the right to obtain personal health information from healthcare providers. The [guidance](#) was meant to clarify the responsibilities of healthcare providers to comply with the HIPAA privacy rule.

The updated guidance addressed the patient's right to inspect and/or obtain a copy of their health records and to have a copy of their records sent or directed to an individual of their choosing. OCR provides the reasoning for this additional guidance as:

*"Providing individuals with easy access to their health information empowers them to be more in control of decisions regarding their health and well-being."\**

## **Patient Request Model Form Versus Authorization Form**

The patient request model form is intended to streamline the request process for patients to obtain their information. The authorization form should be utilized for any other types of release of information that requires patient authorization. For more information about elements of an Authorization form refer to [HHS's Authorization FAQ](#).

## **Individual's Right to Give Access to their Health Information to Another Person**

Per the OCR [guidance](#), 45 CFR 164.524(c)(3)

*"An individual also has a right to direct the [provider] to transmit the [protected health information] PHI about the individual directly to another person or entity designated by the individual. The individual's request to direct the PHI to another person must be in writing, signed by the individual, and clearly identify the designated person and where to send the PHI."\**



# AHIMA Patient Request for Health Information Model Form

## **Recommendations for Using the Patient Request Model Form**

- Organizations may edit the form based on system capabilities as well as operational needs.
- It is recommended that organizations read and understand the OCR [guidance](#), 45 CFR 164.524(c)(3), to ensure compliance.
- Organizations are not precluded from developing their own internal policies that comply with the OCR guidance and do not create barriers to patient access. For example, if a patient requests health information to be transmitted through unsecured email, the provider should comply.
- Logo, barcode, and address may be added at organization's discretion.
- For healthcare organizations' fee structure please refer to OCR guidance and state laws.

\*OCR [guidance](#) 45 CFR 164.524(c)(3) <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>  
HHS Authorization FAQ <https://www.hhs.gov/hipaa/for-professionals/faq/authorizations>



# AHIMA Patient Request for Health Information Model Form

## Patient Request for Health Information

### Patient Information (Please Print)

First Name:		Middle Initial:	Last Name:	
Name at Time of Treatment (if different than above):				
Date of Birth (MM/DD/YYYY):		Phone:	E-mail (optional):	
Street Address:		City:	State:	Zip:

### What records do you want? (Check appropriate boxes below):

Date(s) of Service: \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_

- Discharge Summary  
  Emergency Room Records  
  Operative/Procedure Reports  
  Billing Records  
 Test Results (X-Rays, Lab/Pathology Results) Please specify: \_\_\_\_\_  
 Other (Immunization Records, Medication Lists) Please specify: \_\_\_\_\_

### How would you like your records delivered?

- Paper  
      Home Delivery  
      In-Person Pickup  
 Electronic (Email, USB, CD, Portal, Other) Please specify: \_\_\_\_\_

### Where do you want the information sent? (Fill in boxes below):

ORGANIZATION NAME should provide my records to:  Self  Personal Representative (indicated below)

Recipient Name:	Recipient Phone:
Recipient Mailing Address:	Recipient Fax:
	Recipient E-mail (if applicable):

### Please print your name and sign below:

<b>Name of Patient or Personal Representative (please print)</b>	<b>Relationship (please print)</b>





# Website with Form

Patient Request for Health Information Form  
is available on the [www.AHIMA.org](http://www.AHIMA.org).



# Implementation Challenges

- ▶ Long-Held Belief that Full “Autho” is Always Required!
- ▶ Promised Follow-Up Guidance from HHS – Not Forthcoming
- ▶ Use of Form as Work-Around by Special Interest Groups
- ▶ Confusion!



# Door County Medical Center

- ▶ Implementation Experience
  - Staff Training, Education, and Awareness
    - HIM
    - Other Relevant Departments
    - All Staff – Awareness
  - New Form
  - Supporting Procedure



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**Thank you!**



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