

Your Health Privacy Rights – What They Are and When to Use Them

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1. Definitions

For purposes of this document, the term “Medical Records” refers to all of your health records, including medical, dental, chiropractic, pharmaceutical, mental health, and all of the various specialties (dermatology, surgery, any and all procedures, lab tests, radiology results, etc.).

The term “provider” refers to any licensed healthcare provider, such as an MD, PA, DO, DDS, DC, medical technician, PhD (for example, psychologist), etc. In some states, a provider is also defined as an RN, Nurse Practitioner, and LVN.

Disclosures of your medical records must be performed in such a way that only the “Minimum Necessary” information is released. For example, if your employer requests information about the broken leg you suffered on the job (which would be a worker’s compensation case), then your provider can provide the information without your permission – *but your provider may provide only the Minimum Necessary information relevant to your broken leg (not any of your other illnesses, injuries, etc. unless they are part of your leg injury), and they must log the disclosure.*

2. The HIPAA Privacy Rules – What Are They?

The HIPAA Privacy Rules – your health privacy rights – were written by the Department of Health & Human Services; they were published in the Federal Register as required by law, and became effective in April, 2003.

Even though they are not a collection of laws passed by Congress, Congress gave Health & Human Services the authority to write and enforce the Rules.

This means the Rules have the effect of law, and there are federal penalties for providers, clearinghouses, and health insurance companies who do not follow them.

The one thing the HIPAA Privacy Rules did not give you is the right to sue when a provider, clearinghouse, or health insurance company does not follow these rules – even if you suffered harm as a result.

The good news is that some states are starting to recognize that you should be able to sue when, due to negligence or deliberate action on the part of a provider, clearinghouse, or health insurance company, you suffer harm.

As of October, 2008, the State of California has afforded its citizens the right to sue for damages; the maximum recovery is only \$1000, but that's a lot better than nothing – and that amount can be awarded even if the individual did not suffer any damages.

Many, many providers, particularly those in small practices, do not follow all of the HIPAA Privacy Rules and do not protect your rights.

Having the ability to sue providers when they don't protect your rights is a big step forward in protecting your health information. You may want to contact your state representatives and encourage them to follow California's example.

All healthcare providers are required by the HIPAA Privacy Rules to give you a copy of what is called a "Notice of Privacy Practices." Many providers do not do this, or, if they do, they don't make it clear that that it contains very important information that you need – and is your right to have.

Some of the worst abusers include pharmacies. Pharmacies rarely give patients their Notice of Privacy Practices.

Many pharmacies will ask you to electronically sign something (on an electronic pad) before they give you your prescription – especially the first time you do business with the pharmacy. What "that" is, is an acknowledgment that you have received a copy of their Notice of Privacy Practices – *sneaky, isn't it?* You just signed an electronic notepad stating that you received your Notice, but you didn't!

Pharmacies are wrong to do this – they are defined as "providers" by the HIPAA Privacy Rules – therefore they must give you a copy of their Notice of Privacy Practices. If they don't, then you have a legitimate complaint and can file your complaint with the pharmacy manager or directly with Health & Human Services.

Some providers will let you "look" at their Notice of Privacy Practices – *but that's not good enough*, it's not what the HIPAA Privacy Rules require. If your provider only lets you look at their Notice of Privacy Practices, then tell them you want a copy.

If provider will not give you a copy, then you have a legitimate complaint and can file your complaint with the practice manager or directly with Health & Human Services.

Finally, the Notice of Privacy Practices has to be written in "plain language" – you have to be able to understand what it says about your rights. If you get a Notice from one of your providers – read it and make sure you understand what it says.

If you cannot understand a Notice of Privacy Practices that you have been given, or if the print type is so small you cannot read it, then you have a legitimate complaint and can file your complaint with the practice manager or directly with Health & Human Services.

The HIPAA Privacy Rules provide you with some very specific rights that you didn't have before 2003.

What are they?

3. Your Right to Look at Your Health Information