

DENTAL RECORDS

Patients accessing their dental records



BACKGROUND

Failure to provide patients with access to their health records is a common HIPAA complaint based on data from the US Department of Health and Human Services Office for Civil Rights (OCR). Often patients are told that they cannot obtain a copy because they have an outstanding balance on their account. The facts regarding patients' rights to their dental records were outlined.

PATIENT RIGHTS TO RECORDS

Ownership of the information and images in the patient record belongs to the practice. However, HIPAA and state law recognize patients' rights to have access to the information in their health records. HIPAA and state law limit what the health care provider can do with the patient information, often requiring that the patient's authorization must be obtained to use or disclose information for nonpayment or nontreatment purposes.

Patients or their legal representatives have a right to access any information that relates to their treatment or payment for that treatment. This would include the dentist's notes, radiographs, photographs, and models, as well as any other information related to treatment, even if it came from a different provider. No dental practice can deny patients access to their dental records due to an outstanding balance or because the patient took advantage of a promotional price. Dental practices must comply with requests from patients or patient representatives for access to their dental records.

Noncustodial parents are entitled in general to access their minor child's health information even after a divorce or separation. However, practice staff should carefully verify with the primary custodial parent whether there is any court order that limits a parent's access to their child's information and request a copy for their files. The practice should also limit sharing payment information to the amount incurred, amounts paid, and dates in these cases.

Patients who want to inspect their records must be allowed to view them within 5 days of the practice receiving a written request from the patient. The dental practice is allowed to request that the patient specify the dates of the records to be

viewed. The inspection itself should take place during working hours, and an employee of the dental practice should be present in the room while the record is being viewed. The patient or patient representative is generally limited to having only 1 other individual present during the review. If the patient requests a copy after the review, state law allows up to 15 days to provide that copy.

COPIES OF RECORDS

Legally, requests for a copy of records need not be made in writing. However, if the dental practice requires a written request, that requirement must be included in the practice's HIPAA Notice of Privacy Practices form. Practices can accept requests made in person, via e-mail, through a fax, or by a handwritten letter in lieu of a specific form. The requestor's identity should be verified as much as possible, along with the individual's legal standing with regard to the patient. The copy should be provided within 15 calendar days of receiving the request. The copy provided should be in the form requested (hard copy or digital) if it is feasible.

Charges for copies

Both HIPAA and state law limit what a patient can be charged for copies of records. The charge cannot be more than what it costs the practice to produce the copy. If the practice charges, it must provide patients with a list of fees and should provide an estimate of the cost based on the scope of the request. Fees can be used to recoup the actual cost of duplication, time to duplicate the material, material cost, and postage. A HIPAA-covered entity cannot ask for payment for costs incurred in requesting verification, retrieving information, or maintaining information systems.

For paper copies, the dental office can collect no more than 25 cents per page or 50 cents per page for copies made from microfilm, plus any reasonable clerical costs for copying. Allowable charges include the cost of copying x-rays and postage if the patient wants the copies sent by mail.

For electronic copies, the fee can cover the cost of the electronic media requested (CD or flash drive, for example) and the cost of labor to make the copy or transmit the information. Covered entities can charge a flat fee for each request for electronic copies

Clinical Significance

Patients may need help in accessing their dental records from a former dental practice. They can be referred to the “Patient Records” oral health fact sheet under the Public Resources tab on the cda.org site. Similar information may be available from other state dental associations. Copies of the fact sheet can be made and submitted with a written request for records to the dental practice. Patients may also want to encourage the former dental practice to contact their own state association for further information.

that does not exceed \$6.50. If the dental practice chooses not to use the flat fee approach, \$6.50 is not the limit that can be charged.

The transmission of an electronic copy can be through unencrypted e-mail only if the patient consents to this method. He or she must be informed of the risks of unsecure communications; this informed consent should be documented by the practice.

If a patient requests a copy of a portion of his or her record to support an appeal regarding eligibility for a public benefit program, the copy must be provided by the dental office without charge. However, the patient can only have 1 copy free of charge; any additional copies would have to be paid for.

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Reprints not available

HIPAA

Business associate agreements



BACKGROUND

HIPAA-covered entities must have an agreement with each business associate to ensure that patient information is safeguarded according to the demands of the laws governing the handling of this sensitive information. Definitions were given for business associates and business associate agreements (BAAs) to help clarify what is needed for a dental practice to be in compliance with regulations.

HIPAA BUSINESS ASSOCIATES

HIPAA business associates are entities, individuals, or organizations that create, receive, maintain, use, store, or transmit protected health information (PHI) on behalf of a covered entity, such as a dental practice, usually for nontreatment purposes. These associates are not part of the entity's workforce but can be entities such as claims clearinghouses, practice management software companies, cloud service providers, document shredding companies, or collection agencies. Among the individuals who can be business associates are an attorney, an accountant, or a practice management consultant or liability insurance carrier when PHI is used to provide a service to the dental practice. Subcontractors of business associates are considered business associates under HIPAA. The entities and individuals listed are not the only business associates but give an idea of the range of examples that can qualify.

Among those who would not be considered business associates are associate dentists working in a practice, specialists or other care providers who receive referrals from the dentist for

treatment, and dental laboratories. Interpreters, students, or on-site bookkeepers are examples of nonemployees who can be managed as part of the covered entity's workforce and are not business associates. Dental benefit or medical plans, banks and other financial institutions, services that just serve as conduits for PHI, and researchers using a limited data set are also not considered HIPAA business associates.

BAAS

When is a BAA required?

Several situations should be considered to determine if a BAA is required. If the service vendor creates, receives, maintains, uses, stores, or transmits PHI on behalf of the dental practice, that vendor becomes a business associate and requires a BAA. If a provider claims it's not a HIPAA business associate, the dental practice should determine if PHI is needed for the vendor to perform its job and, if it is, determine the pathway of the PHI, its destination, and if the vendor stores PHI. Vendors who must use PHI but cannot confirm its disposition before, during, and after its use should be avoided.

Voice over Internet Protocol (VoIP) and digital fax services with online patient portals must be carefully considered. The dental practice should understand where patient information moves when these are in use.

Larger vendors want their covered-entity customers to sign their BAA and will not sign a covered entity's BAA. A careful review of