PRACTICE FAQS

- How much can I charge for copying a patient's records? Please click here to see a breakdown of the fee. If you have further questions, please contact Steve Johnson at sjohnson@medchi.org.

- Can I charge a lawyer's office which has subpoenaed medical records the medical record copying fee? Yes, please see MD. Annot. Code, Health-General 4-304(c)(5), available online by clicking here.

- How long do I have to maintain records in my practice? Please click here.

- Where do I go to file a complaint about a hospital, a member of another health occupation, or a health insurer?

    - A hospital? Contact Office of Health Care Quality at 877-402-8218 or click here.
    - A member of another health occupation? See list of boards by clicking here.
    - A health insurer? Please click here.

- Do I need to provide an interpreter for a hearing impaired or a foreign language speaking patient? Practically speaking, with regard to hearing impaired patients, practices are required to make a reasonabl e accommodation to patient disabilities. It is NOT considered an unreasonable accommodation if the cost of the interpreter exceeds the reimbursement for the visit. The Department of Justice has issued guidance stating that a practice may not charge a patient the interpreter fee even if the patient cancels the appointment without notice. A practice may charge a missed appointment fee but it must be a uniform charge applied to all patients.

  Offering to communicate by writing or through a family member are not considered satisfactory solutions under the ADA regulations. Those regulations note that a family member or friend "may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret 'effectively, accurately, and impartially." The Department of Health and Human Services also notes that, because American Sign Language is a language distinct from English, using different structure, grammar and syntax, "it is as much a foreign language to English speaking persons as is French or German. Conversely, English is equally foreign to most deaf persons who rely on ASL for communication." Consequently, an offer to communicate by writing with a patient does not meet the requirements of the ADA in the view of regulatory authorities.

  With respect to foreign language speaking patients, private physician practices are not required to accommodate foreign language speaking patients unless the practice receives federal funds. Receipt of Medicare Part B payments for treating patients is not considered federal funding for this purpose; however, Medicaid and CHIP providers, Medicare Part A providers, and organizations offering Medicare Part C and Part D Medicare Advantage Plans and Prescription Drug Plans may need to provide language assistance services, such as interpreters and translated documents. Please click here for more information.

  Other areas where accommodations may need to be provided are wheelchair accessibility, visual impairment, and mentally challenged patients.

The Disabled Access Tax Credit may be available to help defray the cost incurred in providing access. Physicians interested in taking this credit should consult with their tax professional or the IRS. Please click here for more information.

- Can you help me find a physician? To find a physician in our database, please click here, or contact MedChi at 1-800-492-1056.

- Is there a proper way to terminate the doctor-patient relationship? Once a physician takes an action towards treating a patient the doctor- patient relationship is created. The physician should continue to provide services as long as the patient requires them or until the patient is properly referred or terminated. A physician may choose, for whatever reason, to terminate the relationship with a patient. However, a physician may not terminate patient care if to do so would deprive the patient of needed care. Should termination become an issue under circumstances of immediate critical care, ongoing care must be obtained prior to terminating the patient.

  A physician cannot withdraw from a case without notifying the patient of the withdrawal in writing (preferably sent certified mail). The letter should state that the physician will no longer treat the patient, provide ways to find a new physician, and instruct the patient on how to request a copy of any medical records.

  The physician must provide reasonable notice so that the patient may secure other medical attention if desired. Proper notice requires the letter to be sent in a manner that allows a patient sufficient time to locate another physician. For example, up to four weeks in an urban or suburban location or four to six weeks in a rural area is considered sufficient notice to a patient. To view some letter templates, please click here.

- What information can I disclose about a patient who is a minor? There are special requirements for the release of medical information for patients under eighteen. Both state and federal law must be considered when determining when a minor can consent to treatment and who has access to the records of a minor.

  <u>After the patient has turned 18, a parent no longer has the right to access their medical records, even those that concern treatment that was provided before the patient turned 18.</u>

  - HIPAA

  HIPAA does not supersede state laws that provide stronger privacy protections than those under HIPAA. CMS provides three situations where a parent wouldn't have access to the records of their minor child under federal HIPAA guidelines.

    - When the minor is the one who consents to care and the consent of the parent is not required under State or other applicable law.
    - When the minor obtains care at the direction of a court or a person appointed by the court.
    - When and to the extent that, the parent agrees that the minor and the health care provider may have a confidential relationship.

  In terms of consent for treatment HIPAA considers the parent of an unemancipated minor to be their personal representative and vests the parent, guardian, or other person acting in

loco parentis with legal authority to make health care decisions on behalf of the minor child.

- When the three circumstances above are not present defer to state law.

- When is a minor considered to have the same capacity as an adult to consent to medical treatment? Maryland Health-General §20-102 et seq. identify the following circumstances in which minors may consent to medical treatment as adults:

    - When the minor is married or the parent of a child.
    - In an emergency situation if it is determined that the life or health of the minor would be affected adversely by delaying treatment to obtain consent.
    - When the minor seeks treatment or advice about drug abuse, contraception other than sterilization, alcoholism, venereal disease, or pregnancy. However, regarding drug abuse the consent authority of a minor doesn't extend to refusing to participate in a drug/alcohol abuse treatment program their parent has consented to.
    - When it is necessary for a physical examination to treat injuries or obtain evidence from an alleged rape or sexual offense.
    - When a minor 16 years or older seeks consultation, diagnosis, and treatment of a mental or emotional disorder. In these cases, however, the custodian, guardian, or parent of the minor is not liable for the cost of this consultation, diagnosis, or treatment unless their consent has been obtained.

- What may a physician disclose to a custodian, guardian, or parent?

    - A physician may give a parent, guardian, custodian, or representative of a minor appointed by a court, information about treatment needed by the minor or provided to the minor, except information about an abortion (Abortion is treated separately). Where any of the above exceptions are met and the minor may consent to medical treatment as an adult, disclosing information to a parent or guardian is within the discretion of the attending physician. (MD Health-General §4-301).
    - A parent's authority to receive medical information regarding their child can only be limited by a court order or valid separation agreement. If a parent or other person asserts that this is the case, the physician's office should review a copy of the order before denying access to the minor's information and, ideally, should notify the parent whose access is being questioned.
    - It is important to note that once a minor turns eighteen a parent no longer has the right to information in their child's medical record. This includes information that the parent formerly had access to and events that occurred when the patient was a minor.

- What are the parental notification requirements in cases of a minor seeking an abortion? Maryland Health-General §20-103 states that a physician may not perform an abortion on an unmarried minor without first giving notice to a parent or guardian, except under the following circumstances:

    - When the minor does not live with a parent or guardian and a reasonable effort to give notice to a parent or guardian is unsuccessful.

- Or, when in the professional judgment of the physician one of the following is true

  - Such notification may lead to physical or emotional abuse of the minor.
  - The minor is mature and capable of giving informed consent.
  - Notification would not be in the best interest of the minor.

- These situations should be considered and documented with the utmost care. A physician, or an individual under the direction of a physician, who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent. (MD Health- General §20-102 (e))

- What recourse do patients have when an insurance provider refuses to pay? In 1998, the Maryland General Assembly passed the "Appeals and Grievance Law" (Health General 19-705.2 and Commercial Law Articles 12-4A-04 and 13-4A-02) to assist patients in appealing adverse decisions made by their insurance companies. The law utilizes two different state agencies to assist patients when they feel they have been denied coverage for needed medical care. Most of the cases that are referred to these agencies are decided in favor of the patient.

  The Appeals and Grievance Law was passed in response to concerns expressed by the physician community and the public that necessary medical services were being denied. Under the law, carriers must provide their members with a written copy of an adverse decision within five days of its being made. The decision must clearly state the exact factual basis for the carrier's decision, including the specific criteria the company used in making its decision. Unless the complaint is deemed to be an emergency, the member (patient) must first go through the insurance company's internal grievance process. Patients may utilize the Health Education and Advocacy Unit of the Maryland Attorney General's Office to assist them in filing this grievance with the carrier. The number to call for this assistance is 1-877-261-8807.

  If the insurance carrier still refuses to pay for the medical care, the patient may then file an appeal with the Maryland Insurance Administration (MIA). The number to call to file an appeal with the MIA is 1-800-492-6116.

- How can I use the Maryland Insurance Administration and the legal system to get insurance carriers to make timely payments? Contact the Law & Advocacy Department at MedChi.

- Where can I get the employment posters required by law for my office? View Agencies and Requirements' Chart

- What is a valid subpoena for medical information? Maryland law requires that the following notice (or a notice substantially similar) accompany any subpoena issued by a private party requiring disclosure of medical information. The notice must be sent to the patient at least thirty days prior to the subpoena being sent to the physician. Subpoenas issued by governmental agencies, such as the Board of Physicians or a police department are not covered by this requirement.

SAMPLE NOTICE

[Identification of court]
Plaintiffs [Name of Plaintiff(s)]
v.
Defendants [Name of Defendant(s)]
Case number: _____
[The text of the subpoena goes here]

Notice to [patient name]
In compliance with § 4-306 of the Health-General Article, Annotated Code of Maryland, take note that medical records regarding [patient name], have been subpoenaed from [name and address of health care provider] pursuant to the attached subpoena and § 4-306 of the Health-General Article, Annotated Code of Maryland. This subpoena _____does, _____does not [one should be marked] seek production of mental health records. Please examine these papers carefully. If you have any objection to the production of these documents, you must file a motion for a protective order or a motion to quash the subpoena issued for these documents under Maryland Rules 2-403 and 2-510 no later than thirty (30) days from the date this notice is mailed. For example, a protective order may be granted if the records are not relevant to the issues in this case, the request unduly invades your privacy, or causes you specific harm. Also attached to this form is a copy of the subpoena duces tecum issued for these records.

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