The HIPAA Privacy Rule generally requires covered entities (health plans and most health care providers) to provide individuals, upon request, access to their protected health information (PHI) maintained by the covered entity. This includes the right to inspect and/or obtain a copy of the PHI, as well as to direct the covered entity to transmit a copy to a designated person or entity of the individual’s choice. Individuals have a right to access this PHI for as long as the information is maintained by a covered entity or by a business associate on behalf of a covered entity, regardless of the date the information was created; whether the information is maintained in paper or electronic systems onsite, remotely, or is archived; or where the PHI originated (e.g., whether by the covered entity, another provider, the patient, etc.). Recently the Office for Civil Rights released a fact sheet and two sets of frequently asked questions on its website to clarify aspects of individuals’ core rights under HIPAA regarding access and obtaining a copy of their health information.

Requests for Access

Requiring a Written Request

A covered entity may require individuals to request access in writing, provided the covered entity informs individuals of this requirement. See 45 CFR 164.524(b)(1). Covered entities may also offer individuals the option of using electronic means (e.g., email, secure web portal) to make requests for access. In addition, a covered entity may require individuals to use the entity’s own supplied form, provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to their PHI, as described below.

Verification

The Privacy Rule requires a covered entity to take reasonable steps to verify the identity of an individual making a request for access. See 45 CFR 164.514(h). The rule does not mandate any particular form of verification (such as obtaining a copy of a driver’s license or asking patient for identifying information), but rather generally leaves the type and manner of the verification to the discretion and professional judgment of the covered entity.
Providing Access

Form and Format and Manner of Access

The Privacy Rule requires a covered entity to provide the individual with access to the PHI in the form and format requested, if readily producible in that form and format, or if not, in a readable hard copy form or other form and format as agreed to by the covered entity and individual. See 45 CFR 164.524(c)(2)(i). If the individual requests electronic access to PHI that the covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format, or if not, in an agreed upon alternative readable electronic format. Requests for Paper Copies – Where an individual requests a paper copy of PHI maintained by the covered entity either electronically or on paper, it is expected that the covered entity will be able to provide the individual with the paper copy requested.

Requests for Electronic Copies – Where an individual requests an electronic copy of PHI that a covered entity maintains only on paper, the covered entity is required to provide the individual with an electronic copy if it is readily producible electronically (e.g., the covered entity can readily scan the paper record into an electronic format). Where an individual requests an electronic copy of PHI that a covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format. When the PHI is not readily producible in the electronic form and format requested, then the covered entity must provide access to an agreed upon alternative readable electronic format. See 45 CFR 164.524(c)(2)(ii). This means that while a covered entity is not required to purchase new software or equipment in order to accommodate every possible individual request, the covered entity must have the capability to provide some form of electronic copy of PHI maintained electronically.

How Copies Are Provided – A covered entity also must provide access in the manner requested by the individual, which includes arranging with the individual for a convenient time and place to pick up a copy of the PHI or to inspect the PHI (if that is the manner of access requested by the individual), or to have a copy of the PHI mailed or emailed, or otherwise transferred or transmitted to the individual to the extent the copy would be readily producible in such a manner. Timeliness in Providing Access – When providing access to the individual, the covered entity must provide access to the PHI requested no later than 30 calendar days from receiving the individual’s request. See 45 CFR 164.524(b)(2). The 30 calendar days is an outer limit and covered entities are encouraged to respond as soon as possible.

Source: HHS.gov – Health Information Privacy

For more information about this issue of AFMC HealthIT HIPAAwatch, please visit afmc.org/healthit, email healthit@afmc.org or call 501-212-8616.