

An Individual's Right to Access and Obtain Their Health Information

The Role of Nurses in HIPAA Compliance, Healthcare Security

Maintaining HIPAA compliance is essential for any healthcare provider, and nurses are key tools in protecting patients' healthcare security.

Developed as part of a Medscape education activity, *An Individual's Right to Access and Obtain Their Health Information Under HIPAA*, supported by the US Department of Health and Human Services.

What are the **four main purposes** of HIPAA?

1. **Privacy** of health information
2. **Security** of electronic records,
3. Administrative simplification, and insurance **portability**.
4. Provides **detailed** instructions **for** handling a **protecting** a patient's **personal** health information.

Objectives

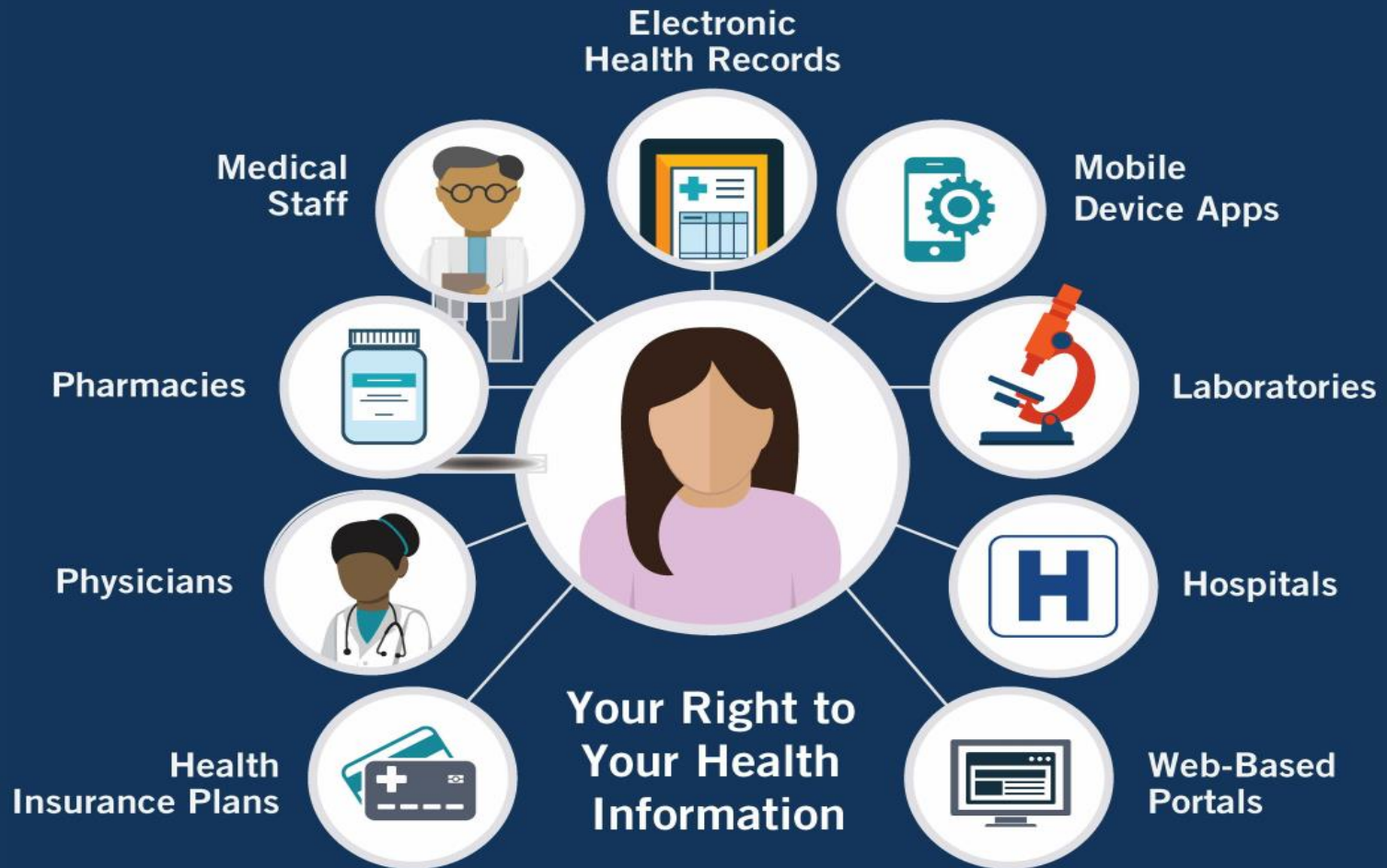
- Discuss how the HIPAA right of access enables individuals to become more involved in their care
- Review key components of the HIPAA access right, including individuals' ability to direct a copy of their health information to a third party, including a researcher
- Suggest ways to integrate aspects of the access right into medical practice

HIPAA Right of Access

- HIPAA provides individuals and their personal representatives with a legal, enforceable right to see and receive copies, upon request, of their health information
- Most healthcare providers, health plans, and business associates that maintain the health information must provide individuals with access



GET IT. CHECK IT. USE IT.



HIPAA Privacy Rule Overview

- Effective April 14, 2003 – right of access^[a]
- Who must comply?
 - **Covered entities**^[b]
 - Most healthcare providers who transmit data electronically
 - Health plans
 - Healthcare clearinghouses
 - **Business associates**^[c]
 - Any person or organization that functions on behalf of a covered entity that involves use or disclosure of identifiable health information
 - Examples: billing, coding, analytics, electronic health record vendor

a. HHS. Health Information Privacy. HIPAA for professionals. <https://www.hhs.gov/hipaa/for-professionals/>;

b. HHS. Health Information Privacy. Covered entities and business associates. <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>; c. HHS. Health Information Privacy Business associates.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>.

HIPAA Privacy Rule Overview (cont)

Goals

- **Provide strong federal protections for privacy rights**
 - Patients should understand that the goal is to protect them
 - Ensure that individuals trust in the privacy and security of their health information
- **Encourage open communication with providers**
- **Make sure that the right information is flowing to the right people at the right time**
 - Make sure staff interacting with patients have the ability to explain the goals of HIPAA

HIPAA Education

Remember that patients may come from countries where completing a government form may not be in their best interest, yet they still desire to share their health information

- Instructing the front staff about how to educate patients will decrease patients' angst and mistrust of the provider
- Do provide support services for translation



What Is Protected Health Information (PHI)?

Information that

- Relates to
 - The individual's past, present, or future physical or mental health or condition
 - The provision of health care to an individual
 - Past, present, or future payment for the provision of health care to the individual
- And
 - Identifies the individual, or
 - There is a reasonable basis to believe it can be used to identify the individual

Benefits of Providing Individuals Access to Their Data

- Increases people's engagement in their care
- Improves overall patient experience/CAHPS score
- Makes patients more aware of their condition
- Prepares patients better for office visits
- Seeing their healthcare information in writing motivates patients to improve their self-care and aids their decision making about what additional care is required
- Checking their own records makes it easier for patients to remember to schedule a follow-up appointment
- Sharing records with other providers is easier for patients when they have access to the records themselves

Key Aspects of the HIPAA Right of Access

- Scope of information and request procedures
- Form, format, and manner of access
- Timeliness
- Fees
- Directing copy to a third party

Scope of Information and Request Procedures

- **The right to access applies to all information in a “designated record set,”** which broadly includes medical, payment, and other records used to make decisions about individuals
 - EVERYTHING in the electronic health record
 - Patient notes
 - Medications
 - Lab results
 - X-rays
 - Procedure and discharge notes
- It does not matter how old the information is, where it is kept, or where it originated

HHS. Health Information Privacy. Individuals' right under HIPAA to access their health information.
<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access>.

HHS. Health Information Privacy. HHS strengthens patients' right to access lab test reports.
<https://www.hhs.gov/hipaa/for-professionals/special-topics/clia/index.html>.

Scope of Information and Request Procedures (cont)

- **There are very limited exclusions from the right to access**
 - Psychotherapy notes that are kept separate from the patient's other records
 - PHI compiled for litigation
 - BUT underlying PHI is required to remain accessible
 - Records not used to make decisions about individuals
- **Not sufficient to deny access**
 - Failure to pay for healthcare services
 - Concerns that individual may not understand the PHI or be upset by it

HHS. Health Information Privacy. Individuals' right under HIPAA to access their health information.
<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access>.

HHS. Health Information Privacy. HIPAA privacy rule and sharing information related to mental health.
<https://www.hhs.gov/hipaa/for-professionals/special-topics/mental-health/index.html>.

Request Procedures

- **An individual or their personal representative can request their health information at any time, for any reason**
 - You may require a written request, and it can be electronic
 - Required: verify identity of requesting individual
- **Procedures cannot create a barrier to, or unreasonably delay, an individual's access**
 - Example: cannot require individuals to mail an access request or make a separate trip to the office to request access
 - Providers are encouraged to offer multiple options for requesting access and obtaining the information

Form, Format, and Manner of Access

An individual has the right to receive a copy of PHI in the form and format requested if “readily producible”

- Depends on the entity’s capabilities, not its willingness
- If information is maintained electronically, at least 1 type of electronic format must be accessible by the individual
- The individual has a right to specify the mode of transmission or transfer
 - Has a right to receive information by email (or mail), including unsecure email if requested by individual (give light warning about security risks)
 - Other modes: accommodate request if within capabilities of entity and the mode would not present unacceptable security risks to PHI on the entity’s systems

Form, Format, and Manner of Access (cont)

- The provider must give the patient access even if the provider knows the patient is planning to do something with the data that may not be in their best interest
- The patient has the right to choose what to do with their data, such as putting it online or using a consumer application with poor security

Timeliness and Fees

- Access must be provided within 30 days
 - One 30-day extension is permitted
 - Providers are expected to respond much sooner if possible
- Limited fees may be charged
 - Reasonable, cost-based fee for labor for copying, or creating summary or explanation
 - If applicable, cost of supplies and postage
- No fee is allowed for search and retrieval or other costs, even if authorized by state law

Timeliness and Fees (cont)

- Individuals must be informed in advance of approximate fee
- Providers are strongly encouraged to provide free copies
- Educate office staff, including those answering the phone and doctors receiving such texts, to document all requests in a central place
 - Document the date the request was made

Directing PHI to Third Party

- **An individual has the right to have the entity directly transmit PHI to a third party of the individual's choice**
- **Examples of third parties**
 - Primary care physician
 - Friend, family member, or caregiver
 - Mobile health application
 - Research institution
- **A signed, written request from the individual is required** (can be virtual)
- **The requirements are the same as for providing access directly to the individual** (eg, fee limitations, form and format, timeliness)

HHS. Health Information Privacy. Individuals' right under HIPAA to access their health information. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access>.

HHS. Health Information Privacy. Research. <https://www.hhs.gov/hipaa/for-professionals/special-topics/research/index.html>.

Directing PHI to Third Party (cont)

- **Requests for mobile health applications will grow with adoption of health IT**
 - Prepare now for the wave of mobile health applications
- **The third party can be a researcher**
 - For example, individuals participating in the *All of Us Research Program* (formerly The Precision Medicine Initiative [PMI] Cohort Program) can share their data online with this important initiative or with other clinical trials



Directing PHI to Third Party (cont)

- The third-party transfer may be to a competitor and may be repeated multiple times
- The fact that a hospital just asked for a patient's information, and that information was sent to the hospital, does not mean the patient cannot later ask for PHI to be sent to the same entity or another entity
- **Resources are at issue in any center**
 - It is not all right to suggest that the patient get medical information from the hospital just because the hospital can better defray the cost

HIPAA Access Educational Tools

OCR's Fact Sheet & Frequently Asked Questions:

Individuals' Right Under HIPAA to Access their Health Information 45 CFR § 164.524 and Questions and Answers About HIPAA's Access Right

- <http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

HHS consumer-facing videos and infographic: *Your Rights Under HIPAA*

- <http://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html>

HIMSS Privacy & Security Toolkit

- <http://www.himss.org/library/healthcare-privacy-security/toolkit>

HIPAA Access: Key Messages

- **With few exceptions, individuals and their personal representatives can access and receive a copy of their health information in medical records or other records used to make decisions about the individuals**
 - In the form and format that individuals request
 - As long as providers can produce it that way
- **If an entity maintains the requested health information electronically, it must offer individuals access in at least 1 type of electronic format**
- **Providers cannot have unreasonable measures in place**

HIPAA Access: Key Messages (cont)

- Providers should produce the information no later than 30 days from the date of request
- If a fee is charged for copies, the fee must be limited
- Providers are encouraged to supply copies free of charge and to respond to requests as soon as possible

HIPAA Access: Key Messages (cont)

A patient can direct a provider to send a copy of their health information to a third party, including:

- A mobile app
- A family member
- A researcher for medical research



It's NOT a suggestion...it's the law!

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<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access>. HealthIT.gov. Your health information, your rights.

www.healthit.gov/sites/default/files/YourHealthInformationYourRights_Infographic-Web.pdf.

