Providing individuals with easy access to their health information (PHI) empowers them to be more in control of decisions regarding their health and well-being. Individuals with access to their health information are better able to monitor chronic conditions, adhere to treatment plans, find and fix errors in their health records, track progress in wellness or disease management programs, and directly contribute their information to research.

Patients have access to their “designated record set” which includes Medical records and billing records about individuals maintained by or for a covered health care provider; enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or other records that are used, in whole or in part, by or for the covered entity to make decisions about individuals. This last category includes records that are used to make decisions about any individuals, whether or not the records have been used to make a decision about the particular individual requesting access. This access is permitted as long as it is held by the covered entity or your business associate.

The Privacy Rule requires a covered entity to take reasonable steps to verify the identity of an individual making a request for access. Verification by be in written or oral form and must be documented. A covered entity may not impose unreasonable measures on an individual requesting access that serve as barriers to or unreasonably delay the individual from obtaining access. For example, a doctor may not require an individual: 1) Who wants a copy of her medical record mailed to her home address to physically come to the doctor’s office to request access and provide proof of identity in person. 2) To use a web portal for requesting access, as not all individuals will have ready access to the portal. 3) To mail an access request, as this would unreasonably delay the covered entity’s receipt of the request and thus, the individual’s 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. 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, ie you have a scanner. A covered entity is not expected to tolerate unacceptable levels of risk to the security of the PHI on its systems in responding to requests for access; whether the individual’s requested mode of transfer or transmission presents such an unacceptable level of risk will depend on the covered entity’s Security Rule risk analysis. However, mail and e-mail are generally considered readily producible by all covered entities. If the individual requested that the covered entity transmit the PHI in an unsecure manner (e.g., unencrypted), and, after being warned of the security risks to the PHI associated with the unsecure transmission, maintained her preference to have the PHI sent in that manner, the covered entity is not responsible for a disclosure of PHI while in transmission to the designated third party, including any breach notification obligations that would otherwise be required. Further, a covered entity is not liable for what happens to the PHI once the designated third party receives the information as directed.

Access to the individual must be provided no later than 30 calendar days from receiving the individual’s request. The 30 calendar days is an outer limit and covered entities are encouraged to respond as soon as possible. Indeed, a covered entity may have the capacity to provide individuals with almost instantaneous or very prompt electronic access to the PHI.
The Privacy Rule permits a covered entity to impose a reasonable, **cost-based** fee if the individual requests a copy of the PHI. The fee may include only the cost of: (1) labor for copying the PHI; (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive); (3) postage. The fee **may not include** costs associated with verification; documentation; searching for and retrieving the PHI; maintaining systems; recouping capital for data access, storage, or infrastructure; or other costs not listed above even if such costs are authorized by State law. Outsourcing of medical record requests: Administrative and other costs associated with outsourcing the function of responding to individual requests for access cannot be the basis for any fees charged to individuals for providing that access.

**Labor for copying includes only:** Photocopying paper PHI; Scanning paper PHI into an electronic format; Converting electronic information in one format to the format requested by or agreed to by the individual; Transferring (e.g., uploading, downloading, attaching, burning) electronic PHI from a covered entity’s system to a web-based portal (where the PHI is not already maintained in or accessible through the portal), portable media, e-mail, app, personal health record, or other manner of delivery of the PHI; Creating and executing a mailing or e-mail with the responsive PHI.

Covered entity **must** inform the individual in advance of the approximate fee that may be charged for copies of the PHI. This includes disclosure of costs for both paper and electronic records. The following methods may be used to calculate this fee. **Actual costs; Average costs; Flat fee** for electronic copies of PHI maintained electronically. Per page fees are not allowed for records provided in digital format, ie email, thumb drive, CD.

See Excel Spreadsheet on how to determine actual and average costs. **Flat fee is set at a maximum of $6.50 to include postage.** See Notice of Charges for Medical Records to post in lobby or on web site.

A covered entity must transmit an individual’s PHI directly to another person or entity designated by the individual. The individual’s request **must** be in writing, signed by the individual, and clearly identify the designated person or entity and where to send the PHI. **Written access requests by individuals to have a copy of their PHI sent to a third party are subject to the same fee limitations in the Privacy Rule that apply to requests by individuals to have a copy of their PHI sent to themselves.** (Make sure all written requests [Medical Records Authorization Requests] have all nine elements required by the HIPAA regulations. See page 12 of HIPAA Essentials] This is true regardless of whether the access request was submitted to the covered entity by the individual directly or forwarded to the covered entity by a third party on behalf and at the direction of the individual. Where the third party is initiating a request for PHI on its own behalf, with the individual’s HIPAA authorization (or pursuant to another permissible disclosure provision in the Privacy Rule), **the access fee limitations do not apply.**

**On behalf of individual – Fee Limitations Apply.**

The HIPAA Privacy Rule provides individuals with the right to inspect their PHI held in a designated record set, either in addition to obtaining copies or in lieu thereof, and requires covered entities to arrange with the individual for a convenient time and place to inspect the PHI. There can be no charge for the patient to inspect their records nor may a covered entity charge an individual who, while inspecting her PHI, takes notes, uses a smart phone or other device to take pictures of the PHI, or uses other personal resources to capture the information. If the individual is making the copies of PHI using her own resources, the covered entity may not charge a fee for those copies, as the copying is being done by the individual and not the entity.

Find out More about a Patient’s Right to Access Protected Health Information and Make Sure Your Office Is Ready For A HIPAA Audit. Check Your Email for your OCR Audit Notification. Be Prepared, Call HITECH Associates Today at 813-892-4411.