

A large, stylized orange graphic of a clipboard with a white sheet of paper. The clipboard has a ring at the top and a clip at the bottom. The white sheet contains the title and subtitle. The background is white with orange decorative shapes on the left and right sides.

Your Medical Record Rights in Tennessee

(A Guide to Consumer Rights under HIPAA)

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INTRODUCTION

Medical records are an important part of your health care. These records are 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.") Tennessee laws also give you rights in your medical record.

ABOUT THIS GUIDE

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

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

The rules explained in this guide only apply when you ask for your own medical record or when you ask for someone else'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. In this guide "health care provider" is used to refer to health care professionals (including doctors, dentists, chiropractors, podiatrists, and others) and health care facilities (such as hospitals, hospices, and home care services). 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 authors have 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. The authors have 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 authors, Georgetown University, and the National Library of Medicine specifically disclaim any personal liability, loss, or risk incurred as a consequence of the use of any information in this guide.

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1. OVERVIEW

Both the *HIPAA Privacy Rule* and Tennessee 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. Tennessee 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 Tennessee law, your health care provider must follow the law that is the most protective of your rights.

SUMMARY OF YOUR RIGHTS

In Tennessee you have the right to:

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

Doctors, dentists, and other health care professionals usually must let you see your medical record or give you a copy of it no more than 10 working days after receiving your written request. Hospitals must let you see your medical record or give you a copy of it without unreasonable delay, usually no later than 30 days after they receive your request.

In most cases, your health care provider is allowed to charge you for copies of your medical record. They can also charge you for postage.

- ***Have information added to your medical records to make them more accurate or complete.***

This right is called the *right to amend* your record. In some limited cases your health care provider can deny your request to amend your medical record. If your provider denies your request, you have the right to add a short statement to your record explaining your position.

- ***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 hospital violates your rights under Tennessee law.***

You have the right to sue your hospital in state court if it violates Tennessee laws that give you the right to get a copy of your medical record. You might have the right under state law to sue a doctor or other health care practitioner for such violations.

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



WHO HAS TO FOLLOW THESE LAWS?

Most Tennessee health care providers (such as medical doctors, chiropractors, 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 applies to 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 Tennessee laws that give you rights to your medical record. Section 6 lists some resources where you can read these state laws.

This guide, however, only explains how to get your medical record from Tennessee 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. This right is often called the *right to access* your 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.
- Notes your doctor makes about you.
- Other information about things that can affect your health or health care.

You have the right to see, get a copy of, and amend these records whether they are kept on paper, on a computer or in another format.

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 related to mental health 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.

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 to amend information in your record you can read Section 3 of this guide.

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 legal 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 usually have the right to get and amend your minor child's medical record. In Tennessee, parents generally 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 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 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 still a minor. Once your child turns 18, you usually no longer have the right to get and amend her medical record just because you are her parent.

I am under 18 and am emancipated. Who has the right to get and amend my medical record?

In Tennessee, if you are under 18 and emancipated, you have the right to consent to your own medical treatment. You also have the right to get and amend medical records that are related to treatment for which you have given consent.

I am an unemancipated minor but I can legally consent to certain kinds of medical treatment without my parents' permission. Who can get and amend my records that are related to this treatment?

Under Tennessee law, as an unemancipated minor you can consent to certain types of medical treatment without the permission of your parents. For example, unemancipated minors in Tennessee do not need parental consent for the following treatments:

- Contraceptive procedures, supplies and information
- Prenatal treatment
- Treatment of a sexually transmitted disease

When you consent to these treatments, you have the right to get and amend your medical record related to this treatment. According to the Tennessee Medical Association, doctors in Tennessee may not give parents access to medical records related to treatment for which minors have lawfully given their consent.

The rules may be different when you, as a minor, obtain treatment from other providers or obtain other sorts of testing or 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.

My mother named me as her health care agent in her appointment of health care agent form. Do I have the right to get and amend her medical records?

Yes. If you are your mother's health care agent, 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, unless the appointment of health care agent form limits your access. You have these rights for as long as you have the authority to act as her health care agent.

Example

Maria's mother signed an Appointment of Health Care Agent form. (This form is also known as a Durable Medical 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. The form does not limit the agent's ability to obtain medical information or records. 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?

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. You have the right to get a deceased person's medical records from a Tennessee health care provider if you are the personal representative (such as the executor or administrator) of the deceased person's estate.



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

Tennessee law requires many health care providers to keep medical records for a specific period of time. For example, doctors and hospitals must keep most medical records at least 10 years after their last professional contact with you. Doctors and hospitals must keep minors' medical records for at least 10 years after their last professional contact or until the minor is 19 years old, whichever is longer. Some records, such as original x-rays and mammograms, are subject to different rules.

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 to access* your medical record.

Health care professionals such as doctor and dentists usually must let you see your medical record or give you a copy of it no more than 10 working days after receiving your written request. Hospitals must let you see your medical record or give you a copy of it without unreasonable delay, but they cannot take longer than 30 days.

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

In many cases, your provider is allowed to charge you a fee for copying your medical 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*.

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. In Tennessee, your request for your medical record must be in writing. Generally, your written request should include the following items:

- The date of your request.
- Your name, address, telephone number or other contact information.
- Any prior name you may have used (such as your maiden name).
- Your date of birth or medical record number.
- Date(s) of service or treatment (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.
- Your signature.
- If you are requesting the medical record of someone else as their personal representative, your relationship to the patient.

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.

Can my provider require that I 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 someone's health care agent, your provider may require you to show them a copy of the appointment of health care agent or medical power of attorney form. If you are a personal representative of an estate, you should expect to show documentation proving that you are the executor or administrator of the estate.



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 access to 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 Tennessee, the time limits for responding to requests for medical records differ depending on the type of health care provider.

Health Care Professionals

Generally, no later than 10 working days after receiving your request, a health care professional (such as a doctor, dentist or optometrist) 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 professional 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 professional take up to 90 days to respond to a request for a medical record, Tennessee law requires a health care professional to give you a copy of your record no later than 10 working days after they receive your written request. Your health care professional must follow the shorter deadline set by Tennessee law.

Hospitals

A Tennessee hospital generally must respond to your request without unreasonable delay. This usually means that they must respond no later than 30 days after receiving your request.



CAN MY PROVIDER CHARGE ME FOR COPYING MY MEDICAL RECORD?

In most cases, yes. Your health care provider usually is allowed to charge you for copying your medical record. The amount your provider may charge differs depending on whether you request your record from a health care professional (such as a doctor) or a hospital. Your provider also may charge you for postage if you request that your record be mailed to you. As discussed below, there are special rules for requests for copies needed for Social Security claims or appeals.

Health Care Professionals

In Tennessee, health care professionals (doctors, dentists, chiropractors and others) are allowed to charge you no more than \$20 for copying medical records 40 pages or less in length and 25¢ per page for each page copied after the first 40 pages. Health care professionals may also charge you the actual cost of mailing your copy to you.

Hospitals

A Tennessee hospital can charge you up to \$15 for copying the first five pages of the medical records. For additional pages, hospitals may charge you the following:

<u>Cost per page</u>	<u>For pages</u>
75¢	6-50
50¢	51-250
25¢	251 and up.

A hospital may also charge you for the actual costs of mailing the records.

Can my provider charge me for a copy of my medical record that I need to support a claim or appeal under Social Security?

It depends. The rules are different for health care professionals and hospitals.

Health Care Professionals

Health care professionals (such as doctors, dentists, optometrists and others) may charge you a fee to copy a medical record to support a claim or appeal under the Social Security Act.

Hospitals

In Tennessee, a hospital may *not* charge you for copying your records if you are indigent (poor) and are requesting your records for the purpose of supporting a claim or appeal under any provision of the Social Security Act. If you are represented by an organization whose purpose it is to provide legal assistance to the indigent (such as the Memphis Area Legal Services) you qualify for a free copy. If you are not represented by such an organization, the hospital may require you to provide proof that you are indigent.

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

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 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. 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, 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. If you agree to receive a summary, your health care provider generally must give you the summary no later than 10 days after they receive your request.

My health care professional offered to give me a summary, but I want a copy of my whole record. Can they make me accept the summary?

No. Although Tennessee law lets health care professionals decide whether you should get a summary or the actual medical record, the HIPAA Privacy Rule says that health care providers can give you a summary in place of the actual record only if you agree to accept the summary. Since the Privacy Rule gives you more rights, your provider must follow the HIPAA Privacy Rule.

Example

Leon asks for a copy of his medical record. Because the medical record is long and complicated, Leon's doctor would prefer to give him 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.

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

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.



CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?

Yes. Your health care provider can deny your request to see or get a copy of your medical record, but only in a few cases. For example, if your provider believes that letting you see your record might physically endanger you or someone else, they can deny your request for your record.

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

Your health care provider must tell you in writing 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 10 days after receiving your request for your record. You can read a more about this time limit in the section of this guide titled "How Long Should It Take to Get My Medical 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 or someone else.

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 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.

My medical record contains some information that my provider is allowed to deny me access to. Does this mean that I can't get any of my medical record?

No. Under the HIPAA Privacy Rule, your health care provider must give you as much of your medical record as possible. Your provider may remove only the information that they are allowed to refuse to give you access to.

What if I send my request to a provider who is not the one who keeps the record I need?

If your provider does not maintain the record that you requested, they must tell you who has the record if they know.

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.



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 because they believe that seeing it might endanger you or someone else, you have the right to have another health care professional review their decision.

At the time your health care provider denies your request for your record, they must tell you in writing if you have a right to a review. They must also tell you how to ask for a review.

If you request a review, your provider must choose another licensed health care professional to review their decision. They cannot choose someone who was involved in the original decision. The reviewer makes the final decision whether you are allowed to get access to your medical record. Your provider must notify you in writing what the reviewer decides.

Can I choose the reviewer?

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.



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, 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 or treatment (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 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?

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?

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, and the procedures, if any, that the health care provider has established for the review of the refusal.

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?

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. Under HIPAA, 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. You do not have the right to have someone else review a denial of your request to amend your record.

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 lawyer 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.



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.

If you file a complaint with your 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, 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 file a complaint with your regional OCR office at:

Office for Civil Rights
U.S. Department of Health & Human Services
61 Forsyth Street, SW, Suite 3B70
Atlanta, GA 30323
(404) 562-7886; (404) 331-2867 (TDD)
(404) 562-7881 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 against a doctor or other health care professional with the Tennessee Department of Health.

You can obtain information about filing complaints against health care professionals and download a complaint form from the web site of the Department of Health at:

<http://www2.state.tn.us/health/HCF/complaints.htm>

You can request a complaint form from the Complaint Division of the Department of Health by calling **1-800-852-2187**.

Complaints and related material should be mailed to:

Tennessee Department of Health

Office of Investigations

Third Floor

Cordell Hull Building

425 Fifth Avenue North

Nashville, TN 37247

You can file a complaint about a hospital or other health care facility with the Tennessee Department of Health, Division of Health Care Facilities.

You can submit your complaint by telephone by calling the Health Care Facilities, Complaint Intake Unit at **1-877-287-0010**. This is a toll free call. You can also request a complaint form by calling this number.

You can obtain additional information about filing complaints against hospitals and download a complaint form from the Tennessee Department of Health web site at:

<http://www2.state.tn.us/health/HCF/complaints.htm>

Written complaint forms should be submitted to:

Division of Health Care Facilities

Centralized Complaint Intake Unit

425 Fifth Avenue North

Cordell Hull Building, First Floor

Nashville, TN 37247

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

Tennessee statutes give you the right to sue a hospital in state court for violating your state law rights to get your medical record. It is not clear whether you have the right to sue a doctor or other health care professional for such violations.

You do *not* have the right to sue your health care provider in federal court 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 Provider. In this guide "health care provider" is used to refer to health care professionals (including doctors, dentists, chiropractors, podiatrists, and others) and health care facilities (such as hospitals, hospices, and home care services).

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 stronger 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 your health information and share it with others.

Right to 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.

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 read state laws about mental health rights in Tennessee on the Department of Mental Health and Developmental Disabilities' website at:

<http://state.tn.us/mental/t33/title33.html>

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/>

Tennessee Medical Record Laws

Some health care providers do not have to follow the HIPAA Privacy Rule. These providers must still follow Tennessee laws that give you the right to see and get a copy of your medical record. You can read the state statutes that apply to medical records at: <http://www.tennesseeanytime.org/laws.laws.html> Look under Tennessee Code Annotated, Title 63 (Professions of the Healing Arts), Chapter 2 (Medical Records); and Title 68 (Health, Safety and Environmental Protection), Chapter 11 (Health Facilities and Resources), Part 3 (Medical Records).