

## **Access to Patient Information**

Effective January 1, 1987, patients and other qualified persons are granted access to health care records by Section 18 of the Public Health Law, which was enacted in Chapter 497 of the Laws of 1986. Section 18 contains the procedures for making records available and the conditions under which a provider can deny access. If access is denied, the patients or other qualified persons are afforded the right of appeal to Medical Record Access Review Committees, committees consisting of peers of the practitioner who denied the access. Committees are established for each licensed health care profession.

## **Basic Provisions**

Section 18 of the Public Health Law applies to records maintained by health care facilities licensed by the Department of Health. These include hospitals, home care facilities, hospices, health maintenance organizations and shared health facilities. Its provisions also apply to health care practitioners, including physicians, physician assistants, specialist assistants, audiologists, chiropractors, dentists, dental hygienists, midwives, occupational therapists, optometrists, ophthalmic dispensers, physical therapists, physical therapist assistants, nurses, podiatrists, psychologists, social workers and speech pathologists. The law describes such facilities and practitioners as "providers." Health care practitioners not specifically included in this paragraph are not covered by Section 18.

The law permits access by "qualified persons." "Qualified persons" include the patient or an incapacitated adult patient's legal guardian. A parent or legal guardian of a minor may access the minor's records when the parent or guardian consented to the care and treatment described in the record or when the care was provided without consent in an emergency resulting from an accidental injury or the unexpected onset of serious illness. "Qualified persons" include holders of health care proxies for living patients, the executors and administrators of estates of deceased patients, and if there is no will, the distributees of the estate under the Estates, Powers and Trusts Law. An attorney representing a "qualified person" is also a "qualified person," provided that the attorney has a signed power of attorney specifically authorizing the attorney to request medical records. Health care providers, insurance companies, other corporate entities and attorneys lacking a power of attorney are not qualified persons.

Section 18 requires that within 10 days of a written request for access to records, the provider must give the qualified person the opportunity to inspect the records. Providers must also provide copies of records if copies are requested. Providers are permitted to charge reasonable fees to recover costs for inspections and copying. However, a qualified person cannot be denied access to information solely because of inability to pay.

The law also states that access to the following records or parts of records may be denied:

- \* personal notes and observations maintained by the practitioner;
- \* information that was disclosed to the practitioner under the condition that it would be kept confidential and it has been kept confidential since then;
- \* information about the treatment of a minor that, in the opinion of the practitioner, should not be disclosed to the parents or guardians (a patient over the age of twelve may be told that his/her

parents or guardians have requested the patient's records, and if the patient objects, the provider may deny the request);

- \* information that the practitioner determines may reasonably be expected to substantially harm the patient or others;

- \* substance abuse program records and clinical records of facilities licensed or operated by the Office of Mental Health (these records may be disclosed pursuant to a separate process in Section 33.16 of the Mental Hygiene Law);

- \* information obtained from other examining or treating practitioners which may be requested from the other practitioners directly;

- \* when other provisions of law prevent their release. For example, Section 17 of the Public Health Law prohibits the release of records to parents or guardians concerning the treatment of a minor for venereal disease or for performance of an abortion.

Section 18 requires a provider who denies access to part or all of a record to inform the qualified person which of the above reasons caused the denial.

## **Mammogram Films**

Under Section 18 a qualified person has the right to obtain original mammogram films. The provider may not impose a copy charge for original mammograms, but may charge the actual documented cost for furnishing the films. Once the original films have been provided, the health care provider is no longer required to maintain a copy.

## **Appeals of Denials to Access to Medical Records and Patient Information**

If a provider denies access to part or all of a record, the qualified person has the right to appeal the denial and the law requires the provider to inform the qualified person of that right. Medical Record Access Review Committees (MRARCs) will review appeals. Each committee is composed of peers of the licensed practitioners who denied access to the records.

Under the law, the Commissioner of Health appoints the MRARCs and the appeals process is conducted under regulations established by the Commissioner. Subpart 50-3 of the Rules and Regulations of the Department of Health has been promulgated effective January 1, 1987.

The rule requires providers to give qualified persons, at the time of denial, a form approved by the Department. The form advises the qualified person of the right to appeal and the method for initiating an appeal. A copy of this form may be obtained from the API Coordinator. Once obtained, providers may copy the form and give it to qualified persons. If providers wish to develop their own form, that form must contain the same information and be approved by the Department of Health's Access to Patient Information Coordinator (API Coordinator).

The qualified person sends this form to the API Coordinator. Upon receiving a request for appeal, the API Coordinator will inform the provider and chairperson of the appropriate MRARC. The provider has 10 days to forward the copies of the records and a brief explanation for the denial to the MRARC chairperson. The MRARC will meet to review the appeal within 90 days of receiving the records. At least 15 days advance notice will be given to all parties. The provider and qualified persons may be present at the meeting and both may have representatives.

The MRARC will issue a written decision with copies to the provider and qualified person. The patient records will be returned to the provider. If the MRARC decides that the qualified person should have access to the records, the provider will be directed by the MRARC to grant the access.

Decisions of the MRARCs, except for determinations regarding access to practitioners' personal notes and observations, may be challenged in the State courts. MRARC decisions regarding personal notes and observations are final.

*The 'Denial of Access to Patient Information and Appeal Form - DOH-1989 is also available here.*

## **Health Care Facilities**

Under the law, if a patient requests records from a health care facility, the facility must consult with the "treating practitioner." The "treating practitioner" is the practitioner who has primary responsibility for the care of the patient. He/she must decide whether or not access to the information may be provided. Individual facilities must decide who the "treating practitioner" is for each request. If the requested records include multiple disciplines, the facility may choose to have either a single practitioner who had the primary responsibility for patient care decide the entire matter or have a practitioner in each profession make the determination for that practitioner's portion of the records.

If a patient is denied access to all or portions of a facility's records, and the patient appeals the denial, the appeal will be reviewed by the MRARC representing the discipline of the "treating practitioner" who made the determination to deny access. If more than one "treating practitioner" made the denial, committees representing each discipline will be convened.

Subpart 50-3 of the Department of Health's Rules and Regulations indicates that providers may be present at MRARC meetings when appeals are deliberated. Since the definition of providers includes both health care facilities and individual health care practitioners, it is possible for both the representative of the health care facility and the "treating practitioner" to be present for an MRARC meeting.

## **Confidentiality**

Subpart 50-3 of the Department of Health's Rules and Regulations requires that patient records be kept confidential. At MRARC meetings, only the provider, the qualified persons, their representatives, the committee members and the API Coordinator may be present. The rule also requires that all information is safeguarded and the MRARC deliberations and records are confidential.

## **Personal Notes and Observations**

Section 18 of the Public Health Law permits providers to deny access to personal notes and observations. The law defines personal notes and observations as "a practitioner's speculations, impressions (other than tentative or actual diagnosis) and reminders, provided such data is maintained by a provider."

It has been suggested that handwritten portions of health care records may all be considered "personal notes and observations" and may be withheld from qualified persons, but this interpretation is overbroad. Consequently, Subpart 50-3 of the Department of Health's Rules and Regulations states "Handwritten notes and observations shall not be presumed to be personal notes and observations."

## **Information for Providers**

Providers should thoroughly read the law and regulations to understand their rights and obligations.

Providers who deny access to part or all of the records are required to inform qualified persons of their right to appeal. An official denial and appeal form or an alternative form approved by the Department of Health's API Coordinator must be given to a qualified person at the time access to records is denied.

## **Relationship Between Section 18 and Federal Regulations**

In some instances where a patient or a patient's personal representative has no right to access health information under state law, a right of access may nevertheless exist under federal law. Health care providers that are required to comply with the federal law known as the Health Insurance Portability and Accountability Act (HIPAA) generally must provide patients with access to all medical records and billing records. Many of the exceptions that exist in state law do not exist in the federal law; the federal law does, however, have an exception for psychotherapy notes.

Any qualified person who may access records on behalf of a patient under State law is a personal representative with a right of access under federal law. Parents have a right of access to their children's medical records under federal law to the same extent that they have that right under State law.

If a right of access exists under federal law, the procedure for exercising that right of access should be written in the provider's Notice of Privacy Practices. The provider should have a reviewing official to make final determinations. New York does not enforce HIPAA. HIPAA is enforced by the Office for Civil Rights in the United States Department of Health & Human Services.

## **Further Information**

Persons seeking further information regarding this process may contact:

API Coordinator  
New York State Department of Health  
433 River Street, Suite 303  
Troy, New York 12180-2299

For Physicians, Osteopaths, Physician Assistants, Specialist Assistants and other Health Care Providers (Chiropractors, Dentists, Nurses, Physical Therapists, Podiatrists, Psychologists, Social Workers, etc.) call:

- 1-800-663-6114

If you would like information regarding records held by hospitals, direct your initial inquiry to the hospital. For additional information or assistance, call:

- 1-800-804-5447

If you would like information regarding records held by facilities licensed or operated by the New York State Office of Mental Health, direct your initial written request to the director of the individual facility. For additional information or assistance, call:

- 1-800-597-8481
- 1-800-210-6456 (Spanish)
- 1-800-597-9810 (TTD)

If you have questions regarding substance abuse records, direct your initial inquiry to the individual facility. For additional information or assistance, call:

Public Information Office  
NYS Office of Alcoholism and Substance Abuse Services  
1450 Western Avenue  
Albany, NY 12203-3526

- 1-518-473-3460

Questions or comments: [opmc@health.state.ny.us](mailto:opmc@health.state.ny.us)  
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