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G98-1368 Medical Record Privacy

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Medical Record Privacy

Medical record privacy is an important issue of the 1990s. This NebGuide focuses on access to our medical records, the risks of inappropriate use of medical records, and what you as a health consumer can do should you face those risks.

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Many of us think our medical records are confidential, seen only by our doctors. The truth is, however, a number of people have access to them. The real question is whether we have **true** privacy of our medical records.

Think of all the information in your medical records. In addition to diagnostic and testing information, they contain the details of your family history, genetic testing, history of diseases and treatments, history of drug use, sexual orientation and testing for sexually transmitted diseases. Moreover, subjective remarks about your demeanor, character and mental state sometimes are included (Kolata, 1995). Finally, medications you have used, your reactions to these medications and any use of alcohol and tobacco also may be listed in your medical record (Rotenberg, 1994).

"A complete medical record may contain more intimate details about an individual than could be found in any other single document."

– Bob Gellman
U.S. House of Representatives
Staff Member

Who Has Access to My Medical Records?

Many people in and out of the health care industry have access to your medical records. In order to obtain medical care, we often must sign "blanket waiver" or "general consent" forms. Once you sign this type of waiver, you allow the health care provider to release your medical information to insurance agencies, government agencies and others (Rotenberg, 1994), but you also have the right to suppress

certain information. Keeping this in mind, following is a list of agencies and people who may have access to your medical records.

1. The **Medical Information Bureau (MIB)**, a central database of medical information and nonprofit organization, is the nation's largest insurance information-reporting agency. The MIB collects data on individuals from insurance companies and provides that information to its members. Insurance company representatives then use the information to process insurance applications. It's estimated that 15 million people are on file in the MIB's computer system. More than 750 insurance companies use the MIB to receive information about insurance applicants. The MIB releases information to help detect and deter fraud on insurers and their policyholders. The information obtained from the MIB is not supposed to be the only information insurance companies use to determine who they will approve to receive coverage (Zoll, 1996).
2. To be approved for a medical insurance policy or to obtain payment for a doctor bill, **insurance companies** require you to release your medical records. Once medical information is obtained by the insurance company, it may share it with **other insurance companies** through the Medical Information Bureau (Consumer Report, 1994).
3. **Government agencies** require your medical records to verify claims made through Medicare, Medicaid, Social Security, Disability and Workers' Compensation (Consumer Reports, 1994).
4. **Employers** also receive medical information about their employees by asking them for consent to disclose their medical records. Since a lot of employers pay for their employees' medical insurance they can require insurance companies to provide them with copies of their employees' medical records (Consumer Reports, 1994).
5. Your medical records can be subpoenaed by a **court**. Typically, if you are involved in litigation, an administrative hearing or worker's compensation hearing and your medical condition is an issue, the relevant parts of your medical record can be copied and used within the court. Moreover, handwritten doctor's notes can be subpoenaed in court without your knowledge (Rotenberg, 1994).
6. **Medical institutions (hospitals)** or **individual physicians** also have access to your medical records. This means a host of different people working in the hospital or in your doctor's office also may have access to your medical records, including nurses, consulting physicians, medical transcriptionists, typists and others. Also, the evaluation processes that determine quality of service provided by hospitals and physicians use medical records to determine the quality of service received. This type of evaluation is required for most hospitals in order for them to receive their licenses. Your identity is usually not revealed when medical practices are evaluated (Rotenberg, 1994).
7. **Direct marketers** also use your medical records when you participate in information health screening. This may include tests for blood pressure and cholesterol levels. These screenings usually are done in health fairs, shopping malls, and other nonmedical settings. The information from these screenings typically ends up in data banks of businesses that have products to sell that are related to the test (Rotenberg).

Concerns About Access to Medical Records

There is no federal law to protect the confidentiality of medical records. With the approach of health care reform and the increased computerization of patients' records, this is a growing concern. Medical

records need to be held in strict confidentiality, with information disclosed only for certain reasons such as for treatment, for bill payment, and for investigation of health care fraud or to protect the public's health (Cordes, 1997). Moreover, the Families USA Foundation (1997) states that there should be protection against improper release of medical information, which is the case in most medical clinics.

Families USA Foundation maintain that health plans should ensure the confidentiality of member or patient information. Few exceptions exist. Among them are: the release of individual patient medical information for purchasers or providers in order to determine eligibility for coverage, to administer payments, or to conduct research if the individual provides consent, or if it is required by law or court order. (Patient identifiers that could lead to violation of individual privacy and harm to patients should not be used.)

These confidentiality provisions ensure that specific individual medical information is not distributed. Also, these confidentiality restrictions would allow the consumer to review, copy and request amendments to their medical records (McBride, 1997).

As a consumer, you need to be aware of the harmful risks should your medical information be misused.

Risks:

What you as a consumer can do...

Loss of privacy due to access to your medical records

1. When you visit your doctor, be sure you disclose only information that is relevant to your health. If you want a specific health condition to be held confidential between you and your physician, take a written request to your doctor that cancels your consent to release medical information to the insurance company or to your employer for that particular visit. In addition, you should pay for the visit yourself instead of getting a reimbursement from your insurance company to make sure the information is confidential. Moreover, you may want to see a new physician and pay for that bill yourself. (Consumer Reports, 1994).

2. Ask your doctor if any part of your medical record can be accessed from other people outside of his/her office. If it can, make sure you ask the purpose of accessing your records (Rotenberg, 1994).

3. Ask your doctor to be careful when photocopying sections of your medical record for other people. People can be careless when photocopying records, copying more of your medical record than necessary (Rotenberg, 1994).

4. Ask if your doctor has a policy on the use of cordless and cellular phones and fax machines when discussing or sending medical information. These methods of

communication are not as private since they can be overheard or seen by other people (Rotenberg, 1994).

5. Before answering any health-related ad, ask how the information being requested will be used. If you question the response they give you, think twice before giving any personal information including your name. If you decide to participate, provide only the minimum information that they need (Consumer Reports, 1994).

Loss of insurance

6. Before you apply for personal health insurance, or if you have been rejected or "rated," request a copy of your report from the MIB at P.O. Box 105, Essex Station, Boston, MA 02112. You also may call MIB at (617) 426-3660 free of charge (Rotenberg, 1994).

Rates you pay for health insurance, your access to credit and admission to education institutions may be influenced.

7. When filling out an insurance application, carefully read the statement that authorizes release of your medical records. If you think the statement is too broad, make modifications and initialize any changes you made. Make sure you insert changes that set limits on the type of information that can be collected and the time period and purpose for which it can be used (Consumer Reports, 1994). For example, "I authorize my records to be released from (X clinic or doctor, hospital) for the (date of treatment) as relates to (the condition treated)" (Rotenberg, 1994).

8. If you have any questions after you have received notice from an insurance company about coverage, ask the company for a written explanation of its decision about your coverage, and have it specify where it received your medical information (Rotenberg, 1994).

9. If your doctor needs to send your medical records to another party, such as your insurance company, ask to view your records for accuracy (Consumer Reports, 1994).

10. It also is important to check your medical records for accuracy in various areas, including your family and personal histories. Make sure you were not unfairly denied insurance benefits (Miller, 1995).

Loss of employment

11. Ask about your company's policies on privacy of employee medical records. If your company uses an employee assistance program, ask the health care provider

under what circumstances your medical records are available to your employer (Consumer Reports, 1994).

Improper treatment

12. Inspect your medical records for accuracy. You can do this by contacting the medical records department of your health care provider and asking about its procedure for obtaining a copy of your records. If the company will not release your records, ask for a written letter of denial. Remember that your medical records should not contain any personal criticism or offhand comment. The only information that should be in your file are facts about you as a patient. Any conclusions by your doctor that may not be true should not be included in your medical records.

You may be reluctant to obtain medical care.

In Nebraska, patients do have access to their medical records. To obtain records, you must be 19 years old. If you are a minor, you must have your parent's signature on the release of records form. There is a charge to release your records, but if you are sending your records to another doctor for follow-up care, there is no charge (Miller, 1995). This is no clear-cut issue, however. Be assertive and ask questions.

Your financial well-being can be threatened.
(Kolata, 1995 and Rotenberg, 1994).

13. Still another suggestion for you as a consumer of health services: *Be informed about the diagnosis and options when you are asked to consent to any medical procedures.* Make sure you understand the role of the physician and others who are involved in your treatment (Miller, 1995). For example, ask your doctor or other physicians questions on his/her role as a physician.

Today another area of concern about access to medical records is the *continued computerization of patient records*. More people are able to gain access to medical records through the computer, which increases the possibility of mistakes or other problems such as misuse or leaks of data (Consumer Reports, 1994).

A bill titled *The Medical Records Confidentiality Act* would create uniform federal rules for the disclosure of health information. This bill (S. 1360) was introduced in the Senate in 1995 by Sens. Robert Bennett and Patrick Leahy. The Medical Records Confidentiality Act would specify who may have access to medical records and under what circumstances they may view them. Also, this bill would require researchers to have their projects approved by an institution review board before they would be able to have access to medical records. Most public research institutions already require such

"Medical record privacy is the most important ... and most complex ... privacy issue of the 1990s."

– Marc Rotenberg
Director, *Electronic Privacy Information Center*

provisions.

Experts support the Medical Records Confidentiality Act. They believe that establishment of a basic national standard of protection will provide clear guidance and significant incentives for the fair treatment of personal information by those in the health care field. In addition, there will be specific penalties for misuse (Health Care in Transition Action Plan, 1997). Since this bill has not yet passed, **consumers need to be aware of what they themselves can do to help protect the privacy of their medical records.**

Although there is debate over the future of the health care industry, it's widely agreed that addressing privacy and confidentiality of health records is an important part of designing the health care system. These issues currently are being debated by federal and state policymakers. If you have an opinion or concern, contact your legislator.

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