



Collecting Medical Records HIPAA and Other Statutory Information

FREQUENTLY ASKED QUESTIONS

1. I already have medical records from another provider in my chart/file. Can I send those to SSA now that I am helping this individual apply for SSI/SSDI benefits?

Most states prohibit the re-release or “further release” of records once they have been released to an entity that originally requested them. However, if you send a request for records using the SOAR Process, which includes (1) a signed SSA-827 Authorization to Disclose Information **and** (2) a signed Agency Authorization to Release Information (either from the SSR manual or your agency’s HIPAA compliant release), you will be able to send those records on to SSA. Also included in the *Stepping Stones to Recovery* curriculum (in Module IV) is a Medical Records Request Letter, which explains the purpose of the records request. This process of sending two releases is permitted under the HIPAA Privacy Rule as a “compound authorization.” The regulation can be found in the Code of Federal Regulations: Title 45 Part 164 Section 164.508.

Source: http://edocket.access.gpo.gov/cfr_2002/octqtr/45cfr164.508.htm

2. I received a notice with a patient’s alcohol and drug abuse records that I could not “further disclose” the information. How can I send them on to SSA?

When providers of substance use services (drug and alcohol) release records, they are required to include the following notice from the CFR Title 42:2.32:

“This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.”

Source: http://edocket.access.gpo.gov/cfr_2002/octqtr/42cfr2.32.htm

However, the law (CFR Title 42:2.33) allows the records to be disclosed to any entity the person names in the consent. Follow the SOAR Process for collecting medical records outlined above and be sure that the authorization form specifically mentions the release of drug and alcohol treatment records.

Source: http://edocket.access.gpo.gov/cfr_2002/octqtr/42cfr2.33.htm

3. I requested records from a provider using a faxed copy of both the SSA-827 and my agency’s release. This provider will not release them without an original signature on the authorization form and I only have a copy. What do I do?

You should be able to use the copy of the authorization that you have to request the records. According to a clarification letter drafted by the Director of the Office of Civil Rights on April 25, 2003, “A copy, facsimile, or electronically transmitted version of a signed authorization is also a valid authorization under the Privacy Rule.”

Source: <http://www.ssa.gov/disability/professionals/HHS-OCRfeedback.pdf>

4. Am I allowed to disclose mental health treatment and counseling records to SSA?

Mental health treatment records are a necessary and integral part of the evidence needed for DDS to make a disability determination for someone alleging mental illness as an impairment. You are permitted and encouraged to support a claimant's application with the disclosure of your records (with proper authorization). The records that are excluded from this authorization are "psychotherapy notes," which are a specific type of note not typically a part of most medical records, especially in publicly funded settings. As HIPAA defines the term, "psychotherapy notes means notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and **that are separated from the rest of the individual's medical record**. Excluded from "Psychotherapy notes" are medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date."

If you keep psychotherapy notes separate from your other medical records, you can send the set of records without the psychotherapy notes. **If you do not keep psychotherapy notes separate from other parts of the medical records, you can legally disclose all of the records.** However, you can choose to black out or remove the parts of the records that would be considered psychotherapy notes if they had been kept separately. Another option is to prepare a report that details the critical current and historical aspects of the applicant's treatment and functional information. For staff familiar with the SOAR training, such a report would be analogous to what SOAR calls the medical summary report.

For more information, see SSA's Fact Sheet for Mental Health Care Professionals:

<http://www.ssa.gov/disability/professionals/mentalhealthproffacts.htm>

5. What do I do if I am being asked to pay for the medical records I have requested?

Most states have laws that regulate what health care providers can charge *individuals* for copies of their medical records. However, these rules do not necessarily apply to *providers* requesting records. In addition, some states provide an exception for records needed to apply for a disability benefits program and stipulate that they be provided at no-cost. Below are sample excerpts from state statutes. Please see the source indicated for each state for a complete explanation. Note that some states specify exemption from costs for the individual but don't necessarily cover such requests from an applicant's representative. Other state statutes cover not only the individual but also his/her representative.

If your state does not require a fee-waiver, we recommend contacting the director of the medical records department and advocating for or negotiating one. Explain that the individual is homeless and that you, as a mutual provider, are unable to pay for the records. Let the director know that the records will be used for a disability application and that, upon approval, the individual will likely be eligible for Medicaid and/or Medicare benefits that will pay for uncompensated care that the provider has given as well as future care that is provided. Therefore, it is in the provider's best interest for the individual's application to be well supported and documented as an approval may lead to retroactive and future reimbursements.

In addition, offer to the director of the medical records department that you would be happy to write a letter to the administrator of his/her agency regarding how helpful the director has been as well as the potential financial recoupment that such collaboration will mean to the provider.

Note: State laws are constantly changing. It is wise, therefore, to verify the state law(s) you are researching.

- **California: Health and Safety Code § 123110 (d)** “Any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits.
Note: This law specifically refers to the no-cost provision as it relates to an appeal rather than an initial application.

Source: <http://law.onecle.com/california/health/123110.html>

- **Connecticut: General Statutes § 20-7c(b)**: “Provided no such charge shall be made for furnishing a health record or part thereof to a patient, a patient's attorney or authorized representative if the record or part thereof is necessary for the purpose of supporting a claim or appeal under any provision of the Social Security Act and the request is accompanied by documentation of the claim or appeal.”

Source: http://www.ct.gov/dph/lib/dph/practitioner_licensing_and_investigations/plis/medical_records/medicalrecord_statute_reg.pdf

- **Delaware: Title 24 § 1761**: “Payment of all costs may be required by the provider or its third party release-of-information service prior to the copies of the records being furnished. This subsection shall not apply to copies of the records requested in order to make or complete an application for a disability benefits program.”

Source: <http://delcode.delaware.gov/sessionlaws/ga144/chp353.shtml>

- **Georgia: OCGA § 31-33-3**: “...Payment of all costs may be required by the provider or its third party release-of-information service prior to the copies of the records being furnished. This subsection shall not apply to copies of the records requested in order to make or complete an application for a disability benefits program.”

Source: <http://www.lexis-nexis.com/hottopics/gacode/default.asp>

- **Kentucky: KRS 422.317**: “Upon a patient's written request, a hospital licensed under KRS Chapter 216B or a health care provider shall provide, without charge to the patient, a copy of the patient's medical record.” *Note: This applies to requests from the individual but not necessarily to requests from another provider. This statute states that providers can charge an individual's representative a cost of \$1/page.*

Source: www.lrc.ky.gov/krs/422-00/317.pdf

- **Massachusetts: Title 16 Ch. 111 § 70**: “...except that no fee shall be charged to any applicant, beneficiary or individual representing said applicant or beneficiary for furnishing a record if the record is requested for the purpose of supporting a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program.”

Source: <http://www.mass.gov/legis/laws/mgl/111-70.htm>

- **Michigan: 333.26269** “A health care provider, health facility, or medical records company shall not charge a fee for retrieving, copying, or mailing all or part of a medical record other than a fee allowed under subsection (1). Except as otherwise provided in subsection (4), a health care provider, health facility, or medical records company shall waive all fees for a medically indigent individual. The health care provider, health facility, or medical records company may require the patient or his or her authorized representative to provide proof that the patient is a recipient of assistance as described in this subsection.” This statute further states, “A medically indigent individual that receives copies of medical records at no charge under subsection (3) is limited to 1 set of copies per health care provider, health facility, or medical records company.”

Source: <http://legislature.mi.gov/doc.aspx?mcl-333-26269>

- **Minnesota: Statute 144.335:** “A provider or its representative must not charge a fee to provide copies of records requested by a patient or the patient's authorized representative if the request for copies of records is for purposes of appealing a denial of Social Security disability income or Social Security disability benefits under title II or title XVI of the Social Security Act.” *Note: This provision only applies to appeals rather than initial applications.*

Source: <https://www.revisor.mn.gov/bin/getpub.php?type=s&num=144.335&year=2006>

- **Nebraska: Statute 71-8405:** “A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance...” *Note: This provision specifically states there is no cost for records requested “by a patient.” It does not address the request for records from a representative.*

Source: www.hhs.state.ne.us/crl/statutes/medrecstat.pdf

- **Nevada: NRS 629.061 (3):** “The provider of health care shall also furnish a copy of any records that are necessary to support a claim or appeal under any provision of the Social Security Act, 42 U.S.C. §§ 301 et seq., or under any federal or state financial needs-based benefit program, without charge, to a patient, or a representative with written authorization from the patient, who requests it, if the request is accompanied by documentation of the claim or appeal.”

Source: <http://leg.state.nv.us/nrs/NRS-629.html#NRS629Sec061>

- **Ohio: ORC 3701.741:** “(C) (1) A health care provider or medical records company shall provide one copy without charge to the following: ... (e) A patient or patient's personal representative if the medical record is necessary to support a claim under Title II or Title XVI of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 401 and 1381, as amended, and the request is accompanied by documentation that a claim has been filed. “

Source: http://law.justia.com/ohio/codes/orc/jd_3701741-978f.html

- **Rhode Island: RI § 23-17-19.1:** “ (16) No charge shall be made for furnishing a health record or part of a health record to a patient, his or her attorney or authorized representative if the record or part of the record is necessary for the purpose of supporting an appeal under any provision of the Social Security Act, 42 U.S.C. § 301 et seq., and the request is accompanied by documentation of the appeal” *Note: This statute applies only to records needed for appeal, not initial application.*

Source: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-17/23-17-19.1.HTM>

- **Tennessee: TCA § 68-11-304 (a)(2)(B):** “A hospital may not impose a charge on an indigent person for furnishing to such person a health record or part thereof concerning such patient, such patient's attorney or authorized representative, if the record or part thereof is necessary for the purpose of supporting a claim or appeal under any provision of the Social Security Act, and a request for the record or part thereof is accompanied by a copy of a recent application seeking benefits under the Social Security Act or a copy of a recent decision denying such benefits.”
Note: This statute requires a copy of the recent application for benefits. In addition, medical providers may request a statement of documentation of an applicant's being indigent.

Source: <http://www.caseonpoint.com/km/cdata05/shelby/supmat/68-11-304.htm>

- **Texas: THSCA § 161.202:** “A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits...”

Source: <http://codes.lp.findlaw.com/txstatutes/HS/2/H/161/M/161.202>

- **Vermont: 18 V.S.A. § 9419:** “A custodian shall not charge for providing copies of any health care record requested to support a claim or an appeal under any provision of the Social Security Act or for any other federal or state needs-based benefit or program.”

Source: <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=18&Chapter=221&Section=09419>

- **West Virginia WVC §16-29-2:** “(b) Notwithstanding the provisions of subsection (a) of this section, a provider shall not impose a charge on an indigent person or his or her authorized representative if the medical records are necessary for the purpose of supporting a claim or appeal under any provisions of the Social Security Act, 42 U.S.C. §301 et seq.”

Source: <http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=16&art=29>

6. As the appointed representative, if I am not able to pay for copies of the medical records, can I get them from SSA or DDS?

As the claimant's representative (using the SSA-1696 Appointment of Representative Form), you can request a copy of the claimant's previous and current files, which include the medical records SSA and DDS received with the application. These documents are generally provided on a CD. This is allowed under the Privacy Act (5 USC § 552a (b)) “An individual may give SSA written consent to disclose his/her personal information to a third party of his/her choosing.” *Note: When using the SOAR process, staff would want to collect the medical records and submit them to DDS rather than the other way around. The reason for this is to ensure that the DDS receives all pertinent information. Obtaining a CD from DDS can be useful when you assist an individual who has already applied and been denied.*

Source: <http://www.usdoj.gov/04foia/privstat.htm> and <https://secure.ssa.gov/poms.NSF/lrx/0203305001>