

Potential Response for Members Getting Questions Regarding Affordable Care Act's Risk Adjustment Formulas

Many members have received letters from insurance plans or third parties saying they are requesting patient records on behalf of insurance plans.

Reason for the Letters. These letters are being sent so that insurers can comply with the requirements of the Patient Protection and Affordable Care Act (ACA). The ACA was concerned that insurers would cherry pick healthy individuals in an effort to avoid the cost of long term and serious illness. To offset that possibility, the ACA contains a "Risk Adjustment" formula that requires carriers who have fewer seriously ill members to make payments that will go to those carriers that have more seriously ill members so that in the end, the risk of loss due to covering serious illness is equitably shared by the insurance industry and there will be no benefit to discriminating against more complex individuals.

Why Patient Records Are Requested. To determine which carriers get paid and which will pay, the law requires carriers to report claims data to the state or to the Department of Health and Human Services. The carriers are responsible for ensuring that the data reported is accurate and therefore are conducting audits of their own data, which was originally derived from claims submission forms. Insurers have a record of the numbers of patients they paid claims for with X disease and that will be compared to how many consumers with X disease other insurers report. To ensure that the reporting is accurate, some insurers have hired audit firms that will review patient files to make certain that coding was correct and that, in the case of multiple diseases, all have been reported so that their company will accurately be placed in the correct grouping of those who pay because they have fewer seriously ill members or those who receive payment because they have more. These letters seek patient files in order to audit the data the insurance company has for the patients and make sure that their reports to the government will be accurate.

Your Responsibility. The answer to the question of whether the treating physician has to provide the data is different depending on the physician's status with the insurer and the patient's agreement with the insurer:

1. **Participating physicians.** Physicians who participate in the insurance network that is asking for the information need to check their contract to determine what documentation they are required to provide. It is likely that the agreement requires the physician to provide documentation when requested, but this could vary from contract to contract. In this situation, HIPAA allows a physician to provide the information to the insurance plan or to its "business associate."
2. **Non-participating physicians.** Physicians who do not participate in the insurer's network and have no contractual relationship with the insurer probably have no legal duty to the insurer and no obligation to respond to the insurer's request for information. Your patient, on the other hand, may have a duty to provide the information to the insurer under the terms of his/her plan and this may vary from plan to plan. Several options are reasonable in this circumstance.
 - a. Inform the patient of the request and reason therefore, and if the patient consents to providing the information, cooperate with the request.
 - b. Inform the entity making the request that they need to first secure the patient's permission for you to provide the records.
 - c. Wait for further communication from the requesting entity and then let them know that they need to contact the patient first for consent.
 - d. Wait for further communication from the requesting entity and ask them to provide in writing the statute, regulation, or contract that they believe requires you to provide the records.

Produce Records Only to a HIPAA Covered Entity. If the letter you received is not from the insurer, but instead comes from a company claiming to be a business associate of the insurer, you should check with the insurer before providing records to confirm that the requesting company is actually the insurer's business associate. If the letter you received comes directly from the insurer with whom you contract and it represents that a third party is a business associate under HIPAA, it should be fine to provide the records to that third party.