



# Your Medical Record Rights in South Dakota

(A Guide to Consumer Rights under HIPAA)

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## INTRODUCTION

Medical records are an important part of your health care. These records are a written history of your health condition and treatment. They are used by doctors, hospitals, health care clinics, and other health care professionals and facilities to treat you.

A federal law called the HIPAA Privacy Rule gives you the right to see, get a copy of, and amend (correct) your medical record by adding information to it. (HIPAA stands for the "Health Insurance Portability and Accountability Act.") South Dakota laws also give you rights with respect to your medical record.

### ABOUT THIS GUIDE

This guide is intended to help you understand how to see, get a copy of, and amend (correct) medical records from South Dakota health care providers who have to follow the HIPAA Privacy Rule. You can read guides about getting medical records from health care providers in other states at

<http://hpi.georgetown.edu/privacy/records.html>.

This guide was designed so that you can read just the parts that interest you. For example, if you are interested in how much your provider can charge you for copying your medical record, you may want to focus on that part of the guide. We urge everyone to read "Who Is Covered by These Laws?" so that you can be sure the guide applies to your provider. Some basic information is repeated throughout the guide so that it is easily available to those who are reading only certain sections.

The rules explained in this guide only apply when you ask for your own medical record or when you ask for someone else's medical record as their personal representative. These rules do not apply when you request that your health care provider give your medical record to someone else (such as another doctor or a lawyer).

This guide does not discuss mental health records or records about drug and substance abuse treatment. Section 6 of this guide lists some resources where you can find some information about these types of records.

### Words to Know

Some of the words in this guide have a special meaning. In this guide "health care providers" or "providers" means doctors, chiropractors, podiatrists, optometrists, and other health professionals, as well as hospitals, clinics, ambulatory surgery centers and other health care facilities. Section 5 explains these and other words that are helpful to know. The words explained in Section 5 are in **boldface** print the first time they appear in each section of the guide.

Rather than use the awkward phrases "he, she, or it" and "his, her, or its" this guide uses "they" and "theirs" when referring to health care providers in a general way. Examples that use "he" or "she" are meant to refer to both genders.

## **DISCLAIMER**

The authors have made every attempt to assure that the information in this guide is accurate as of the date of publication. Many areas of the law can be interpreted more than one way. The authors have tried to interpret the law in a way that is consistent with protecting health care consumer rights. Others might interpret the law in another way.

This guide is only a summary. The rights and procedures described in this guide can change depending on the circumstances. The information in this guide may not apply to your particular situation.

This guide should not be used as a substitute for legal or other expert professional advice. The authors, Georgetown University, and the National Library of Medicine specifically disclaim any personal liability, loss, or risk incurred as a consequence of the use of any information in this guide.

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## 1. OVERVIEW

Both the *HIPAA Privacy Rule* and South Dakota law give you rights with respect to your medical record. The HIPAA Privacy Rule sets standards that apply to records held by *health care providers* across the nation. South Dakota law sets standards for records held by doctors, hospitals and other health care providers within the state. Most health care providers must follow both the HIPAA Privacy Rule and South Dakota law. If a standard in South Dakota law conflicts with a standard in the HIPAA Privacy Rule, your health care provider must follow the law that is the most protective of your rights.

### SUMMARY OF YOUR RIGHTS

In South Dakota you have the right to:

- ***See and get a copy of your medical record.***

Your health care provider usually must let you see your medical record or give you a copy of it no later than 30 days after they receive your request. This right is called the *right to access* your medical record.

Your health care provider is allowed to charge you a fee for copying your record. They can also charge you the actual cost of postage if you have the copy mailed to you.

- ***Have information added to your medical record to make it more complete or accurate.***

This right is called the *right to amend* your record. In certain cases, your provider can deny your request to amend your record. If this happens, you have the right to add your own short statement to your medical record.

- ***File a complaint.***

You have the right to file a complaint with the Office for Civil Rights, U.S. Department of Health and Human Services if you believe your health care provider has violated your right to see, get a copy of, or amend your medical record. You can also file a complaint with the state agency that regulates your health care provider.

You can learn more about these rights in the following sections of guide.



## WHO HAS TO FOLLOW THESE LAWS?

Most South Dakota health care providers (such as doctors, chiropractors, podiatrists and hospitals) must follow both the HIPAA Privacy Rule and state laws that give patients rights with respect to their medical records.

There are some health care providers, however, that do *not* have to follow the HIPAA Privacy Rule. The HIPAA Privacy Rule only covers health care providers that use computers to send health information for certain administrative or financial purposes (such as filing claims for insurance).

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### *Example*

Sometimes Ashley goes to a doctor at a free clinic for medical treatment. The doctor does not accept private insurance, Medicaid, or Medicare. The doctor does not file any insurance claims. Ashley's doctor probably does not have to follow the HIPAA Privacy Rule because the doctor does not appear to send health information for the types of administrative or financial purposes that would make her a covered health care provider under the Rule.

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If you have questions about whether your health care provider must follow the federal HIPAA Privacy Rule, you can contact the Office for Civil Rights, U.S. Department of Health and Human Services (OCR), the agency that is in charge of enforcing the HIPAA Privacy Rule. Section 4 of this guide lists contact information for OCR.

### ***Are nursing homes covered by HIPAA?***

Yes. Most nursing homes are covered by the HIPAA Privacy Rule. They also have to follow other specific rules that only apply to nursing homes and long term care facilities. Because the rules for nursing homes are different than they are for other health care providers, they are not covered by this guide.

### ***What if my health care provider does not have to follow HIPAA?***

Even if your provider does *not* have to follow the HIPAA Privacy Rule, they still have to follow South Dakota laws that give you rights with respect to your medical record. Section 6 lists some resources where you can read these state laws.

This guide, however, only explains how to get your medical record from South Dakota providers who *have* to follow the HIPAA Privacy Rule and state law.



## WHAT RECORDS DO I HAVE THE RIGHT TO GET AND AMEND?

You have the right to see and get a copy of your medical record. This right often is called the *right to access* your medical record. You also have the right to have information added to your medical record to make it more complete or accurate. This right is called the *right to amend* your record. (This guide will call these rights the "right to get and amend.")

Your medical record includes such things as:

- Information that identifies you, such as your name and Social Security number.
- Information that you tell your doctor, such as:
  - Your medical history.
  - How you feel at the time of your visit.
  - Your family health history.
- The results of your examination.
- Test results.
- Treatment received in a hospital.
- Medicine prescribed.
- Notes your doctor makes about you.
- Other information about things that can affect your health or health care.

You have the right to see, get a copy of, and amend these records whether they are kept on paper, on a computer, or in other format.

### ***What happens if my medical record has information in it that came from a different health care provider?***

Generally, if your provider has the medical information that you request, they must give it to you. You have the right to get the information no matter who originally put it in the record. Your right to amend this information may be limited, though. For more information about how to amend information in your record you can read Section 3 of this guide.

### ***Do I have the right to get and amend records related to substance abuse or mental health treatment?***

Maybe. The rules for when you can get and amend your records about mental health and substance abuse treatment can be different. For example, psychotherapy notes are treated differently than other records under HIPAA. Because the rules for mental health and substance abuse records can be different they are not discussed in this guide. You can find some resources that explain your rights in these types of records in Section 6.

## WHO HAS THE RIGHT TO GET AND AMEND MY MEDICAL RECORD?



You have the right to see and get a copy of medical records that are about you. You also have the right to correct medical records that are about you by having information added to them. (This guide calls these rights the right to "get and amend" your medical record.) If there is someone who acts as your *personal representative for health care*, they usually have the right to get and amend your record on your behalf.



***Do I have the right to get and amend my minor child's medical record?***

Generally, yes. As a parent or guardian, you generally have the right to get and amend your minor child's medical record. In South Dakota, you usually have these rights when your child is younger than 18 years old.

***As a parent, do I always have the right to get and amend my child's medical record?***

No. A parent does not always have the right to get and amend a minor child's medical record. For example, if a health care provider reasonably believes that a parent is abusing or neglecting a child, the provider does not have to give the parent access to the child's medical record.

Some other situations where parents do not have the right to get and amend their child's medical records are discussed in the following questions and answers.

***Who has the right to get and amend my child's medical record once she turns 18?***

Once your child turns 18, your child has the right to see, get a copy of, and amend her own medical record. This includes getting access to records that were created when she was still a minor. After your child turns 18, you usually no longer have the right to get and amend your child's medical record just because you are her parent.

***I am under 18 and am emancipated. Who has the right to get and amend my medical record?***

In South Dakota, you are considered emancipated for purposes of health care even if you are under 18 if:

- You are or have been legally married;
- You are on active duty with any of the armed forces of the United States of America; or
- You have received a declaration of emancipation from a South Dakota court.

As an emancipated minor, you have the right to consent to your own medical treatment without having to get the permission of your parents. You also have the right to get and amend medical records that are related to this treatment. Your parents generally do not have the right to access your medical record once you are emancipated.

***I am an unemancipated minor but I can legally consent to certain kinds of medical treatment without my parents' permission. Who has the right to get and amend my records that are related to this treatment?***

It depends. In South Dakota, as an unemancipated minor you can consent to certain types of medical treatment without the permission of your parents. For example, you can consent to testing for and treatment of venereal disease without the permission of your parents. When you consent to testing or treatment for a venereal disease, you have the right to get and amend your medical record related to the test or treatment. In South Dakota, it is up to your health care provider whether your parents also have the right to get and amend these medical records.

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***Example***

Jason is sexually active and under 18. He consents to be tested for gonorrhea on his own. Jason's mother later requests a copy of his medical record. It is up to Jason's doctor, using his professional judgment, to decide whether Jason's mother should get the part of the record about Jason's gonorrhea test.

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The rules may be different when you, as a minor, obtain testing or treatment for other medical conditions (such as mental health) without parental consent. If you have questions or concerns about whether your parent will have access to your medical information, you should talk to your health care provider.

***I am listed as my mother's attorney in fact on her durable power of attorney for health care form. Do I have the right to get her medical records?***

Yes. If you are your mother's attorney in fact for health care, you generally have the right to get and correct her medical records that are relevant to making health care decisions on her behalf. You have the right of access only while the power of attorney is actually in effect.

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***Example***

Maria's mother signed a health care power of attorney form that gives Maria the power to make health care decisions if her mother is unable to make such decisions. Maria's mother was in a bad accident and is not able to make decisions about her health care. Maria now has the right to make health care decisions on her mother's behalf. She also has the right to get her mother's medical records. For example, Maria has the right to see the records about her mother's current medical condition and treatment.

Maria is curious about the time her mother had a miscarriage. Maria wants to look at these old medical records. Maria does *not* have the right to get and amend these old medical records because the records have nothing to do with her mother's current condition or treatment.

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***My mother never filled out a durable power of attorney for health care form. Do I have the right to access her medical record?***

It depends. Sometimes a patient is unable to make her own health care decisions but has not filled out a durable power of attorney for health care form. When this is the case, South Dakota law usually gives family members the right to make health care decisions on the patient's behalf. Family members have the authority to make health care decisions in the following order:

- The spouse, if not legally separated
- An adult child
- A parent
- An adult sibling
- A grandparent or an adult grandchild
- An adult aunt or uncle or an adult niece or nephew

If you have the legal right to make health care decisions on your mother's behalf, you also have the right to access her medical records.

***My father recently died. Do I have the right to get his medical record?***

It depends. You have the right to get a deceased person's medical records from a South Dakota health care provider if you are the personal representative (such as the executor or administrator) of the deceased person's estate.

If a personal representative was not appointed, surviving family members have the right of access in the following order:

- The spouse, if not legally separated at the time of death
- An adult child
- A parent
- An adult sibling
- A grandparent or an adult grandchild
- An adult aunt or uncle or adult niece or nephew



**HOW LONG DOES MY PROVIDER HAVE TO KEEP MY MEDICAL RECORD?**

State law requires many health care providers to keep your medical record for a specific period of time. For example, hospitals generally must keep medical records at least 10 years after the date of service. They generally must keep the records of minor patients at least 10 years or until the minor turns 20, whichever is later. In practice, many health care providers keep their medical records longer.

You have a right to see, get a copy of, and amend your medical record for as long as your health care provider has it.

## 2. GETTING YOUR MEDICAL RECORD

### SUMMARY

You have the right to see your medical record. You also have the right to get a copy of your medical record. These rights are often called the *right to access* your medical record.

Usually, your *health care provider* must respond to your request for your record no later than 30 days after receiving your request.

Generally, your health care provider must give you a copy in the format that you request if they are able to do so.

Your provider may charge you a reasonable cost-based fee to copy your medical record.



### HOW DO I ASK FOR MY MEDICAL RECORD?

You should ask your health care provider about their specific procedures for getting your medical record. Often, your provider has a form for requesting your medical record. You should use this form if one is available. You should be able to find some information about getting your medical record in your health care provider's *notice of privacy practices*.



#### **Can my provider require that I put my request for my medical record in writing?**

Yes. Your provider can require that your request for your medical record be in writing. Your provider must let you know that they have such a requirement.

#### **What information should I include in my request for my medical record?**

If your health care provider does not have a form for requesting your medical record, you should check to see what information they require. Generally, when you ask for your medical record, your request should include:

- The date of your request.
- Your name, address, telephone number or other contact information.
- Any previous name you may have used (such as your maiden name).
- Your date of birth or medical record number.
- Date(s) of treatment or service (such as dates you were in the hospital).
- A description of the information that you want to see or copy. This might include:
  - Whether you want the entire record or just part of the record.
  - Medical condition for which you are asking information.
  - Specific test results.
  - Whether you want X-rays or records made by heart monitors or similar medical devices.
- Whether you want to see your medical record, want a copy of your record, or would like both.

- If you are requesting the medical record of someone else as their personal representative, your relationship to the patient.

***Can my health care provider require that I include my Social Security number in my request for my medical record?***

Yes. Because some health care providers use Social Security numbers as a way to identify medical records, they may need your Social Security number to locate your medical record. There is nothing in the HIPAA Privacy Rule or the Social Security Act that prohibits a private provider from engaging in this practice.

***Do I have to choose between seeing my medical record and getting a copy of it?***

No. You have the right to do both.

***Can my health care provider require me to show some proof of who I am in order to see or get a copy of my medical record?***

Yes. Your health care provider must make sure you are the person who has the right to get the medical record before they give it to you. Your provider is allowed to choose the method for verifying your identity. For example, your provider might ask for an identification card (such as a driver's license).

If you are acting as an attorney in fact under a durable power of attorney for health care your provider may require you to show them a copy of the form. If you are requesting medical records as the personal representative of a deceased patient, you should expect to show documentation that you are the administrator or executor of the deceased's estate. Similarly, if you are requesting medical records as a relative of the patient or a deceased patient, you should expect to provide some documentation of your relationship to the patient, such as an affidavit.



**WHAT WILL HAPPEN IF MY REQUEST FOR MY MEDICAL RECORD IS ACCEPTED?**

Your health care provider will inform you if they agree to give you your medical record. If you asked to *see* your records, your health care provider must arrange a convenient time and place for you to review the record. If you have requested a *copy* of your record, your health care provider must either send it to you or arrange for you to pick up a copy.



## HOW LONG SHOULD IT TAKE TO GET MY MEDICAL RECORD?

Generally, no later than 30 days after your health care provider receives your request, they must either

- Let you see or give you a copy of your medical record *or*
- Tell you that they are denying your request for your record.

### ***Can it ever take longer?***

Yes. If your medical records are kept off site, your health care provider can take up to 60 days to respond to your request.

If your provider cannot respond in 30 days (or 60 days if your records are kept off site), they can get one 30-day extension. Your provider must give you a written explanation for the delay and tell you the date they expect to respond. It should not take more than 90 days total to get a response to your request for your record.

### ***When does the 30-day time period begin?***

The 30 days does not start until your provider *receives* your request for your medical record. If you mail your request, you should include some time for mail delivery when you compute the date you should receive your record.



## CAN MY PROVIDER CHARGE ME FOR COPYING MY MEDICAL RECORD?

Yes. Generally, health care providers may charge you a reasonable, cost-based fee for copying your medical record. The fee can include the cost of supplies and the labor for making copies. Your provider can also charge you the actual cost of postage if you have the copies sent to you.

### ***Can I be charged if I just want to look at or read my medical record?***

No. Your health care provider cannot charge you a fee if you just look at or read your medical record.



### ***Can I be charged for copies of X-rays and similar records?***

Yes. Your provider may charge you a reasonable cost-based fee for copying x-rays, fetal monitoring strips and other records not in standard paper form.

### ***Can I be charged if I want a copy of my medical record sent to another health care provider or to a lawyer?***

The procedures and fees for having a copy of your medical record sent to someone else (such as to another doctor or to a lawyer) are not covered by the HIPAA Privacy Rule. They are not discussed in this guide.



### **CAN I HAVE MY MEDICAL RECORD SENT SOMEWHERE OTHER THAN MY HOME ADDRESS?**

Yes. You can ask your health care provider to send the copy of your medical record to your regular address (such as your home) or to a different, preferred address (such as to your office or to a friend's house). As long as your request is reasonable, your provider must send your record to the place that you identify.



### **CAN I GET A PAPER, E-MAIL, OR FAX COPY?**

It depends. Generally, your health care provider must give you your medical record in the format that you request if it is not difficult to do so. For example, if you request a paper copy of your record, your provider generally must give you a paper copy.

Providers also must make sure that they send your records to you in a secure manner. Due to security concerns, many health care providers are reluctant to send copies of medical records by e-mail or fax. You should check with your provider to see whether they are willing to send you a copy by e-mail or fax and to find out their specific procedures.



### **CAN I GET A SUMMARY OR EXPLANATION OF MY MEDICAL RECORD?**

It depends. You may want just a summary of your record. You may want your provider to explain some of the information in your record. Under the HIPAA Privacy Rule, your health care provider can give a summary or explanation of your medical record if you both agree *in advance*

- That it is all right for them to give you a summary or explanation, *and*
- To the fee, if any, they want to charge for writing the summary or explanation.

If your health care provider agrees to give you a summary, they generally must give it to you no later than 30 days after they received your request. If they are unable to produce the summary in this time, they can get a 30-day extension. Sometimes it can take longer.

Your provider can charge you a reasonable fee for the actual time they spend preparing the summary or explanation.



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**Example**

Leon asks for a summary of his medical record. The record does not currently contain a summary and the doctor does not have the time or staff to prepare one. Leon's doctor is not required to prepare a summary in response to Leon's request. But the doctor must let Leon see or get a copy of his medical record.

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***I received a copy of my medical record, but I can't understand it. Doesn't my provider have to give me a copy that is in plain language that I can understand?***

No. Health care providers often use technical words or a type of medical shorthand. Providers are not required to translate this information for you or give you your medical record in a form that you can understand. If you cannot understand what is written in your medical record, you can request an explanation of your record. But your provider is not required to give you an explanation. You can find some resources that explain medical terms in Section 6 of this guide.

**CAN MY PROVIDER DENY MY REQUEST FOR MY MEDICAL RECORD?**



Yes. Your health care provider can deny your request to see or get a copy of your medical record, but only for a few reasons. For example, if your provider believes that letting you see your record might physically endanger you or another person, they can deny your request.

The rules that control whether a provider can deny your request to see or get a copy of records related to mental health or substance abuse conditions or treatment may be different and are not discussed in this guide.

***How will I know if my request for my medical record has been denied?***

Your health care provider must tell you in writing if they deny your request for your medical record. They must tell you why your request was denied. They also must tell you if you have a right to have their decision reviewed and how you can file a complaint.

Generally, your health care provider must give you this information within 30 days after receiving your request for your record.

***Can my health care provider deny my request for my medical record just because they think I might get upset if I read it?***

No. Your health care provider cannot deny you access to your record because they think the information in the record might upset you or that it might cause you mental harm. However, they can deny your request if they believe you will become upset enough to physically harm yourself or another person.



***Can my health care provider deny my request for my medical record because I have not paid my medical bill?***

No. Your provider cannot deny your request for your medical record because you have not paid your medical bill.

***My medical record contains some information that my provider is allowed to deny me access to. Does this mean that I can't get any of my medical record?***

No. Under the HIPAA Privacy Rule, your health care provider must give you as much of your medical record as possible. Your provider may remove only the information that they are allowed to refuse to give you access to.

***What if I send my request to a provider who is not the one who keeps the record I need?***

If your provider does not maintain the record that you requested, they must tell you who has the record if they know.

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#### ***Example***

Tony sends a request for his chest x-ray film to his primary care physician. Although his physician has a report of the x-ray results, he does not have the original x-ray film that Tony requested. However, the primary care physician knows that ABC Radiology took the x-ray and has the original film. When the primary care physician responds to Tony's request, the physician must inform Tony to send his request for his x-ray film to ABC Radiology.

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## **WHAT CAN I DO IF MY HEALTH CARE PROVIDER DENIES MY REQUEST FOR MY MEDICAL RECORD?**

If your health care provider denies your request for your medical record because they believe that seeing it might endanger you or another person, you have the right to have a different health care professional review their decision.

At the time your provider denies your request for your record, they must tell you in writing if you have a right to a review. They also must tell you how to ask for a review.

If you request a review, your provider must choose another licensed health care professional to review their decision. They cannot choose someone who was involved in the original decision. The reviewer makes the final decision whether you are allowed to get your medical record. Your provider must notify you in writing what the reviewer decides.

### ***Can I choose the reviewer?***

No. Your health care provider gets to choose the reviewer.

### 3. AMENDING (CORRECTING) YOUR MEDICAL RECORD

#### SUMMARY

When you read your medical record you may find something that you believe is not accurate. You might believe that important information is missing. You have the right to have information added to your medical record to make it more complete or accurate. The *HIPAA Privacy Rule* calls this right the *right to amend* your medical record.

If your *health care provider* accepts your request to amend your record, they must add the information to your record.

If your provider denies your request to amend, they must tell you. You then have the right to add a short statement to your record that explains your position.

#### ***As a minor, do I have the right to amend my medical record under the HIPAA Privacy Rule?***

Sometimes. As a minor, you usually do not have the right to amend your medical record. The right to amend (like the right of access) usually belongs to your parents.

However, if, as a minor, you legally consent to medical treatment (and the consent of your parents is not required for that treatment) you have the right to amend medical records related to that treatment.



#### **HOW DO I ASK MY HEALTH CARE PROVIDER TO AMEND MY MEDICAL RECORD?**

Before you ask your health care provider to amend your medical record, you should:

- Identify the part of your medical record that you think is inaccurate or incomplete.
- Identify the health care provider that created the information or that first put the information into your record.

You should ask your provider about their specific procedures for requesting an amendment to your medical record. Your health care provider may have a form for requesting an amendment. You should use this form if one is available. You should be able to find some information about amending your medical record in your provider's *notice of privacy practices*.



***Can my health care provider require that I put my request to amend my record in writing?***

Yes. Your health care provider is allowed to require that you put your request to amend your record in writing. They are also allowed to require that you give them a reason why you want to amend your record.

***What information must be included in my request to amend my medical record?***

If your provider does not have a form for requesting your medical record, you should check to see what information your provider requires. Generally, you may want to include the following information in your request:

- The date of your request.
- Your name, address and other information about where they can contact you.
- Your date of birth or medical record number.
- The type of information you want to amend (such as lab results).
- A description of the information that you believe is inaccurate or incomplete.
- The information that you want them to add to your record.
- The reason why you want the information added.

***Can my health care provider require that I include my Social Security number in my request to amend my medical record?***

Yes. Because some health care providers use Social Security numbers as a way to identify medical records, they may need your Social Security number to locate your medical record so that they can amend it. There is nothing in the HIPAA Privacy Rule or the Social Security Act that prohibits a private provider from engaging in this practice.



***Do I have the right to have information removed from my medical record?***

No. You do not have the right to have information that is already in your record removed or altered. You only have the right to add more information.

***I disagree with my provider's diagnosis. Can I make them change it?***

No. The right to amend your record is not supposed to be a chance to dispute a diagnosis. It is meant to give you the chance to correct your record by adding information to it.



## WHAT HAPPENS IF MY REQUEST TO AMEND MY RECORD IS ACCEPTED?

If your health care provider accepts your request to amend your medical record, they must add the new information to your record. They also must tell you in writing that your request to amend was accepted.

You might know people or organizations that should be told about the new information. You should give their names and contact information to your health care provider. Your provider must give the amended health information to the people and organizations you identify.



## HOW LONG SHOULD IT TAKE TO AMEND MY MEDICAL RECORD?

Generally, no later than 60 days after they receive your request, your health care provider must either

- Add the information to your medical record as you requested *or*
- Deny your request in writing.

### ***Can it ever take longer?***

Yes. If your health care provider is unable to act within 60 days, they can get one 30-day extension to respond. In order to get this extension, they have to give you a written explanation for the delay and tell you the date they expect to respond. Even with an extension, they shouldn't take more than 90 days to respond to your request to amend your record.

### ***When does the 60-day time period begin?***

The 60 days does not start until your health care provider *receives* your request to amend your medical record. If you mailed your request, you should make sure you include some additional time for mail delivery when you count the days for these deadlines.



## **CAN MY HEALTH CARE PROVIDER DENY MY REQUEST TO AMEND MY MEDICAL RECORD?**

Yes. There are times when your health care provider can deny your request to amend your medical record. Generally, your provider can deny your request when:

- They determine your record is accurate or complete.
- They did not create the information that you want to amend.

If your health care provider denies your request to amend your record, they must let you know in writing. Your provider also must tell you why they denied your request.

### ***The provider that created the information that I want to amend isn't around any more. Is there anything I can do?***

You can ask your current provider to amend your information. You should explain to them in as much detail as possible that the health care provider who first created the information that you want to amend is no longer available to act on your request. If your explanation is reasonable, your current provider cannot deny your request to amend just because they did not create the medical information.

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#### ***Example***

Brianna wants to amend information in her medical record that was originally put in her record by Dr. Smith. Dr. Smith has retired. Brianna asks Dr. Jones, her current doctor, to amend her medical record. She shows Dr. Jones the letter Dr. Smith sent to his patients announcing his retirement. Dr. Jones cannot refuse to amend Brianna's record just because he didn't create the information she wants to amend.

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## **WHAT CAN I DO IF MY REQUEST TO AMEND MY MEDICAL RECORD IS DENIED?**

If your request is denied, you have the right to give your health care provider a written statement that explains why you disagree with their decision. Your provider may reasonably limit the length of your statement. Your provider must make your statement part of your medical record. In the future, when your provider shares your medical information with others, your provider must also give them a copy of their denial of your request to amend and a copy of your statement of disagreement.

### ***What if my health care provider disagrees with my statement of disagreement?***

If your health care provider disagrees with your statement, they have the right to put a note in your record that says why they do not agree with you. They must give you a copy of this note.

### ***Do I have the right to have someone else review my health care provider's denial of my request to amend my records?***

No. If your health care provider denies your request to amend your medical record you do not have the right to have someone else review that decision.



## 4. ASKING QUESTIONS AND FILING COMPLAINTS

This guide is just a summary of your rights to see, get a copy of, and amend (correct) your medical record. If you have more questions or would like to file a complaint you can contact the people and organizations listed below. You can also contact professional help if necessary.



### **WHO CAN ANSWER MY QUESTIONS ABOUT GETTING AND AMENDING MY MEDICAL RECORD?**

There are a number of resources available to answer your questions about getting and amending your medical record.

#### ***Your health care provider***

Your health care provider should be able to answer many of your questions about getting and amending your medical record. Your provider's *notice of privacy practices* must contain a general description of your right to see, get a copy of, and amend your medical record. The notice also must list the name (or title) and the telephone number of a contact person who should be able to answer your questions about getting and amending your medical record. (This person often is called a privacy officer.) In addition, some providers have Web sites that list information on how to see, get a copy of and amend your medical record.

#### ***Office for Civil Rights, United States Department of Health and Human Services (OCR)***

You may be able to get answers to your questions about your rights under the HIPAA Privacy Rule from OCR, the federal agency in charge of enforcing the HIPAA Privacy Rule. OCR provides fact sheets for consumers and responses to frequently asked questions on its Website <http://www.hhs.gov/ocr/hipaa/>.

If you do not find your question answered here you can call OCR at **1-866-627-7748**. This is a toll free number. OCR requests that you read their responses to frequently asked questions before you call this number.



## **WHAT CAN I DO IF I BELIEVE MY RIGHTS TO GET AND AMEND MY MEDICAL RECORDS HAVE BEEN VIOLATED?**

Before taking any formal action, you should try to informally solve your problems getting and amending your medical record with your health care provider. If you are unable to resolve your issues informally, there are a number of possible actions you can take.

### ***You can file a complaint with your health care provider.***

You have the right, under the HIPAA Privacy Rule, to file a complaint with your health care provider. Your health care provider's notice of privacy practices must describe how to file a complaint.

Your provider cannot threaten you or do anything else to get even with you if you file a complaint.

### ***You can file a complaint with the Office for Civil Rights, Health and Human Services (OCR).***

You can get detailed information about filing a complaint with OCR at:  
<http://www.hhs.gov/ocr/privacyhowtofile.htm>.

You can file a complaint with your regional OCR office at:

Office for Civil Rights  
U.S. Department of Health and Human Services  
1961 Stout Street -- Room 1426 FOB  
Denver, CO 80294-3538  
Voice Phone (303)844-2024  
FAX (303)844-2025  
TDD (303)844-3439

You can call OCR at **1-800-368-1019** if you need help filing a complaint or have a question about the complaint form. This is a toll free call.

Your provider cannot threaten you or do anything else to get even with you if you file a complaint.

### ***You can file a complaint about a doctor of medicine or osteopathy with the South Dakota Board of Medical and Osteopathic Examiners.***

You can file a complaint about a doctor of medicine or osteopathy with the South Dakota Board of Medical and Osteopathic Examiners. You can download a complaint form and read more information about the complaint process on the Board's website at  
<http://www.state.sd.us/doh/medical/>

***You can file a complaint about a hospital or other health care facility with the South Dakota Department of Health.***

You can file a complaint against a health care facility with the South Dakota Department of Health. You can read the general directions for filing a complaint and a description of the complaint process on the Department's website at:

<http://www.state.sd.us/doh/Facility/complain.htm>

***Can I sue my health care provider for violating my rights to get and amend my medical record?***

You do not have the right to sue your health care provider in federal court (United States District Court) for violating your right to get and amend your medical record under the HIPAA Privacy Rule.

You might have the right to bring a law suit in a South Dakota court to obtain a copy of your medical record.

## 5. WORDS TO KNOW

**Health care provider or provider.** As used in this guide, "health care provider" or "provider" includes doctors, chiropractors, podiatrists, optometrists, and other health professionals, as well as hospitals, clinics, ambulatory surgery centers and other health care facilities.

**HIPAA Privacy Rule.** A set of legal rules written by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These rules set national standards that give patients the right to see, copy, and amend their own health information. They also set standards protecting the privacy of health information. The HIPAA Privacy Rule does not apply to everyone who keeps health information about you. Only health care providers (such as doctors and hospitals), health plans (such as health insurers and Medicare) and health care clearinghouses (organizations that put health information into or out of an electronic format) have to follow the HIPAA Privacy Rule. Other people (such as employers) generally do not have to follow the HIPAA Privacy Rule.

**HIPAA.** Health Insurance Portability and Accountability Act of 1996. This federal law directed the United States Department of Health and Human Services to write rules protecting the privacy of health information. The federal law leaves in place state laws that have privacy protections that are equal to or stronger than the federal law.

**Notice of Privacy Practices.** A notice that health care providers must give their patients that explains the patients' rights under the HIPAA Privacy Rule. Your provider must give you this notice when they first see you. They also must give you a copy of the notice when you ask for one. The notice of privacy practices must also explain how a provider can use health information and share it with others.

**Personal representative.** This guide uses the term "personal representative" to refer to someone who has the legal right to make health care decisions on behalf of another person.

**Right to Access.** The right to see and get a copy of your medical record.

**Right to Amend.** The right to have information added to your medical record to make it more complete or accurate. The right to amend does not mean a right to have information erased or removed.

## 6. WHERE TO FIND MORE INFORMATION

This guide only discusses how to get and amend your medical records from health care providers who have to follow the HIPAA Privacy Rule. The guide mentions some related topics without discussing them in detail. Here are some resources where you can find information about these related topics.

### **Alcohol and Drug Treatment Records**

Records related to alcohol and drug treatment may be subject to other privacy rules. You can get more information about these records at:

<http://hipaa.samhsa.gov/Part2ComparisonCleared.htm>

### **Medical Records in General**

You can read general information on your medical record rights under the HIPAA Privacy Rule, the flow of medical information, and how to create a personal medical record at <http://www.myphr.com/> a Website operated by the American Health Information Management Association, an association of professionals who manage medical records and information. Please note that this site does not discuss medical record rights that may be available under your state's laws.

### **Medical Terms**

You can find out the meaning of many medical terms and medical shorthand from the Medical Library Association's Website at:

[http://www.mlanet.org/resources/consumr\\_index.html](http://www.mlanet.org/resources/consumr_index.html)

Your library might also have books or brochures that explain medical terms.

### **Mental Health Treatment**

The HIPAA Privacy Rule treats most mental health treatment records like other medical records. However, psychotherapy notes (as defined by the HIPAA Privacy Rule) are treated differently. You can read about how these notes are treated in the *Summary of the Privacy Rule* written by the Office for Civil Rights, Dept. of Health & Human Services (OCR) at: <http://www.hhs.gov/ocr/hipaa/>

You can find information about mental health resources in South Dakota on the web site of the Dept. of Human Services, Division of Mental Health at

<http://www.state.sd.us/dhs/dmh/MentalHealthResources.htm>

## **South Dakota Medical Record Access Laws**

Some health care providers do *not* have to follow the HIPAA Privacy Rule. These providers must still follow South Dakota laws that give you the right to see and get a copy of your medical record. You can read the state statutes that give you the right of access to records on the web site of the state legislature at <http://legis.state.sd.us/statutes/StatutesTitleList.aspx>. For the statute that applies to records of doctors of medicine and osteopathy and other health care practitioners look under Title 36, Professions and Occupations, Chapter 2, Practitioners of Healing Arts In General, Section 36-12-16, Medical Records Released to Patient. To read the statute that gives you the right of access to records held by hospitals and other health care facilities look under Title 34, Public Health and Safety, Chapter 12, Regulation of Hospitals, Section 34-12-15.