

Practice Management

ACCESS TO PATIENT RECORDS

Can patients receive copies of their records?

Yes. Patients and their representatives have the right to access their records. Patients are not limited in the number of requests for access to, or copies of, records. Copies of x-rays need not be provided to the patient if the original x-rays are transmitted to another dentist at the request of the patient.

Can the patient be charged for the copies?

Yes. Copying charges may not exceed specified limits. A reasonable charge for clerical costs involved in making the record or copies available is allowed. Many dentists forgo charging a fee if they transmit the records directly to another dentist.

Must the patient clear up any outstanding account before receiving copies of their records?

No. Dentists may not demand an outstanding account be cleared before providing access to records. However, there are other mechanisms by which the account balance may be pursued.

What exactly is the patient entitled to receive?

The law regulating patient right to access to medical records is found in the [California Health and Safety Code Section 123100-123149.5](#). It gives patients the right to:

- Inspect records during business hours within five days of presenting a written request.
- Receive copies of records within 15 days of presenting a written request.

The law gives the dentist the right to:

- Charge a reasonable clerical cost for locating and making the records available.
- Charge \$.25 per page (or \$.50 per page for microfilm copy), as well as reasonable clerical costs, for copies.
- Charge reasonable costs, not exceeding actual duplication cost, for x-ray copies.
- Prepare a summary of the records as an alternative to providing copies or allowing inspection.

If the summary option is exercised, the summary must be provided within ten working days of the patient's request, 30 days for extraordinarily long records or if the patient has been discharged from a licensed health facility within the last ten days. It must include the chief complaint(s) with pertinent history; findings from consultations and referrals to other health care providers; diagnosis, where determined; treatment plan and regimen, including medications prescribed; progress of treatment; prognosis, including significant continuing problems or conditions; pertinent records of diagnostic procedures and tests and all discharge summaries; objective findings from the most recent physical exam,

such as blood pressure, weight and actual values from routine laboratory tests; and a list of all currently prescribed medications, including dosages , and sensitivities or allergies to medications recorded by the dentist.

If a summary is provided, the dentist may confer with the patient to determine why the patient wants the records. If the information required relates only to specific injuries, illnesses or episodes, the summary need only relate to those items.

Must I provide a patient with an electronic copy of his or her record?

If the dental practice maintains a patient's record in electronic form, the patient has the right to receive an electronic copy of his or her record and also to direct the dental practice to transmit an electronic copy to an individual or entity designated by the patient.

Who else is entitled to have access to patient records, and under what circumstances?

Employer: Employers, in general, do not have the right to access the information *except* in workers' compensation cases or when necessary to carry out their responsibilities for workplace medical surveillance under Cal-OSHA or similar federal or state laws. Employers who self-insure may have limited access to patient information necessary to determine payment. Employer-sponsored dental benefit plans also have limited access to patient information necessary to determine payment and to conduct quality assessment audits.

Payer: If an individual other than the patient is responsible for paying the patient's bill, disclosure of patient information is allowed under HIPAA as long as the disclosures are limited to the minimum amount of information necessary to obtain payment. In making such disclosures, health care providers also must honor any reasonable request for confidential communication and any agreed-to-restrictions on the use or disclosure of the patients' protected health information. The dental office's Notice Of Privacy Practices can state that if a patient designates another person as responsible for payment, the office will disclose the minimum amount of personal health information necessary to obtain payment from that person. If the patient objects to that disclosure, the office should inform the patient that he or she will have to choose between allowing the office to disclose information in order to obtain payment or paying for the services himself or herself. If a patient has paid the full cost of an item or service out-of-pocket and requests that the personal health information regarding the item or service not be disclosed to a health plan for purposes of payment or health care operations, the dental office must honor the patient's request.

Associate: A dentist who was an associate in a dental practice may not obtain copies of patient records without first obtaining written permission from the patients.

Mandated Reporting: Dentists also have some discretion under HIPAA and state law to disclose possible domestic abuse, criminal activity, and other legal violations involving patients to appropriate agencies.

Subpoenas: If a dental office receives a subpoena for a patient's record, circumstances will dictate the way to respond.

If law enforcement serves the subpoena, consult your attorney immediately. Provide the officers with access to the record while informing them that you are contacting your attorney. Do not try to impede law enforcement's access to records.

In many cases, receipt of a subpoena likely arises out of a civil lawsuit. Upon receipt of a subpoena in these cases, evaluate whether you can comply with the demand for records. Consider these questions:

- ▶ ***Do you have the requested records?*** If not, provide a statement that you do not have the records.
- ▶ ***Is the subpoena issued part of a civil action in California?*** Out-of-state subpoenas are not enforceable in California, except for subpoenas issued in federal cases. Subpoenas issued as part of state administrative hearings have patient notification requirements. Consult with your attorney for more information.
- ▶ ***Are you a party to the lawsuit?*** If yes, contact your professional liability carrier.
- ▶ ***Is the subpoena valid?*** A subpoena is valid if
 - (1) it is personally served on you or someone authorized by you to receive a subpoena;
 - (2) it is issued by the clerk of the court or attorney handling the lawsuit;
 - (3) it is addressed to you or someone qualified to certify the requested records;
 - (4) it contains a date specified for production of records that is at least 20 days after the subpoena was issued and at least 15 days after it was served on you and at least 20 days after notice of the subpoena was received;
 - (5) it specifies each item or category of items to be produced; and
 - (6) it must have documentation demonstrating that the patient either has consented to the release of records or has been informed of the records request.

The 20 days is specified because time is allowed for the court to hear motions to suppress the subpoena. If the subpoena is valid and you are not a party to the lawsuit, produce the records as requested, sign the affidavit and submit statement for costs incurred in responding to the subpoena.

For more information on managing patient records, refer to “Patient Records – Requirements and Best Practices” on cdacompass.com.

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