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HIM Briefings

HIM's role in court ruling on patient-directed requests

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Over the past four years, HIM professionals, in-house attorneys, and compliance officers have struggled to mitigate issues associated with patient-directed requests (PDR) from attorneys and record retrieval companies (RRC) related to the limited fees applicable to patient access requests.

On January 23, healthcare provider organizations breathed a collective sigh of relief as a federal court issued an order that vacated the "third-party directive" within the individual right of access "insofar as it expands the HITECH Act's third-party directive beyond requests for a copy of an electronic health record with respect to [protected health information] of an individual … in an electronic format." In addition, the fee limitation set forth at 45 CFR § 164.524(c)(4) will apply only to an individual's request for access to their own records, and does not apply to an individual's request to transmit records to a third party.

Then, on January 29, Washington, D.C. US District Court Judge Amit Mehta issued a reasoned, detailed opinionto HHS for its 2013 HIPAA Right of Access rule regarding third-party requests for patient records, finding some sections of its rule to be impermissible under the Administrative Procedure Act (APA).

Judge Mehta's statement followed a lawsuit filed by CIOX Health in 2017 against HHS. CIOX's lawsuit argued that sections of the 2013 Omnibus Rule and related 2016 guidance regarding right to access and patient-directed requests under HITECH overstepped legal boundaries and that significant changes were made without regard for appropriate legislative process. Those changes extensively affected the release of information (ROI) industry in terms of privacy, financial, and legal risks.

Background

In February 2016, OCR released new guidance regarding fees that patients could be charged for their own medical records. The guidance stated that a "reasonable, cost-based fee" based on the Omnibus Rule should apply regardless of whether the request was submitted by the patient or by a third party. This inclusion, stating that it didn't matter who the third party was, paved the way for attorneys and third-party RRCs to argue they should be charged the $6.50 suggested in the guidance. Though the guidance was not promulgated to law, attorneys and RRCs used it to force organizations to follow the 2016 guidance, which allowed them to receive information from the designated record set at the nominal $6.50 rate.

The 2020 court ruling confirmed that the guidance was unlawful, meaning that requesters had been improperly enforcing the guidance to restrict fees for their own purposes. Effective immediately with the federal ruling and support of OCR, the guidance can no longer be used by attorneys or RRCs to obtain medical records at the rate designated for patient access. Patients can be charged only the nominal rate for copies of their own records that are stored in an EHR and included in the designated record set. As a result, attorneys and RRCs cannot obtain the records at the safe harbor rate. Furthermore, if a patient directs copies to be sent to a third party, the rate is governed by state guidelines—the patient rate does not apply.

Impact on HIM

For HIM professionals, the new ruling provides clarity for handling patient-directed requests according to established guidelines that safeguard patient privacy. Patients have always had the ability to authorize others to receive their PHI by completing a HIPAA-compliant authorization form.

Patient access was intended to assist the patient in their continuity of care and/or payment of a claim. It was not intended to allow attorneys or RRCs to obtain a patient's record and gain access to any or all of their healthcare information in their designated record set.

From an HIM perspective, we are better positioned to properly respond to third-party attorney requests. For example, if an attorney seeks to obtain patient information, they must specify precisely what they need in accordance with the minimum necessary as authorized by the patient. Further, the attorney must hold medical power of attorney or a fully compliant HIPAA authorization from the patient. This requirement will help eliminate practices that disregard patient privacy safeguards.

Impact on health systems

The increase in the number of attorneys trying to obtain records at the patient rate created costly administrative overhead for the healthcare industry. HIM departments carried most of the burden to validate these requests for information. However, other areas of healthcare organizations also experienced negative impacts and privacy, cost, and legal risks.

The complexity of rules governing providers and requesters led to burdensome OCR complaints by attorneys and RRCs. In our experience, we found that an attorney or RRC would often file a complaint and a request for information at the same time in anticipation of a refusal to release information. This deluge of complaints and requests caused problems for both healthcare facilities and OCR. The new ruling will help to eliminate unnecessary, erroneous OCR complaints filed by attorneys and RRCs, which will greatly reduce administrative costs for various departments responding to those complaints.

The 2016 ruling also led to exponential growth in the volume of patient-directed requests by attorneys and RRCs. Further, an increase in the page count of PHI requested was consistently noted with attorney requests. With the new ruling, we expect a decrease in the excessive number of pages as attorneys will now be charged the state rates versus the patient rate. Decreased volumes will normalize workloads, costs, and staffing—a benefit for HIM and other departments as well.

HIM plays a pivotal role

THIM professionals have long held responsibility for ensuring patient access and privacy in the compliant release of patient information. As the healthcare industry proceeds with the 2020 ruling, HIM expertise will be essential to guide proper implementation of the new legislation.

About the Authors

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