

HOW THE HITECH ACT CAN HELP YOUR CLIENTS AND SAVE YOU THOUSANDS

Under the HITECH Act, health care providers are required to provide every patient a copy of their electronic health records, in a format of their choice, at a reasonable cost. Regulations interpreting the law define the reasonable cost to be labor costs, the costs of media or supplies (typically, a CD), and postage. Most importantly, the law allows patients to direct their health care provider to send a copy of their electronic health record to any party they designate, including their attorney.

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Before:

This itemized **PREPAYMENT** invoice reflects the charges authorized by the State of Washington for copying and releasing medical records. The requested records will be sent after we receive payment.

Reproduction Charges Include:

Media	Quantity	Flat Fee	Fee Details	Total
Paper/CD	7819	\$24.00	1 to 30 x \$1.09 = \$32.70 31 to 7819 x \$0.82 = \$6,222.98	\$6,279.68
Sub Total				\$6,279.68

Tax: 596.57
Amount Paid:
Total Due Upon Receipt of Invoice: **\$6,876.25**

Upon receipt of this letter submit payment payable to:

After:

Invoice:

This itemized **PREPAYMENT** invoice reflects the charges authorized by the State of Washington for copying and releasing medical records. The requested records will be sent after we receive payment.

Reproduction Charges Include:

Media	Quantity	Flat Fee	Fee Details	Total
Paper/CD	453	\$24.00	1 to 30 x \$1.09 = \$32.70 31 to 453 x \$0.82 = \$346.86	\$403.56
Sub Total				\$403.56

Tax:
Amount Paid:
Total Due Upon Receipt of Invoice:

\$6.50

Upon receipt of this letter submit payment payable to:

An example of savings achieved by requesting records under the HITECH Act. Flat fees have been negotiated in some areas as a result of DHHS Office of Civil Rights investigations into HITECH compliance.

THE HITECH ACT -- A Brief Overview

The Health Information Technology for Economic and Clinical Health Act or HITECH Act is a 2009 federal law encouraging the adoption of electronic health records. Passed as Title XIII of the American Recovery and Reinvestment Act of 2009 (more commonly known as the stimulus).¹ The HITECH Act has made available billions in federal funding to encourage hospitals and health care providers to adopt electronic health records (a/k/a electronic medical records).²

The bill was part of a broader effort to encourage EHR adoption. For many years, politicians and advocacy groups on each side of the aisle backed legislative efforts encouraging the adoption of EHRs. The rationale behind this push was improving patient care by reducing errors, encouraging better coordination of care, and allowing patients to take greater control over their own health care decisions.³ The overarching goal continues to be lower costs and better health outcomes for patients and society as a whole.

A note about terminology: Electronic copies of patient information are often referred to by two names as Electronic Health Records (EHR) or Electronic Medical Records (EMR). The terms refer to the same thing and can be used interchangeably. EHR appears to be the preferred term used by the Department of Health and Human Services.

¹ Health Information Technology for Economic and Clinical Health Act, Title XIII, American Recovery and Reinvestment Act of 2009, Pub.L. 111-5, 123 Stat. 115

<http://www.gpo.gov/fdsys/pkg/BILLS-111hr1enr/pdf/BILLS-111hr1enr.pdf>

See also, H.R. 1, 111th Cong., 1st Sess., Title XIII (pages 112-164)

https://www.healthit.gov/sites/default/files/hitech_act_excerpt_from_arra_with_index.pdf

² Brian Shilling, The Federal Government Has Put Billions into Promoting Electronic Health Record Use: How Is It Going? The Commonwealth Fund, June/July 2011. (online)

<http://www.commonwealthfund.org/publications/newsletters/quality-matters/2011/june-july-2011/in-focus>

³ See generally, The Benefits of EHRs, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology (online)

<https://www.healthit.gov/providers-professionals/benefits-electronic-health-records-ehrs>

HITECH ESTABLISHES YOUR CLIENT'S RIGHT TO LOW-COST E-HEALTH RECORDS

The HITECH Act establishes that *your client (and every patient)*:

1. **Has the Right to obtain a copy of their E-Health Records (EMR/EHR)...**

"Shall have the right to obtain...a copy of such information in electronic format"

AT

2. **Low-Cost...**

If the record is available in electronic form, "any fee" that a provider may impose, "shall not be greater than the entity's labor costs in responding to the request for the copy."

AND

3. **They Can Designate Records Be Sent to Their Attorney (you) ...** The patient has the right "to direct the covered entity to transmit such copy directly to an entity or person designated by the individual." This includes lawyers.

42 U.S.C. § 17935(e)—HITECH Act – Access to health information in electronic format

e) Access to certain information in electronic format

In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual-

(1) **the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format and, if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual,** provided that any such choice is clear, conspicuous, and specific; and

(2) notwithstanding paragraph (c)(4) of such section, **any fee that the covered entity may impose for providing such individual with a copy of such information** (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

KEY CHANGE: RECORDS CONTRACTORS a/k/a “BUSINESS ASSOCIATES” NOW SUBJECT TO DIRECT HHS ENFORCEMENT

Under the HITECH Act, “Business Associates” are now directly subject HIPAA regulations. A Business Associate is a person or entity who creates, receives, maintains, or transmits PHI on behalf of a covered entity, or who provides services to or for the CE involving the disclosure of PHI. *See* 45 C.F.R. § 160.103.

The new rules promulgated by HHS make clear that Business Associates are *directly liable* for violations subject to HHS enforcement and *liable in contract* (as before) to the covered entity.⁴ Moreover, the health care provider can be held liable for the actions of its contractors. *See* 45 C.F.R. §§ 160.402(c) and 164.504(e)(1). This gives each party powerful incentive to comply or enforce compliance among their contractors.

COVERED ENTITIES MUST SEND RECORDS WITHIN 30 DAYS

The 30-day deadline is controlling in Wisconsin. Under HIPAA (as amended by the HITECH Act), the Health Care Provider or their Business Associate must provide the records within 30 days. 45 C.F.R. § 164.524(b). *If the state law deadline is fewer days than the federal requirement, the state law controls.*

Some states have set shorter deadlines. *See, e.g.,* 22 Tex. Admin. Code § 165.2(b) (requiring that a health care provider turn over records within 15 days).

PREEMPTION NOT A PROBLEM IN WISCONSIN

HIPAA controls EHR requests in Wisconsin. This is no change. HIPAA preempts state law unless the state law is more stringent. *See* 42 U.S.C. § 1320(d-7)(a)(2)(B)(referencing § 264(c)(2) of HIPAA), *see also* 45 C.F.R. § 160.202 (defining terms such as stringent in the preemption context). Do note, however, that the fee schedule outlined in Wis. Stat. §146.83(3f)(b) does not apply to electronic records but *is still applicable for records not available in electronic format.*⁵

Wisconsin law specifically invokes the HIPAA framework in the areas affecting EHR requests. HIPAA sets the guideposts in Wisconsin law in two important ways. First, key terms in the Wisconsin statutes are defined with reference to the HIPAA definition. For example, Wis. Stat. § 146.816 adopts HIPAA definitions of “Covered Entities” and “Business Associates.” *See* Wis. Stat. § 146.816 (cross referencing 45 C.F.R. § 160.103). Secondly, where Wisconsin law does offer guidance, it is not specific enough to control. For example, Wis. Stat. § 146.83(1m)(b) provides only that a health care provider may charge “reasonable costs” for the provision of patient records. This law does not define the bounds of reasonable costs, nor does it establish deadlines. Because the law does not establish a statutory regime that is more stringent, HIPAA preempts any attempt to invoke a provision such as Wis. Stat. § 146.83(1m)(b) in support of higher fees for EHRs.⁶

⁴ *See* HHS Office of Civil Rights Presentation on New Rules Governing Business Associates Under HIPAA, http://www.wedi.org/forms/uploadFiles/35FE700000100.filename.7.26_Combined.pdf

⁵ *See* Wis. Stat. 146.83(3f)(b) for fees by document type and Wis. Stat. § 146.836 for applicability.

⁶ If there was Wisconsin case law defining “reasonable costs” in excess of that allowed by HIPAA, as determined by HHS rules, it too would be preempted.

As a result, the HITECH Act/HIPAA will continue controlling the bounds of “reasonable costs” and defining “covered entities and “business associates” who must provide EHRs at low cost.

WHAT YOU NEED TO DO: HAVE YOUR CLIENT SUBMIT REQUEST IN WRITING

The HITECH Act enables your client to “direct the covered entity to transmit “[a copy of their electronic health records] directly to an entity or person designated by the individual ***provided that any such choice is clear, conspicuous, and specific***[.]” 42 U.S.C. § 17935(e).

You can submit the request on your client’s behalf by following these seven steps.

THE LOW-TECH ELEMENTS OF A SUCCESSFUL HITECH REQUEST LETTER

1. On plain white paper
2. Patient’s [your client] name and address
3. Health care provider’s name and address
4. Patient name and birth date in document
5. Request documents on CD in .pdf format.
6. Request clearly: Send Records to [Attorney Name and address—do not include firm name]
7. Patient signature

ACCEPTABLE FORMATS FOR DOCUMENT PRODUCTION

1. CD (most common)
2. Email (encrypted) or unencrypted if the patient is advised of the risks and consents.⁷
3. Any electronic format agreed to by the provider and the patient, e.g., requesting download instructions.⁸

⁷ See 79 Fed. Reg. 25 (February 6, 2014) 7290 at 7302, available at

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02280.pdf>.

See also, [http://www.americanbar.org/publications/aba_health_esource/2013-](http://www.americanbar.org/publications/aba_health_esource/2013-14/may/practical_implications.html)

[14/may/practical_implications.html](http://www.americanbar.org/publications/aba_health_esource/2013-14/may/practical_implications.html) (providing a more thorough rundown of how providers may comply with HITECH).

⁸ 78 Fed. Reg. 17 (January 25, 2013) at 5632, available at

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-25/pdf/2013-01073.pdf>.

SAMPLE REQUEST LETTER #1--LIVING PATIENT

[Patient's Name and Address]

Jane Q. Client
123 Main St.
Anytown, WI

Date: October 15, 2015

Patient Records

[Health care provider's name and Address]

Re: Health Records Request

Dear Records Custodian:

I am a patient of [Health care provider's name]. My birth date is [patient's birth date]. I request copies of any and all of my medical records including, but not limited to, radiological films, billing records, and outside records. Provide the records in electronic form on CD in the Adobe Acrobat (.pdf) format.

Please send the records to [attorney's name] as follows:

[Attorney's name and address]

SIGNED: _____

[Patient Name]

Jane Q. Client

SAMPLE REQUEST LETTER #2—LIVING CLIENT

RE: Patient:
Social Security No.:
Date of Birth:
Date of Service:

Dear Sir/Madam:

Please provide me with a full and complete copy of my medical records for dates of service referenced above. ***It is specifically requested that you provide the record copies in PDF format on CD***, per the requirements of 45 C.F.R. § 164.524(c)(2)(ii), as amended effective September 23, 2013. As you know, this Federal regulation preempts Wisconsin state law, and provides, in pertinent part:

“... [I]f the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, ***the covered entity must provide the individual with access to the protected health information in the electronic form and format requested*** by the individual ...”

As I'm sure you are aware, 42 U.S.C. §17935(e)(2) and 45 C.F.R. § 164.524(c)(4) limit the cost of obtaining the records to the actual labor costs for reproducing them in the requested electronic format, the actual cost of the portable media (in this case, CD), and postage. If you would like me to bring you a cd or a flash drive to put the records on, I am willing to do so.

Thank you for your compliance with this request within 30 days of your receipt of this letter, as required by 45 C.F.R. § 164.524(b)(2)(i).

Sincerely,

SAMPLE REQUEST LETTER--DECEASED PATIENT

[Representative's name and address]

Date: October 15, 2015

[Health Care Provider's Name]

Re: Health Records Request

We are the children of [decedent's name] (deceased – Death Certificate attached) who was a resident at your facility [or was patient of] until her death on [date]. Our mother's birth date is [birth date] and his social; security number is [social security number]. We request copies of any and all of our [DECEDENT'S RELATIONSHIP] mother's medical records including, but not limited to, radiological films, billing records, and outside records. Provide the records in electronic form on CD in the Adobe Acrobat (.pdf) format.

Please transmit the records directly to [ATTORNEY NAME] as follows:

[ATTORNEY NAME and LAW FIRM ADDRESS]

[CITE LEGAL AUTHORITY FOR YOUR REPRESENTATIVE STATUS, e.g., Wis. Stat. ch. 857],
[spouse, daughter, son, etc.] of [decedent's name]

IF THE LETTER DOESN'T WORK? -TRY THIS FIRST

If you are unable to obtain the records you have requested you should first contact the health care provider and (if applicable) their records contractor. Counsel for the health care provider (covered entity in HIPAA-speak) or contractor may take steps to bring the entity into compliance without the need to file a formal complaint with the DHHS, Office of Civil Rights.

MOST COMMON VIOLATIONS

This is an anecdotal list of HIPAA/HITECH violations, it is NOT comprehensive.

Please submit your experiences with the HITECH Act to WAJ Government Affairs Director Jim Rogers, jim@wisjustice.org to allow us to follow developments in this law.

1. Overcharging
2. Requiring a HIPAA 3rd party authorization
3. Charging additional fees, e.g., retrieval fees, access fees, inventory fees
4. Violating the Deadline for producing records (30 days)
5. Charging higher fees if an attorney receives the records or claiming the attorney requires separate authorization.
6. Business Associate believing that it is not subject to HIPAA regulations
7. Limited production of records, e.g., limiting to only one request per year or capping the number of the records or allowing only one request at "low-cost"
8. Demanding additional paperwork such as hold harmless agreements.

**SAMPLE COMPLAINT LETTER TO HEALTH SYSTEM COUNSEL --
(WITH CITATIONS)**

[YOUR NAME]

[DATE]

[HEALTH SYSTEM COUNSEL]

Re: Violation of HITECH Act

[COUNSEL'S NAME]

I write to inform you that your [RECORDS CUSTODIAN] is violating my client's right to obtain her medical records at a low-cost under the HITECH Act, 42 U.S.C. § 17935(e).⁹

By letter dated [DATE], my client, [NAME], requested that all electronic records be produced in .pdf file format on compact disc (CD) for the cost of labor and of a CD. In addition, my client requested, clearly, in writing that the records be mailed to [YOUR NAME].

On [DATE], [CLIENT NAME] received a response from [RECORDS CUSTODIAN] indicating that they would not comply with my client's request. Instead of providing the records requested, the [RECORDS CUSTODIAN] requested [e.g., PREPAYMENT of \$XX for XX documents]. Page charges for a digital file that can be copied to a single CD are not reasonable cost-based fees required under the HITECH Act. I write to request that you take steps to bring your [RECORDS CUSTODIAN] compliance with this law.

The HITECH Act provides my client with a right to low-cost medical records in electronic format. The act modified HIPAA regulations limiting charges for medical records to labor-only fees. They have the right under this law to send the records to any individual they may designate in writing. Rules promulgated by the Department of Health and Human Services in 2013 clarify the scope of this law and the rights available to my client.

The fee that a covered entity may impose for providing e-health records "shall not be greater than the entity's labor costs" in responding to the request. 42 U.S.C. § 17935(e)(2). The regulations make clear that the costs are limited to labor, the cost of supplies, in this case, the cost

⁹ **42 USC § 17935(e)(emphasis added):**

(e) Access to certain information in electronic format

In applying section 164.524 of title 45, Code of Federal Regulations [HIPAA regulations], in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual--

(1) *the individual shall have a right to obtain* from such covered entity a copy of such information in an electronic format and, if the individual chooses, *to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific;* and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) *is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).*

of a CD; and postage. *See* 45 C.F.R. § 164.524(c)(4)(i)-(iii). Moreover, as a covered entity, you are required to answer requests within 30 days. 45 C.F.R. § 164.524(b)(2)(i).

The low cost provisions of the HITECH ACT apply to any individual the patient designates to receive their records. The law requires that you provide the records to “any entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific . . .” 42 U.S.C. § 17935(e)(1). This means that a patient has the right to designate an attorney or any other individual they choose.

My client need only provide a written request. The regulations clarify that the “request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.” 45 C.F.R. 164.524(c)(3)(ii). When a patient has made a request that satisfies these conditions, “the covered entity must provide the copy to the person designated by the individual.” *Id.*

(if requesting 3rd party HIPAA authorization)

There is no need to obtain a third-party HIPAA authorization to release [CLIENT’S NAME]’s records. HHS distinguishes between requests made under this section from those requiring a 3rd party HIPAA authorization. *See* 45 C.F.R. § 164.508(c). A third party HIPAA authorization is not required. *See* Fed. Reg. Vol. 78 (17), January 25, 2013, Page 5634 (at bottom)(“The final rule adopts the proposed amendment Sec. 164.524(c)(3) to expressly provide that, if requested by an individual, a covered entity must transmit the copy of protected health information directly to another person designated by the individual[.]”), *contra* 45 C.F.R. § 164.508(c)(which requires additional elements to release PHI to a third party).

My client’s letter meets all legal requirements. On [MONTH, DAY, YEAR] [CLIENT NAME] clearly requested in writing that her medical records be released to [YOUR NAME AND ADDRESS]. By law, you must provide the records at a fee no greater than your labor costs. Additional fees are allowed for the cost of media, in this case, a CD and postage. Instead, [CONTRACTOR] seeks to impose a fee of XX.

As you know, compliance with HIPAA (as amended by the HITECH Act) and regulations are enforced by Department of Health and Human Services’ Office of Civil Rights. If you do not direct your records custodian to comply with my client’s request, I will be submitting a copy of this letter along with a complaint on my client’s behalf to the Chicago regional office.

Please contact me with any questions or concerns.

Sincerely,

[YOUR NAME]
[CLIENT’S NAME, etc]

**SAMPLE COMPLAINT LETTER TO HEALTH SYSTEM --
RECORDS CONTRACTOR NOT COMPLYING WITH REQUEST--
(WITH CITATIONS)**

[YOUR NAME]

[DATE]

[HEALTH SYSTEM COUNSEL]

Re: Violation of HITECH Act

[COUNSEL'S NAME]

I write to inform you that your [CONTRACTOR] is violating my client's right to obtain her medical records at a low-cost under the HITECH Act, 42 U.S.C. § 17935(e).¹⁰

By letter dated [DATE], my client, [NAME], requested that all electronic records be produced in .pdf file format on compact disc (CD) for the cost of labor and of a CD. In addition, my client requested, clearly, in writing that the records be mailed to [YOUR NAME].

On [DATE], [CLIENT NAME] received a response from [RECORDS CUSTODIAN/ CONTRACTOR] indicating that they would not comply with my client's request. Instead of providing the records requested, the [CONTRACTOR] requested [e.g., PREPAYMENT of \$XX for XX documents]. Page charges for a digital file that can be copied to a single CD are not reasonable cost-based fees required under the HITECH Act. I write to request that you take steps to bring your [RECORDS CONTRACTOR] into compliance with this law.

The HITECH Act provides my client with a right to low-cost medical records in electronic format. The act modified HIPAA regulations limiting charges for medical records to labor-only fees. They have the right under this law to send the records to any individual they may designate in writing. Rules promulgated by the Department of Health and Human Services in 2013 clarify the scope of this law and the rights available to my client.

The fee that [CONTRACTOR] or any covered entity may impose for providing a copy of e-health records "shall not be greater than the entity's labor costs" in responding to the request. 42

¹⁰ **42 USC § 17935(e)(emphasis added):**

(e) Access to certain information in electronic format

In applying section 164.524 of title 45, Code of Federal Regulations [HIPAA regulations], in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual--

(1) *the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format and, if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific;* and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) *is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).*

U.S.C. § 17935(e)(2). The regulations make clear that the costs are limited to labor, the cost of supplies, in this case, the cost of a CD; and postage. *See* 45 C.F.R. 164.524(c)(4)(i)-(iii). Your records contractor is a “Business Associate” as defined in 45 C.F.R. § 160.103. Business associates managing records must comply with the low-cost requirements of the HITECH Act and are now subject to their own fines and enforcement actions. 45 C.F.R. §164.502(a). Moreover, covered entities and business associates are likewise required to answer requests within 30 days. 45 C.F.R. 164.524(b)(2)(i).

The low cost provisions apply to any individual the patient designates to receive their records. The law requires that your [CONTRACTOR] provide the records to “any entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific . . .” 42 U.S.C. § 17935(e)(1). This means that a patient has the right to designate an attorney or any other individual they choose.

My client need only provide a written request. The regulations clarify that the “request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.” 45 C.F.R. 164.524(c)(3)(ii). When a patient has made a request that satisfies these conditions, “the covered entity must provide the copy to the person designated by the individual.” *Id.*

(if requesting 3rd party HIPAA authorization)

There is no need to obtain a third-party HIPAA authorization to release [CLIENT’S NAME]’s records. HHS distinguishes between requests made under this section from those requiring a 3rd party HIPAA authorization. *See* 45 C.F.R. § 164.508(c), *see also* Federal Register Vol. 78 (17), January 25, 2013, Page 5634 (at bottom)(“The final rule adopts the proposed amendment Sec. 164.524(c)(3) to expressly provide that, if requested by an individual, a covered entity must transmit the copy of protected health information directly to another person designated by the individual[.]”), *contra* 45 C.F.R. § 164.508(c)(which requires additional elements to release PHI to a third party).

My client’s letter meets all legal requirements. On [MONTH, DAY, YEAR] [CLIENT NAME] clearly requested in writing that her medical records be released to [YOUR NAME AND ADDRESS]. By law, you must provide the records at a fee no greater than your labor costs. Additional fees are allowed for the cost of media, in this case, a CD and postage. Instead, [CONTRACTOR] seeks to impose a fee of XX.

As you know, compliance with HIPAA (as amended by the HITECH Act) and regulations are enforced by Department of Health and Human Services’ Office of Civil Rights. If you do not direct your records custodian [OR CONTRACTOR] to comply with my client’s request, I will be submitting a copy of this letter along with a complaint on my client’s behalf to the Chicago regional office.

Please contact me with any questions or concerns.

Sincerely,

[YOUR NAME]
[CLIENT’S NAME, etc]

**SAMPLE COMPLAINT LETTER TO NONCOMPLIANT RECORDS CONTRACTOR
(WITH CITATIONS)**

[YOUR NAME]

[DATE]

[RECORDS CONTRACTOR COUNSEL, if able to locate]

Re: Violation of HITECH Act

[COUNSEL'S NAME]

I write to inform you that [CONTRACTOR] is violating my client's right to obtain her medical records at a low-cost under the HITECH Act, 42 U.S.C. § 17935(e).¹¹

By letter dated [DATE], my client, [NAME], requested that all electronic records be produced in .pdf file format on compact disc (CD) for the cost of labor and of a CD. In addition, my client requested, clearly, in writing that the records be mailed to [YOUR NAME].

On [DATE], [CLIENT NAME] received a response from [CONTRACTOR] indicating that they would not comply with my client's request. Instead of providing the records requested, they [CONTRACTOR] requested [e.g., PREPAYMENT of \$XX for XX documents]. Page charges for a digital file that can be copied to a single CD are not reasonable cost-based fees required under the HITECH Act. I write to request that you take steps to bring your [RECORDS CUSTODIAN/CONTRACTOR] into compliance with this law.

The HITECH Act provides my client with a right to low-cost medical records in electronic format. The act modified HIPAA regulations limiting charges for medical records to cost-based fees. They have the right under this law to send the records to any individual they may designate in writing. Rules promulgated by the Department of Health and Human Services in 2013 clarify the scope of this law and the rights available to my client.

The fee that [CONTRACTOR] or any covered entity may impose for providing a copy of e-health records "shall not be greater than the entity's labor costs" in responding to the request. 42 U.S.C. § 17935(e)(2). The regulations make clear that the costs are limited to labor, the cost of

¹¹ **42 USC § 17935(e)(emphasis added):**

(e) Access to certain information in electronic format

In applying section 164.524 of title 45, Code of Federal Regulations [HIPAA regulations], in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual--

(1) *the individual shall have a right to obtain* from such covered entity a copy of such information in an electronic format and, if the individual chooses, *to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific;* and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

supplies, in this case, the cost of a CD; and postage. *See* 45 C.F.R. 164.524(c)(4)(i)-(iii). As a business associate under 45 C.F.R. § 160.103, you must comply with all provisions of this law and are now subject to fines and enforcement actions. Specifically, you are required to comply with the low-cost requirements of the HITECH Act. 45 C.F.R. §164.502(a). Moreover, you are required to answer requests within 30 days. 45 C.F.R. 164.524(b)(2)(i).

The low cost provisions apply to any individual the patient designates to receive their records. The charges must be limited not only for the patient, but also “any entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific . . .” 42 U.S.C. § 17935(e)(1). The regulations state that “request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.” 45 C.F.R. 164.524(c)(3)(ii). When a patient has made a request that satisfies these conditions, “the covered entity must provide the copy to the person designated by the individual.” *Id.* The fact that my client directed the records be sent to an attorney makes no difference.

(if requesting 3rd party HIPAA authorization)

There is no need to obtain a third-party HIPAA authorization to release [CLIENT’S NAME]’s records. HHS distinguishes between requests made under this section from those requiring a 3rd party HIPAA authorization. *See* 45 C.F.R. § 164.508(c). A third party HIPAA authorization is not required. *See* Federal Register v. 78 (17), January 25, 2013, Page 5634 (at bottom)(“The final rule adopts the proposed amendment Sec. 164.524(c)(3) to expressly provide that, if requested by an individual, a covered entity must transmit the copy of protected health information directly to another person designated by the individual[.]”), *contra* 45 C.F.R. § 164.508(c)(which requires additional elements to release PHI to a third party).

My client’s letter meets all legal requirements. On [MONTH, DAY, YEAR] [CLIENT NAME] clearly requested in writing that her medical records be released to [YOUR NAME AND ADDRESS]. By law, you must provide the records at a fee no greater than your labor costs. Additional fees are allowed for the cost of media, in this case, a CD and postage. Instead, [CONTRACTOR] seeks to impose a fee of XX.

As you know, compliance with HIPAA (as amended by the HITECH Act) and regulations are enforced by Department of Health and Human Services’ Office of Civil Rights. If you do not direct your staff to comply with my client’s request, I will be submitting a copy of this letter along with a complaint on my client’s behalf to the Chicago regional office.

Please contact me with any questions or concerns.

Sincerely,

[YOUR NAME]
[CLIENT’S NAME, etc]

NEXT STEP: FILING A COMPLAINT TO DHHS-OCR

FILING A COMPLAINT

You should always notify the health care provider first, regardless of which entity is answering your client's request. The health care provider (a "covered entity") and the records contractor (a "business associate") are bound by contract and law to comply with HIPAA and HITECH amendments. The health care provider is also vicariously liable by agency law for the violations of its records contractors. *See* 45 C.F.R. §§ 160.402(c) and 164.504(e)(1).¹²

A health care provider must take action to enforce compliance by their records contractors. Once made aware of a HITECH violation, a health care provider must take "reasonable steps to...end the violation." *See id.* If they are unsuccessful, they are expected to terminate the contract or agreement with the contractor. *Id.*

A NOTE ABOUT OCR INVESTIGATIONS

OCR INVESTIGATIONS TAKE TIME

- x Many ballpark the time needed to investigate a complaint and reach a decision at twelve to eighteen months. In some regions, DHHS has acted within three to six months. Regardless, DHHS often takes action to enforce compliance before the investigation and final decision is reached.

WHY FILING A COMPLAINT IS WORTH YOUR TIME

1. You are vindicating your client's rights
2. DHHS has been known to intervene with health care providers and health systems to encourage compliance in advance of investigatory outcomes.
 - o This can include sending staff to implement compliance policies at records contractors and with in-house records custodians.
3. Puts health care providers on clear notice they must take action to comply with your client's request.

¹²45 C.F.R. § 164.504(e)(1)(ii) Reads:

A covered entity is not in compliance [with HIPAA/HITECH], if the covered entity knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.

WHERE AND HOW TO FILE YOUR COMPLAINT

For additional Reference: <http://www.hhs.gov/ocr/privacy/hipaa/complaints/>

REQUIREMENTS – Your complaint must:

1. Be filed in writing, either [electronically via the OCR Complaint Portal](#), or by mail, fax, or [e-mail](#);
Form: <http://www.hhs.gov/ocr/privacy/hipaa/complaints/hipcomplaintpackage.pdf>
2. Name the covered entity or business associate and describe the acts or omissions you believe violated the requirements of the Privacy, Security, or Breach Notification Rules; and
3. Be filed within 180 days of when you knew that the act or omission complained of occurred. OCR may extend the 180-day period if you can show "good cause."

METHODS

1. By mail (or fax):

Region V- IL, IN, MI, MN, OH, and WI
Office for Civil Rights, DHHS
Michigan Ave. - Suite 240
Chicago, IL 60601
Phone: (312) 886-2359;
Fax: (312) 886-1807

Note: Using this option allows you to include any correspondence with the health care provider or records contractor.

2. Online Form: <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>
x Select "Privacy or Security of Health Information (HIPAA)"

3. Plain Paper (Letter, Email, Fax):

You need not use one of the official complaint forms (online or in print) to file a complaint on your client's behalf. You have the option of submitting a complaint in any format you choose.

Note: if you choose this option, you should reference the information requested on the paper form or the online complaint portal. You need to be sure to include:

- x Name and contact information
- x Name of client on whose behalf you are filing
- x Name and address of health care provider or business associate violating the HITECH Act.
- x Brief description of what happened (previous correspondence should suffice)
- x Any other relevant information



THE PROCESS WORKS -- SAMPLE HHS DECISION LETTER

DEPARTMENT OF HEALTH & HUMAN SERVICES

Voice - (206) 615-2290, (800) 362-1710
TDD - (206) 615-2296, (800) 537-7697
(FAX) - (206) 615-2297
<http://www.hhs.gov/ocr/>

OFFICE OF THE SECRETARY

Office for Civil Rights, Region X
701 Fifth Avenue, Suite 1600, MS-11
Seattle, WA 98104

Date: NOV 19 2014



Anthony Armada
Chief Executive
Swedish Health Services
747 Broadway
Seattle, WA 98122



OCR Transaction Number: [REDACTED]

Dear [REDACTED]:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), received a complaint from [REDACTED] (Complainant) alleging that Swedish Health Services (Swedish) is not in compliance with the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). Specifically, the Complainant alleged that he is the personal representative of his deceased father, [REDACTED]; on or about November 7, 2013, IOD, a business associate of Swedish, sent an invoice to Complainant for providing an electronic copy of his father's protected health information (PHI) that was not compliant with the copy fees permitted by the Privacy Rule. This allegation reflected a potential violation of 45 C.F.R. § 164.524(c)(4) (access of individuals to PHI - fees).

OCR enforces the Privacy and Security Rules and also enforces Federal civil rights laws that prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and, under certain circumstances, sex and religion.

The Privacy Rule states that an individual has the right to access his/her PHI, maintained by a covered entity in a designated record set, for as long as the PHI is maintained in the designated record set (e.g., medical or billing records). See 45 C.F.R. § 164.524(a)(1). If an individual requests an electronic copy of that PHI, except under certain circumstances, a covered entity is required to provide the individual with such electronic copy to the extent it is readily producible. See 45 C.F.R. § 164.524(c)(2)(i) and (ii). A covered entity must act on the individual's request for access no later than 30 days after it receives the request. See 45 C.F.R. § 164.524(b)(2).

The Privacy Rule permits the covered entity to impose reasonable, cost-based fees to provide individuals (or their personal representatives) with access to their PHI. **The fee may include only the cost of copying (including supplies and labor) and postage**, if the patient requests that the copy be mailed. If the patient has agreed to receive a summary or explanation of his or her protected health information, the covered entity may also charge a fee for preparation of the summary or explanation. The fee may not include costs associated with searching for and retrieving the requested information. See 45 C.F.R. § 164.524(c)(4).

SAMPLE HHS DECISION LETTER—continued

OCR Transaction Number: [REDACTED]

2

Additionally, if an individual's request for access directs the covered entity to transmit the copy of PHI directly to another person designated by the individual, the covered entity must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of PHI. See 45 C.F.R. § 164.524(c)(3)(ii).

OCR notified Swedish of this complaint on December 20, 2013. In response to this complaint, Swedish conducted a review of the correspondence between Swedish, Complainant, and Complainant's attorney and determined that Swedish had failed to provide access as required by the Privacy Rule. Swedish concluded that, due to the inclusion of an attorney's letter, IOD staff had misinterpreted the request as an attorney request, and IOD had pre-billed the attorney using the Washington State allowable fees set forth by Washington State law. The IOD "PrePay Notice" dated November 7, 2013, provided by Complainant, reflected a charge of \$624.51 for a hard copy page count of 654 pages, which included a "basic fee" of \$24, a copy charge of \$1.09 per page for pages 1 to 30, a copy of charge of \$.82 per page for pages 30 to 654, plus sales tax and shipping.

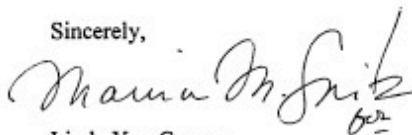
In order to resolve the matter at issue, OCR provided substantial technical assistance to Swedish. Swedish agreed to clarify its individual access policies and procedures and amend its contract with IOD, stipulating that individual patients requesting access will be charged reasonable, cost based fees. Swedish revised its individual access copy fees to a) no cost for a hard copy of up to 10 pages, b) \$.38 per page for hard copies after the first 10 pages, and c) \$6.50 for a CD containing electronic PHI, regardless of the number of pages/images on the CD. Swedish amended its contract with IOD as of June 5, 2014 to reflect its revised individual access copy fees. Swedish retrained its staff members on its revised individual access policies and procedures and provided documentation of the retraining to OCR. Additionally, OCR confirmed that Swedish provided the requested records for no charge on a CD to Complainant's attorney, per the Complainant's request.

All matters raised by this complaint at the time it was filed have now been resolved through Swedish's voluntary compliance actions. Therefore, OCR is closing this case. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions regarding this matter, please contact Evelyn Zeller, of my staff, at 206-615-3869 (Voice), 206-615-2296 (TDD). When contacting this office, please remember to include the transaction number that we have given this file.

Sincerely,



Linda Yuu Connor
Regional Manager

TABLE OF AUTHORITIES

Authority	Text	Comment
42 U.S.C. § 17935(e)	<p>e) Access to certain information in electronic format In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual-</p> <p>(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format and, if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; and</p> <p>(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).</p>	<p>HITECH's Right to Access Low Cost EHR</p>
45 C.F.R. § 160.103	<p>Business associate: (1) Except as provided in paragraph (4) of this definition, business associate means, with respect to a covered entity, a person who:</p> <p>(i) On behalf of such covered entity or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or</p> <p>(ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.</p> <p>(2) A covered entity may be a business associate of another covered entity.</p> <p>Covered entity means:</p> <p>(1) A health plan. (2) A health care clearinghouse. (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.</p>	<p>HIPAA Definitions (as amended by HITECH)</p>

<p>45 C.F.R. § 164.524(c)(2)(ii)</p>	<p>(2) <i>Form of access requested.</i></p> <p>(i) The covered entity must provide the individual with access to the protected health information in the form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the covered entity and the individual.</p> <p>(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, <u>the covered entity must provide the individual with access to the protected health information in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual.</u></p> <p>(iii) The covered entity may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:</p> <p>(A) The individual agrees in advance to such a summary or explanation; and</p> <p>(B) The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.</p>	<p>Covered Entity Must Provide Individual with Access to PHI in Form and Format Requested by Individual</p>
<p>45 C.F.R. § 164.524(c)(4)</p>	<p>(4) <i>Fees.</i> If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:</p> <p>(i) Labor for copying the protected health information requested by the individual, whether in paper or electronic form;</p> <p>(ii) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;</p> <p>(iii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and</p> <p>(iv) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(iii) of this section.</p>	<p>Cost Structure</p>
<p>78 Fed. Reg. 17 (January 25, 2013) at 5635.</p>	<p>Proposed Rule Section 164.524(c)(4) of the Privacy Rule currently permits a covered entity to impose a reasonable, cost-based fee for a copy of protected health information (or a summary or explanation of such information). However, such a fee may only include the cost of: <u>(1) The supplies for, and labor of, copying the protected health information; (2) the postage associated with mailing the protected health information, if applicable; and (3) the preparation of an explanation or summary of the protected health information, if agreed to by the individual. With respect to providing a copy (or summary or explanation) of protected health information from an EHR in electronic form, however, section 13405(e)(2) of the HITECH Act provides that a covered entity may not charge more than its labor costs in responding to the request for the copy.</u> In response to section 13405(e)(2) of the HITECH Act, we proposed to amend § 164.524(c)(4)(i) to</p>	<p>What Providers/Contractors May Charge</p>

	<p>identify separately the labor for copying protected health information, whether in paper or electronic form, as one factor that may be included in a reasonable cost-based fee.</p>	
<p>78 Fed. Reg. 17 (January 25, 2013) at 5636.</p>	<p>Response: When a State law provides a limit on the fee that a covered entity may charge for a copy of protected health information, this is relevant in determining whether a covered entity's fee is "reasonable" under § 164.524(c)(4). A covered entity's fee must be both reasonable and cost-based. For example, if a State permits a charge of 25 cents per page, but a covered entity is able to provide an electronic copy at a cost of five cents per page, then the covered entity may not charge more than five cents per page (since that is the reasonable and cost-based amount). Similarly, if a covered entity's cost is 30 cents per page but the State law limits the covered entity's charge to 25 cents per page, then the covered entity may not charge more than 25 cents per page (since charging 30 cents per page would be the cost-based amount, but would not be reasonable in light of the State law).</p>	<p>Analysis: "Cost-Based" and "Reasonable" In Light of State Laws</p>
<p>45 C.F.R. § 164.524(b)(2)(i)</p>	<p>(2) Timely action by the covered entity. (i) Except as provided in paragraph (b)(2)(ii) of this section, the covered entity must act on a request for access no later than 30 days after receipt of the request as follows. (A) If the covered entity grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, in accordance with paragraph (c) of this section. (B) If the covered entity denies the request, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d) of this section. (ii) If the covered entity is unable to take an action required by paragraph (b)(2)(i)(A) or (B) of this section within the time required by paragraph (b)(2)(i) of this section, as applicable, the covered entity may extend the time for such actions by no more than 30 days, provided that: (A) The covered entity, within the time limit set by paragraph (b)(2)(i) of this section, as applicable, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; and (B) The covered entity may have only one such extension of time for action on a request for access.</p>	<p>Records Must Be Provided in 30 Days</p>
<p>79 Fed. Reg. 25 (February 6, 2014) 7290 at 7302.</p>	<p><i>[Note: in the context of providing lab results, but the same reasoning applies].</i></p> <p>[W]e have found that there may be instances when an individual may not want to receive his or her protected health information in an encrypted format or may be unable to access the information when encrypted. In these cases, a HIPAA-covered laboratory is permitted to send the individual copies of the test reports via unencrypted email, if it advises the individual of the risks associated with unencrypted email, and, after doing so, the individual still wishes to receive his or her protected health information via unencrypted email.</p>	<p>Email Allowed, Unencrypted Acceptable, with Patient Consent</p>

<p>78 Fed. Reg. 17 (January 25, 2013) at 5634.</p>	<p>The final rule adopts the proposed amendment § 164.524(c)(3) to expressly provide that, if requested by an individual, a covered entity must transmit the copy of protected health information directly to another person designated by the individual. In contrast to other requests under § 164.524, when an individual directs the covered entity to send the copy of protected health information to another designated person, the request must be made in writing, signed by the individual, and clearly identify the designated person and where to send the copy of the protected health information. If a covered entity has decided to require all access requests in writing, the third party recipient information and signature by the individual can be included in the same written request; no additional or separate written request is required.</p>	<p>Elements of a Request Letter</p>
<p>45 C.F.R. §§ 160.402(c) and 164.504(e)(1)</p>	<p>160.402(c) <i>Violation attributed to a covered entity or business associate.</i></p> <p>(1) A covered entity is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the covered entity, including a workforce member or business associate, acting within the scope of the agency.</p> <p>(2) A business associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the business associate, including a workforce member or subcontractor, acting within the scope of the agency.</p> <p>164.504(e)(1) <i>Standard: Business associate contracts.</i></p> <p>(i) The contract or other arrangement required by § 164.502(e)(2) must meet the requirements of paragraph (e)(2), (e)(3), or (e)(5) of this section, as applicable.</p> <p>(ii) A covered entity is not in compliance with the standards in § 164.502(e) and this paragraph, if the covered entity knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.</p> <p>(iii) A business associate is not in compliance with the standards in § 164.502(e) and this paragraph, if the business associate knew of a pattern of activity or practice of a subcontractor that constituted a material breach or violation of the subcontractor's obligation under the contract or other arrangement, unless the business associate took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.</p>	<p>Health Care Provider (Covered entity) can be held liable for violations of Records Contractors.</p>

<p>42 U.S.C. § 1320(d-7)(a)(2)(B)</p>	<p>(1) General rule Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections <u>1320d-1</u> through <u>1320d-3</u> of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.</p> <p>(2) Exceptions A provision or requirement under this part, or a standard or implementation specification adopted or established under sections <u>1320d-1</u> through <u>1320d-3</u> of this title, shall not supersede a contrary provision of State law, if the provision of State law—</p> <p>(A) is a provision the Secretary determines—</p> <p>(i) is necessary—</p> <p>(I) to prevent fraud and abuse;</p> <p>(II) to ensure appropriate State regulation of insurance and health plans;</p> <p>(III) for State reporting on health care delivery or costs; or</p> <p>(IV) for other purposes; or</p> <p>(ii) addresses controlled substances; or</p> <p>(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.</p>	<p>HITECH Preempts State Law, Unless State Law More Stringent</p>
<p>45 C.F.R. § 160.202</p>	<p>Definitions. For purposes of this subpart, the following terms have the following meanings:</p> <p>...</p> <p><i>More stringent</i> means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:</p> <p>...</p> <p>(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.</p>	
<p>78 Fed. Reg. 17 (January 25, 2013) at 5632.</p>	<p><i>Comment:</i> One commenter requested clarification that this electronic access requirement preempts State laws that diminish, block, or limit individual access to their records.</p> <p><i>Response:</i> We clarify that this HIPAA electronic right of access requirement does preempt contrary State law unless such law is more stringent. In the case of right of access, more stringent means that such State law permits greater rights of access to the individual.</p>	<p>Preemption Clarified (again)</p>
<p>22 Tex. Admin. Code § 165.2(b)</p>	<p>(b) Deadline for Release of Records. The requested copies of medical and/or billing records or a summary or narrative of the records shall be furnished by the physician within 15 business days after the date of receipt of the request and reasonable fees for furnishing the information.</p>	<p>Example of State Law/Authority Setting more Stringent Requirements Than HIPAA/HITECH.</p>

Wis. Stat. § 146.816	(1)(a) "Business associate" has the meaning given in 45 C.F.R. § 160.103. (1)(b) "Covered entity" has the meaning given in 45 C.F.R. § 160.103.	Wisconsin Law Incorporating HIPAA
Wis. Stat. § 146.83(1m)(b)	(a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent. (b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.	Wisconsin Law on "Reasonable Costs" when Providing Records to another Health Care Provider
Wis. Stat. §146.83(3f)(b)	(b) Except as provided in sub. (1f), a health care provider may charge no more than the total of all of the following that apply for providing the copies requested under par. (a): <ol style="list-style-type: none"> 1. For paper copies: \$1 per page for the first 25 pages; 75 cents per page for pages 26 to 50; 50 cents per page for pages 51 to 100; and 30 cents per page for pages 101 and above. 2. For microfiche or microfilm copies, \$1.50 per page. 3. For a print of an X-ray, \$10 per image. 4. If the requester is not the patient or a person authorized by the patient, for certification of copies, a single \$8 charge. 5. If the requester is not the patient or a person authorized by the patient, a single retrieval fee of \$20 for all copies requested. 6. Actual shipping costs and any applicable taxes. <i>See also</i> , Wis. Stat. § 146.836 – EHR not included: Applicability. Sections 146.815, 146.82, 146.83(4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.	Wisconsin Statutory Fee Schedule for Paper Medical Records

APPENDIX

[DHHS OCR HIPAA Privacy Complaint Form](#)