



Your Medical Record Rights in New Jersey

(A Guide to Consumer Rights under HIPAA)

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Funded by Grant G13LM8312
The National Library of Medicine

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INTRODUCTION

Medical records are an important part of your health care. These records 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 get and correct or amend your medical record. (HIPAA stands for the “Health Insurance Portability and Accountability Act.”) New Jersey 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 correct or amend your medical record that is held by health care providers who have to follow the HIPAA Privacy Rule and New Jersey law. The guide only discusses records kept by health care professionals licensed by the New Jersey Board of Medical Examiners (such as medical doctors and doctors of osteopathy) and hospitals. Other health care providers in New Jersey may have to follow different rules. You can read guides about getting medical records from health care providers in 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. These rules do not apply when you request that your health care provider give your medical 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. When this guide uses “health care professionals” it means professionals who are licensed by the New Jersey Board of Medical Examiners (such as medical doctors and doctors of osteopathy). When the guide uses “health care provider” it means health care professionals *and* hospitals. Section 5 explains these 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.

ACKNOWLEDGMENTS

This work was funded by Grant G13LM8312 from the National Library of Medicine.

In addition, sincere thanks to Karen S. Ali, Assistant In-House Counsel, New Jersey Hospital Association; Michele O'Connor, MPA, RHIA, President, New Jersey Health Information Management Association; and Lilia Sollish, Privacy and Security Officer, Shore Memorial Hospital for reviewing this guide; and to Jeffrey S. Crowley, MPH, Mila Kofman, JD and Kevin Lucia, JD for their input on early versions of the guide. Their help was invaluable. However, any mistakes are the author's own.

1. OVERVIEW

Both the *HIPAA Privacy Rule* and New Jersey 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. New Jersey law sets standards for records held by health care providers within the state. If a standard is different under the HIPAA Privacy Rule than it is under New Jersey law, your health care provider must follow the law that is the most protective of your rights.

SUMMARY OF YOUR RIGHTS

In New Jersey 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 or give you a copy of it within 30 days of receiving your request.

Your health care provider is allowed to charge you for copies of your medical record. They can also charge you for postage.

∞ ***Correct your medical record by adding information to it.***

You have the right to correct your medical record by having information added to your record to make it more complete or accurate. This 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.

∞ ***You have the right to sue in state court if your health care provider violates your rights under New Jersey law.***

You have the right to sue in state court if your health care provider violates New Jersey laws on seeing and getting a copy of your medical record.

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



WHO HAS TO FOLLOW THESE LAWS?

Most New Jersey health care providers (such as doctors and hospitals) 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 computer technology to send health information for certain administrative or financial purposes (such as filing claims for insurance).

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.

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.

What happens 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 New Jersey laws that give you rights to your medical record. Section 6 lists some resources that summarize these state laws.

This guide, however, only explains getting your medical record from New Jersey 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 or health care provider, 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.
- ∞ 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 New Jersey law, your health care provider owns the actual medical record. This means, for example, that 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 health care provider makes personal notes about patients. Do I have a right to get these notes?

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

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 file that says that she suspects that Michael 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 see and get a copy of this note.

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.

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 lawsuit.

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 about 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 records?

Usually, yes. As a parent or guardian, you are generally considered to be the personal representative of your minor child. As a personal representative, you generally have the right to get and amend your child's medical record. In New Jersey, parents have these rights when a 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 of access to a minor child's medical record. For example, when a provider reasonably believes that a parent is abusing or neglecting a child, the provider does not have to treat the parent as the personal representative of the child. 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 of access to 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, she has the right to get and amend her own medical record. This includes the right to get records that were created when she was younger. 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 am emancipated under New Jersey law. Who has the right to get and amend my medical record?

You do. If you are an emancipated minor under New Jersey law, you have the right to get and amend your own medical record. Your parents do not have the right to get and amend your medical records.

I am a minor. I'm 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 New Jersey, even though you are a minor you can consent to certain types of medical treatment without the permission of your parents. For example, you can consent to treatment related to pregnancy and sexually transmitted diseases without the permission of your parents. When you consent to such treatment, you have the right to get and amend your medical record related to this treatment. In New Jersey, your parents do not have the right to access information related to treatment for these conditions.

Example

Jason is 15 and is sexually active. Jason gives his permission to be tested for gonorrhea, a sexually transmitted disease. Jason's mother later requests a copy of Jason's medical record. Jason's mother does not have the right to get the part of his medical record that is related to his test for gonorrhea.

The rules may be different when you, as a minor, obtain other sorts of treatment 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 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 get and amend the part of her medical record that is relevant to making health care decisions on her behalf. You have these rights while the power of attorney is in effect.

Example

Maria's mother signed a health care power of attorney form. If Maria's mother is not able to make decisions about her health care, this form gives Maria the power 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 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 old 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 a copy of his medical record?

Maybe. The rules are different depending on whether you are requesting medical records from a hospital or a health care professional (such as a doctor).

You have the right to get a deceased person's medical records from a New Jersey *hospital* if you are the deceased person's legally authorized representative, such as their surviving spouse, immediate next of kin, or legal guardian.

You have the right to get a deceased person's medical record from a *health care professional* (such as a doctor) in New Jersey, if you are the have the right to act on behalf of the deceased person or their estate. For example, if you are the personal

representative of the estate you have the right to get the deceased person's medical record.



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

New Jersey hospitals must keep your medical record at least 10 years after the date you were discharged or until you reach the age of 23, whichever is longer. Health care professionals (such as doctors) in New Jersey must keep medical records at least 7 years from the last time they enter information in your medical record. In practice, many health care providers keep their records longer.

You have a right to get 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 respond to your request for your record within 30 days after receiving your request. Sometimes, it can take longer.

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

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 provider about their specific procedures for getting your medical record. Often, your health care 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 provider's *notice of privacy practices*.



Can my provider require me to put my request for my medical record in writing?

Yes. Your 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 it has such a requirement.

What information should I include in my request for 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, when you ask for your medical record, your request should include:

- ∞ Your name.
- ∞ Your address.
- ∞ Your telephone number.
- ∞ Your e-mail address (if you have one).
- ∞ Your date of birth or your medical record number.
- ∞ 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 Dates of treatment.
 - 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 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 engaging in this practice.

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

No. You have the right to do both.

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 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 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 doctor treating the patient 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 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?

Generally, within 30 days after receiving your request, your health care provider 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.

My health care provider says that in certain cases they can take up to 90 days to give me a copy of my medical record. Is that true?

No. Although 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, New Jersey law requires a provider to give you a copy of your record no later than 30 days after receiving your request. Your health care provider must follow the shorter deadline set by New Jersey 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 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.



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, they want to charge for writing the summary or explanation.

Your provider can't give you a summary in place of your medical record unless you agree. Your health care provider generally must give you the summary within 30 days from when you request the summary.

Your provider can charge you a reasonable fee for the actual time they spend preparing the summary or explanation. Health care professionals (such as doctors) cannot charge more for a summary than they could have charged you for copying the original record. In any case, the maximum your health care professional can charge you for preparing a summary is \$100. This fee limit does *not* apply to hospital records.

Example

Leon asks for a copy of his medical record. Leon's doctor would prefer to give Leon just a summary of the record. Leon does not agree to accept a summary. The doctor must give Leon a full copy of the record.

I received a copy of my medical record, but I can't read my doctor's handwriting. Does my doctor have to give me a copy that I can read?

Yes. Under New Jersey law, if a doctor or other health care professional gives you a copy of a medical record that you can't read because it is illegible or was written in a language other than English, they must provide a typed copy in English. The health

care professional cannot charge you for this transcription. This rule does not apply to hospital records.

I can't understand the medical terms used in my record. Does my health care provider have to translate this information into plain language?

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

 WILL I HAVE TO PAY FOR MY MEDICAL RECORD?

Maybe. Your health care provider is allowed to charge you for copying your medical record. They may also charge you for postage if you request that your record be mailed to you. The maximum rates are different for health care professionals (such as doctors) and hospitals.

Health care professionals (such as doctors) may charge no more than \$1.00 per page or \$100 for the entire medical record, whichever is less.

Hospitals may charge up to \$1.00 per page for the first 100 pages and 25¢ per page after that. Hospitals may not charge more than \$200 for the entire medical record. Every hospital must have a policy in place to ensure that patients who are unable to pay can get access to copies of their medical records.

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 someone searching for my record?

No. You cannot be charged a fee for someone searching for your record. Although search fees are permitted under New Jersey law, they are not permitted under the HIPAA Privacy Rule. Because the HIPAA Privacy Rule is more protective of your rights, your provider must follow the HIPAA Privacy Rule. They may not charge you a *search fee*.



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 copies. You can also be charged postage if you ask that the records be mailed to you.



CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?

Yes. In very limited cases, your health care provider can deny your request for your medical record. For example, in New Jersey, a health care professional (such as a doctor) can deny you access to subjective information in your medical record (such as their opinion of your condition) if they believe that seeing it would endanger your life or physical safety. A health care professional *cannot* deny you access to any objective information in your medical record, such as test results and x-ray results.

A New Jersey hospital can deny you access to your medical record where they believe that seeing the information would endanger your life or physical safety.

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. Generally, your health care provider must give you this information within 30 days after receiving your request for your record.

Can my health care provider deny my request for my medical record just because they think I might get upset if I read it?

No. Your health care provider cannot deny you access to your record because they think the information in the record might upset you or that it might cause you mental harm. However, they can deny your request if they believe you will become upset enough to physically harm yourself.

Can my health care provider deny my request for records related to my mental health treatment?

Records about mental health treatment may be treated differently from other types of medical records. This guide does not discuss mental health records. Section 6 lists some resources for information about mental health records.



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 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 your medical record is kept if they know.



WHAT CAN I DO IF MY HEALTH CARE PROVIDER DENIES MY REQUEST FOR MY MEDICAL RECORD?

If your health care provider denies your request for your medical record, you have rights under both New Jersey law and the HIPAA Privacy Rule.

New Jersey Law

In New Jersey, if a *health care professional* (such as a doctor) denies you access to your medical record, you have the right to require them to give a copy of your record directly to: your attorney, another health care professional, your health insurance carrier, or a governmental reimbursement program (such as Medicaid).

If a *hospital* denies you access to your medical record, you have the right to require them to give a copy to your legally authorized representative (such as your attorney) or to your physician.

HIPAA Privacy Rule

You also have rights under the HIPAA Privacy Rule if your health care provider denies you access to your medical record because they believe that seeing it will endanger your life or physical safety. When you are denied access for this reason, you have the right to have someone else review your provider's decision. This right is called the *right to review*.

If you request a review under HIPAA, the health care provider must select another licensed health care professional to review their decision. They cannot choose someone who was involved in the original decision to deny your request. The reviewer will make the final decision whether you can see or get a copy of your medical record. Your health care provider must follow the reviewer's decision.

How will I know what the reviewer has decided?

Your health care provider must tell you in writing (such as by a letter, fax or e-mail) the reviewer's decision.

Can I choose the reviewer under the HIPAA Privacy Rule?

No. Your health care provider gets to choose the reviewer.

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 have information added to your record to make it more complete or accurate. This right is called the “*right to amend*” your medical record. In New Jersey, there are two ways you can amend your medical record.

First, under New Jersey law you have the right to add a short statement to your *hospital* record after the record is complete. New Jersey does not have detailed rules for how you do this.

You also have the right under the HIPAA Privacy Rule to amend your medical record by asking your *health care provider* to add information to your record to make it more complete or accurate. This rule applies to *both hospitals and health care professionals* (such as doctors).

Which way should I choose to amend my record?

If you want to amend your record held by a health care professional (not a hospital) you must follow the procedures under the HIPAA Privacy Rule.

If you want to amend your medical record held by a *hospital*, you have a choice of following New Jersey law or the HIPAA Privacy Rule. Both procedures have their advantages. Writing your own short statement is a simpler procedure. But some people feel that having your hospital make the change makes your medical record more believable to others. Only you can decide which procedure is better for you.

HOW DO I ADD A WRITTEN STATEMENT TO MY HOSPITAL RECORD UNDER NEW JERSEY LAW?

New Jersey does not have detailed procedures for adding a written statement to your medical record. Generally, if you want to add information to your hospital record, you should send the hospital a letter that includes:

- ∞ Your name.
- ∞ Your address.
- ∞ Your telephone number.
- ∞ Your email address.
- ∞ Your date of birth or your medical record number.
- ∞ The dates you were in the hospital.

- ∞ A request that the hospital add your statement to your medical record under New Jersey law.
- ∞ A short statement for them to include in your record.



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

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, such as by a letter, fax, or e-mail. 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, when you ask for your medical record, your request to amend should include:

- ∞ Your name.
- ∞ Your address.
- ∞ Your telephone number.
- ∞ Your email address.
- ∞ Your date of birth or medical record number.
- ∞ Date(s) of service (such as the date when you were in the hospital).
- ∞ 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 engaging in this practice.

As a minor, do I have the right to request my provider 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.



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 health care 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 UNDER HIPAA IS ACCEPTED?

If your health care provider agrees with 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 HIPAA?



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 an 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 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 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. 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 health care 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.

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.

WHAT CAN I DO IF MY PROVIDER DENIES MY REQUEST TO AMEND MY MEDICAL RECORD UNDER HIPAA?

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 along with a copy (or summary) 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. In the future, when your provider shares your medical information with others, they will include this note along with their original denial, and your statement of disagreement.

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 (correcting) 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

You may be able to get answers to your questions about your rights under the HIPAA Privacy Rule from the Office for Civil Rights, United States Department of Health and Human Services (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 questions answered there 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.

New Jersey Health Information Management Association

You can ask the New Jersey Health Information Management Association specific questions about medical records by using a link at <http://www.njhima.org>. A health information management specialist will respond to your question.



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 discuss problems and issues you have about getting and amending your medical record with your health care provider. It is possible that you may be able to resolve your issues informally. It is also likely that if you contact someone for assistance, they will ask whether you have tried to solve your problem informally. If you believe your rights have been violated and 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 your complaint.

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

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.

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 of medicine, doctor of osteopathy or podiatrist with the New Jersey Board of Medical Examiners at:

State of New Jersey
State Board of Medical Examiners
P.O. Box 183
Trenton, NJ 08625

You can file a complaint form online or download a complaint form to mail at: <http://www.state.nj.us/lps/ca/comp.htm>. You can also obtain a complaint form by calling **609-826-7100**.

You can find information about where to file complaints about other types of health care professionals at: <http://www.state.nj.us/lps/ca/bme/bme.htm>.

You can file a complaint about a hospital with the New Jersey Department of Health, Complaint Hotline at:

1-800-792-9770

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

You have the right to sue your health care provider in New Jersey state court for violations of your rights to get your medical record under New Jersey law.

You do *not* have the right to sue your health care provider for violating your right to get and amend your medical record under the HIPAA Privacy Rule.

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 Professional. This guide uses “health care professional” to describe people who are licensed by the New Jersey Board of Medical Examiners (including medical doctors, doctors of osteopathy, and podiatrists). The term does not include dentists, pharmacists and other professionals who are licensed by other boards and subject to other rules.

Health Care Provider. In this guide, “health care provider” means health care professionals who are licensed by the New Jersey Board of Medical Examiners (including medical doctors, doctors of osteopathy, podiatrists) and hospitals.

HIPAA Privacy Rule. A set of legal rules written by the United States Department of Health and Human Services 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. Health care providers (such as doctors and hospitals) and health plans (such as health insurers and Medicare) have to follow the HIPAA Privacy Rule. Others, 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 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. 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. With respect to deceased people, the term “personal representative” is broader and includes someone who has the right to make any sort of decision on behalf of the individual or their estate.

Search 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 correct your health information by adding information to it. The right to amend does not mean a right to have information erased.

Right to Review. The right to have someone else review a health care provider's denial of a request for a medical record.

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>

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.

You can ask the New Jersey Health Information Management Association specific questions about medical records by using a link at <http://www.njhima.org>. A health information management specialist will respond to your question.

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.

New Jersey Medical Record Laws

Some health care providers do not have to follow the HIPAA Privacy Rule. These providers must still follow New Jersey laws that give you the right to see and get a copy of your medical record. You can read the state regulations that apply to doctors' medical records (Section 13:35-6.5 of the New Jersey Administrative Code) at

<http://www.state.nj.us/lps/ca/bme/statreg/bmeregulations2.pdf>

You can read the answers to frequently asked questions about hospital records on the Web site of the New Jersey Hospital Association at:

<http://www.njha.com/librarysection/pdf/ConsumerSecFAQONLY.pdf>

Mental Health Treatment Records

For information about mental health rights in New Jersey you can contact

New Jersey Protection and Advocacy (NJPA) at:

609- 292-9742 or 800- 922-7233 (in NJ only)

(609) 777-0187 (Fax)

(609) 633-7106 (TTY)

advocate@njpanda.org

NJPA is the consumer-directed, non-profit organization that serves as New Jersey's designated protection and advocacy system for people with disabilities in the state.

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/>