

## Access to Health Records

### **Do I have a right to access my health records?**

Yes. Both the federal Health Insurance Portability and Accountability Act (HIPAA) and Nebraska law grant certain rights regarding access to health records. With a few exceptions, these include the right to review and copy your patient records and the right to authorize another individual to review these records.

### **How do I request my health records?**

Most health care providers have a records release form that can be found on their website or by calling their office. If your health care provider has a pre-written form, you should use that to request your records. If they do not have a pre-written form, you, or the individual that you have authorized, must make a written request to your health care provider.<sup>1</sup> The request should specify whether you want to review the records, be given a copy of the records, or both. If you wish to be given copies, you should specify which records you want. For example, you may wish to give specific dates to narrow down what records you wish to receive.

### **How soon can I access my health records?**

In Nebraska, you must be allowed to review the records within 10 days of your health care provider receiving your request.<sup>2</sup> You must be provided a copy of those records within 30 days of your health care provider receiving

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<sup>1</sup> Neb. Rev. Stat. §71-8403 (1)

<sup>2</sup> Neb. Rev. Stat. §71-8403(3)

the request.<sup>3</sup> You should be aware that you may be charged a fee for copying these records and for postage. This charge should be no more than \$20.00 for a handling fee and no more than \$0.50 per page for a copying fee.<sup>4</sup> A provider may also charge an amount necessary to cover the cost of labor and materials for copying an x-ray or other similar record.<sup>5</sup> A medical provider can also provide you with a summary instead of allowing you access to the records. However, this can only be done if you agree in advance to the summary and any potential fees.<sup>6</sup>

### **Can my medical provider refuse to grant me access to my health records?**

Yes. In limited circumstances, a provider may deny you access to health records. For example, a correctional institution may deny an inmate's request for health care records if there is a danger to the health, safety, security, custody, or rehabilitation of the individual requesting the records, any officer or employee of the correctional institution, other inmates, or other personnel at the correctional institution responsible for transportation.<sup>7</sup>

### **Can my mental health provider refuse to grant me access to my mental health records?**

Yes. In limited circumstances, a provider may deny you or your personal representative access to mental health records. You may be denied access if a licensed health care professional has determined, in the exercise of professional judgment, that:

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<sup>3</sup> Neb. Rev. Stat. §71-8403(2)

<sup>4</sup> Neb. Rev. Stat. §71-8404

<sup>5</sup> *Id.*

<sup>6</sup> 45 C.F.R. § 164.524(c)(2)(iii)

<sup>7</sup> 45 C.F.R. § 164.524 (a)(2)

- The access is reasonably likely to endanger the life or physical safety of you or another person;
- A personal representative has requested your records, and their access is reasonably likely to cause substantial harm to you or another person;
- The record refers to another person that is not a health care provider and access to that record is reasonably likely to cause substantial harm to that other person.<sup>8</sup>

If you are refused access based on any of the above reasons, you have the right to have that denial reviewed by a health care professional designated by the entity refusing access. This individual must not have participated in the original decision to deny you access.<sup>9</sup>

For example, your treating psychologist may deny your request for a copy of your mental health records if they believe access to those records would endanger your physical safety. However, you may ask that the treating psychologist choose another mental health practitioner to review their decision. If that mental health practitioner disagrees with the original decision, you should be granted access to your records.

Note: Psychotherapy notes are treated differently than other medical records.<sup>10</sup> Psychotherapy notes are notes made by a mental health professional during a counseling session.<sup>11</sup>

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<sup>8</sup> 45 C.F.R. § 164.524 (a)(3)

<sup>9</sup> 45 C.F.R. § 164.524 (a)(4)

<sup>10</sup> 45 C.F.R. § 164.524 (a)(1)(i)

<sup>11</sup> 45 C.F.R. § 164.501

## **What can I do if I believe that access to my medical records has been improperly denied?**

If you believe your rights to access your medical records have been violated, you may wish to:

- File a complaint with the Office for Civil Rights.
- File a complaint with the U.S. Department of Health and Human Services.
- Follow the hospital or office's internal grievance procedure.