



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
Office of Health Care Quality
Spring Grove Center • Bland Bryant Building
55 Wade Avenue • Catonsville, Maryland 21228-4663

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

TO: Nursing Home Administrators

FROM: Patricia Tomsko Nay, M.D. *Nay, M.D.*
Executive Director, Office of Health Care Quality

DATE: December 23, 2014

RE: Requests for Records and Required Action by February 2, 2015

This transmittal clarifies requirements for the provision of resident records kept by the facility and the release of records to a resident of a nursing home or a resident's legal representative. State requirements are located in the Code of Maryland Regulations (COMAR) at 10.07.09.08 (13) and (14).

Federal requirements are located in Title 42, Code of Federal Regulations, §483.10(b)(2). The Office of Health Care Quality recognizes the importance of this issue and supports a resident's right to view or obtain copies of the records.

Both state and federal regulations require that a resident, or his or her legal representative, be provided access to view all records pertaining to him or herself, within 24 hours of an **oral or written** request (excluding weekends and holidays observed by the facility). A "legal representative" is any person authorized by law to view the resident's records. "Records" includes all records pertaining to the resident, including trust fund ledgers pertinent to the resident and contracts between the resident and the facility. Residents or their legal representative should be provided an area in the facility that provides privacy during their review of the records. The facility staff should not coerce, threaten, or intimidate a resident or their legal representative who is reviewing their record.

Federal regulations require that a provider must provide the resident with access to the protected health information in the form or format requested by the individual, if it is readily producible in such form or format. Copies of the record shall be provided to the resident or legal representative within two working days of an oral or written request.

Facilities may charge a fee for copying of the records or providing electronic copies (i.e., cost of DVD or flash drive). The fee should not exceed the community standard, such as, the amount charged per copy by organizations such as the public library, the Post Office, or a commercial copy center. Additional fees for locating the records or typing forms or envelopes may not be assessed. If an individual who is enrolled in the Maryland Medical Assistance Program requests a copy of their **medical** records, the fee shall not exceed \$20 for each 100 pages or portion of 100 pages copied. Note that this applies only to medical records and not to other types of documents. In all cases, the facility is not obliged to provide records until the lawfully authorized fees are paid, but the facility may voluntarily do so.

Facilities may **not** require the resident or legal representative to complete forms or documents in order to view or obtain copies of the resident's record. Facilities should verify that a legal representative has the necessary authority to review records, but this must be done timely and should not be used to delay access to medical records. If the requestor is not authorized to see the resident's records, there is no right being violated by not providing the records. As a courtesy, the facility should let the requestor know the basis for the denial of the request. The facility proceeds at its own peril if it simply assumes the requestor is not authorized to view the records and does not produce them. The facility has the right to conserve staff time until the requestor has provided sufficient proof of their right of access when such right is seriously in doubt. If it was clear that the person was authorized to view the records, delaying access to the medical records is not permissible.

By February 2, 2015, all facilities must submit their policy and procedures for resident access to and requests for medical records to OHCQ. Please forward your policies and procedures to Margie Heald, Deputy Director of Federal Programs, at Margie.heald@maryland.gov. Facilities failing to submit their policies and procedures by February 2, 2015 will be surveyed for compliance with this regulation.

Identified non-compliance with State regulations, regarding residents' rights to accessing and/or securing a copy of their medical record, will result in the citation of the violation, and may result in the imposition of a civil money penalty up to \$10,000.

OHCQ is partnering with stakeholder associations to conduct educational programs on records requests. Any questions regarding this transmittal should be directed to Margie Heald, Deputy Director of Federal Programs, Margie.heald@maryland.gov or 410-402-8101.