

**YOUR MEDICAL RECORDS AND
YOUR PRIVACY:**

**A GUIDE FOR MASSACHUSETTS
CONSUMERS**

November 2003

Health Law Advocates, Inc.

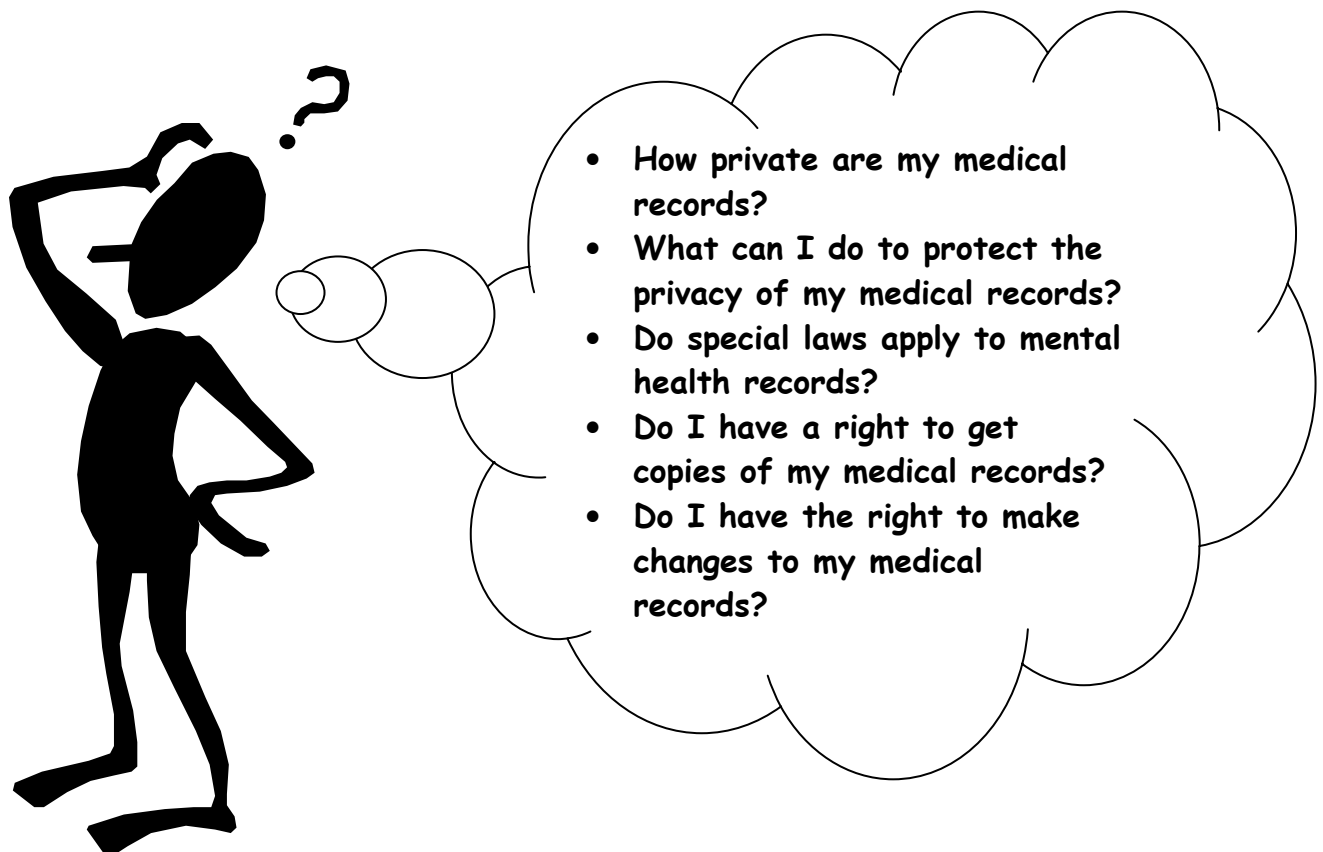
30 Winter Street
Boston, MA 02108
(617) 338-5241
www.hla-inc.org

Health Law Advocates

Health Law Advocates (HLA) is a public interest law firm that uses the expertise unique to lawyers to secure the right of health care access for every man, woman, and child in Massachusetts. In this effort, HLA partners with Health Care For All, the leading health advocacy organization in Massachusetts.

Why This Guide?

You may need access to your records for many reasons, such as changing doctors, filing a disability claim, or applying for public benefits. You may also have concerns about the access other people have to your personal medical information. This guide addresses questions you may have about your medical records, including:



The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

TABLE OF CONTENTS

	Page
<u><i>Introductory questions</i></u>	
Does the law protect the privacy of my medical records?	4
Who must follow the HIPAA privacy rule?	4
Does the HIPAA privacy rule apply to government agencies?	5
What is my "Protected Health Information" or "PHI"?	5
<u><i>Disclosure of PHI for "treatment, payment or health care operations"</i></u>	
May a provider release my PHI without my permission?	6
May I ask a provider to limit disclosure of my PHI?	6
Does my employer have access to my PHI?	7
<u><i>Personal representatives</i></u>	
What is a personal representative?	8
Who must be treated as a personal representative?	8
Can a provider refuse to honor my personal representative?	9
<u><i>Authorizing release of your PHI</i></u>	
May I authorize someone who is not my personal representative to receive my PHI?	9
<u><i>Getting a copy of your medical record</i></u>	
Do I have a right to inspect or receive my medical record?	10
Does a provider have to agree to disclose my medical records only under conditions I request?	10
Can a provider charge for the cost of copying my records?	11
Can a provider deny my request to see my medical records?	11
Do special rules apply to psychotherapy notes?	11
What are my rights when a request for records is denied?	12
<u><i>Requesting changes to your medical record</i></u>	
Do I have the right to request changes to the information in my medical record?	12
Does the provider have to change my record?	12
What can I do if a provider denies my request to change my record?	13
<u><i>Other questions</i></u>	
Can I find out when my PHI has been used or disclosed?	13
Who do I contact if my privacy rights have been violated?	14
Where can I get more information about my privacy rights?	14

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

1) DOES THE LAW PROTECT THE PRIVACY OF MY MEDICAL RECORDS?

A new rule under a federal law called HIPAA (which stands for "Health Insurance Portability and Accountability Act") protects the privacy of your medical information and records. The HIPAA Privacy Rule creates new and comprehensive national protections for privacy of health information. The Rule is complex. *In some cases, existing federal, state or other laws that offer greater privacy protections may apply.* Seek legal advice if you have a specific question about the privacy of your medical information.

2) WHO MUST FOLLOW THE HIPAA PRIVACY RULE?

The HIPAA Privacy Rule applies to:

- Health care providers, such as hospitals, clinics, physicians, dentists and pharmacists
- Health plans, both individual and group, including:
 - Employer-sponsored plans
 - Health Maintenance Organizations (HMOs)
 - Plans sold by private insurers
 - Government-sponsored plans
 - Health care clearinghouses, such as billing service companies



The Rule also applies to organizations that use or disclose "protected health information" for part of their operations, such as insurance companies that offer both health and other insurance products.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

3) DOES THE HIPAA PRIVACY RULE APPLY TO GOVERNMENT AGENCIES?

Yes. State-sponsored health plans, including MassHealth and Group Insurance Commission plans, must comply with the Rule. Some state agencies operate specific programs and facilities that must comply (for example, hospitals run by the Department of Public Health). Federal health plans, including Medicare, plans for military personnel and veterans, and plans offered by the Federal Employee Health Benefits Program, must also follow the HIPAA Privacy Rule.

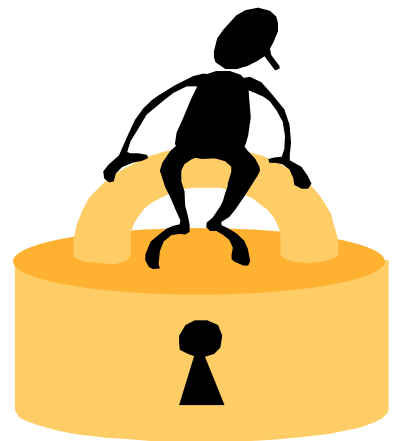
4) WHAT IS MY "PROTECTED HEALTH INFORMATION" OR "PHI"?

PHI is health-related information that identifies you, or information that could identify you if it is combined with other data. Specifically, your PHI is information that is created or received by a health care provider, health plan, employer or health care clearinghouse that relates to:

- your past, present or future physical or mental health condition
- the provision of health care to you or
- past, present or future payment for provision of health care to you and that identifies you or could be used to identify you.

Some examples of PHI are:

- Medical data about you that are used to help you get health care
- Information about payment for health services, including bills
- Diagnoses, observations, and descriptions of services you have received



The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

***In the questions and answers that follow, the term “provider” refers to any business, agency or organization covered by the Privacy Rule. (Please refer to Question 2 “Who Must Follow the Privacy Rule?” for a complete list of entities subject to the Rule.)**

5) MAY A PROVIDER RELEASE MY PHI WITHOUT MY PERMISSION?

Yes. With the exception of psychotherapy notes, which require your authorization in almost all circumstances, a provider does not need permission to release or use your PHI for any of the following:

- *Treatment*, including consultation and referral among medical providers
- *Payment*, such as determinations of coverage, billing and collection activities
- *Health care operations*, such as customer service, internal appeals, and case management

However, when a provider releases or uses your PHI for the above activities, it must limit the disclosure to the minimum information necessary.

6) MAY I ASK A PROVIDER TO LIMIT DISCLOSURE OF MY PHI FOR TREATMENT, PAYMENT OR HEALTH CARE OPERATIONS?

Yes. Your request should be made in writing to the HIPAA Privacy Officer for the provider. The request must include the information you wish to limit, and to whom you wish the limits to apply. A provider does *not* have to agree to your request. However, if the provider agrees, it must document the terms of the agreement and follow those terms, until you or the provider terminates the agreement (except in the case of emergency care).

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

7) DOES MY EMPLOYER HAVE ACCESS TO MY HEALTH INFORMATION?

In most cases, your employer has very limited access to your PHI. Most employers that offer group health coverage either purchase insurance coverage or hire an outside company to run their health plan. In these cases, the employer may generally receive from the insurer or outside administrator only:

- information on whether individuals are participating in the health plan and
- summary health information about participants, but only if the information will be used to modify the plan or to obtain premium bids from health insurers

Some employers, usually large companies, fund and operate their employee health benefit plans in-house. In these cases, certain employees of the company need to have access to other employees' PHI to determine coverage, pay claims and run the plan. The employer must ensure that the privacy of employees' health information is protected to the greatest extent possible, by, among other things:

- Limiting the employees that have access to other employees' PHI to only those directly involved in operation of the health plan
- Destroying to the extent feasible all PHI received
- Not using or disclosing health information for employment-related actions or in connection with other employee benefits
- Taking all reasonable steps to restrict access to and use of employee health information (locking file drawers, requiring passwords, etc.)



The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

8) WHAT IS A PERSONAL REPRESENTATIVE?

If you are incapable of exercising your rights to get your medical records (due to age or mental incompetence, for example), a provider must treat certain individuals as your "personal representative." In general, the personal representative "steps into your shoes" with regard to your protected health information.

9) WHO MUST BE TREATED AS A PERSONAL REPRESENTATIVE?

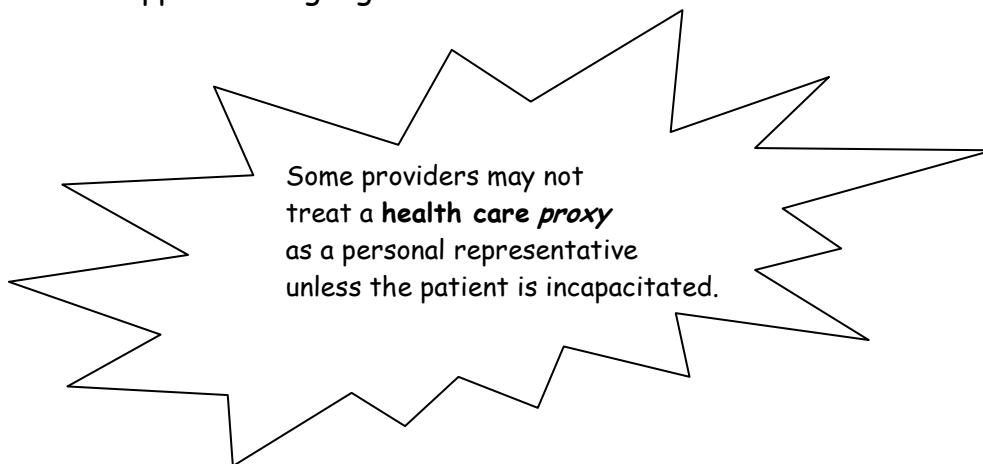
In general, a provider must treat certain individuals as personal representatives.

For minors (under 18 years of age):

- A parent
- A legal guardian
- Other person with legal authority to make health care decisions on the minor's behalf

For an adult (18 and over) or an emancipated minor, a person with legal authority to make health care decisions on behalf of the individual, such as:

- A person with health care *power of attorney*★
- A court-appointed legal guardian



For a deceased person, the executor or administrator of the person's estate.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

10) CAN A PROVIDER REFUSE TO HONOR MY PERSONAL REPRESENTATIVE?

Yes, if the provider reasonably believes that:

- you have been or may be subjected to domestic violence, abuse, or neglect by the personal representative, or
- treating the person as your personal representative could endanger you, and, in the provider's professional judgment, it is not in your best interests for the provider to treat the person as your personal representative.

11) MAY I GIVE PERMISSION FOR SOMEONE OTHER THAN A PERSONAL REPRESENTATIVE TO RECEIVE MY PHI?

The HIPAA Privacy Rule permits the disclosure of limited health information to family members and friends who are involved in your medical care.

If you want someone other than a *personal representative* to receive more detailed information, you must complete an authorization form for the provider to disclose your PHI to this person. For example, you might want an attorney or advocate to receive your medical records. The authorization must contain specific details, including: the provider who may release your information and the person to whom the information may be released, a description of the information to be released, and an expiration date for the authorization.

You must sign a separate authorization form for psychotherapy notes.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

12) DO I HAVE A RIGHT TO INSPECT OR RECEIVE MY MEDICAL RECORD?

In general, yes. You have a right to request to inspect or get a copy of your medical record. A provider may require that you submit this request in writing. In most cases, the provider must respond to your request in writing within 30 days. In some circumstances, a provider may take an additional 30 days to respond but usually must give you a written reason for the delay.

13) DOES A PROVIDER HAVE TO AGREE TO DISCLOSE MY MEDICAL RECORDS ONLY UNDER CONDITIONS I REQUEST?

Yes. If you ask a health care provider, such as a hospital or physician, to disclose your records by certain means (for example, mailing to someone else's address) or at a certain place (for example, an advocate's office), the health care provider must agree if such request is reasonable. In the case of a health plan, the plan must comply if you state in writing that other means of disclosure would endanger you.

14) CAN A PROVIDER CHARGE FOR THE COST OF COPYING MY RECORDS?

Yes. A provider may charge you for the reasonable cost of copying (including the labor) and postage if you ask for the record to be mailed. A provider may also charge you for an explanation or summary of your record if you agree. Under Massachusetts state law, a provider may not charge for copies if you are requesting the medical record to support a claim for Social Security disability or other public benefits.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

15) CAN A PROVIDER DENY MY REQUEST TO SEE MY MEDICAL RECORD?

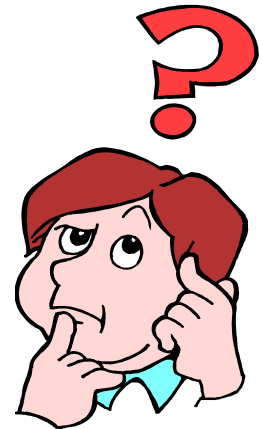
Yes. A provider may deny your request when a licensed health care professional determines, in his or her professional judgment, that:

- it is reasonably likely that releasing the record will endanger your life or physical safety or the life or physical safety of someone else
- the record refers to another person (other than a medical provider) and release of the information is reasonably likely to cause substantial harm to that person

In the above circumstances, you have the right to review of the denial.

There are some circumstances in which a provider can deny your request and you do not have the right to review. These include:

- Requests for psychotherapy notes
- Requests for information compiled in reasonable anticipation of a legal proceeding
- Inmate requests to a correctional institution or its health care contractor when release would jeopardize the health and safety of the requester, other inmates or correctional personnel
- Ongoing research in which you are a consenting participant
- Certain laboratory records



16) DO SPECIAL RULES APPLY TO PSYCHOTHERAPY NOTES?

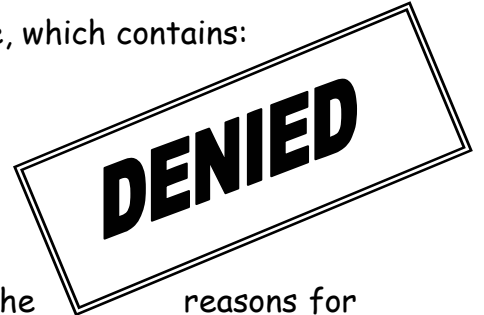
In general, you have a right to request a copy of your mental health records, including "psychotherapy notes." Psychotherapy notes are records prepared by a mental health professional, such as a psychologist or psychiatrist, which document or analyze the content of your conversations during counseling sessions. Psychotherapy notes do not include records of medication monitoring or summaries of diagnoses or treatment plans. A mental health professional may refuse to release psychotherapy notes to you if she or he reasonably determines, in his or her professional judgment, that their release could endanger your life or safety, or the life and safety of others. You do not have a right to review of this denial.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

17) WHAT ARE MY RIGHTS WHEN A REQUEST FOR RECORDS IS DENIED?

The provider must give you a written denial in plain language, which contains:

- The basis for the denial
- A statement of your review rights, if applicable
- A description of how you can complain about the denial, including contact information



You should contact the provider if you cannot understand the reasons for the denial. If the denial is reviewable and you request a review, the provider must choose a licensed health care professional who was not involved in the initial decision to deny your request for the records. The chosen reviewer must make a decision on your request within 60 days and must notify you in writing.

18) DO I HAVE THE RIGHT TO REQUEST CHANGES TO THE INFORMATION IN MY MEDICAL RECORD?

You have the right to ask the provider to change or correct your health information. You should make the request in writing, and explain in detail what changes you want and why you want the provider to make these changes (for example, the information is inaccurate or incomplete).

19) DOES THE PROVIDER HAVE TO CHANGE MY RECORD?

No. The provider does not have to change your record when:

- The provider determines that your record is accurate and complete
- the provider did not create the portion(s) of your record that you want changed

The provider must give you a written denial of your request, explaining why the provider is not making the requested changes to your record.

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

20) WHAT CAN I DO IF A PROVIDER REFUSES TO CHANGE MY RECORD?

You may submit a written statement to the provider's HIPAA Privacy Officer or directly to the provider, objecting to the record as it is written and detailing the changes you believe should have been made. This will become part of your medical record, but the information you object to will also remain in the record.

21) CAN I FIND OUT WHEN MY PHI HAS BEEN USED OR DISCLOSED?

You may ask a provider for an accounting of when and how your PHI has been used or disclosed. You must make your request in writing. Under the HIPAA Privacy Rule, the provider has up to 60 days to give you the accounting. The accounting does not have to include disclosures made:

- to carry out treatment, payment and health care operations
- to you or authorized individuals involved with your care
- to correctional institutions or law enforcement officials for national security or intelligence purposes

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.

22) WHO DO I CONTACT IF MY PRIVACY RIGHTS HAVE BEEN VIOLATED?



Office for Civil Rights, U.S. Department of Health & Human Services, John F. Kennedy Federal Building, Room 1875, Boston, MA 02203
www.hhs.gov/ocr/hipaa (Tel: 617-565-1340 or 866-627-7748). OCR can investigate HIPAA privacy complaints and impose fines on violators in appropriate cases.

23) WHERE CAN I GET MORE INFORMATION ABOUT MY PRIVACY RIGHTS?

There are many resources for information about medical privacy rights under HIPAA and other laws. Two good resources are:

- www.hhs.gov/ocr/hipaa/
For frequently-asked questions and answers
- www.cms.gov/hipaa
For Medicare and Medicaid HIPAA information

**SAMPLE AUTHORIZATION FORMS ARE AVAILABLE ON OUR WEBSITE.
MANY PROVIDERS HAVE THEIR OWN FORMS FOR YOU TO FILL OUT.**

The information in this guide is not legal advice and may not apply to your circumstances. Seek help from a lawyer if you have a specific problem related to your medical records.