

Patient Perspective: Access to Information in the Electronic Medical Record

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Access-the Patient Perspective

- HIPAA citations relevant to patient and access to PHI
- RCW 70.02 citations relevant to patient and access to PHI
- Additional patient perspectives re Access
- Challenges for healthcare

Patient Right to Access-HIPAA |

- **164.524 (a)(1) Access to PHI in DRS**
 - Right of access to inspect & obtain copy of PHI about individual in DRS for as long as maintained,
 - except for psychotherapy notes, info compiled in reasonable anticipation of or use in civil, criminal, or admin action or proceeding, or PHI subject to Clinical Laboratory Improvement Amendments of 1988 42 U.S.C. 263a or exempt from CLIA of 1988 pursuant to 42 CFR 493(a)(2)

Denial of Patient Access-HIPAA II

- **164.524 (a)(2) Unreviewable grounds for denial**
 - CE may deny access without review if:
 - PHI is excepted from right of access by pp(a)(1), (psychotherapy notes, etc.)
 - CE is a correctional institution or CE providing acting under direction of the correctional institution
 - Access to PHI created/obtained by provider in course of research that includes treatment may be suspended for as long as research in progress, provided indiv agreed to denial when consenting to participate & provider has informed indiv that right of access reinstated upon completion of research

Denial of Patient Access-HIPAA III

- **164.524 (a)(3) Reviewable grounds for denial**
 - CE may deny access if:
 - Licensed HC professional determines access requested likely to endanger life or physical safety of individual or another person
 - PHI makes reference to other person who might be harmed
 - Request made by personal representative & provision of access might cause substantial harm to the individual or another person

Denial of Patient Access-HIPAA IV

- **164.524 (a)(4) Review of a denial of access**
 - If reviewable denial, individual has right to have denial reviewed by licensed HC professional designated by CE to act as reviewing official & did not participate in original decision.
 - CE must provide or deny access in accordance with decision by reviewing official.

Patient Right to Access-HIPAA v

- **164.524 (b) Implementation specifications**
 - **164.524 (b)(1) Individual's right to request for access – CE must permit requests**
 - **164.524 (b)(2) Timely action by the CE – 30 days**

Implementing Access-HIPAA vi

- **164.524 (c) Implementation specifications -If CE provides the access to PHI:**
 - **164.524 (c)(1) Providing the access requested to PHI in DRS**
 - **164.524 (c)(2) Form of access requested** - provide in form/format requested if readily producible or summary if pt agrees
 - **164.524 (c)(3) Time and manner of access** - convenient time & place to inspect or obtain copy
 - **164.524 (c)(3) Fees** - reasonable, cost-based fee

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- **164.524 (d) Implementation specifications: denial of access**
 - **164.524 (d)(1) Making other information accessible** - access to any other PHI after excluding PHI denied
 - **164.524 (d)(2) Denial** - written denial, basis of denial, review rights, how to complain
 - **164.524 (d)(3) Other responsibility** - If CE does not maintain, the requested PHI but knows where maintained, must inform individual
 - **164.524 (d)(4) Review of denial requested** - designate licensed healthcare professional, not directly involved in denial, to review decision.

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- **164.524 (e) Implementation specification: documentation**
 - CE must document and retain documentation:
 - DRS that are subject to access by individuals
 - titles of persons responsible for receiving and processing requests for access

Patient Access per RCW

- **70.02.080 Patient's examination and copying – Requirements**

(1) As promptly as required under circumstances, but no later than ***fifteen working days*** after receiving written request shall:

(a) Make information available

(b) Inform patient if information does not exist or cannot be found;

(c) If record not maintained, inform patient & provide name/address of provider who does if known;

(d) If delay, inform patient, specify reasons & earliest date, not later than ***twenty-one working days*** after request, when information available; OR

(e) Deny request, in whole or in part, under RCW [70.02.090](#) & inform patient.

Patient Access per RCW II

- **70.02.080 Patient's examination and copying – Requirements**

2) Upon request,

(a) provider shall provide explanation of any code or abbreviation used;

(b) provider is not required to create new record or reformulate an existing record;

(c) may charge reasonable fee; not required to permit examination or copying until fee paid.

Patient Access per RCW III

70.02.090 Denial of examination and copying

(1) Provider may deny patient access to health care information if provider reasonably concludes that:

(a) Knowledge of the information would be injurious to patient;

(b) Knowledge of information could lead to patient's identification of individual who provided information in confidence;

(c) Knowledge of information reasonably expected to cause danger to life or safety of any individual;

(d) The information was compiled and used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to information is otherwise prohibited by law.

Patient Access per RCW ^{IV}

70.02.090 Denial of examination and copying

- (1) If provider denies a request for examination and copying, must provide access to information for which access cannot be denied
- (2) If provider denies a patient's request
 - (a) provider shall permit examination & copying by provider selected by the patient, authorized to treat patient for the same condition.
 - (b) denying provider shall inform the patient of right to select another provider.
 - (c) Patient responsible for compensation of other provider so selected.

Additional Patient Perspectives |

- **164.526 Amendment of PHI**
 - Increased requests means more accurate record
- **164.528 Accounting of disclosures of PHI**
 - Challenge of maintaining accounting
- **164.522 (a)(1) Right to request restriction of uses and disclosures**
- **(2) Terminating a restriction**
- **(3) Documentation**

Additional Patient Perspectives II

- **Access control and management**
- **164.312 (b) Monitoring access**
- **164.530 (d)(1) Complaints to the CE**
- **164.530 (e)(1) Sanctions**
- **164.514 (d)(3) Minimum necessary**
- **164.308 (a)(7) EMR dependably & appropriately accessible for continuity of care & business**

Additional access expectations and rights from patient perspective

- Notice of privacy practices
- Strict adherence to permitted uses and disclosures per NPP
- Use & disclosure for treatment, payment & operations
- Minimum necessary for other than treatment purposes
- Access for personal representatives

Issues and Challenges

- Providing the medical record in an intelligible format:
 - Paper copies flatten out the logic of the EMR
 - EMRs typically don't provide a viewer and patient's record with logic intact
- Defining the Designated Record Set: remains challenge for some
- Maintaining response timeframes

Issues and Challenges II

- Maintaining procedures, responsibility, consistent process for patient access, amendment/correction requests
- Learning from complaints & investigations-a quality improvement approach
 - Fixing problems
 - Expanding training in response
- Providing complete and accurate accountings of disclosures
 - Strong tool
 - Consistent reporting

Issues and Challenges III

- Recording & examining access in systems
 - Implementing monitoring tools
 - Acquiring tools that efficiently identify events
 - Widely unimplemented or inadequately
 - Workforce on workforce violation 1st threat
- Amendments & Corrections
 - Strong, serious response procedure
 - Versioning

Issues and Challenges IV

- Sanctions: meaningful, realistic sanctions for workforce including medical staff
 - HCOs invest in workforce & medical staff: experience, training, loyalty, admits
 - Need to determine sanctions that deliver serious message and protect patients
 - Challenge: what sanctions for medical staff who can admit patients elsewhere