How long is a records release authorization valid?

Except for permission to provide information to third-party health care payers, an authorization to release records can be valid for varying lengths of time. The authorization to release records must specify one of the following: an expiration date (a specific date—e.g., January 1, 2010) OR a specified number of days from the date signed OR when the following event occurs (e.g., “when adoption of our child is final”). The law has no time limit on the validity of releases to health care payers.

How long do I have to respond to a request to copy records?

You should comply as soon as is reasonably practical, but the law allows up to 15 working days to make the information available. If special or unusual circumstances cause a delay beyond 15 working days, you must inform the patient in writing of the reasons for the delay and specify a date no later than 21 working days after receiving the authorization when the information will be made available. This discussion does not apply in the context of a subpoena or request for discovery.

What do I do if a patient asks to see his or her record?

The patient does have the right to personally inspect his or her medical record as promptly as required under the circumstances, but no later than 15 or 21 working days after the patient’s request as described in question 3 above. A staff member should accompany the patient to provide assistance, answer questions, and guard against tampering with the chart.

How much can I charge for copies of the records?

For Washington practitioners and facilities:
HIPAA and Washington State law limit the amount that may be charged for duplication and searching services to a reasonable cost-based fee. HIPAA prohibits charging patients for handling fees, chart-pulling fees, or per-page fees in excess of the direct cost of materials. The interaction between these two laws may arguably permit the inclusion of a clerical or labor fee only under certain circumstances. When editing of the record is required by statute and is done by the provider personally, Washington State law allows the provider to charge the usual and customary charge for a basic office visit. However, because of the HIPAA Privacy Rule, individuals must agree to these charges in advance. A typical example of where editing would be required is a records request that does not specifically authorize disclosure of information related to HIV/AIDS, sexually transmitted diseases (STDs), substance abuse, or mental health, which would require that information be removed from the chart copy.

The Washington State Department of Health discourages charging a fee in cases of financial hardship. Refusing to provide copies of records for treatment purposes is unethical. In other situations, Washington State and federal law does provide that a “reasonable” or “cost-based” fee may be charged. In Washington State, effective July 1, 2011 through June 30, 2013, these fees may not exceed the following:
• Copying: $1.04/page for the first 30 pages plus $0.79/page thereafter (HIPAA prohibits charging patients or their representative handling fees, chart-pulling fees or per-page fees in excess of the direct cost of materials)
• Clerical/labor: Up to $23.00 (HIPAA provides that this fee cannot be charged to patients or their representatives)
• Certification: $2.00

Differing opinions exist concerning how the language contained with the HIPAA privacy regulations interacts with the copy charges allowed by Washington State law. HIPAA regulations may limit permissible copy charges assessed to patients by allowing labor and supply costs only, and specifically excluding charges for “retrieving or handling.” Therefore, we currently believe that the $23 “clerical fee for searching and handling” allowed under Washington law cannot be charged to patients requesting copies of their records. For nonpatient requestors, excluding third-party payers, HIPAA contains no provisions governing or limiting such fees. Therefore, it is debatable as to whether or not it is permissible to charge nonpatient requestors the $23 clerical fee for searching and handling. The bottom line is that you cannot charge the patient, or third-party payers, the $23 fee. The “per page” charges allowed under Washington law can still be charged to patients up to the statutory maximum provided that these fees do not exceed the direct cost of materials.

References: RCW 70.02.010, RCW 70.02.080, WAC 246-08-400, 45 CFR 164.524, Washington State HIPAA Preemption Analysis (2002 WHSA)

Do I still need a special form to release information about HIV/AIDS, sexually transmitted diseases, drug abuse, and mental health treatment?

The patient must sign an authorization that specifically mentions these conditions before the records can be released. Please refer to our sample Authorization to Use or Disclose Health Care Information for the recommended language.

Can anyone other than the patient sign a records release authorization?

If the patient is alive but does not have the capacity to sign a records release authorization, a person authorized to make health care decisions on behalf of the patient can sign the records release authorization. A person authorized to make health care decisions is a member of one of the following classes of persons in the following order of priority:

1. The appointed guardian of the patient, if any.
2. The individual, if any, to whom the patient has given a durable power of attorney for health care.
3. The patient’s spouse.
4. Children of the patient who are at least eighteen years old.
5. Parents of the patient.
6. Adult brothers and sisters of the patient.

If the patient is deceased, the personal representative of the patient (executor of the patient’s estate) can sign a records release authorization. If there is no personal representative, then a person authorized to make health care decisions for the patient as listed above can sign the release.
Can parents sign releases for their minor children?

Parents may sign releases for their minor children in most cases. However, if the minor is emancipated, married, or authorized to consent to health care without parental consent according to federal and state law, only the minor may authorize the release of health care information pertaining to his or her care. In Washington, minors may consent at age 14 for treatment related to HIV/AIDS or sexually transmitted diseases; at age 13 for outpatient mental health care or outpatient substance abuse treatment; and at any age for birth control or pregnancy-related care.

What if the parents are divorced?

If the parent represents to the health care provider that he or she is authorized to consent to treatment for the minor, the parent can sign the records authorization. This applies regardless of whether the parents are married, unmarried, or separated at the time of the request; the consenting parent is or is not the custodial parent; and the giving of consent by the parent is or is not in compliance with a divorce order or decree.

What do I do when I receive a discovery request or subpoena for records, deposition, or trial from a lawyer?

Before a discovery request or subpoena is served, the health care provider must be given at least 14 days’ advance written notice by the attorney issuing the request or subpoena. A copy of the advance notice also is sent to the patient or patient’s attorney.

The notice must indicate from what provider the information is sought, what information is sought, and the date by which a protective order must be obtained to prevent the provider from complying with the discovery request or subpoena. The health care provider may not, without the patient’s consent, disclose the information sought if the requestor has not complied with the notice requirements.

If the notice requirements have been met, the provider must disclose the requested information in response to the discovery request or subpoena unless a protective order is issued by the court or the information is otherwise protected by law as described in the next paragraph. The discovery request or subpoena must be placed into the patient’s record.

The fact that notice requirements have been met and that the release is pursuant to a discovery request or subpoena for records does not modify the terms and conditions of disclosure under laws forbidding the compelled disclosure of information about HIV/AIDS, STDs, mental health, or substance abuse. You cannot disclose such information unless the patient specifically consents in writing or the party requesting disclosure obtains a specific court order. A general subpoena or request for discovery is not enough. If you receive an advance notice of a subpoena or discovery request without the patient’s signed authorization for the release of information about HIV/AIDS, STDs, mental health, or substance abuse, we recommend you send the parties a letter that explains your dilemma. It should include language similar to this:

“I will comply with the (subpoena) (discovery request) to the extent allowed by law. If the patient’s record contains any information which requires the patient’s specific consent for disclosure, I will need the patient’s specific written consent or a specific court order before I can release such information.”
If you delete information from the record, advise the requestor that information has been deleted as required by law, but do not specify the nature of the information.

Of course, if you are involved in the litigation as a party, you should consult with your counsel about the appropriate response to a request for records.

**Can I disclose health care information without the patient’s authorization?**

Yes. There are a variety of situations whereby information may be disclosed without authorization by the patient.

Following is a partial list of such circumstances. This list is not intended to be all inclusive and each organization’s policy regarding privacy practices should be consulted before disclosures are made without a patient’s authorization. Privacy regulations now in effect are designed to improve the privacy and security of health care information but they are not intended to be a barrier to quality health care.

- To funeral directors/coroners consistent with applicable law to allow them to carry out their duties.
- To organ procurement organizations (tissue donation and transplant) or persons who obtain, store, or transplant organs.
- To the Food and Drug Administration (FDA) relating to problems with food, supplements, and products.
- To comply with workers’ compensation laws—if a workers’ compensation claim is made.
- For public health and safety purposes as allowed or required by law:
  - To prevent or reduce a serious, immediate threat to the health or safety of a person or the public.
  - To public health or legal authorities:
    - To protect public health and safety.
    - To prevent or control disease, injury, or disability.
    - To report vital statistics such as births or deaths.
- To report suspected abuse or neglect to public authorities.
- To correctional institutions if the patient is in jail or prison, as necessary for the patient’s health and the health and safety of others.
- For law enforcement purposes such as when a subpoena, court order, or other legal process requires disclosure, or if the patient is a victim of a crime.
- For health and safety oversight activities. For example, health information may be shared with the Department of Health.
- For disaster relief purposes. For example, health information may be shared with disaster relief agencies to assist in notification of a patient’s condition to family or others.