



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS



The Office of the National Coordinator for
Health Information Technology

21ST CENTURY CURES ACT & THE HIPAA ACCESS RIGHT

Empowering Patients by Improving Patient Access to Electronic Health Information (EHI)

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Weaving together Access, HIPAA & Electronic Health Information (EHI) Exchange

New laws work with existing HIPAA rights to simplify how health care providers can meet individual requests for access to electronic health information



The **2000 HIPAA Privacy Rule** established an individual's right to access, inspect, and obtain a copy of health records, upon request, from a covered health care provider.



The **2009 HITECH Act** directs HHS to adopt certification standards for electronic health record systems (EHRs), including methods for individual access, and to create rules for providers to use EHRs to provide access under Medicare enhanced payment programs



The **2016 Cures Act** directs HHS to develop the Trusted Exchange Framework and Common Agreement (TEFCA) for EHI exchange through health information networks (HINs) (Sec 4003), to require certified HIT to publish application programming interfaces (Sec 4002), & to educate stakeholders about how EHI exchange can support individual access (Sec 4006)

Background: *HIPAA Access*

An individual has the right to request & receive a copy of medical, payment, and other records—Protected Health Information (PHI)—that providers and health plans use to make decisions about individuals

- Doesn't matter how old the PHI is, where it is kept, or where it originated
- Includes clinical lab test reports and underlying information



An individual has the right to receive the information electronically & in her preferred form and format if the entity has the ability to readily produce it

45 CFR 164.524

www.HHS.gov/HIPAA

HITECH Also Reinforced Individual Access to ePHI

If a covered health care provider or health plan uses an EHR that holds an individual's PHI:

- The individual has a right to obtain a copy of that PHI in an electronic format and,
- To direct the provider or plan to transmit the copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; and
- Any fee that the provider or plan may impose for providing a copy of such information in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy.

See HITECH 13405(e)

Individuals' HIPAA Right to have PHI Sent Directly to Another Party per Written, Signed Request

- If requested by an individual, a covered entity must transmit an individual's PHI directly to another person or entity designated by the individual.
- *Example:* A patient requests in writing (electronically executed via secure web portal) that her ob-gyn digitally transmit records of her latest pre-natal visit to a new pregnancy self-care app that she has on her mobile phone. The ob-gyn's EHR has the ready capability to establish the connection in a manner that does not present an unacceptable level of security risk to the PHI in the EHR or other of the ob-gyn's systems, based on the ob-gyn's Security Rule risk analysis.
- Thus, after receiving the patient's written request, the covered entity has 30 days (or 60 days if an extension is applicable) to send the PHI to the designated recipient as directed by the individual.

See [OCR HIPAA Access FAQ 2036](#) for more information

Summary of Current Federal Rules

Automating Patient Access

Under HIPAA

Patients have **rights to an electronic copy** of their electronic PHI (ePHI) (including medical records) and **to have the provider electronically transmit PHI to another person**

(45 CFR 164.524(c))



Some records the individual requests may not be stored in the main EHR—providers may need to pull PHI from other digital systems or paper records to meet the request

(45 CFR 164.524(a)(1); 164.501)

CMS's Promoting Interoperability Program Stage 3 Requirements for Providers

Enable Individuals to

- **View online, download & transmit** their EHI, and/or
- **Access their choice of 3rd party health apps** using APIs

ONC's Developer Requirements for Certified Health IT (2015 Edition Rule)

- Offers certification for API functions so app can retrieve whole or partial patient record
- Apply API security measures

Looking Forward, TEFCA Supports Access

Cures Act requires ONC to “develop or support a **trusted exchange framework, including a common agreement** among health information networks nationally.”

Providers will more easily retrieve data from different sources across HINs to produce more complete health records for individuals

- More interconnected networks can make it easier for individuals to:
 - Access their protected and other electronic health information
 - Direct their compiled EHI to any recipient they designate, including researchers or digital health apps

HIPAA & the Trusted Exchange Framework will allow health records to be transmitted many ways

Entities should find a method that satisfies *the individual*

Support patients so they can use a secure electronic method to access their information:

- Through digital health apps that use open APIs
- Through other view/ download/ transmit options
- By secure email (or insecure, if requested by the individual) and direct messaging, through HINs, etc.
- Through patient portals
- Engage patients through online appointment scheduling, secure messaging, and prescription refills (see [playbook](#))

**Work with your
vendors
and/or HIN to enable
these functions**



About half of individuals were offered access to an online medical record in both 2017 and 2018

% Offered Access to Online Medical Record
by Health Insurer or Provider



Source: ONC analysis of Health Information National Trends Survey (HINTS)
HINTS 4, Cycle 4 (2014); HINTS 5, Cycle 1 (2017), Cycle 2 (2018)
Note: * $p < 0.05$, compared to prior cycle

Access & Exchange Assistance For Providers

- [HIPAA Access Right Guidance and FAQs](#)
- [Guide to Privacy and Security](#)
- [Improving the Health Records Request Process for Patients](#)
- [Provider Access CME and CE](#)
- [Developer Portal](#)
- [OCR](#) and [ONC](#) YouTube pages
- [Patient Portals Guidance](#) in the Patient Engagement Playbook
- [Provider Playbook API Information](#) & [API education video](#)
- [Draft TEFCA](#)
- [Model Notice of Privacy Practices](#)



Health IT Exchange Resources Related to Access

- [2015 Certification Requirements](#)
- [Developer Portal](#) for HIT, business associate aid & more
- [Health app scenarios guidance](#)
- [Draft TEFCA](#)
- [Draft USCDI](#)
- [Key Privacy & Security for APIs](#)
- [CMS Blue Button 2.0](#)



Access Information for Individuals

- [Your Rights Under HIPAA](#) and [HealthIT.gov/Access](#) for Access videos & factsheets
- [OCR](#) and [ONC](#) YouTube pages
- [Information is Powerful Medicine](#)
- [Trusted Exchange Highlights for Patients](#)
- [Consumer Guide to Getting & Using Your Health Records](#)



Information is key to making good health care decisions.

Understand your health history to ask better questions and make healthier choices

Track your lab results and medications, get x-rays and other medical images, or share your information with a caregiver or a research program

INFORMATION IS POWERFUL MEDICINE

Access to your health information is your right

Get it. Check it. Use it.

Learn about HIPAA* and your health information rights at: www.HHS.gov/GetItCheckItUseIt

*Health Insurance Portability and Accountability Act

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Health records are a powerful tool in managing your care

GET IT

Ask your doctor. You have the right to see and get copies of your health information. In most cases, you can get a copy the way you want it, such as by e-mail. While your doctor normally has up to 30 days to provide you a copy of your information, your doctor often can provide the information much sooner than that. If your doctor offers a web portal, you may be able to easily view and download your health information whenever you want.



There are a few exceptions to getting your information, but you can't be denied access for not paying your medical bill. Your doctor can, however, charge you a reasonable fee for a copy of your health information. The fee may not be a per page fee if your information is stored electronically.

CHECK IT

Check to make sure your health information is correct and complete.

If you think something is wrong or missing, you can ask your doctor to fix it. Your doctor might not agree, but you always have the right to have your disagreement added to your record.



USE IT

Having access to your health information means better communication

between you and your doctors, less paperwork, and greater control over your health. You can request that your doctor share your information directly with others, like family members, a caregiver, a mobile application or "app" or a researcher.

Get it: Form, format & manner of access, timeliness, fees

Check it: Make sure your health information is correct and complete

Use it: Share with others including researchers & family caregivers

Free Continuing Medical Education and Continuing Education Credit for Health Care Professionals via Medscape



IN THIS PRESENTATION

Introduction

HIPAA Privacy Rule Overview

Scope of Information

Form, Format & Access

ZOOM

THUMBNAILS

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

Moderator

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Deputy Director for Health Information Privacy
Office for Civil Rights
US Department of Health and Human Services
Washington, DC

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.

NEXT >

<http://www.medscape.org/viewarticle/876110>

OCR Developer Portal Resources

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Health app developers, what are your questions about HIPAA?

Welcome

About

Open Qs

Answered Qs

Helpful Links

Notes

Contact

- Does HIPAA apply to my business?
- HIPAA Business Associate Responsibilities
- HIPAA Business Associate Agreement Requirements
- Individual right to access health information
- Individual right to have entity transmit PHI to 3rd party of individual's choice
- Technical Security Safeguards

<http://hipaaQsportal.hhs.gov/>

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Welcome About Open Qs Answered Qs Helpful Links Notes Contact

HIPAA Health Information Privacy, Security and Breach Notification Rules

About HIPAA

Health App Use Scenarios & HIPAA

Guidance on HIPAA & Cloud Computing

Engage with OCR on issues & concerns
related to protecting health information
privacy in mHealth design and
development

Submit & View Questions

<http://hipaaQsportal.hhs.gov/>

About



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Questions?

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