



# Your Medical Record Rights in Florida

(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.” Florida laws also give you rights in your medical record.

### ABOUT THIS GUIDE

This guide is intended to help you understand how to see, get a copy of, and amend (correct) medical records from Florida health care providers who have to follow the HIPAA Privacy Rule. You can read guides about getting medical records from health care providers in 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 will 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 someone’s medical record as their personal representative. These rules 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 the term “health care practitioners” means persons who are licensed to provide health care (such as medical doctors, dentists, chiropractors, and doctors of osteopathy). “Health care providers” means health care practitioners *and* hospitals. Section 5 explains these and other words that are helpful to know. These words explained in Section 5 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 Florida 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. Florida law sets standards for records held by health care providers within the state. Most health care providers must follow both the HIPAA Privacy Rule and Florida law. If a standard is different under the HIPAA Privacy Rule than it is under Florida law, your health care provider must follow the law that is the most protective of your rights.

### SUMMARY OF YOUR RIGHTS

In Florida, you have the right to:

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

Upon your request, your health care provider must give you a copy of your medical record in a timely manner, usually within 30 days. They must also let you see your medical record if you ask.

Your health care provider is allowed to charge you for copies. They can also charge you for postage.

∞ ***Amend your medical record by having information added to it.***

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 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 to obtain your medical record.***

You have the right to sue in Florida local court to get a copy of your medical record.

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



## WHO HAS TO FOLLOW THESE LAWS?

Most Florida health care providers (such as doctors 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 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 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 Rule.

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If you have questions about whether your health care provider must follow the 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 health records belonging to 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 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 Florida 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 Florida 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 amend 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 calls 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.

This guide generally refers to all of this information as your “medical record.”

### ***Who owns my medical record?***

Under Florida law, your health care provider owns your medical record. For example, if your provider maintains paper medical records, they own and have the right to keep the original record. You only have the right to see and get a copy of it.

### ***My provider makes personal notes about patients in their medical record. 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 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 a health care provider has the medical information that you request, they must give it to you. It does not matter who originally put the information 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.

***My health care provider collected information about me because they think I might sue them. Do I have the right to get this information?***

Not under these particular laws. You do not have the right under the HIPAA Privacy Rule to get information about you that has been gathered for potential use in a law suit or similar proceeding.

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***Example***

Roberto complained to his hospital that he was very unhappy with his treatment. Believing that Roberto is going to sue, the hospital lawyer interviews doctors and nurses involved with Roberto's case to get their version of what happened. Roberto requests a copy of all medical information that the hospital has about his treatment. The hospital must give Roberto a copy of his medical record, including test results and entries made while Roberto was in the hospital. However, the hospital does not have to give Roberto a copy of the interview notes they took for potential use in the lawsuit.

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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 amend 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. A personal representative generally 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 minor child's medical records?***

Generally, yes. As a parent or guardian, you usually are considered to be the personal representative of your minor child. As a personal representative, you generally have the right to get and amend your child's medical record. In Florida, you have these rights when your 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 to get and amend a child's medical record. For example, if a health care provider reasonably believes that a parent is abusing or neglecting a child, the provider does not have to treat the parent as the child's personal representative. This means 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 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, but I'm considered emancipated under Florida law. Who has the right to get and amend my medical record?***

You do. If you are under 18, but are considered emancipated under Florida law, you have the right to get and amend your own medical record. For example, if you are under 18 and are married, you are considered emancipated under Florida law. Similarly, you are emancipated under Florida law if a court has declared you to be emancipated. In both these cases, you (not your parents) have the right to get and amend your medical record.

***I am a minor. I am not emancipated but can legally consent to certain kinds of medical treatment without my parents' permission. Who has the right to get and amend medical records that are related to this treatment?***

It depends. In Florida, unemancipated minors can sometimes consent to medical treatment without the permission of their parents. When you consent to such treatment, you have the right to get and amend your own medical record related to that treatment. The HIPAA Privacy Rule lets state law determine whether your parents *also* have access rights to information about this treatment.

For example, in Florida, a minor may obtain treatment for a sexually transmissible disease (such as gonorrhea or HIV) without parental consent. When you obtain such treatment, your parents do not have the right to get and amend medical records about this treatment.

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**Example**

Jason is under 18 and has been sexually active. At his annual exam Jason consents to an HIV 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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The rules may be different when you, as a minor, obtain other sorts of treatment without parental consent.

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 named me as her health care surrogate. Do I have the right to get and amend her medical records?***

Yes. In Florida, a person can designate another person (a surrogate) to make health care decisions on their behalf. If you are your mother's health care surrogate, 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 this right while the health care surrogate is in effect.

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**Example**

Maria's mother signed a form designating Maria as her health care surrogate. If Maria's mother is not able to make decisions about her health care, this form gives Maria the power to make such 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 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 get 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.

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**My father recently died. Do I have the right to get and amend his medical record?**

Maybe. You don't necessarily have the right to get and amend a deceased person's medical record just because you are related to them. In general, you have the right to get and amend a deceased person's medical record if you have the right to act on behalf of the deceased or their estate. In Florida, the rules for getting the medical record of a deceased person are different depending on who has the record.

For example, you have the right to get and amend a deceased person's medical records from a *doctor* if you are one of the following:

- ∞ A legally recognized guardian of the patient (such as the parent of a minor child).
- ∞ A court appointed representative of the patient.
- ∞ Any person designated by the patient or by the court to receive copies of the patient's medical records.

You have the right to get and amend a deceased person's *hospital* records if you are one of the following:

- ∞ The person's guardian.
- ∞ The person's curator.
- ∞ The personal representative of the deceased.

If there is no guardian, curator or personal representative, you have the right to get and amend the deceased's medical record if you are their next of kin.



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

Under Florida law, many health care providers must keep medical records for a minimum period of time. For example, doctors in Florida must keep medical records for at least five (5) years after their last contact with the patient. Public hospitals in Florida must keep their medical records at least seven (7) years after the patient has been 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.

***What happens to my medical records if my health care practitioner retires or quits their practice?***

Under Florida law, a health care practitioner (such as a doctor) must put an advertisement in the local newspaper or send you a letter or other writing that says they are quitting their practice, retiring, or relocating. At this time, they must offer patients the opportunity to obtain a copy of their medical record. Health care practitioners must also tell the appropriate Florida regulatory board who the new records owner is and where the medical records can be found. The new owner of the records must allow you to get and amend your medical records.

***What happens to my medical record if my health care practitioner dies?***

If your health care practitioner dies, the appropriate Florida regulatory board can appoint someone else as custodian of the medical records held by the practitioner. For example, if your doctor dies the Florida Board of Medicine can appoint someone else as custodian of the medical records held by the doctor. The custodian of the records must allow you to get and amend your medical records.

## 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 respond to your request for your record in a timely manner, without delay for legal review. This usually means in less than 30 days.

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 date of birth or medical record number.
- ∞ Dates of treatment related to the record.
- ∞ A description of the information that you want to see or copy. This might include:

- Whether you want the entire record or just part of the record.
- Medical condition for which you are asking information.
- Specific test results.
- 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.

***Can my provider ask for 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.

***Do I have to choose between seeing my medical record and getting a copy of it?***

No. You have the right to do both.



**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 doctor or hospital must arrange a convenient time and place for you to review the record. If you have requested a *copy* of your record, your doctor or hospital should either send it to you or arrange for you to pick up a copy.



**HOW LONG SHOULD IT TAKE TO GET MY MEDICAL RECORD?**

Under Florida law, your health care provider must give you your medical record in a timely manner without delays for legal review. Although Florida law does not set a precise deadline, the HIPAA Privacy Rule generally requires a provider to furnish your medical record within 30 days after they receive your request.

***Can it take longer?***

Yes. In certain situations, your provider is allowed to take more than 30 days to respond to your request for your medical record under the HIPAA Privacy Rule. For example, if your medical record is kept off-site, your provider may be able to take up to 60 days to respond to your request. But in all cases your provider must give you your medical record within 90 days after receiving your request.

***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. 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 acting as a health care surrogate you may be required to give your provider a copy of the form designating you as the surrogate. You also may be required to show that it is in effect. For example, you may need a letter from the patient's treating doctor to show that the patient is unable to make health care decisions.



### **CAN I CONTROL WHERE 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 must also 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. Sometimes it can take longer.

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 asks for 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 is allowed to charge you a fee for making copies of your medical record. In Florida, the maximum copying fee permitted depends on the type of health care provider. For example, doctors and chiropractors may charge no more than \$1 per page for copying the first 25 pages and 25¢ per page for additional pages. Hospitals may charge no more than \$1 per page for paper copies. Hospitals may not charge more than \$2 per copy for nonpaper records. Your health care provider can charge you for postage if you have the copy mailed to you.

The maximum fees that other health care providers are allowed to charge for copies may be different.

***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 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" and "handling" fees. They are not permitted under the HIPAA Privacy Rule.



***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 that are not in paper format. The maximum fee permitted depends on the type of health care provider. For example, doctors

may charge a fee 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.

There may be different copying fee limits for other health care providers.



## **CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?**

Yes. Your health care provider can deny your request to see and get a copy of your medical record, but only in a few situations. For example, your health care provider can deny your request if they believe that seeing the record will probably endanger you or someone else.

### ***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. Generally, your health care provider must give you this information within 30 days after receiving your request for your 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.

### ***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.

***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?***

Generally, 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 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 a different health care professional 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 a review. They also must tell you how to ask for a review.

If you request a review, your provider must choose another licensed health care professional to be the reviewer. They cannot choose someone who was 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) 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. The *HIPAA Privacy Rule* calls this the “*right to amend*” your medical record.

If your *health care provider* agrees with your request to amend your record, they must add the information to your record.

If your provider denies your request to amend, they must tell you. You then have the right to add a short statement to your record that explains your position.

#### ***As a minor, do I have the right 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.



#### **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, 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.
- ∞ Dates that are related to the information you want to amend (such as treatment date).
- ∞ Your date of birth or medical record number.
- ∞ 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.



***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 amend 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 do get this extension, your provider must give you a written explanation for the delay and tell you the date they expect to respond. Even with an extension, your provider 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 (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 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. 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 your statement of disagreement.

***What happens if I do not file a statement of disagreement?***

If you do not file a statement of disagreement, your request to amend your record will not be included in future disclosures of your medical record unless you specifically ask.

***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.



## 4. ASKING QUESTIONS AND FILING COMPLAINTS

This guide is just a summary of your rights to see, get a copy of and amend (correct) 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 seek legal help 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, U.S. Department of Health and Human Services (OCR)***

You may be able to get answers to your questions about your rights under the HIPAA Privacy Rule from 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 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 licensed health care practitioner with the Florida Department of Health, Division of Medical Quality Assurance.***

All complaints about doctors and health care practitioners must be in writing.

Information about filing a complaint and a printable complaint form are available on the Department's Web site at: <http://www.doh.state.fl.us/mqa/>

You can also call **1-888-419-3456** toll-free to request the Department to mail a complaint form to you.

***You can file a complaint about your hospital or other health care facility with the Florida Agency for Health Care Administration at:***

1-888-419-3456 (toll free)

You can get more information about filing complaints against hospitals at: [http://www.fdhc.state.fl.us/Contact/call\\_center.shtml](http://www.fdhc.state.fl.us/Contact/call_center.shtml)

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

You have the right to sue your health care provider in Florida Circuit Court to get a copy of your medical record or to challenge copying fees for medical records.

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 records 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.

**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 greater 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 health information and share it with others.

**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. With respect to deceased people, the term “personal representative” is broader and includes someone who has the right to make any sort of decision on behalf of the individual or their estate.

**Retrieval Fee.** A fee for the administrative time spent searching for and finding your medical record.

**Right of Access.** The right to see and get a copy of your medical record.

**Right to Amend.** The right to amend 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>

### Florida Medical Record Laws

Some health care providers do *not* have to follow the HIPAA Privacy Rule. These providers must still follow Florida laws that give you the right to see and get a copy of your medical record. You can read Florida statutes that give patients' access to their medical records on the Web site of the Florida legislature at:

<http://www.leg.state.fl.us/Welcome/index.cfm>

For laws that apply to *hospitals* look under Florida Statutes, Title XXIX, Chapter 395, Part 1, Section 395.3015 through Section 395.3025. For laws that apply to *doctors*, look under Florida Statutes, Title XXXII, Chapter 456, Section 456.057 through 456.061.

### 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

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/>

You can get a pamphlet with information about your rights (including to records) in mental health facilities under Florida law from the Florida Department of Children and Families at:

<http://www.dcf.state.fl.us/mentalhealth/laws/ptrtspam.pdf>

The Advocacy Center for Persons with Disabilities also has information about your rights in records maintained by mental health facilities at:

<http://www.advocacycenter.org/programs/paimi/index.html>