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HIPAA's Privacy Rule

What Is HIPAA?

HIPAA stands for the Health Insurance Portability and Accountability Act passed by Congress in 1996. The Act includes provisions for health insurance portability, fraud and abuse control, tax related provisions, and group health plan requirements, among others. Additionally, the Act creates national standards to protect individuals' medical records and other Protected Health Information (PHI), also known as the HIPAA privacy rule.

What Is HIPAA's Privacy Rule?

The HIPAA Privacy Rule creates national standards to protect individuals' medical records and other PHI.

a) It gives patients more control over their health information.

b) It sets boundaries on the use and release of health records.

c) It establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information.

d) It holds violators accountable with civil and criminal penalties that can be imposed if they violate patients' privacy rights.

e) And it strikes a balance when public responsibility supports disclosure of some forms of data, for example, to protect public health.

For patients:

a) It means being able to make informed choices when seeking care and reimbursement for care based on how personal health information may be used.

b) It enables patients to find out how their information may be used, and about certain disclosures of their information that have been made.

c) It generally limits release of information to the minimum reasonably needed for the purpose of the disclosure.

d) It generally gives patients the right to examine and obtain a copy of their own health records and request corrections.

e) It empowers individuals to control certain uses and disclosures of their health information.

Who Can Access My Medical Records?

The Covered Entity (a health plan, a health care clearinghouse, or a health care provider that transmits any health information in electronic form relating to any covered transaction) is permitted to use or disclose PHI:

a) To the individual;
b) For Treatment, Payment, and Health Care Operations
c) Incident to a use or disclosure otherwise permitted, provided that the Covered Entity has complied with the applicable requirements of minimum necessary and safeguards;
d) Pursuant to an authorization; and
e) Pursuant to an agreement.

The Covered Entity is required to disclose Protected Health Information:

a) To the individual;
b) To the individual's personal representative;
c) When required by the Secretary of Health and Human Services to investigate or determine a Covered Entity's compliance with the regulations; and
d) When required by law.

Who is a Personal Representative Under HIPAA?

A "personal representative" under HIPAA is defined as a person who has authority to act on behalf of the individual in making health care decisions. In Ohio this may include the individual's Durable Health Care Power of Attorney (DHCPOA) agent.

Can a HIPAA Covered Entity Refuse to Release the Principal's Health Care Information to the Personal Representative?

HIPAA covered entities must allow your personal representative to inspect and receive a copy of protected health information about you that the covered health care provider or health plan maintains, except in cases where there is a reasonable belief that the personal representative might endanger you in situations of domestic violence, abuse, or neglect.

What Can The Covered Entity Require of a Personal Representative Prior to Releasing Health Care Information?

Covered Entities must require a valid authorization prior to releasing PHI. A valid authorization must include the following core elements and required statements.

Core Elements:

a) Description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
b) Name of the person(s) or class or persons authorized to use or disclose the PHI;
c) Name of the person(s) or class of persons to whom the Covered Entity is authorized to make the use or disclosure;
d) Description of each purpose of the requested use/disclosure. Statement "at the request of the individual" is sufficient when an individual initiates the authorization and does not, or elects not to, provide a statement of purpose;
e) Expiration date or an expiration event that relates to the individual or the purpose of the use/disclosure. Statement "end of research study," "none," or similar language is sufficient if the authorization is for research, including the creation and maintenance of a research database or research repository;

f) Signature of individual and date; if signed by personal representative, a description of the representative's authority to act for the individual.

Required Statements: In addition to the core elements, the authorization must contain statements adequate enough to place the individual on notice of all of the following:

1. Individual's right to revoke authorization in writing and either:
    a. Exceptions to the right to revoke and a description of how the individual may revoke; or
    b. Reference to the Covered Entity's privacy notice if it contains the exceptions and description of how to revoke.

2. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization by stating either:
    a. Covered Entity may not condition treatment, payment, enrollment or eligibility for benefits or whether individual signs authorization when the prohibition on conditioning authorizations applies; or
    b. The consequences to the individual of a refusal to sign when the Covered Entity can condition on failure to obtain such authorization.

3. The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by recipient and no longer protected by the HIPAA privacy rules.

Will My Agent Under Ohio's Durable Power of Attorney for Health Care Be Able to Access My Health Care Information?

If the DHCPOA is in effect, generally the agent will be able to access the information. Ohio's standard DHCPOA form also allows a principal to authorize their designated agent to have access to PHI even when the DHCPOA is not currently in effect.

Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.
This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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