



# Your Medical Record Rights in New York

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(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 a written history of your health condition and treatment. They are used by health care providers to treat you.

A federal law called the HIPAA Privacy Rule gives you the right to get and amend (correct) your medical record. HIPAA stands for the “Health Insurance Portability and Accountability Act.” New York laws also give you rights in your medical record.

### ABOUT THIS GUIDE

This guide describes how to get and amend (correct) medical records from New York 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 record or when you ask for a record as a personal representative of someone else. They do not apply when you request that your health care provider give your 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 in this guide to refer to health care practitioners (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 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.

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## 1. OVERVIEW

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

### SUMMARY OF YOUR RIGHTS

In New York, you have the right to:

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

Your health care provider usually must let you *inspect* or *see* your medical record within ten (10) days of receiving your written request. Your health care provider generally must give you a copy of your medical record within 30 days after they receive your request.

Your health care provider is allowed to charge you up to 75¢ per page for paper copies. They can also charge you for postage. Your provider *cannot* refuse to give you access to your medical record just because you are unable to pay for it.

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

You have the right to add information to your medical record to make it more complete or accurate. This right is often 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.

∞ ***Sue in state court.***

You have the right to file suit in New York State Court for violations of your rights under state law.

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



## WHO HAS TO FOLLOW THESE LAWS?

Most New York health care providers must follow both the HIPAA Privacy Rule and state laws that give patients rights in their medical records. When this guide uses the phrase health care providers it includes both health care practitioners (such as doctors, dentists, and chiropractors) and health care facilities (such as hospitals).

There are some health care providers 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).

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### **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.

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

### **Are nursing homes covered by HIPAA?**

Yes. Most nursing homes are covered by the HIPAA Privacy Rule. They also have to follow other specific rules that cover nursing homes and long term care facilities. Because the rules for nursing homes are different than they are for other health care providers, they are not covered by this guide.

### **What happens if my provider does not have to follow HIPAA?**

If your provider does not have to follow the HIPAA Privacy Rule, they still have to follow New York 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 York providers who *have* to follow the HIPAA Privacy Rule.



## 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 York law, your health care provider owns the actual medical record. This means, for example, that if your provider maintains paper medical records, your provider has 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 get a provider’s personal notes about you if the notes are used to make decisions about you.

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#### ***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 medical record saying she suspects that he 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.

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

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***Example***

Dr. Green keeps a medical record on his patient Kayla. This record includes information about Dr. Green's treatment of Kayla. It also includes information about tests and treatment that she has received from other doctors. If Kayla requests her medical record from Dr. Green, she has the right to get the entire medical record, not just the part that is about Dr. Green's treatment of her.

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***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 child's medical record?***

Generally, yes. When you, as a parent, consent to treatment or care for your minor child you have right to get and amend the minor's medical record related to that treatment. You also have the right of access to a minor's medical record where they obtain emergency treatment without your consent.

In New York, you usually have these rights until your child turns 18. However, if your child is 12 or older and objects to your request, her provider may deny you access to her medical record.

***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 child's medical record. For example, parents do not have the right to get their minor child's medical record if a health care provider determines that providing a parent access would have a harmful effect on the care and treatment of the minor.

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 right includes getting access to 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. Do I have the right to get and amend my medical record?***

Generally, no. As a minor, you usually do not have the right to get and amend your own medical record. That right usually belongs to your parents.

However, there are situations when you may have the right of access to your own medical record. For example, if you are an emancipated minor under New York law, you have the right to get and amend your own medical record. In New York, you also have the right to access your medical record when, as a minor, you can legally consent to medical treatment without your parents' permission. This right is discussed in the next question and answer.

***I am under 18, but I can legally consent to medical treatment without my parents' permission. Who has the right to get and amend medical records that are related to this treatment?***

You do. Even though you are a minor, sometimes you can consent to medical treatment without the permission of your parents. For example, in New York a minor who is pregnant may give consent for medical, dental, health and hospital services relating to prenatal care. Similarly, a minor can get treated for sexually transmitted diseases without parental consent. When you consent to such treatment, you have the right to get and amend your medical record related to this treatment. In New York, your

parents generally do not have the right to get and amend information related to treatment for which they did not give consent.

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**Example**

Jason is under 18 and is sexually active. At his annual exam Jason consents to an HIV test. He does not get his parents' permission for the test. Jason's mother later requests a copy of Jason's medical record. Jason's health care provider cannot give Jason's mother the part of his record about the HIV test unless Jason gives his written permission.

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If you have questions or concerns about whether your parent will have access to your medical record you should talk to your health care provider.

***My mother signed a form that names me as her health care proxy. Do I have the right to get and amend her medical records?***

Yes. In New York, you can sign a health care proxy form that names someone you trust to make health care decisions for you if you lose the ability to make decisions yourself. This person is called your health care agent or proxy. If you are your mother's health care proxy, you generally have the right to get and amend her medical records that are relevant to making health care decisions on her behalf. You have these rights while the proxy is in effect.

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**Example**

Maria's mother signed a form naming Maria her health care proxy in the event her mother is unable to make her own health care decisions. Maria's mother was in a bad accident and is not able to make decisions about her health care. Maria now has the right to make health care decisions on her mother's behalf. She also has the right to get and amend medical records that are relevant to making these decisions. For example, Maria has the right to see the records about her mother's current medical condition and treatment.

Maria is curious about the time her mother had a miscarriage. Maria wants to look at these old medical records. Maria does *not* have the right to get and amend these medical records because the records have nothing to do with her mother's current condition or treatment.

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

Maybe. In New York, you have the right to get and amend a deceased person's medical records if you are the personal representative (an executor or administrator) of their estate. If no personal representative has been appointed, you have the right to get and amend a deceased person's medical record if you are their surviving spouse or child. In some circumstances other relatives may have access rights to a deceased's medical records.



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

Under New York law, many health care providers must keep medical records for a minimum period of time. For example, doctors in New York generally must keep medical records for at least six (6) years. Obstetrical records and records about minor patients must be kept at least six (6) years or until one year after the minor patient reaches 18, whichever is longer. Hospitals must keep their medical records at least six years from the date you are discharged. In practice, many health care providers keep their records longer.

You have a right to see, get a copy of, and amend your medical record for as long as your health care provider has it.

## 2. GETTING YOUR MEDICAL RECORD

### SUMMARY

You have the right to see your medical record. You also have the right to get a copy of your medical record. These rights are often called the *right of access* to your medical record.

Usually, your health care provider must let you see your record within 10 days after they receive your written request.

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.
- ∞ Your medical record number (if you know it) or your date of birth.

- ∞ A description of the information that you want to see or copy. This might include:
  - o Dates of treatment.
  - 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.

***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 include my Social Security number on 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.

***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 of access to the medical record before they give it to you.

If you request someone else's medical record as their personal representative, you generally have to prove that you have the right to get their medical record. For example, if you ask for someone's medical record as their "health care proxy," you must give the provider a copy of the "health care proxy" form along with your request.



## 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?

Your provider must let you *inspect* or *see* your medical record within ten (10) days of your request. If you request a copy of your medical record, your provider must give you the copy within a reasonable time, usually within 30 days after they receive your request.



## CAN I CONTROL WHERE THE COPY OF 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 health care provider generally must give you the summary within 30 days from when you request the summary. If they are unable to produce the summary in this time they can get a 30 day extension.

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

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### **Example**

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

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***I received a copy of my medical record, but I can't understand it. Doesn't my provider have to give me a copy that is in plain language that I can understand?***

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



### **WILL I HAVE TO PAY FOR MY MEDICAL RECORD?**

Maybe. Your health care provider can charge you up to 75¢ per page for paper copies of your medical record. You also can be charged for postage if you have the copy mailed to you.

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

No. Although New York law permits a provider to charge you an "*inspection fee*" if you just want to look at your record, the HIPAA Privacy Rule does not. Because the HIPAA Privacy Rule is more protective of your rights in this area, your provider must follow the HIPAA Privacy Rule. Your provider cannot charge you an inspection fee.

***Can I be charged for someone searching for my record or for processing my request?***

No. You cannot be charged a fee for someone searching for and getting your record. Neither can you be charged for someone processing your request for your record. These fees are often called “retrieval” or “clerical” fees. They are not permitted.



***Can I be charged for copies of X-rays and similar records?***

Yes. Your health care provider may 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.

***What happens if I am unable to pay the copying fee?***

Under New York law, you cannot be denied access to your medical record solely because you are unable to pay the copying fee.

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

The procedures and fees for having a copy of your medical record sent to another health care provider may be different. Because these procedures and fees are not covered by the HIPAA Privacy Rule, they are not discussed in this guide.



***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, 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 (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.

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

At the time your provider denies your request for your record, they must tell you in writing if you have a right to obtain a review. Both New York law and the HIPAA Privacy Rule have procedures for obtaining a review when your request is denied due to potential harm.

***New York Law***

Under New York law, you may request a review by a medical record access review committee. Medical record access review committees are made up of three to five licensed health care professionals. For example, a committee of doctors reviews the decisions of doctors. The members of the committee are appointed by the Commissioner of Health.

The committee will review your provider's decision. The committee decides whether you should get access to your medical record. If the committee decides you should be given access to your record, your provider must let you see or get a copy of your medical record.

If the committee decides that you should *not* get access to your medical record, they must tell you that your request has been denied. They must also give you notice that you have the right to seek judicial review of their decision. To obtain judicial review, you must start a proceeding in New York Supreme Court within 30 days of receiving

the committee's notice. The judge will decide whether you get access to your medical record.

### ***HIPAA Privacy Rule***

You may request a review by another health care provider under the HIPAA Privacy Rule. If you request such a review, your provider must choose another licensed health care professional who was not involved in the original decision to review the denial of your request for your record. The reviewer will decide whether you can see or get a copy of your medical record. Your health care provider must follow the reviewer's decision. Your provider must tell you in writing (such as by a letter, fax or e-mail) the reviewer's decision.

### 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 amend your medical record by adding information to your record to make it more complete or accurate. This right is called the “*right to amend*” your medical record.

There are two ways you can amend your medical record:

- ∞ You can write a short statement and give it to your *health care provider* to add to your medical record under New York law *or*
- ∞ You can request that your health care provider amend your record under the HIPAA Privacy Rule.

You do not have the right under either law to have information removed from your record.

#### ***Which way should I choose to amend my record?***

Both procedures have their advantages. Writing your own short statement is a simpler procedure. But some people feel that having your health care provider make the change makes your medical record more believable to others. Only you can decide which procedure is better for your purposes. Both procedures are discussed in the sections that follow.

#### **HOW DO I ADD A WRITTEN STATEMENT TO MY MEDICAL RECORD UNDER NEW YORK LAW?**

Under New York law, you have the right to challenge information in your medical record that you believe is inaccurate. The right only applies to factual statements. You do not have the right to challenge a provider’s observations, inferences or conclusions.

You may give your health care provider a brief written statement about the challenged information. You should include a statement that you are challenging your medical record under New York law.

Your provider must make this statement a permanent part of your medical record. They must release it whenever the challenged information at issue is released.

## **HOW DO I ASK MY HEALTH CARE PROVIDER TO AMEND MY MEDICAL RECORD UNDER THE HIPAA PRIVACY RULE?**

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. 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 medical record number (if you know it) or your date of birth.
- ∞ Dates related to the information (such as the date the treatment was given).
- ∞ The type of information you want to amend.
- ∞ 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.



***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 under HIPAA 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.

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



**WHAT HAPPENS IF MY REQUEST TO AMEND MY RECORD UNDER THE HIPAA PRIVACY RULE 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 THE HIPAA PRIVACY RULE?**

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. Under the HIPAA Privacy Rule, if your health care provider is unable to act within 60 days, they can get one 30-day extension to respond. In order to do this, 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 THE HIPAA PRIVACY RULE?**

Yes. Under the HIPAA Privacy Rule, 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.

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#### ***Example***

Brianna wants to amend information in her medical record that was originally put in her record by Dr. Smith. When he retired, Dr. Smith put a notice in the paper telling patients of his retirement. Brianna requests that Dr. Jones amend her medical record and shows him the notice of Dr. Smith's retirement. Dr. Jones cannot refuse to amend Brianna's record on the grounds that he didn't create the information she wants to amend.

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## **WHAT CAN I DO UNDER THE HIPAA PRIVACY RULE IF MY PROVIDER DENIES MY REQUEST TO AMEND MY MEDICAL RECORD?**

If your request to amend 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 under the HIPAA Privacy Rule

## 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 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 OCR, from the office for Civil Rights, U.S. 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, your health care provider 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).***

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

You can call OCR toll free 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 medical doctor with the New York State Department of Health, Office of Professional Medical Misconduct at:***

New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, NY 12180-2299

Complaints must be in writing. You can obtain information about filing a complaint and download a complaint form at: <http://www.health.state.ny.us/nysdoh/opmc/main.htm>.

You can also call **1-800-663-6114** (toll free) to get a complaint form or if you have questions.

***You can file a complaint about health care professionals other than medical doctors (such as dentists, chiropractors and podiatrists) with the New York State Education Department, office of Professional Discipline at:***

**1-800-442-8106** (complaint hotline)

**[conduct@mail.nysed.gov](mailto:conduct@mail.nysed.gov)** (e-mail)

You can write to or send a complaint form to:

State Education Department

Office of Professional Discipline

1 Park Avenue, 6<sup>th</sup> Floor

New York, NY 10016

You can also send a complaint form to a regional office. You can get more information about filing complaints, obtain a list of regional offices, and download a complaint form at:

<http://www.op.nysed.gov/opd.htm> or  
<http://www.op.nysed.gov/faq.htm#complain>.

***You can file a complaint against a hospital with the New York State Department of Health, Bureau of Hospital and Primary Care Services.***

You can file a complaint against a hospital with the appropriate regional office of the New York State Department of Health.

You can obtain information about filing complaints, obtain a list of regional offices and download a complaint form at:

<http://www.health.state.ny.us/nysdoh/consumer/director/hospcare.htm>

***Can I sue my health care provider for violating my right to get my medical record?***

Under New York law, you have the right to sue in state court to get your medical record or for other violations of your state rights. If your provider denied your request because of potential harm, you must first request a review by a medical access review committee. If the review committee also denies your request for your record, you can bring an action in state court to get your record.

You do *not* have the right to sue your health care provider in federal district court (U.S. District 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.** This guide uses the term “health care provider” to refer to doctors, dentists, chiropractors (and other health care practitioners) and to hospitals and other health care facilities licensed in New York.

**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. 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.

**Inspection Fee.** A fee imposed for the administrative costs associated with letting you look at (inspect) your medical record. This fee is prohibited under HIPAA.

**Notice of Privacy Practices.** A notice required under the HIPAA Privacy Rule that describes a person’s right to get and correct (amend) their medical record. It also explains when a provider can use and disclose (share) health information. The notice must also give the name (or title) and telephone number of a contact person who should be able to answer questions about getting and amending medical records. A provider must give a privacy notice to a patient on their first visit and upon the patient’s request.

**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.

**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 (correct) 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](http://www.mlanet.org/resources/consumr_index.html)

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

### **Mental Health Treatment Records**

For information about mental health rights and referral services in New York you can contact:

Advocacy Services Bureau  
NYS Commission on Quality of Care  
401 State Street  
Schenectady, NY 12305-2397

(518) 388-2892 or 1-800-624-4143 (toll free)

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/>.

### **New York Medical Record Access Laws**

Some health care providers do *not* have to follow the HIPAA Privacy Rule. These providers must still follow New York laws that give you the right to see and get a copy of your medical record. You can read New York Public Health Law, Section 18, the state law that gives you access to your medical records, on the New York State Legislature's Web site at <http://public.leginfo.state.ny.us/menuf.cgi>. Look under "Laws of New York," under "PBH," Article 1, Title 2, Section 18.