

Policy and Procedure on Patient's Right to Access Health Information

Carolina Musculoskeletal Institute, PA

Date: April 14, 2003

Authority: Office Manager, Hope Greene

Responsibility: Medical Secretary

Purpose:

The purpose of this policy is to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and to afford our patients the right to inspect and obtain a copy of health information about themselves.

General Policy:

It is our policy to provide our patients the right of access to inspect and obtain a copy of health information about themselves, for as long we maintain the information in our designated record set, with exceptions permitted by law.

It is our policy to comply with all legal requirements and obligations relating to the PHI of minor patients. Under most circumstances, a parent or legal guardian will have legal authority to act on behalf of minor children; in this matter the parent is considered to be the minor's "personal representative." The "personal representative" is entitled to receive PHI and permit its disclosure, as the patient would be. Under the following circumstances, the minor has authority to make his/her health care decisions:

- when the minor has the right under state law and the minor has not requested another person be treated as a personal representative;
- when the minor has the right to obtain a particular health care service;
- when the guardian agrees to an agreement of confidentiality between health care provider and the minor.

Definitions:

Access means that patients may inspect their medical records and billing records under the supervision of a staff member for which an inspection fee is charged; or obtain a copy of all or a portion of their medical records and billing records for which a copying fee is charged.

Designated record set means medical records and billing records that we use to make health care and payment decisions about patients.

Procedure:

1. Patients may request access to their medical records and/or billing records by submitting a request in writing on our Authorization for Release of Information Form to our Medical Secretary. This Form specifies that the access will be granted within 30 days of its receipt unless the patient is otherwise notified, and identifies the fees that will be charged for supervision of inspection, for copying all or portions of the record, or for summarizing the record. The request must state the type of access requested (inspection, copy, or if a summary will be accepted if there are reasons why a complete inspection or copy cannot be released, see step

3.b.), specify the dates and specific information requested, and be signed by the patient.

2. When a request for access to the medical record and/or billing record is made by a patient:

a. Obtain the patient's medical record and verify the patient's demographic information and signature on the Authorization for Release of Information Form with demographic information and signature on the consent for use and disclosure of health information, or other document signed by the patient contained within the medical record. If the authenticity of the patient cannot be verified, send a request to the patient to have a new Authorization for Release of Information Form notarized.

b. Review the medical record and/or billing record according to the request, to determine if:

1.) The information requested is excepted from the patient's right of access (see step 3. Exceptions to access), in which case access must be denied. Follow the procedure in step 4. for Denial of access.

2.) The information requested is complete. If the information is not complete, inform the physician responsible for completion that a request for access has been made by the patient and the record will need to be completed within 30 days in order to comply with the patient's request or be found in non-compliance with HIPAA and subject to fines. If the record is not completed within 30 days, send a copy of the Authorization for Release of Information Form to the patient indicating that an extension to providing access will be required because the record is in the process of being completed and indicating the specific date on which access will be granted. This date must not exceed an additional 30 days.

c. If access is not excepted and the information is complete and the patient requests inspection of the medical record and/or billing record or any portion thereof, schedule an appointment for the patient to visit the office. If the request is only for a portion of a record, remove that portion and place it in a separate folder for purposes of the inspection. Our Medical Secretary must be present with the patient during the time the patient is inspecting the record(s). During this time, the patient may not remove any documents from the record(s) or write any information in the record(s). If the patient wishes to make an amendment to the record(s), follow the Policy and Procedure for Patient's Right to Request Amendment of Health Information. If the patient has any questions concerning the information in the medical record, inform the patient that an appointment must be made with the physician to discuss the information. If the patient has any questions concerning the information in the billing record, refer the patient to the Patient Accounts representative.

d. If access is not excepted and the information is complete and the patient requests a copy of any or all of the medical record and/or billing record, make the specified copies and mail the information to the patient via postal mail. If the patient requests this information to be mailed to a different address, mailed to a different individual, or be given to someone else who physically presents to our office, this information must be authorized through the Authorization for Release of Information Form. If another individual is designated to physically pick up the copy of the information, verify the individual's identity by requesting a photo identification card and match the name on the card to the name on the Authorization for Release of Information signed by the patient.

Have the individual sign the Authorization for Release of Information as having received the information.

3. Exceptions to access are limited to very specific situations. Certain exceptions are unreviewable and for others we must permit the patient to request a review of our decision not to grant access.

Unreviewable grounds for denial of access include:

- when the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- when the request is from an inmate of a correctional institution, and we believe that providing a copy of the information would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or of other inmates, or the safety of any official, employee, or other person at the correctional institution or the safety of any person responsible for transporting the inmate.
- when the information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

Reviewable grounds for denial of access include:

- when a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person.
- when the information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person.
- when the request for access is made by the patient's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the patient or another person.

4. Denial of access is a serious matter under the law. Before the On-call Nurse may make such a denial decision, it is our policy to conduct an internal review of that denial. Any such case should be given to the Clinic Physician who will authorize the denial.

a. If access is denied for one of the unreviewable reasons to deny access, return a copy of the Authorization for Release of Information to the patient indicating that we are unable to comply with the request for access due to the applicable reason. Retain a copy of the Authorization for Release of Information sent to the patient in the patient's medical record.

b. If access is denied for one of the reviewable reasons, determine if a summary of the record may be made or portions of the record may be provided access such as to prevent the risk associated with denial.

1.) If a summary or access to portions of the record would prevent risk, return a copy of the Authorization for Release of Information to the patient indicating we are not able to comply with the request for access for the specified reason but would be able to provide a summary of information in the record or access to portions of the record.

2.) If such a summary or access to portions of the record is not possible, return a copy of the Authorization for Release of Information to the patient indicating we are not able to comply with the request for access for the specified reason. Indicate on this Form that the patient has the right to have this decision reviewed

by another licensed health care professional.

3.) If a request for review is received, give a copy of the Authorization for Release of Information Form, the medical record, and, if applicable, the billing record to Clinic Physician, who will make a final determination. Upon the review and determination, send a response to the patient indicating the result of the review and how the patient may file a complaint with our office or to the Secretary of Health and Human Services (HHS).

4.) File a copy of the Authorization for Release of Information Form and other documentation received from the patient in the patient's medical record. Place a copy of the Authorization for Release of Information in your Risk Management file.

5. If a request for access to the medical record or billing record is made and the person was not a patient of ours, return a copy of the Authorization for Release of Information Form to the individual indicating we have no records. If we do not have records on this individual but know where the requested information may be maintained (such as at a hospital or other physician's office), return the Authorization for Release of Information Form to the individual and provide the name and address of the location where we believe the records may be maintained. Keep a copy of the Authorization for Release of Information Form in your Risk Management file.

State Law Information for Patient's Right to Access Health Information

Carolina Musculoskeletal Institute, PA

State: SC

Your state's laws regarding Protected Health Information must be considered along with the HIPAA Privacy Regulation when updating your organization's policies and procedures. We are providing the information below as a guide to what those other considerations may be. Consult your state's laws to make sure you are meeting all of the requirements.

Summary

South Carolina has many statutes affecting this policy. This has a low to medium impact to the policies. Carefully read each state provision and our "Expected Impact" and then incorporate appropriate language into your policy. Seek outside counsel if anything is unclear.

General Policy Issues

The HIPAA Privacy Regulation allows patients to access information about themselves, with some exceptions. Your state law may not allow a patient to access his or her own health information or they may limit the information held in the data set. Thus you may need to make changes to your general policy accordingly.

Definitions

In our standard HIPAA policy, we provide the definition for access and designated data set. Your state regulations, as cited below, may have a different definition for access. The state may also change the content held in the designated data set, or use a different term for the records that can be accessed by the patient.

Specific Issues

In Part 1, the policy states that patients are allowed to obtain a copy of their medical records pursuant to the covered entity receiving a written Authorization of Release of Information form and that this access or denial will occur within 30 days. State law may prohibit patients to access their medical records and/or have a different time limit in which they must comply with a request.

Part 2 establishes a process for you to accept or reject a patient's request to obtain their medical record. State law may have a different process in which you may accept or reject a patient's request. Be careful to note that the state law may require the provider to inform the patient of their decision in a certain period of time and have a different cost for copying the records.

Part 3 includes the grounds for denial of access to the patient. State law may or may not have the same grounds for denying access.

Part 4 deals with the process of reviewing a denial decision. State law may have a process in which a denial is reviewed and have certain criteria for patients who would like to appeal a denial.

Part 5 refers to the process providers should use if the requested records are not part of their data set. State law may have a different provision for handling this situation.

Definition of Protected Health Information

Expected Impact [Low]

The federal access regulation applies to protected health information maintained in a designated record set. State law does not appear to include the designated record set limitation. The federal designated record set limitation does not appear to be applicable.

NOTE: Do not rely on the federal designated record set limitation.

State Law Citation

S.C. Code 44-115-30; 44-7-325

Highlight of State Provision

Under the Physicians' Patient Records Act, a patient has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his representative to release the record.

Records exempt from access requirements

Psychotherapy Notes

Expected Impact [Low]

Psychotherapy notes can apparently be withheld only if they meet the federal standard of harm for patient access. However, no information can be withheld from the patient's attorney.

NOTE: You may withhold psychotherapy notes only under the federal exemption for harm to the patient. However, no information can be withheld from the patient's attorney.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written

authorization signed by the patient.

Litigation

Expected Impact [Medium]

State law has no exemption for litigation materials, but they may not be within the scope of a required disclosure under state law.

NOTE: It looks like litigation materials can be withheld. If you have litigation materials, you also probably have a lawyer and can ask about it.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written authorization signed by the patient.

Harm to Individual

Expected Impact [Medium]

The federal *harm to patient* standard (professional judgment, reasonably likely to endanger life or physical safety of individual or another person) allows for the withholding of less information from the patient than state law.

NOTE: Follow the federal harm to patient standard for withholding information. However, no information can be withheld from the patient's attorney.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written authorization signed by the patient.

Information about third parties, Harm to others

Expected Impact [Medium]

The federal regulation allows withholding of information about another person if a healthcare professional has determined in the exercise of professional judgment that access is reasonably likely to cause substantial harm to the other person. The state standard allows withholding only if there would be harm to another person who has given information about the patient to the physician, but not if there would be harm to a person who did not give information. The federal standard requires substantial harm and not just harm.

NOTE: Follow the narrower state standard for information with respect to this information, but only if the harm would be substantial. However, no information can be withheld from the patient's attorney.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written authorization signed by the patient.

*Harm from disclosure to personal representative***Expected Impact [Medium]**

The federal regulation allows withholding from a personal representative if disclosure is reasonably likely to cause substantial harm to the individual or another person. It is not clear that state law allows for withholding on the basis of harm to a personal representative, unless the personal representative gave information about the patient to the physician.

NOTE: It does not appear that state law allows withholding simply on the basis of harm to a personal representative unless it was the personal representative who gave the information to the physician. However, no information can be withheld from the patient's attorney.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise

prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written authorization signed by the patient.

Confidential Sources

Expected Impact [Medium]

The federal regulation allows for the withholding of information obtained under a promise of confidentiality if disclosure would be reasonably likely to reveal the source of the information. The state law standard applies to a person who provided information about the patient to the physician if disclosure would result in harm to that person, regardless whether there was a promise of confidentiality or whether the source would be identified.

NOTE: The federal and state standards here are not in direct conflict. It appears that information obtained from a confidential source can be withheld only if both the federal and state standards are met. However, no information can be withheld from the patient's attorney.

State Law Citation

S.C. Code 44-115-60

Highlight of State Provision

A physician may refuse to release a copy of the entire medical record and may furnish instead a summary when he has a reasonable belief that release of the information contained in the entire record would cause harm to the well-being of the patient or another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. However, a physician may not refuse to release the entire record or a portion of it, if the information is requested by a licensed attorney representing the patient, and the request is accompanied by a written authorization signed by the patient.

Access Process

Procedure

Expected Impact [Low]

The federal regulation allows a provider to require that a request for access be in writing. The state law does the same.

NOTE: There is no conflict between the federal regulation and state law on access procedures. You may ask a patient for a written request before providing access to medical records.

State Law Citation

S.C. Code 44-115-30

Highlight of State Provision

A patient or his legal representative has a right to receive a copy of his medical record when accompanied by a written authorization from the patient.

Time

We have not discovered any relevant state statutes for this section.

Cost

Expected Impact [Medium]

Federal law allows healthcare providers to charge a reasonable, cost-based fee plus postage. No handling fee is permitted.

NOTE: Fees for copying may not exceed the maximum allowed under either the federal regulation or state law, whichever is less.

State Law Citation

S.C. Code 44-115-80, 44-115-90

Highlight of State Provision

A physician may charge a fee for the search and duplication of a medical record, not to exceed \$0.65 per page for the first thirty pages and \$0.50 per page for all other pages, with the clerical fee for searching and handling not to exceed \$15 per request plus actual postage and applicable sales tax.

Records must be provided at no charge when the patient is referred by the provider to another provider for continuation of treatment for specific conditions. The physician may charge a patient or the patient's representative no more than the actual cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication.

When a request for medical information involves more than making copies of existing documents, a physician may charge reasonable fees, excluding the fees charged for copying the medical record, for providing this service.

Appeal

We have not discovered any relevant state statutes for this section.