

A large, stylized orange graphic of a clipboard with a white sheet of paper. The clipboard has a circular hole at the top for a clip. The paper is white and contains the title and subtitle. The background is white with orange decorative shapes: a large orange shape on the left and a large orange arrow pointing right on the right side.

Your Medical Record Rights in Texas

(A Guide to Consumer Rights under HIPAA)

JOY PRITTS, JD
HEALTH POLICY INSTITUTE
GEORGETOWN UNIVERSITY

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Written by
Joy Pritts, JD
Health Policy Institute
Georgetown University

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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 doctors and hospitals to treat you.

A federal law called the HIPAA Privacy Rule gives you the right to get and amend (correct) your medical record by adding information to it. (HIPAA stands for the Health Insurance Portability and Accountability Act.) Texas 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 correct or amend medical records from Texas 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/records.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 Laws?" so that you can be sure the guide applies to your provider. Some basic information is repeated throughout the guide so that it is easily available to those who are reading only certain sections.

The rules explained in this guide only apply when you ask for your own medical 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 medical 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 providers" or "providers" means medical doctors and hospitals. Section 5 explains these and other words that are helpful to know. The 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 Texas law 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. Texas law sets standards for records held by doctors and hospitals within the state. Most health care providers must follow both the HIPAA Privacy Rule and Texas law. If a standard in Texas law conflicts with a standard in the HIPAA Privacy Rule, your health care provider must follow the law that is the most protective of your rights.

SUMMARY OF YOUR RIGHTS

In Texas you have the right to:

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

Your *doctor* usually must let you see your medical record or give you a copy of it within 15 business days after they receive your request and payment for copies ("business days" do not include weekends). Your *hospital* usually must let you see or give you a copy of your medical record as promptly as the circumstances require, but no later than the 15th day after they receive your request and payment for copies.

In many cases, your health care provider is allowed to charge you a fee for copying your record. They can also charge you the actual cost for postage or delivery.

- **Correct your medical record by having information added to it.**

You have the right to correct your medical record by having information added to it to make it more complete or accurate. This is called the *right to amend* your record.

- **File a complaint.**

You have the right to file a complaint with your health care provider if you believe they have violated your right to see, get a copy of, or amend your medical record. You can also file a complaint with the Office for Civil Rights, U.S. Department of Health and Human Services or the state agency that regulates your health care provider.

- **Sue in state court to get access to your medical record.**

Under Texas law, you have the right to sue in Texas court to get access to your medical record.

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



WHO HAS TO FOLLOW THESE LAWS?

Most Texas doctors and hospitals (*health care providers*) must follow both the HIPAA Privacy Rule and state laws that give patients rights in their medical records.

There are some health care providers, however, that do *not* have to follow the HIPAA Privacy Rule. The HIPAA Privacy Rule only covers health care providers that use computers to send health information for certain administrative or financial purposes (such as filing claims for insurance).

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.

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 only apply 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 health care provider does not have to follow HIPAA?

Even if your provider does *not* have to follow the HIPAA Privacy Rule, they still have to follow Texas 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 Texas providers who *have* to follow the HIPAA Privacy Rule and state law.



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, such as:
 - Your medical history.
 - How you feel at the time of your visit.
 - Your family health history.
- The results of your examination.
- Test results.
- Treatment received in a hospital.
- Medicine prescribed.
- Other information about things that can affect your health or health care.

You have the right to get these records whether they are kept on paper or on a computer.

Who owns my medical record?

Under Texas law, your health care provider owns the actual 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.

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 give him a copy of this note.

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

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 that explain 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 minor child's medical record?

Generally, yes. A parent or guardian is usually considered to be the personal representative of a minor child. As a personal representative, you have the right to get and amend your minor child's medical record. In Texas, you generally 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 minor 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, your child has the right to see, get a copy of, and amend her own medical record. This 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 Texas law. Who has the right to get and correct my medical record?

You do. If you are under 18, but are considered emancipated under Texas law, you have the right to get and correct your own medical record. Your parents generally do not have the right to get and correct your medical record.

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

In Texas, minors can consent to certain kinds of medical treatment (such as treatment for sexually transmitted disease) without their parents' permission. If you can legally consent to receive medical treatment, you have the right to get and correct your own medical record related to this treatment. In Texas, it is up to your health care provider to decide whether your parents also can get and correct medical records that are related to this treatment.

Example

Jason is sexually active and under 18. He gets a test for gonorrhea without his parent's consent. Jason's mother later requests a copy of his medical record. It is up to Jason's doctor, using his professional judgment, to decide whether Jason's mother should get the part of the record about Jason's gonorrhea test.

The rules may be different when you, as a minor, obtain testing or treatment for other medical conditions without parental consent. If you have questions or concerns about whether your parent will have access to your medical information, you should talk to your health care provider.

I am listed as an agent on my mother's medical power of attorney. Do I have the right to get and amend her medical records?

Yes. If you are your mother's agent under her medical power of attorney, 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 only during the time that you have the authority to make health care decisions on her behalf.

Example

Maria's mother signed a medical power of attorney form that gives Maria the power to make health care decisions if her mother is unable 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 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 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 his medical record?

It depends. In Texas, the rules for getting a deceased person's medical records are a little different depending on whether you are requesting them from a doctor or a hospital.

Doctors

In Texas, you have the right to get a deceased person's medical records from a doctor if you are a personal representative of the deceased person (such as an executor or administrator of the estate). You will probably be required to show verification or proof such as a death certificate.

Hospitals

You have the right to get a deceased person's medical records from a hospital if you are a personal representative of the deceased person (such as an executor or administrator of the estate). If the deceased did not leave a will, you have the right to get their medical record from a hospital if you are a surviving spouse or adult child. In certain cases, you might also have this right if you are another relative of the deceased. You will probably be required to show verification or proof such as a death certificate.



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

State law requires your health care provider to keep your medical record for a certain period of time. The time periods for retaining records varies depending on the type of health care provider.

Doctors

In Texas, your doctor must keep your medical record for at least 7 years after the date they last treated you. If you were a minor when you were last treated, your doctor must keep your medical record until you are 21 years old or at least 7 years after the date of last treatment, whichever is longer.

Hospitals

Texas hospitals must keep medical records for at least 10 years after the date that you were last treated in the hospital. If you were a minor when you were hospitalized, the hospital must keep your record until you are 20 years old or at least 10 years after you were last treated, whichever is longer.

In practice, many doctors and hospitals keep their medical records longer.

You have a right to see, get a copy of, and correct 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.

Your *doctor* usually must let you see your medical record or give you a copy of it within 15 business days after they receive your request and payment for copies. "Business days" often do not include weekends.

A *hospital* usually must let you see or give you a copy of your medical record as promptly as the circumstances require, but no later than the 15th day after they receive your request and payment for copies.

Generally, your health care provider must give you a copy in the format that you request if they are able to do so.

In many cases, 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 health care provider about their specific procedures for getting your medical record. Often, your 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 health care provider's *notice of privacy practices*.

Under Texas law, your request for your medical record from a doctor or hospital must:

- be in writing
- be signed and dated
- describe the medical record (or part of the record) that you are requesting and
- state that you want the information released to you.

Requests for records from a doctor also must state the reason you are requesting your record (such as, "For my personal records") when the request is submitted to a doctor.

You may want to also include the following additional information in your request:

- Your address, telephone number or other contact information.
- Your date of birth or medical record number.
- Whether you want to see your medical record, want a copy of your record, or would like both.
- Whether you want the copy mailed to you

Can my health care provider require that I include my Social Security number in 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.

Can my provider require me to show some proof of who I am in order to see or get a copy of my medical record?

Yes. Your health care provider must make sure you are the person who has the right to get 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 request a deceased person's medical record, you will need to prove that you have the right to get it. For example, you can prove that you are an executor or administrator by presenting either letters of testamentary or letters of administration or a certificate from the clerk of the court that such letters have been issued to you.



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?

Generally, *doctors* must let you see or give you a copy of your medical record within 15 business days after the date they receive your request and payment for copies. "Business days" generally do not include weekends.

Hospitals generally must let you see or give you your medical record as promptly as the circumstances require, but no later than the 15th day after they receive your request and payment for copies.



WILL I HAVE TO PAY FOR MY MEDICAL RECORD?

Maybe. In many cases, your health care provider is allowed to charge for copying your medical record. The maximum copying fees are different for doctors and hospitals.

Doctors

Doctors in Texas may charge you no more than \$25 for the first 20 pages copied and 50¢ per page for pages 21 and up. Your doctor may also charge you postage if you have the copies mailed to you.

If your doctor receives your request for a copy of your medical record without payment, they must tell you the copying fee in writing within 10 days of receiving your request.

Hospitals

Hospitals in Texas are allowed to charge you a reasonable fee for copying your medical record. Under Texas law, as of September 11, 2004, your hospital may charge you no more than the following amounts for copies:

From paper records:

<u>Pages</u>	<u>Cost per page</u>
0-10	A reasonable cost-based fee (See discussion in next question.)
11-60	\$1.24
61-400	0.64
401+	0.32

From microform or other electronic medium:

<u>Pages</u>	<u>Cost per page</u>
0-10	A reasonable cost-based fee (See discussion in next question.)
11+	\$1.00

These fees are adjusted annually based on the Consumer Price Index.

Your hospital can also charge you the actual cost of mailing, shipping or delivery if you request that the copies be sent to you.

What is the maximum copying fee for the first ten pages of my record?

Under HIPAA, your hospital may charge you a reasonable cost-based fee for copying the first ten pages of your record, including the cost of labor and supplies. Although Texas law allows a hospital to charge you a basic retrieval or processing fee that includes the first ten pages of copies (\$37.09 for copies from paper and \$55.64 for microfilm), the HIPAA Privacy Rule prohibits such retrieval and processing fees. Because the HIPAA Privacy Rule gives you stronger rights in this area, your hospital must follow the Privacy Rule. Your hospital may not charge you a fee for processing your request for your medical record. Neither may they charge you a fee for retrieving your record.

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

No. Your health care provider cannot charge you a fee if you just look at or read your medical record.

Can I be charged if I need a copy of my medical record to support a claim for Social Security or other public benefits?

No. Your provider may not charge you a copying fee when you request your medical record to support a claim for Social Security, Medicaid or other public benefit based on disability.



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

Yes. Doctors and hospitals can charge you to make copies of x-rays and similar records. The maximum fees are different for doctors than they are for hospitals.

Under Texas law, your *doctor* may charge you no more than \$8 per copy for an x-ray or similar record. Your *hospital* can charge you a reasonable fee, based on the actual cost of making the copy. Both doctors and hospitals can charge you the actual cost of mailing, shipping or delivery if you request that they send the copy to you.

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

The procedures and fees for having a copy of your medical record sent to someone else (such as to another doctor or to a lawyer) are not covered by the HIPAA Privacy Rule. They are not discussed in this guide.



CAN I HAVE THE COPY OF MY MEDICAL RECORD SENT SOMEWHERE OTHER THAN MY HOME?

Yes. When you request a copy of your own medical record, you can ask your health care provider to send the copy to your regular address (such as your home) or to a different, preferred 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. You should check with your provider to see whether they are willing to send you a copy by e-mail or fax and to find out their specific procedures.



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, for writing the summary or explanation.

Example

Leon asks for a copy of his full medical record. Because the medical record is long and complicated, Leon's doctor would prefer to give Leon a summary of his medical record. If Leon does not agree to receive the summary, his doctor must give him a copy of the full record.

The deadlines and fees for furnishing summaries are slightly different for doctors than they are for hospitals. (If you are requesting a copy of a previously prepared summary, the copy fees in "Will I Have to Pay for My Medical Record?" may apply.)

Doctors

Your doctor generally must give you the summary within 15 business days from when you request the summary. Your doctor may charge you a reasonable fee for the actual time they spend preparing the summary or explanation.

Hospitals

If you request a summary of your medical record from your hospital, they generally must provide it within 15 days of your request. Your hospital may charge you a reasonable fee for the actual time they spend preparing the summary or explanation.

Under Texas law, you may submit a written list of questions to your hospital. If you submit a written list of questions to your hospital, they can charge you a fee for providing a written set of responses to your questions. As of September 2004, the maximum fee your hospital can charge for providing a set of written responses to your questions is \$12.36. This fee is adjusted every year.

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. But your provider is not required to give you an explanation. You can find some resources that explain medical terms in Section 6 of 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.

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. Your health care provider must give you this information within 15 days (business days for doctors) after receiving your request.

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.



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 if my provider doesn't have the medical record that I requested, but knows who has it?

Your provider must tell you who has your medical record if they know. However, your provider generally is not required to obtain your record from someone else.

Example

Tony sends a request for his chest x-ray film to his primary care physician. Although his physician has a report of the x-ray results, he does not have the original x-ray film that Tony requested. However, the primary care physician knows that ABC Radiology took the x-ray and has the original film. When the primary care physician responds to Tony's request, the physician must inform Tony to send his request for his x-ray film to ABC Radiology.

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?

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 endanger you or another person, 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 review their decision. They cannot choose someone who was involved in the original decision. The reviewer makes the final decision whether you are allowed to get your medical record. Your provider must notify 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 correct your medical record by having information added to your record to make it more complete or accurate. The *HIPAA Privacy Rule* calls this right the *right to amend* your medical record.

If your *health care provider* accepts 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. 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, you may want to include the following information in your request:

- Your name, address and other information about where you can be contacted.
- Your date of birth or medical record number.
- 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 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 correct your record by adding information to it.



WHAT HAPPENS IF MY REQUEST TO AMEND MY RECORD IS ACCEPTED?

If your health care provider accepts 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, 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 health care 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 HEALTH CARE 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 provider that created the information that I want to amend isn't around any more. Is there anything I can 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 to amend just because they did not create the medical information.

Example

Brianna wants to amend information in her medical record that was originally put in her record by Dr. Smith. Dr. Smith has retired. Brianna asks Dr. Jones, her current doctor, to amend her medical record. She shows Dr. Jones the letter Dr. Smith sent to his patients announcing his retirement. Dr. Jones cannot refuse to amend Brianna's record just because he didn't create the information she wants to amend.

WHAT CAN I DO IF MY REQUEST TO AMEND MY MEDICAL RECORD IS DENIED?

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 and a copy 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.

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 contact professional 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, United States 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 question answered here 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 try to informally solve your problems getting and amending your medical record with your health care provider. If you 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 a complaint.

You can file a complaint with the Office for Civil Rights, Health and Human Services (OCR).

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

You can file a complaint with the appropriate regional OCR office at:

Office for Civil Rights
U.S. Department of Health & Human Services
1301 Young Street - Suite 1169
Dallas, TX 75202
(214) 767-4056; (214) 767-8940 (TDD)
(214) 767-0432 FAX

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 your doctor with the Texas State Board of Medical Examiners at:

Texas State Board of Medical Examiners
Investigations Department, MC-263
P.O. Box 2018
Austin, TX 78768-2018

The Board encourages you to use a complaint form. You can obtain a complaint form by calling the **Complaint Hotline** at **1-800-2011-9353** (toll free).

You can download a complaint form and find additional information about filing complaints at the Board's Web site at:

<http://www.tsbme.state.tx.us/complain/complain.htm>

You can file a complaint about a hospital with the Texas Department of State Health Services at:

Health Facility Licensing and Compliance Division
Texas Department of state health Services
1100 West 49th St.
Austin, TX 78756

You also can call the **Complaint Hotline** at **1-888-973-0022**.

You can obtain more information about filing complaints at the Department's Web site at: <http://www.tdh.state.tx.us/HFC/Complain.htm>

Can I sue my health care provider for violating my rights to get and amend my medical record?

Under Texas law, you have the right to sue to get access to your medical record in Texas court.

You do not have the right to sue your health care provider in federal court (United States 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 or provider. As used in this guide, health care provider or provider includes only doctors and hospitals.

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. Only health care providers (such as doctors and hospitals), health plans (such as health insurers and Medicare) and health care clearinghouses (organizations that put health information into or out of an electronic format) have to follow the HIPAA Privacy Rule. Other people (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. Your provider must give you this notice when they first see you. They also must give you a copy of the notice when you ask for one. The notice of privacy practices 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.

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

Right to Amend. The right to have information added to your medical record to make it more complete or accurate. The right to amend does not mean a right to have information erased or removed.

6. WHERE TO FIND MORE INFORMATION

This guide only discusses how to get and amend your medical records from doctors and hospitals that 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

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

Mental Health Treatment Records

You can read the Texas law that gives you rights to your mental health record at:

<http://www.capitol.state.tx.us/statutes/docs/HS/content/htm/hs.007.00.000611.00.htm>

You can get general information about access to mental health records in Texas from Advocacy Inc., a nonprofit corporation funded by the United States Congress to protect and advocate for the legal rights of people with disabilities in Texas at their Web site:

<http://www.advocacyinc.org/CS8.htm>

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/>

Texas Medical Record Access Laws

Some health care providers do *not* have to follow the HIPAA Privacy Rule. These providers must still follow Texas state laws that give you the right to see and get a copy of your medical record. You can read the Texas laws that give you rights to your records held by doctors and hospitals on the Web site of the Texas legislature at:

<http://www.capitol.state.tx.us/statutes/statutes.html>

For rules that apply to doctors, look under: Occupations Code, Title 3, Chapter 159, "Physician-Patient Communication."

For rules that apply to hospitals, look under: Health and Safety Code, Title 4, Chapter 241, Section 241.151 through Section 241.154 "Requests."