

Practice Management

ACCESS TO PATIENT RECORDS

Can patients view or receive copies of their records?

Yes. A patient or patient's representative has the right to access his or her records once a written request is presented to the office. Patients are not limited in the number of requests for access to, or copies of, records. If patient records are maintained electronically, a patient may have upon request an electronic copy of the record.

A patient record includes x-rays, photographs, and models, and can include any written document in the chart, even if it is non-clinical.

Can the patient be charged for the copies?

Yes. Copying charges may not exceed specified limits. The dental office may collect from the patient no more than 25 cents per page, or 50 cents per page for copies made from microfilm. All reasonable costs, not exceeding actual costs, incurred by the dental office to provide the copies may be charged to the patient. This includes the cost of copying x-rays and postage if the patient requests receipt by mail. Many dentists forgo charging a fee if they transmit the records directly to another dentist.

The dental office should provide all copies within 15 days of receiving the written request.

If the dental practice maintains a patient's record in electronic form, the patient has the right to receive an electronic copy of their record and to direct the dental practice to transmit an electronic copy to an individual or entity designated by the patient. The fee charged for this electronic copy may not exceed the actual labor costs of fulfilling the request. Because HIPAA regulations are silent on a practice's ability to be reimbursed for electronic media material costs, you can require patients provide their own USB devices.

Must the patient clear up any outstanding account before receiving access to records?

No. A dental practice may not demand an outstanding account be cleared before providing access to records. There are other mechanisms by which the account balance may be pursued.

What exactly is the patient entitled to receive?

The laws on patient rights to access medical records include [California Health and Safety Code Section 123100-123149.5](#) and the Health Insurance Portability and Accountability Act (HIPAA). The laws give patients the right to:

- Inspect records during business hours within five days of presenting a written request.
- Receive copies of records within 15 days of presenting a written request.

The laws give a dental practice the right to:

- Charge \$.25 per page (or \$.50 per page for microfilm copy), as well as reasonable clerical costs, for copies.
- Charge reasonable costs, not exceeding actual duplication cost, for x-ray copies.
- Prepare a summary of the records as an alternative to providing copies or allowing inspection, except for HIPAA-covered entities. A patient of a HIPAA-covered entity must approve in advance the preparation and preparation fee for the summary.
- Charge a reasonable clerical cost for locating and making the records available *only* if the dental practice is not a HIPAA-covered entity.

If the summary option is exercised, the summary must be provided within ten working days of the patient's request. More time may be allowed to prepare the summary if the record is large, but the summary must be provided within 30 days of the request. The dentist may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary.

If a summary is provided, the dentist may confer with the patient to determine why the patient wants the records. If the information required relates only to specific injuries, illnesses or episodes, the summary need only relate to those items.

Must I provide a patient with an electronic copy of his or her record?

If the dental practice maintains a patient's record in electronic form, the patient has the right to receive an electronic copy of his or her record and also to direct the dental practice to transmit an electronic copy to an individual or entity designated by the patient.

Who else is entitled to have access to patient records, and under what circumstances?

Records can be released to anyone the patient chooses as long as the dental office receives written authorization signed by the patient or the patient's representative and if the dentist has determined that releasing the records will not cause harm to the patient. The authorization form should specify who is to receive the records and if the release of records or information is limited in any way. Restricted and confidential health information with regard to pregnancy, HIV test results, sexually-transmitted diseases, mental health, alcohol or drug abuse may not be provided to a requestor without specific consent from the patient.

If, however, the patient is not the one requesting the information or records, whether the dental office can provide it depends on whom the requestor is and why the request was made. If deciding that a requestor can have information, you are then responsible for determining whether HIPAA's "minimum necessary" rule applies.

Other Health Care Professionals: HIPAA and California law allow a dental practice to provide patient information, without patient authorization, to other health care professionals as long as the purpose of the information is to provide patient treatment.

Although the HIPAA Privacy Rule allows the use and transfer of patient information to relevant parties who need that information for healthcare operations, which includes practice sales, state law does not include the same provision. In the transfer, sale, merger or consolidation of a dental practice, it is therefore prudent for the selling dentist to obtain written patient authorization prior to allowing a potential buyer or partner to view charts. The absent provision in state law also means that a new practice owner

should stay on the safe side of the state's privacy laws and obtain written patient authorization before using a patient record. If a patient sets an appointment to be seen by the new owner, this is viewed as an implied authorization that allows the dentist to view the record before the patient presents. Patient authorization must be separate from the acknowledgement of the office's Notice of Privacy Practices. The authorization form can be mailed to patients together with the selling dentist's notification of transferring practice ownership.

In the transfer, sale, merger or consolidation of a dental practice, the new owner may agree to have custody of the patient record (the alternative is that the former owner retains the records). As the custodian of records, the owner is legally responsible for ensuring the contents are secure and, if the records are to be destroyed, ensuring the contents are unreadable.

Patient's Employer: Employers, in general, do not have the right to access the information except in workers' compensation cases or when necessary to carry out their responsibilities for workplace medical surveillance under Cal-OSHA or similar federal or state laws. Employers who self-insure may have limited access to patient information necessary to determine payment. Employer-sponsored dental benefit plans also have limited access to patient information necessary to determine payment and to conduct quality assessment audits.

Payer: If an individual other than the patient is responsible for paying the patient's bill, disclosure of patient information is allowed as long as the disclosures are limited to the minimum amount of information necessary to obtain payment. In making such disclosures, health care providers also must honor any reasonable request for confidential communication and any agreed-to-restrictions on the use or disclosure of the patients' protected health information. The dental office's Notice of Privacy Practices can state that if a patient designates another person as responsible for payment, the office will disclose the minimum amount of personal health information necessary to obtain payment from that person. If the patient objects to that disclosure, the office should inform the patient that he or she would have to choose between allowing the office to disclose information in order to obtain payment or paying for the services himself or herself. If a patient has paid the full cost of an item or service out-of-pocket and requests that the personal health information regarding the item or service not be disclosed to a health plan for purposes of payment or health care operations, the dental office must honor the patient's request.

Parents -- Divorced or Separated: A parent generally has a right to access the health record of his or her minor child irrespective of whether the parent has custody or financial responsibility. A dental practice may refuse to give access to a parent if it determines that providing access may harm the patient. A parent does not have a right to access the health record of an emancipated minor. An emancipated minor is an individual under 18 yrs old and is either (a) married or divorced; (b) is on active duty with the US armed forces; or (c) received a declaration of emancipation from the court.

Associate: A dentist who is a former associate in a dental practice may not copy or otherwise use patient health information from that dental practice without first obtaining written authorization from the patient.

Mandated Reporting: The obligation of a licensed dental professional to disclose possible domestic abuse, criminal activity, and other legal violations involving patients to appropriate agencies is not hindered in any way by HIPAA or California law.

Representative of Deceased Patient: A legally designated representative or beneficiary of a deceased patient may inspect or obtain a copy of the patient's record. The representative or beneficiary also may grant third-party access to the record. The dental office should request verification of the requestor's status as a deceased patient's representative or beneficiary. A proposed HIPAA rule would allow a

dentist discretion to release information to a family member or individual who is involved in the patient's care or with payment for care.

Research Entities and Public Health Organizations: These groups may have limited access to protected health information. Details can be found in [*The ADA Practical Guide to HIPAA Compliance: Privacy and Security Kit \(2010\)*](#).

Dental Board and DentiCal/MediCal: The Dental Board has the authority to inspect or copy patient records. Representatives of the state Department of Health Care Services, the state Attorney General's Office and the U.S. Department of Health and Human Services have the authority to inspect or copy records of patients whose care is provided through the DentiCal/MediCal program. Neither HIPAA nor CMIA limit the agencies' access to records.

Coroner: California law requires healthcare providers provide information upon a coroner's request to help identify the deceased, locate next of kin, or investigate deaths that may involve public health concerns, organ or tissue donation, child or elder abuse, suicide, poisoning, accident, sudden infant death, suspicious deaths, unknown deaths or criminal deaths.

Law Enforcement without a Subpoena: Sometimes law enforcement will request a health care provider make available protected health information. Although it is prudent to insist upon a subpoena, HIPAA does allow a dentist, without patient authorization, to release protected health information to law enforcement under the following circumstances:

- ▶ To report injuries resulting from criminal acts or deadly weapons;
- ▶ To respond to court orders, search warrants, court-issued subpoenas, or regulatory agency order;
- ▶ To respond to requests for information to identify or locate suspects, fugitives, witnesses, or missing persons;
- ▶ To respond to requests for information about a crime victim;
- ▶ To alert law enforcement of a suspicious death; and
- ▶ To provide evidence of criminal conduct.

Before providing the requested information, verify the identity and credentials of the individual receiving it.

Subpoenas: If a dental office receives a subpoena for a patient's record, circumstances will dictate the way to respond.

If law enforcement serves the subpoena, consult your attorney immediately. Provide the officers with access to the record while informing them that you are contacting your attorney. Do not try to impede law enforcement's access to records.

In many cases, receipt of a subpoena likely arises out of a civil lawsuit. Upon receipt of a subpoena in these cases, evaluate whether you can comply with the demand for records. Consider these questions:

- ▶ ***Do you have the requested records?*** If not, provide a statement that you do not have the records.

- ▶ ***Is the subpoena issued part of a civil action in California?*** Out-of-state subpoenas are not enforceable in California, except for subpoenas issued in federal cases. Subpoenas issued as part of state administrative hearings or court proceedings have patient notification requirements. Consult with your attorney for more information.
- ▶ ***Are you a party to the lawsuit?*** If yes, contact your professional liability carrier.
- ▶ ***Is the subpoena valid?*** A subpoena is valid if
 - (1) it is personally served on you or someone authorized by you to receive a subpoena;
 - (2) it is issued by the clerk of the court or attorney handling the lawsuit;
 - (3) it is addressed to you or someone qualified to certify the requested records;
 - (4) it contains a date specified for production of records that is at least 20 days after the subpoena was issued and at least 15 days after it was served on you and at least 20 days after notice of the subpoena was received;
 - (5) it specifies each item or category of items to be produced; and
 - (6) it must have documentation demonstrating that the patient either has consented to the release of records or has been informed of the records request.

The 20 days is specified because time is allowed for the court to hear motions to suppress the subpoena. If the subpoena is valid and you are not a party to the lawsuit, produce the records as requested, sign the affidavit and submit statement for costs incurred in responding to the subpoena.

Marketing Activity: HIPAA limits the use of protected health information for marketing activities on behalf of a covered entity or a third party. California law prohibits solicitation of an individual's health information for direct marketing purposes unless the solicitor informs the individual of the intended uses of the information and obtains the individual's permission. Refer to the article "Dental Practice Marketing" on cdacompass.com.

References

[Health & Safety Code §§123100-123149.5, 130200 - 130205](#)

[Health Information Technology for Clinical Health \(HITECH\) Act](#)

Also available on cdacompass.com:

[Patient Records: Requirements and Best Practices](#)

[HIPAA and California Health Information Privacy and Protection Laws Q&A](#)

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