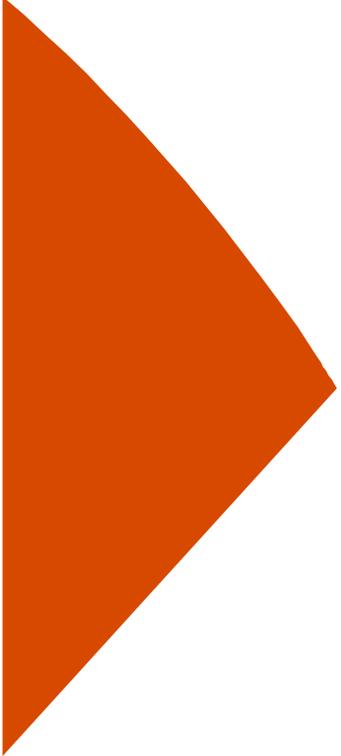


Your Medical Record Rights in Massachusetts



(A Guide to Consumer Rights under HIPAA)

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Funded by
Grant G13LM8312
The National Library of Medicine

CONTENTS

SECTION	PAGE
INTRODUCTION	i
About this guide	
Disclaimer	
Acknowledgments	
1 OVERVIEW	1
Summary of your rights	
Who has to follow these laws?	
What records do I have the right to get and amend?	
Who has the right to get and amend my medical record?	
How long does my provider have to keep my medical record?	
2 GETTING YOUR MEDICAL RECORD	8
Summary	
How do I ask for my medical record?	
What will happen if my request for my medical record is accepted?	
How long should it take to get my medical record?	
Will I have to pay for my medical record?	
Can I have my medical record sent somewhere other than my home?	
Can I get a paper, e-mail, or fax copy?	
Can I get a summary of my medical record?	
Can my health care provider deny my request for my record?	
What can I do if my provider denies my request for my record?	
3 AMENDING (CORRECTING) YOUR MEDICAL RECORD	15
Summary	
How do I ask my health care provider to amend my medical record?	
What will happen if my request to amend my record is accepted?	
How long should it take to amend my record?	
Can my health care provider deny my request to amend my medical record?	
What can I do if my provider denies my request to amend my medical record?	
4 ASKING QUESTIONS AND FILING COMPLAINTS	20
Who can answer my questions about getting and amending my medical record?	
What can I do if I believe my rights to get and amend my medical record have been violated?	
5 WORDS TO KNOW	23
6 WHERE TO FIND MORE INFORMATION	24

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 and other health care providers to treat you.

A federal law called the HIPAA Privacy Rule gives you the right to see, get a copy of and amend (correct) your medical record by adding information to it. (HIPAA stands for the "Health Insurance Portability and Accountability Act.") Massachusetts laws also give you rights in your medical record.

ABOUT THIS GUIDE

This guide is intended to help you understand how to see, get a copy of, and amend or correct medical records from Massachusetts health care providers who have to follow the HIPAA Privacy Rule. You can read guides about getting medical records from health care providers in other states at

<http://hpi.georgetown.edu/privacy/records.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 Laws?" so that you can be sure the guide applies to your provider. Some basic information is repeated throughout the guide so that it is easily available to those who are reading only certain sections.

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. These rules do not apply when you request that your health care provider give your medical record to someone else (such as to 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. In this guide "health care providers" or "providers" means medical doctors, dentists, optometrists, hospitals and others who provide medical care or services. Section 5 explains these and other words that are helpful to know. The words explained in Section 5 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.

ACKNOWLEDGMENTS

The author wishes to thank the National Library of Medicine for its generous support of this project. In addition, sincere thanks to Massachusetts Medical Society's Department of Health Policy/Health Systems and Office of the General Counsel; Anuj K. Goel, Esq. Director, Regulatory Compliance, Massachusetts Hospital Association; Karen Griffin, Susan Marre, RHIA, Karen O'Brien, RHIA, Deb Polansky, Nancy Stanton, RHIA and Georgette Wilson, RHIA; for their suggestions and comments on improving this guide, and Jeffrey S. Crowley, MPH; Mila Kofman, JD; and Kevin Lucia, JD for their input on early versions of the guide. A special thanks also to Theresa Jordan, Donald Jones and Nina Kudzus for all of their technical skill in transforming the guides from rough drafts to polished, final product. Their help was invaluable. Any mistakes, however, are the author's own.

1. OVERVIEW

Both the *HIPAA Privacy Rule* and Massachusetts 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. Massachusetts 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 Massachusetts law. If a standard in Massachusetts law conflicts with a standard in the HIPAA Privacy Rule, your health care provider must follow the law that is the most protective of your rights.

SUMMARY OF YOUR RIGHTS

In Massachusetts 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 and/or give you a copy of it. Most health care providers, including hospitals, must give you access to your medical record no later than 30 days after they receive your request. Doctors, however, generally must respond to your request for your medical record within 14-21 days.

In many cases, your health care provider is allowed to charge you for copying your record. You can also be charged the actual cost for postage or delivery.

- ***Correct your medical record by having information added to it.***

You have the right to have information added to your medical 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 against your doctor with the Massachusetts Board of Registration in Medicine, the state agency that regulates doctors in your state. Complaints against hospitals can be filed with the Massachusetts Department of Public Health, the state agency that regulates hospitals.

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



WHO HAS TO FOLLOW THESE LAWS?

Most Massachusetts health care providers (medical doctors, dentists, optometrists, hospitals and others who provide medical care or services) 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).

Example

Ashley goes to a dentist who does not accept any type of insurance, including Medicaid. The dentist requires all patients to pay directly out of pocket and does not file any insurance claims. Ashley's dentist probably does not have to follow the HIPAA Privacy Rule because the dentist 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 Rule.

If you have questions about whether your health care provider must follow the federal HIPAA Privacy Rule, you can contact the Office for Civil Rights, U.S. Department of Health and Human Services (OCR), the agency that is in charge of enforcing the HIPAA Privacy Rule. Section 4 of this guide lists contact information for OCR.

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 only apply to 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 health care 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 Massachusetts laws that give you rights to your medical record. Section 6 lists some resources that where you can read these state laws.

This guide, however, only explains getting your medical record from Massachusetts providers who *have* to follow 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 correct 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:
 - o Your medical history.
 - o How you feel at the time of your visit.
 - o Your family health history.
- The results of your examination.
- Test results.
- Treatment received in a hospital.
- Medicine prescribed.
- Notes that the doctor or nurse makes about you.
- Other information about things that can affect your health or health care.

You have the right to get these records whether they are kept on paper or on a computer.

Can I keep my original medical record?

Under Massachusetts law, your health care provider is required to maintain the original medical record. You only have the right to see and get a copy of it.

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. You have the right to get the information no matter who originally put it in the record. Your right to amend this information may be limited, though. For more information about the right to amend information in your record you can read Section 3 of this guide.

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 correct 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 record?

Generally, yes. As a parent or guardian, you are usually considered to be the personal representative of your minor child. As a personal representative, you have the right to get and amend your minor child's medical record. In Massachusetts, you usually 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, if a health care provider reasonably believes that a parent is abusing or neglecting a child, the provider does not have to treat the parent as the child's personal representative. This means the provider does not have to give the parent access to the child's medical record.

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 he or she turns 18?

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

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

You do. If you are under 18 and are emancipated under Massachusetts law, you have the right to get and amend your own medical record. For example, if you are under 18 and are married, widowed or divorced, you are generally considered to be emancipated for purposes of making health care decisions in Massachusetts. Similarly, if you are in the armed forces you are considered emancipated with respect to consenting to health care. In these cases, you have the right of access to your own medical record.

I am a minor. I am not emancipated but I 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?

It depends. In Massachusetts, if you are under 18, you can consent to certain kinds of medical treatment without the permission of your parents. For example, a minor may consent to the treatment for chlamydia (a sexually transmitted disease) without their parents' permission. When you consent to such treatment, you have the right to get and amend your own medical record related to that treatment. In Massachusetts, your parents generally do not have the right to get and amend medical records related to treatment for which you have given consent. However, your provider must notify your parents of your medical condition if it is so serious that your life or health is endangered.

Example

Jason is sexually active and under 18. He consents to get tested for chlamydia (a sexually transmitted disease). Jason's mother later requests a copy of his medical record. Jason's health care provider generally cannot give Jason's mother the part of his record about the chlamydia test without Jason's permission. However, if the doctor believes that Jason's condition is serious enough to endanger Jason's life or health, the doctor must notify Jason's parents.

The rules may be different when you, as a minor, obtain testing or treatment for other medical conditions without parental consent. If you have questions or concerns about whether your parent will have access to your medical information, you should talk to your health care provider.

I am named as my mother's health care agent in her health care proxy. Do I have the right to get and amend her medical records?

Yes. If you are named as the agent in your mother's health care proxy, you generally have the right to get and amend her medical records that are relevant to making health care decisions on her behalf. You have these rights while you have the authority to make health care decisions on her behalf.

Example

Maria's mother signed a health care proxy 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 and 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 these medical records because the records have nothing to do with her mother's current condition or treatment.

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

It depends. You do not have the right to get a deceased person's medical records just because you are a close relative of theirs. In Massachusetts, you have the right to get a deceased person's medical records only if you are the administrator or executor of their estate.



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

State law requires many health care providers to keep medical records for a certain period of time. For example, doctors in Massachusetts must keep medical records for at least 7 years from the date of the last patient encounter. If the patient is a minor, the doctor must keep the medical record for 7 years or until the patient reaches the age of 9, whichever is longer. Massachusetts hospitals must keep medical records at least 30 years after the discharge or final treatment of the patient.

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.

In Massachusetts, the time period for responding to your request to see or get a copy of your medical record differs depending on the type of provider. Most health care providers, including hospitals, must let you see or give you a copy of your medical record no later than 30 days after they receive your request. Under rules set by the Board of Registration in Medicine, doctors usually must respond to your request within 14-21 days.

Generally, your health care provider must give you a copy in the format that you request if they are able to do so.

In many cases, 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 require that I put my request for my medical record in writing?

Yes. Your health care provider can require that you put your request in writing. They must let you know if 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, address, telephone number or other contact information.
- Your date of birth or medical record number.
- Date(s) of service (such as dates you were in the hospital).

- A description of the information that you want to see or copy. This might include:
 - o Whether you want the entire record or just part of the record.
 - o Medical condition for which you are asking information.
 - o Specific test results.
 - o 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.

Can my health care provider require that I include my Social Security number in my request for my medical record?

Yes. Because some health care providers use Social Security numbers as a way to identify medical records, they 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 provider from requiring you to include your Social Security number in your request for your medical record.

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

No. You have the right to do both. You may need to make separate arrangements to review your record depending on the policy of your health care provider.

Can my provider require me to show some proof of who I am in order to see or get a copy of my medical record?

Yes. Your health care provider must make sure you are the person who has the right to get the medical record before they give it to you. Your provider is allowed to choose the method for verifying your identity. For example, your provider might ask for an identification card (such as a driver's license).

If you are acting under a health care proxy or power of attorney, your provider may require you to show them a copy of the form. If you are requesting medical records as the personal representative of a deceased patient, you should expect to show documentation that you are the administrator or executor of the deceased.



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 records, your health care provider must arrange a convenient time and place for you to review the record. If you have requested a *copy* of your record, your health care provider must either send it to you or arrange for you to pick up a copy.



HOW LONG SHOULD IT TAKE TO GET MY MEDICAL RECORD?

In Massachusetts, the time limit for responding to requests for medical records depends on the type of health care provider.

Doctors

Generally, doctors in Massachusetts must respond to requests for medical records in a timely manner. The Board of Registration in Medicine usually considers 14-21 days to be a reasonable response time.

Hospitals (and most other health care providers)

Generally, within 30 days after receiving your request, hospitals (and most other health care providers) must either

- Let you see or give you a copy of your medical record or
- Tell you that they are denying your request for your record.

Can it ever take longer?

Generally, yes. If your medical records are kept off site, your hospital can take up to 60 days to respond to your request.

If your hospital cannot respond in 30 days (or 60 days if your records are kept off site), they can get one 30-day extension. Your hospital must give you a written explanation for the delay and tell you the date they expect to respond. It should not take more than 90 days total to get a response to your request for your record.

If you request your record for a claim or an appeal under the Social Security Act or any federal or state financial needs-based benefit program, your hospital must furnish it within 30 days and may not get an extension.

When does the 30 day time period begin?

The 30 days does not start until your hospital 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.

Some other types of health care providers, such as doctors, have shorter deadlines for responding to requests for medical records. Deadlines for doctors are described in the previous section.

 WILL I HAVE TO PAY FOR MY MEDICAL RECORD?

Maybe. Your health care provider usually is allowed to charge you for copying your medical record. It is clear that providers can charge you no more than the following amounts per page for copying your record:

<u>Fee per page</u>	<u>For pages</u>
50¢	1- 100
25¢	101 and up.

These fees will be adjusted annually beginning in October 2005. Health care providers can also charge you the actual cost of postage, shipping, or delivery if you have the copy sent to you. Your provider is allowed to request payment of these copying fees before they send the copies to you.

Massachusetts law also allows health care providers to charge you a \$15 base fee for each medical record requested. However, it is unclear whether this charge is permitted under the HIPAA Privacy Rule. The HIPAA Privacy Rule allows providers to charge only for the actual cost of copying (including labor and supplies). The Privacy Rule does not permit providers to charge fees for searching or retrieving medical records. It is not clear whether the \$15 base fee includes these prohibited charges. If you have questions or complaints about being charged this base fee, you may want to contact one of the state or federal agencies listed in Section 4 of this guide.

Can I be charged if I just want to look at or read my medical record?

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

Can I be charged for a copy of my medical record that I need to support a claim for Social Security or similar benefits?

No. Under Massachusetts law, health care providers may not charge a fee to any applicant or beneficiary who requests a copy of their medical record for the purpose of supporting a claim or appeal under the Social Security Act or any federal or state financial needs-based benefit program.



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, including labor. You can also be charged postage if you ask that the records be mailed to you.

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

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



CAN I HAVE MY MEDICAL RECORD SENT SOMEWHERE OTHER THAN MY HOME?

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 a different, preferred address (such as your office). As long as your request is reasonable, your provider must send your record to the place that you identify.



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 also must 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. You should check with your provider to see whether they are willing to send you a copy by e-mail or fax and to find out their specific procedures.



CAN I GET A SUMMARY OR EXPLANATION OF MY MEDICAL RECORD?

It depends. You may want just a summary of your record. You may want your provider to explain some of the information in your record. Under the HIPAA Privacy Rule, your health care provider can give a summary or explanation of your medical record if you both agree *in advance*

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

Your health care provider generally must give you the summary within 30 days from when you request the summary. If they are unable to produce the summary in this time, they can get a 30 day extension. Sometimes it can take longer.

Your provider can charge you a reasonable fee for the actual time they spend preparing the summary or explanation.

Example

Leon asks for a summary of his medical record. The record does not currently contain a summary and the doctor does not have the time or staff to prepare one. Leon's doctor is not required to prepare a summary in response to Leon's request. But the doctor must let Leon see or get a copy of his medical record.

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 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. But your provider is not required to give you an explanation. You can find some resources that explain medical terms in Section 6 of this guide.



CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?

Generally, no. In Massachusetts, a provider generally may not deny you access to your medical record. However, the rules for records related to mental health or substance abuse conditions and treatment may be different.

Can my health care provider deny my request for 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 if my provider doesn't have the medical record that I requested, but knows who has it?

Your provider must tell you who has your medical record if they know. Your provider is not, however, required to obtain your record for you if someone else has it.

Example

Tony sends a request for his chest x-ray film to his primary care physician. Although his physician has a report of the x-ray results, he does not have the original x-ray film that Tony requested. However, the primary care physician knows that ABC Radiology took the x-ray and has the original film. When the primary care physician responds to Tony's request, the physician must inform Tony to send his request for his x-ray film to ABC Radiology.

3. AMENDING (CORRECTING) YOUR MEDICAL RECORD

SUMMARY

When you read your medical record you may find something that you believe is not accurate. You might believe that important information is missing. You have the right to correct your medical record by having information added to your record to make it more complete or accurate. The *HIPAA Privacy Rule* calls this right the *right to amend* your medical record.

If your *health care provider* accepts your request to amend your record, they must add the information to your record.

If your provider denies your request to amend, they must tell you in writing that your request was denied. You then have the right to add a short statement to your record that explains your position.

As a minor, do I have the right to 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, when minors legally consent to certain kinds of medical treatment they have the right to amend medical records related to that treatment.



HOW DO I ASK MY HEALTH CARE PROVIDER TO AMEND MY MEDICAL RECORD?

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. Your health care provider is allowed to require that you put your request to amend your record in writing. They are also allowed to 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, you may want to include the following information in your request:

- Your name, address and other information about where they can contact you
- Your date of birth or medical record number.
- 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 require that I include my Social Security number in my request to amend my medical record?

Yes. Because some health care providers use Social Security numbers as a way to identify medical records, they may need your Social Security number to locate your medical record so that they can amend it. There is nothing in the HIPAA Privacy Rule or the Social Security Act that prohibits a private provider from requiring you to include your Social Security number in your request to amend your medical record.



Do I have the right to have information removed from my medical record?

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 is not supposed to be a chance to dispute a diagnosis. It is meant to give you the chance to correct your record by adding information to it.



WHAT HAPPENS IF MY REQUEST TO AMEND MY RECORD 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?

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?

Yes. There are times when your health care provider can deny your request to amend your medical record. 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. 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. Is there anything I can 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 to amend just because they did not create the medical information.

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 just because he didn't create the information she wants to amend.

WHAT CAN I DO 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 (correct) 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 professional help 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 at **1-866-627-7748**. This is a toll free number. OCR requests that you read their responses to frequently asked questions before you call this number.

Board of Registration in Medicine

The Board of Registration in Medicine website offers consumer information about medical records. There is a "frequently asked questions" section and a medical record brochure available at <http://www.massmedboard.org/consumer>. (As of August 2005, the discussion of copying fees on this site had not been updated to reflect current law, which permits higher fees.)



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.

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 a complaint.

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

You can file a complaint with the Office for Civil Rights, Health and Human Services (OCR).

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

In Massachusetts, you can file a complaint with the regional OCR office at:
Office for Civil Rights
U.S. Department of Health & Human Services
JFK Federal Building - Room 1875
Boston, MA 02203

(617) 565-1340 (telephone); (617) 565-1343 (TDD)
(617) 565-3809 (FAX)

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.

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 Massachusetts Board of Registration and Medicine.

You can download a complaint form from the Board's web site at
<http://www.massmedboard.org>

You can obtain information about complaints by calling 1-800-377-0550 or 617-654-9830.

You can file a complaint about a hospital with the Massachusetts Department of Public Health, Advocacy Office.

You may contact the Department in writing at:

Massachusetts Department of Public Health
Advocacy Office
Patient Protection Unit, Division of Health Care Quality
10 West Street, 5th Floor,
Boston MA 02111

617-753-8220 (telephone)

You can contact the Massachusetts Office of the Attorney General.

You can call the Massachusetts Office of the Attorney General, Consumer Hotline at **(617) 727-8400** if you are having problems receiving copies of medical records from a medical facility or health care provider for assistance.

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

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.

You might have the right to sue to see or get a copy of your medical record under Massachusetts law in state court.

5. WORDS TO KNOW

Correct. This guide uses the word "correct" to mean adding information to your medical record to make it more accurate or complete.

Health care provider or provider. As used in this guide, "health care provider" or "provider" means a medical doctor, dentist, optometrist, hospital or other professional who provides medical care or services.

HIPAA Privacy Rule. A set of legal rules written by the United States Department of Health and Human Services. These rules set national standards that give patients the right to see, get a copy of, and amend their own health information. They also set standards protecting the privacy of health information. 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 and organizations (such as employers and life insurers) do not have to follow the HIPAA Privacy Rule.

HIPAA. Health Insurance Portability and Accountability Act of 1996. This federal law directed the United States Department of Health and Human Services 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. Your provider must give you this notice when they first see you. They also must give you a copy of the notice when you ask for one. The notice of privacy practices 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.

Retrieval Fee. A fee for the administrative time spent searching for and finding your medical record.

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

Right to Amend. The right to have information added 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>

Massachusetts Medical Record Access Laws

Some health care providers do *not* have to follow the HIPAA Privacy Rule. These providers must still follow Massachusetts laws that give you the right to see and get a copy of your medical record. You can read the Massachusetts statutes that give you these access rights on the Web site of the Massachusetts legislature at:

<http://www.mass.gov/legis/legis.htm>. Look under "General Laws" for Chapter 112, Section 12CC and Chapter 111, Section 70.

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

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

Mental Health Treatment Records

You can find a summary of your rights of access to mental health records under Massachusetts law on the Web site of the **Disability Law Center** at:

http://www.dlc-ma.org/Resources/Mental_Health/MH9%20your_rights_regarding_access_to.htm

The HIPAA Privacy Rule treats most mental health treatment records like other medical records. However, psychotherapy notes (as defined by the HIPAA Privacy Rule) are treated differently. You can find what types of records are included in psychotherapy notes and how these notes are treated in the *Summary of the Privacy Rule* written by the Office for Civil Rights, HHS at: <http://www.hhs.gov/ocr/hipaa/>.