



# Your Medical Record Rights in California

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(A Guide to Consumer Rights under HIPAA)

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## INTRODUCTION

Medical records are an important part of your health care. These records are a written history of your health condition and treatment. They are used by doctors, hospitals, dentists, health care clinics, and other health care providers to treat you.

A federal law called the HIPAA Privacy Rule gives you the right to get and amend (correct) your medical record. (HIPAA stands for the “Health Insurance Portability and Accountability Act.”) California law also gives you rights in your medical record.

### ABOUT THIS GUIDE

This guide describes how to get and amend or correct medical records from California doctors, hospitals and other health care providers that have to follow the HIPAA Privacy Rule. If you get your medical care in another state, different rules will apply. You can read guides for other states at <http://hpi.georgetown.edu/privacy/index.html>.

This guide was designed so that you can read just the parts that interest you. For example, if you are interested in how much your provider can charge you for copying your medical record, you may want to focus on that part of the guide. We urge everyone to read “Who Is Covered by These Rules?” so that you can be sure the guide applies to your provider. Because we expect most people to read only parts of the guide, some basic information is repeated throughout the guide.

The rules explained in this guide only apply when you ask for your own medical record or when you ask for someone’s medical record as their personal representative. The rules do not apply when you request that your health care provider give your record to someone else (such as another doctor or a lawyer).

This guide does not discuss mental health records or records about drug and substance abuse treatment. Section 6 of this guide lists some resources where you can find some information about your right to get and amend these types of records.

### Words to Know

Some of the words in this guide have a special meaning. This guide uses the phrase “health care providers” to mean doctors, dentists, chiropractors, podiatrists, hospitals and others. Section 5 explains this and other words that are helpful to know. These words are in **boldface** print the first time they appear in each section of the guide.

Rather than use the awkward phrases “he, she, or it” and “his, her, or its” this guide uses “they” and “theirs” when referring to health care providers in a general way. Examples that use “he” or “she” are meant to refer to both genders.

## **DISCLAIMER**

The author has made every attempt to assure that the information in this guide is accurate as of the date of publication. Many areas of the law can be interpreted more than one way. This guide has tried to interpret the law in a way that is consistent with protecting health care consumer rights. Others might interpret the law in another way. This guide is only a summary. The rights and procedures described in this guide can change depending on the circumstances. The information in this guide may not apply to your particular situation.

This guide should not be used as a substitute for legal or other expert professional advice. The author, Georgetown University, and the National Library of Medicine specifically disclaim any personal liability, loss, or risk incurred as a consequence of the use of any information in this guide.

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## 1. OVERVIEW

Both the *HIPAA Privacy Rule* and California law give you rights to your medical record. The HIPAA Privacy Rule sets standards that apply to records held by *health care providers* across the nation. California law sets standards for records held by doctors, hospitals and other health care providers within the state. Most health care providers must follow both the HIPAA Privacy Rule and California law. If a standard is different under the HIPAA Privacy Rule than it is under California law, your health care provider must follow the law that is the most protective of your rights.

### SUMMARY OF YOUR RIGHTS

In California, you have the right to:

- ***See and get a copy of your medical record.***

Your health care provider usually must let you see your medical record within five (5) business days after they receive your written request. If you request a copy of your record, your provider must give you the copy within 15 days after they receive your request.

Your provider can charge you 25¢ cents a page for photocopies and 50¢ a page for copies from microfilm. If you request that the copy be mailed to you, you can also be charged for postage.

- ***Amend your medical record by adding information to it.***

You have the right to amend your medical record by adding information to your record to make it more complete or accurate. This right is called the *right to amend* your record.

- ***File a complaint.***

You have the right to file a complaint with the Office for Civil Rights, U.S. Department of Health and Human Services if you believe your health care provider has violated your right to see, get a copy of, or amend your medical record. You can also file a complaint with the state agency that regulates your health care provider.

- ***Sue in state court to get your medical record.***

You have the right under California law to sue in a California Superior Court to obtain your medical record.

You can learn more about these rights in the following sections of this guide.



## WHO HAS TO FOLLOW THESE LAWS?

Most California doctors, dentists, optometrists, hospitals and other health care providers must follow both the HIPAA Privacy Rule and state laws that give patients rights in their medical records.

There are some health care providers, however, that do *not* have to follow the HIPAA Privacy Rule. The HIPAA Privacy Rule only covers health care providers that use computers to send health information for certain administrative or financial purposes (such as filing claims for insurance).

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### **Example**

Sometimes Ashley goes to a doctor at a free clinic for medical treatment. The doctor does not accept private insurance, Medicaid, or Medicare. The doctor does not file any insurance claims. Ashley's doctor probably does not have to follow the HIPAA Privacy Rule. This is because the doctor does not appear to send health information for the types of administrative or financial purposes that would make her a covered health care provider under the HIPAA Privacy Rule.

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If you have questions about whether your health care provider must follow the HIPAA Privacy Rule, you can contact some of the resources listed in Section 4 of this guide.

### **Are nursing homes covered by HIPAA?**

Yes. Most nursing homes are covered by the HIPAA Privacy Rule. They also have to follow other specific rules that cover nursing homes and long term care facilities. Because the rules for nursing homes are different than they are for other health care providers, they are not covered by this guide.

### **What if my provider does not have to follow HIPAA?**

Even if your provider does not have to follow the HIPAA Privacy Rule, they still have to follow California laws that give you rights to your medical record. Section 6 lists some resources that summarize these state laws.

This guide, however, explains getting your medical record from California providers who *have* to follow both the HIPAA Privacy Rule and state law.



## WHAT RECORDS DO I HAVE THE RIGHT TO GET AND AMEND?

You have the right to see and get a copy of your medical record. You also have the right to amend your medical record by having information added to it to make it more complete or accurate. This right is called the *right to amend* your record. (This guide will call these rights the right to “get and amend.”)

Your medical record includes such things as:

- Information that identifies you, such as your name and Social Security number.
- Information that you tell your doctor, such as:
  - Your medical history.
  - How you feel at the time of your visit.
  - Your family health history.
- The results of your examination.
- Test results.
- Treatment received in a hospital.
- X-rays, records made by heart monitors, and similar items.
- Medicine prescribed.
- Other information about things that can affect your health or health care.

### ***Who owns my medical record?***

Under California law, your health care provider owns the actual medical record. For example, if your provider maintains paper medical records, they own and have the right to keep the original record. You only have the right to see and get a copy of it.

### ***My provider makes personal notes about patients. Do I have a right to get these notes?***

Probably. You have the right to get a provider’s personal notes about you if the notes are used to make decisions about you.



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**Example**

Michael's doctor writes notes about her personal impressions of patients in their medical records. She uses these notes to help her treat her patients. For example, she wrote a note in Michael's medical record saying she suspects that he is exaggerating his complaints about his health and that his problems are "all in his head." If Michael requests his entire medical record, the doctor must let him get a copy of this note.

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***What happens if my medical record has information in it that came from a different health care provider?***

Generally, if your provider has the medical information that you request, they must give it to you. It does not matter who originally put the information in the record.

Your right to amend or correct this information may be limited, though. For more information about how to amend information in your record you can read Section 3 of this guide.

***My health care provider collected information about me because they think I might sue them. Do I have the right to get this information?***

Not under these particular laws. You do not have the right under the HIPAA Privacy Rule to get information about you that has been gathered for potential use in a law suit or similar proceeding. There are special rules for getting information in law suits.

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### **Example**

Roberto complained to his hospital that he was very unhappy with his treatment. Believing that Roberto is going to sue, the hospital lawyer interviews doctors and nurses involved with Roberto's case to get their version of what happened. Roberto requests a copy of all medical information that the hospital has about his treatment. The hospital must give Roberto a copy of his medical record, including test results and entries made while Roberto was in the hospital. However, the hospital does not have to give Roberto a copy of the interview notes they took for potential use in the law suit.

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#### ***Do I have the right to get and amend records about my mental health treatment?***

Maybe. The rules for when you can get and amend your records about mental health treatment can be different. For example, psychotherapy notes are treated differently than other records under the HIPAA Privacy Rule. Because the rules for mental health records can be different they are not discussed in this guide. You can find some resources that explain your rights in these types of records in Section 6.

#### **WHO HAS THE RIGHT TO GET AND AMEND MY MEDICAL RECORD?**

You have the right to see and get a copy of medical records that are about you. You also have the right to amend medical records that are about you by having information added to them. (This guide calls these rights the right to "get and amend" your medical record.) If there is someone who acts as your *personal representative*, they usually have the right to get and amend your record on your behalf. Generally, a personal representative is a person who has the right to make health care decisions on your behalf.



#### ***Do I have the right to get and amend my minor child's medical records?***

Generally, yes. As a parent or guardian, you are generally considered to be the personal representative of your minor child. As a personal representative, you usually have the right to get and amend your child's medical record. In California, you have these rights when your child is younger than 18 years old.

#### ***As a parent, do I always have the right to get and amend my child's medical record?***

No. A parent does not always have the right to get and amend a minor child's medical record. For example, a parent does not have the right to get and amend a minor child's medical record if the provider determines that giving the parent access to the child's record would be physically or mentally harmful to the child. A provider can also deny

a parent's access to a minor child's record when the provider determines that giving the parent access would harm the provider's professional relationship with the minor.

Some other situations where parents do not have the right to get and amend their child's medical records are discussed in the following questions and answers.

***Who has the right to get and amend my child's medical record once she turns 18?***

Once your child turns 18, your child has the right to get and amend her own medical record. This right includes getting access to records that were created when she was younger. You usually no longer have the right to get and amend your adult child's record just because you are her parent.

***I am under 18, but I'm considered emancipated under California law. Who has the right to get and amend my medical record?***

You do. In California, you are an emancipated minor if:

- You are married (or have been married);
- You are on active duty with the armed forces; *or*
- You have been declared emancipated by court order.

If you are an emancipated minor, you have the right to get and amend your own medical record. Your parents do not have the right to get and amend your record.

***I am a minor. I am not emancipated but can legally consent to certain kinds of medical treatment without my parents' permission. Who has the right to get and amend my records that are related to this treatment?***

You do. In California, minors can obtain certain types of medical treatment without the permission of their parents. When you obtain such treatment, you have the right to get and amend your own medical record related to this treatment. Your parents generally do not have the right to get and amend medical records related to treatment to which you can legally consent.

For example, as a minor in California you can consent to medical care related to the prevention or treatment of pregnancy without the permission of your parents. Similarly, if you are a minor 12 or older you may consent to testing and treatment for sexually transmitted disease without your parents' permission. In both of these cases, you have the right to get and amend the medical records related to the testing or treatment. Your parents do not have the right to get and amend these records.

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***Example***

Janet is 16. She believes she might have chlamydia, a sexually transmitted disease. Janet does not need her parents' permission to get tested and treated. She goes to a clinic and is tested. Later, Janet's mother requests a copy of her medical record. Janet's doctor cannot give Janet's mother the part of the medical record about this test without Janet's permission.

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If you have questions or concerns about whether your parents will have access to your medical information, you should talk to your health care provider.

***I have a health care power of attorney for my mother. Do I have the right to get and amend her medical records?***

Yes. If you have your mother's health care power of attorney, you generally have the right to see, get a copy of, and amend her medical record. You have these rights during the time when the health care power of attorney is in effect.

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### **Example**

Maria's mother signed a health care power of attorney form that gives Maria the power to make health care decisions if her mother is unable to make such decisions. Maria's mother was in a bad accident. Maria's mother is not able to make decisions about her health care. Maria now has the right to make health care decisions on her mother's behalf. She also has the right to get and amend medical records that are relevant to making these decisions. For example, Maria has the right to see the records about her mother's current medical condition and treatment.

Maria is curious about the time her mother had a miscarriage. Maria wants to look at these old medical records. Maria does *not* have the right to get and amend these medical records because the records have nothing to do with her mother's current condition or treatment.

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#### ***My father recently died. Do I have the right to get his medical record?***

Maybe. You do not automatically have the right to get a deceased person's medical records, even if you are a close relative. In California, you have the right to see and get a copy of a deceased person's medical records if you are:

- The deceased person's beneficiary *or*
- Their personal representative such as the administrator of the estate or the executor of their will.



#### **HOW LONG DOES MY PROVIDER HAVE TO KEEP MY MEDICAL RECORD?**

California law may require your health care provider to keep your medical record for a certain period of time. For example, hospitals in California generally must maintain medical records for at least seven (7) years after the date the patient was discharged. Records for unemancipated minors must be kept at least seven (7) years or a minimum of one year after the minor has reached 18, whichever is later. There is no general rule for how long doctors in California must keep medical records.

You have a right to see, get a copy of, and amend your medical record for as long as your health care provider has it.

## 2. GETTING YOUR MEDICAL RECORD

### SUMMARY

You have the right to see your medical record. You also have the right to get a copy of your medical record. These rights are often called the *right of access* to your medical record.

Usually, your *health care provider* must let you see your medical record within five (5) business days after receiving your request. If you request a copy of your record, your provider must give you the copy within 15 days after receiving your request.

Generally, your health care provider must give you a copy in the format that you request.

You may have to pay a fee to get a copy of your record.



### HOW DO I ASK FOR MY MEDICAL RECORD?

You should ask your health care provider about their specific procedures for getting your medical record. Often, your provider has a form for requesting your medical record. You should use this form if one is available. You should be able to find some information about getting your medical record in your health care provider's *notice of privacy practices*.



#### ***Can my provider make me put my request for my medical record in writing?***

Yes. Your health care provider can require that you put your request in writing (such as by sending a letter, an e-mail, or a fax). Your provider must let you know that they have such a requirement.

#### ***What information should I include in my request for my medical record?***

If your health care provider does not have a form for requesting your medical record, you should check to see what information they require. Generally, when you ask for your medical record, your request should include:

- Your name and address.
- Your telephone number.
- Your e-mail address.
- Your medical record number, if you know it, or your date of birth.
- Date(s) of service (such as the dates you were in a hospital).

- A description of the information that you want to see or copy. This might include:
  - Whether you want the entire record or just part of the record.
  - Medical condition for which you are asking information.
  - Specific test results.
  - Whether you want X-rays or records made by heart monitors or similar medical devices.
- Whether you want to see your medical record, want a copy of your record, or would like both.

***Do I have to choose between seeing my medical record and getting a copy of it?***

No. You have the right to do both.

***Can my health care provider ask for my Social Security number on my request for my medical record?***

Yes. Some health care providers use Social Security numbers as a way to identify medical records. If this is the case, your provider may need your Social Security number to locate your medical record. There is nothing in the HIPAA Privacy Rule or the Social Security Act that prohibits a private health care provider from engaging in this practice.

***Will I have to show some proof of who I am in order to see or get a copy of my medical record?***

Maybe. If your health care provider does not know you well, they are supposed to make sure you are the person who has the right to get the medical record before they give it to you.

Your health care provider may require reasonable proof of your identity. Your provider may not ask for proof in a way that is unfair or discriminatory.

If you are acting under a health care power of attorney, your provider may require you to show them a copy of the power of attorney form. You also may be required to show that the power of attorney is in effect. For example, you may need a letter from the patient's treating doctor to show that the patient is unable to make health care decisions.



## WHAT WILL HAPPEN IF MY REQUEST FOR MY MEDICAL RECORD IS ACCEPTED?

Your health care provider will inform you if they agree to give you your medical record. If you asked to *see* your record, your health care provider must arrange a convenient time and place for you to review it. You have the right to bring one other person with you when you review your record.

If you have requested a *copy* of your record, your health care provider should either send it to you or arrange for you to pick up a copy.



## HOW LONG SHOULD IT TAKE TO GET MY MEDICAL RECORD?

Under California law your health care provider must allow you to *see* your record within five (5) business days after they receive your written request. If you request a copy of your medical record, your provider must send or give you the copy of your medical record within 15 days after they received your written request.

### ***When does the time period begin?***

The time does not start until your provider *receives* your request for your medical record. If you mail your request, you should include some time for mail delivery when you compute the date you should receive your record.

### ***My health care provider says that under the HIPAA Privacy Rule they can take up to 90 days to give me my medical record. Is that true?***

Not really. There are times when the HIPAA Privacy Rule would let a health care provider take up to 90 days to respond to a request for a medical record. However, California law requires that providers respond within five (5) business days to requests to see a record and 15 days to requests for copies. Your health care provider must follow the shorter deadlines set by California law.



## CAN I CONTROL WHERE MY MEDICAL RECORD IS SENT?

Yes. You can ask your health care provider to send the copy of your medical record to your regular address (such as your home) or to another address (such as to your office or to a friend's house). As long as your request is reasonable, your provider must send your record to the place that you ask.





### **CAN I GET A PAPER, E-MAIL, OR FAX COPY?**

It depends. Generally, your health care provider must give you your medical record in the format that you request if it is not difficult to do so. For example, if you request a paper copy of your record, your provider generally must give you a paper copy.

Providers must also make sure that they send your records to you in a secure manner. Due to security concerns, many health care providers are reluctant to send copies of medical records by e-mail or fax.



### **CAN I GET A SUMMARY OF MY MEDICAL RECORD?**

Maybe. Under the HIPAA Privacy Rule, your health care provider can give you a summary of your medical record if you both agree in advance

- That it is all right for them to give you a summary, *and*
- To the fee, if any, they want to charge for writing the summary.

Your provider can't give you a summary in place of your medical record unless you agree. If you do agree to receive a summary, your health care provider must generally make the summary available to you within ten (10) working days from the date of your request. If your record is very long, or if you were just discharged from a health care facility (such as a hospital), your provider can take up to 30 days to give you the summary.

Your health care provider can charge you a reasonable fee for the actual time they spent preparing the summary.

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#### ***Example***

Leon asks for a copy of his full medical record. Because the medical record is long and complicated, Leon's doctor would prefer to give Leon a summary of his medical record. If Leon does not agree to receive the summary, his doctor must give him a copy of the full record.

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***I received a copy of my medical record, but I can't understand it. Doesn't my provider have to give me a copy that is in plain language that I can understand?***

No. Health care providers often use technical words or a type of medical shorthand. Providers are not required to translate this information for you into plain language or give you your medical record in a form that you can understand. If you cannot understand what is written in your medical record, you can request an explanation of your record. However, your provider is not required to give you an explanation. Section 6 of this guide lists some resources that explain medical terms.

***\$ WILL I HAVE TO PAY FOR MY MEDICAL RECORD?***

Probably. Your health care provider is allowed to charge you for copying your medical record. In California, your doctor or hospital may charge you no more than 25¢ a page for photocopies or 50¢ a page for copies from microfilm. If you request that they mail the copy to you, you can also be charged for postage.

***Can I be charged if I just want to review my medical record?***

No. Under the HIPAA Privacy Rule, your health care provider cannot charge you a fee if you just review your medical record.

***Can I be charged for someone locating my record?***

No. California law permits a charge for locating records and making them available. These fees are sometimes called "retrieval fees." The HIPAA Privacy Rule does not permit providers to charge these fees. Because the HIPAA Privacy Rule is more protective of your rights in this area, your provider must follow the HIPAA Privacy Rule. They may *not* charge these fees.



***Can I be charged for copies of x-rays and similar records?***

Yes. Your health care provider can charge you a reasonable fee for copying x-rays and similar records. This fee must be based on the actual cost of making the copy. You can also be charged postage if you ask that the records be mailed to you.

***Can I be charged for copies of medical records that I need to apply for public benefits?***

Yes. Your health care provider can charge you for copies of medical records that you need to apply for public benefits. If your application is denied, different rules may apply, as explained in the next question and answer.

***Can I be charged for copies of medical records that I need to appeal a denial of eligibility for public benefits?***

If your application for public benefits (like Medi-Cal and Social Security disability) is denied, you may need your medical records to appeal the decision. You have the right to get a free copy of the part of your medical record necessary for your appeal. If your appeal is successful, your health care provider may then charge you for your record.

To get a free copy of your medical record, you must send your provider a written request for the part of your medical record necessary for your appeal. You must also send the provider proof that you need the record for an appeal of public benefits (for example, a copy of your appeal). Your health care provider must send you a copy of your record within 30 days after they receive these materials.

If a private lawyer handles your appeal, there are times when you may not have a right to a free copy of your record.

***Can I be charged if I want a copy of my medical record sent to another health care provider or to a lawyer?***

The procedures and fees for having a copy of your medical record sent to someone else (such as to another doctor or to a lawyer) are not covered by the HIPAA Privacy Rule. They are not discussed in this guide.



**CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?**

Yes. In California, your health care provider can deny your request to see or get a copy of your medical record, but only in a few situations. For example, your health care provider can deny you access to information that someone (other than another health care provider) gave to the provider in confidence and that would reveal the source of the information.

***Can my provider deny me access to my record because they believe that seeing it might harm me?***

It depends on the type of record. In California, a provider can deny you access to *mental health records* (records relating to evaluation or treatment of a mental disorder) if they believe that seeing the record might result in harm to you or someone else. Providers may *not* deny you access to other types of *medical records* on these grounds.

This guide does not discuss mental health records in detail. Section 6 lists some resources that have more information about getting mental health records.

***How will I know if my request for my medical record has been denied?***

Your health care provider must tell you in writing (by letter, fax, or e-mail) if they deny your request for your medical record. They must tell you why your request was denied. They also must tell you if you have a right to have their decision reviewed and how you can file a complaint.



***Can my health care provider refuse to give me my medical record because I have not paid my medical bill?***

No. Your provider cannot deny your request for your medical record because you have not paid your medical bill.

***What happens if my health care provider doesn't have the medical record that I requested?***

If your health care provider doesn't have the record that you requested, they don't have to locate it for you. But your provider must tell you where the record is kept if they know.



***My health care provider says that they don't have to give me a copy of my x-ray as long as they send a copy to another health care provider. Is this right?***

No. Under California law, a provider who sends a copy of an x-ray (or a record made by a heart monitor or similar device) to another health care provider doesn't have to give the patient a copy. But the HIPAA Privacy Rule doesn't allow this practice. Since the HIPAA Privacy Rule gives you more access to your medical record, your provider must follow the HIPAA Privacy Rule. Your provider must give you access to your x-ray if you request it.

### 3. AMENDING (CORRECTING) YOUR MEDICAL RECORD

#### Summary

When you review your medical record you may find something that you believe does not belong in your record. You might also believe that important medical information is missing. If this is the case, you have the right to add information to your medical record to make it more accurate or complete. This right is usually called the *right to amend* your record.

There are two ways you can amend your medical record:

- You can write a short statement and give it to your provider to add to your medical record under California law *or*
- You can request that your health care provider amend your record under the HIPAA Privacy Rule.

You do *not* have the right to have information removed from your record.

#### ***Which way should I choose to amend my record?***

Both procedures have their advantages. Writing your own short statement is a simpler procedure. But some people feel that having your health care provider amend your medical record makes the information more believable to others. The rules for minors are different than those for adults. Only you can decide which procedure is better for your purposes. Both procedures are discussed in the sections that follow.

#### **HOW DO I ADD A WRITTEN STATEMENT TO MY MEDICAL RECORD UNDER CALIFORNIA LAW?**

Under California law, after you review your medical record you have the right give your health care provider a short written statement for any item that you believe is incorrect or incomplete. Your statement may be no longer than 250 words for each item that you believe is incomplete or incorrect. Your statement must clearly state that you want the information to be made part of your medical record. Your provider may have a form for adding a written statement. You should use this form if it is available.

Your health care provider must attach your statement to your medical record. They have to include your statement whenever they share the disputed information with someone else.

***Does everyone have the right to add a written statement to their medical record?***

No. Minors cannot take advantage of California law and just add a written statement to their medical records. California law only gives adults this right. Minors sometimes have the right to request their provider to amend their medical record under HIPAA. You can read the section of this guided titled “How Do I Ask my Health Care Provider to Amend My Medical Record under the HIPAA Privacy Rule?” to get more information about amending your record under HIPAA.



***Do I have the right to have information removed from my medical record under California Law?***

No. You do not have the right to have information that is already in your record removed or altered. You only have the right to add more information.



**HOW DO I ASK MY HEALTH CARE PROVIDER TO AMEND MY MEDICAL RECORD UNDER THE HIPAA PRIVACY RULE?**

The HIPAA Privacy Rule gives you the right to ask your health care provider to amend your medical record by adding more information to it.

Before you ask your health care provider to amend your medical record, you should:

- Identify the part of your medical record that you think is inaccurate or incomplete.
- Identify the health care provider that created the information or that first put the information into your record.

You should ask your provider about their specific procedures for requesting an amendment to your medical record. Your health care provider may have a form for requesting an amendment. You should use this form if one is available. You should be able to find some information about amending your medical record in your provider’s *notice of privacy practices*.

***Can my health care provider require that I put my request to amend my record in writing?***

Yes. Under the HIPAA Privacy Rule, your health care provider is allowed to require that you put your request to amend your record in writing, such as by a letter, fax, or e-mail. Your provider must let you know in advance that this is a requirement. Your provider can also require that you give them a reason why you want to amend your record.

***What information must be included in my request to amend my medical record?***

If your provider does not have a form for requesting your medical record, you should check to see what information your provider requires. Generally, your request to amend your record should include:

- Your name.
- Your address.
- Your telephone number.
- Your email address.
- Your medical record number, if you know it, or your date of birth.
- Date(s) of service (such as the date of treatment).
- The type of information you want to amend (such as lab results).
- A description of the information that you believe is inaccurate or incomplete.
- The information that you want them to add to your record.
- The reason why you want the information added.

***Can my health care provider ask for my Social Security number on my request to amend my medical record?***

Yes. Some health care providers use Social Security numbers as a way to identify medical records. If this is the case, your provider may need your Social Security number to locate your medical record in order to amend it. There is nothing in the HIPAA Privacy Rule or the Social Security Act that prohibits a private health care provider from engaging in this practice.



***Do I have the right to have information removed from my medical record under the HIPAA Privacy Rule?***

No. You do not have the right to have information that is already in your record removed or altered. You only have the right to add more information.

***I disagree with my provider's diagnosis. Can I make them change it?***

No. The right to amend your record under the HIPAA Privacy Rule is not supposed to be a chance to dispute a diagnosis. It is meant to give you the chance to amend your record by adding information to it.

***As a minor, do I have the right to request my provider amend my medical record under the HIPAA Privacy Rule?***

Sometimes. As a minor, you usually do not have the right to amend your medical record. The right to amend (like the right of access) usually belongs to your parents.

However, if you are an emancipated minor, you have the right to amend your own medical record. Similarly, minors who legally consent to certain kinds of medical treatment have the right to amend medical records related to that treatment.





### **WHAT HAPPENS IF MY REQUEST TO AMEND MY RECORD UNDER THE HIPAA PRIVACY RULE IS ACCEPTED?**

If your health care provider accepts your request to amend your medical record, they must add the new information to your record. They also must tell you in writing that your request to amend was accepted.

You might know people or organizations that should be told about the new information. You should give their names and contact information to your health care provider. Your provider must give the amended health information to the people and organizations you identify.



### **HOW LONG SHOULD IT TAKE TO AMEND MY MEDICAL RECORD UNDER THE HIPAA PRIVACY RULE?**

Generally, within 60 days after they receive your request, your health care provider must either

- Add the information to your medical record as you requested *or*
- Deny your request in writing.

#### ***Can it ever take longer?***

Yes. If your health care provider is unable to act within 60 days, they can get one 30-day extension to respond. In order to get this extension, they have to give you a written explanation for the delay and tell you the date they expect to respond. Even with an extension, they shouldn't take more than 90 days to respond to your request to amend your record.

#### ***When does the 60 day time period begin?***

The 60 days does not start until your health care provider *receives* your request to amend your medical record. If you mailed your request, you should make sure you include some additional time for mail delivery when you count days for these deadlines.



### **CAN MY HEALTH CARE PROVIDER DENY MY REQUEST TO AMEND MY MEDICAL RECORD UNDER HIPAA?**

Yes. There are times when your health care provider can deny your request to amend your medical record under the HIPAA Privacy Rule. Generally, your provider can deny your request when:

- They determine your record is accurate or complete.
- They did not create the information that you want to amend.

If your health care provider denies your request to amend your record, they must let you know in writing (for example by sending you a letter, a fax or an e-mail). Your provider also must tell you why they denied your request.



***The provider that created the information that I want to amend isn't around any more. What can I do?***

You can ask your current provider to amend your information. You should explain to them in as much detail as possible that the health care provider who first created the information that you want to amend is no longer available to act on your request. If your explanation is reasonable, your current provider cannot deny your request on the grounds that they did not create the medical information that you want to amend.

Of course, you can also give your provider a written statement under California law, as discussed at the beginning of Section 3 of this guide.

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***Example***

Brianna wants to amend information in her medical record that was originally put in her record by Dr. Smith. Dr. Smith has retired. Brianna asks Dr. Jones, her current doctor, to amend her medical record. She shows Dr. Jones the letter Dr. Smith sent to his patients announcing his retirement. Dr. Jones cannot refuse to amend Brianna's record on the grounds that he didn't create the information she wants to amend.

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**WHAT CAN I DO UNDER HIPAA IF MY REQUEST TO AMEND MY MEDICAL RECORD IS DENIED?**

If your request is denied, you have the right to give your health care provider a written statement that explains why you disagree with their decision. Your provider may reasonably limit the length of your statement. Your provider must make your statement part of your medical record. In the future, when your provider shares your medical information with others, your provider must also give them a copy of their denial of your request to amend and a copy of your statement of disagreement.

***What if my health care provider disagrees with my statement of disagreement?***

If your health care provider disagrees with your statement, they have the right to put a note in your record that says why they do not agree with you. They must give you a copy of this note.

***Do I have the right to have someone else review my health care provider's denial of my request to amend my records?***

No. If your health care provider denies your request to amend your medical record you do not have the right to have someone else review that decision.

## 4. ASKING QUESTIONS AND FILING COMPLAINTS

This guide is just a summary of your rights to see, get a copy of, and amend your medical record. If you have more questions or would like to file a complaint, you can contact the people and organizations listed below. You can also contact a professional if necessary.



### WHO CAN ANSWER MY QUESTIONS ABOUT GETTING AND AMENDING MY MEDICAL RECORD?

There are a number of resources available to answer your questions about getting and amending your medical record.

#### ***Your health care provider***

Your health care provider should be able to answer many of your questions about getting and amending your medical record. Your provider's *notice of privacy practices* must contain a general description of your right to see, get a copy of, and amend your medical record. The notice also must list the name (or title) and the telephone number of a contact person who should be able to answer your questions about getting and amending your medical record. In addition, some providers have Web sites that list information on how to see, get a copy of and amend your medical record.

#### ***Office for Civil Rights, United States Department of Health and Human Services (OCR)***

You may be able to get answers to your questions about your rights under the HIPAA Privacy Rule from OCR, the federal agency in charge of enforcing the HIPAA Privacy Rule. OCR provides fact sheets for consumers and responses to frequently asked questions on its Website <http://www.hhs.gov/ocr/hipaa/>.

If you do not find your question answered here you can call OCR toll-free at **1-866-627-7748**. OCR requests that you read their responses to frequently asked questions before you call this number.

#### ***California Office of Privacy Protection***

If you have questions about health privacy issues you can call the California Office of Privacy Protection toll-free at **1-866-785-9663**. You can also contact the office by e-mail at [privacy@dca.ca.gov](mailto:privacy@dca.ca.gov).



## **WHAT CAN I DO IF I BELIEVE MY RIGHTS TO GET AND AMEND MY MEDICAL RECORDS HAVE BEEN VIOLATED?**

Before taking any formal action, you should try to informally solve your problems getting and amending your medical record with your health care provider. If you are unable to resolve your issues informally, there are a number of possible actions you can take if you believe your health care provider has violated your right to get and amend your medical record.

### ***You can file a complaint with your health care provider.***

You have the right, under the HIPAA Privacy Rule, to file a complaint with your health care provider. Your health care provider's notice of privacy practices must describe how to file your complaint. If you file a complaint, your health care provider cannot threaten you or do anything else to get even with you.

### ***You can file a complaint with the Office for Civil Rights, U.S. Department of Health and Human Services (OCR).***

Complaints must be in writing. You can get detailed information about filing a complaint with OCR at <http://www.hhs.gov/ocr/privacyhowtofile.htm>.

You can call OCR at **1-800-368-1019** if you need help filing a complaint or have a question about the complaint form. This is a toll free call.

In California, complaints should be sent to:  
Office for Civil Rights  
U.S. Department of Health and Human Services  
50 United Nations Plaza - Room 322  
San Francisco, CA 94102  
(415) 437-8329 (Fax no.)

If you file a complaint with OCR, your health care provider cannot threaten you or do anything else to get even with you.

### ***You can file a complaint about a doctor with the California Medical Board or the California Medical Association.***

#### **California Medical Board**

You can file a complaint about any doctor who practices in California with:

Medical Board of California  
800-633-2322 (toll free) or 916-263-2424  
[http://www.medbd.ca.gov/complaint\\_info.htm](http://www.medbd.ca.gov/complaint_info.htm)

#### **California Medical Association**

If your doctor is a member of the California Medical Association, you can file a complaint with the county medical association where your doctor practices. The medical association will try to resolve the complaint informally. You can find a list of

county medical associations on the California Medical Association's Web site at: <http://new.cmanet.org/PUBLICDOC.cfm/63>

***You can file a complaint about your hospital with the California Department of Health Services (DHS).***

You need to file your complaint with the district office where your hospital is located. You can call DHS at **916-445-2070** to find out where to file your complaint.

***You can get assistance in finding the proper place to file a complaint from the California Office of Privacy Protection***

If you need help in finding the proper place to file a complaint, you can contact:

California Office of Privacy Protection

866-785-9663 (toll free)

[privacy@dca.ca.gov](mailto:privacy@dca.ca.gov).

***Can I sue my health care provider for violating my rights to get and amend my medical record?***

You have the right to sue in California Superior Court to enforce your rights under California law. For example, you can sue to obtain your medical record, challenge copying fees, or to require your provider to add your statement to your medical record. The judge can award costs and attorney fees to the person that wins the lawsuit.

You do not have the right to sue your health care provider in federal court (United States District Court) for violating your right to get and amend your medical record under the HIPAA Privacy Rule.

## 5. WORDS TO KNOW

**Amend.** This guide uses the word “amend” to mean adding information to your medical record to make it more accurate or complete.

**Correct.** This guide uses the work “correct” to mean adding information to your medical record to make it more accurate or complete.

**Health care provider.** This guide uses the term provider to refer to doctors, dentists, chiropractors, hospitals and other health care practitioners and facilities.

**HIPAA Privacy Rule.** A set of legal rules written by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These rules set national standards that give patients the right to see, copy, and amend their own health information. They also set standards protecting the privacy of health information. The HIPAA Privacy Rule does not apply to everyone who keeps health information about you. Only health care providers (such as doctors and hospitals), health plans (such as health insurers and Medicare) and health care clearinghouses (organizations that put health information into or out of an electronic format) have to follow the HIPAA Privacy Rule. Other people (such as employers) generally do not have to follow the HIPAA Privacy Rule.

**HIPAA.** Health Insurance Portability and Accountability Act of 1996. This federal law directed HHS to write rules protecting the privacy of health information. The federal law leaves in place state laws that have privacy protections that are equal to or greater than the federal law.

**Notice of Privacy Practices.** A notice that health care providers must give their patients that explains the patients’ rights under the HIPAA Privacy Rule. This notice must also explain how a provider can use health information and share it with others.

**Personal representative.** This guide uses the term “personal representative” to refer to someone who has the legal right to make health care decisions on behalf of another person.

**Right of Access.** The right to see and get a copy of your medical record.

**Right to Amend.** The right to add information to your medical record to make it more complete or accurate. The right to amend does not mean a right to have information erased or removed.

## 6. WHERE TO FIND MORE INFORMATION

This guide only discusses how to get and amend your medical records from health care providers who have to follow the HIPAA Privacy Rule. The guide mentions some related topics without discussing them in detail. Here are some resources where you can find information about these related topics.

### **Alcohol and Drug Treatment Records**

Records related to alcohol and drug treatment may be subject to other privacy rules. You can get more information about these records at:

<http://hipaa.samhsa.gov/Part2ComparisonCleared.htm>

### **California Privacy Laws**

You can find a consumer guide to health information privacy in California written by the California Office of Privacy Protection at:

<http://www.privacy.ca.gov/health/yppr.htm>

### **Medical Records in General**

You can read general information on your medical record rights, the flow of medical information, and how to create a personal medical record at <http://www.myphr.com/> a Website operated by the American Health Information Management Association, an association of professionals who manage medical records and information.

### **Medical Terms**

You can find out the meaning of many medical terms and medical shorthand from the Medical Library Association's Website at:

[http://www.mlanet.org/resources/consumr\\_index.html](http://www.mlanet.org/resources/consumr_index.html)

Your library might also have books or brochures that explain medical terms.

## **Mental Health Treatment Records**

You can get information about your rights in your mental health records under the combination of the HIPAA Privacy Rule and California law from **Protection and Advocacy Inc., (PAI)** a nonprofit corporation designated as California's system to protect and advocate for the rights of persons with disabilities. PAI has prepared a memo on access to mental health records which is available at:

<http://www.pai-ca.org/OPR/Information/AccessMedRec.pdf>

You can find general information about how mental health records, and in particular psychotherapy notes are treated under HIPAA, in the *Summary of the Privacy Rule* written by the Office for Civil Rights, HHS at:

<http://www.hhs.gov/ocr/hipaa/>