

**MYTH:** Patients may not restrict the release of their health information to their health insurance plans.

**FACT:** Patients may restrict the disclosure of their information to their health insurance plans if they pay in full out-of-pocket for the health care services received.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule regulates the use and disclosure of patients' protected health information (PHI) by covered entities and business associates that hold such data. The rule permits the sharing of information without patient consent with other covered entities (such as insurance plans) for the purposes of treatment, payment and health care operations (TPO). Patients have asked how to keep information from being reported to their insurance plans, perhaps for privacy reasons or because, prior to health reform, insurance plans could use that information to adjust premiums in the future.

The Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH)<sup>1</sup> answered this question by changing how HIPAA restricts the release of PHI for TPO in certain circumstances. Before HITECH, covered entities were not required to agree to any patient-requested restrictions regarding the release of PHI for TPO purposes, such as payment. Now, however, providers and other covered entities must comply with an individual's request to restrict the use or disclosure of his or her PHI regarding a health care service if the patient pays the provider for the service in full, out-of-pocket, unless disclosure is required by law. In other words, if the provider has no need to file a claim with an insurance plan to get reimbursed for a service, then the patient is entitled to request that the PHI related to this service not be released to

the insurance plan, and the provider must honor this request unless required by law to disclose it.<sup>2</sup>

HHS also clarified several related issues in January 2013 regulations:

- Providers need not keep separate medical records to segregate patient-restricted PHI, but will need a system to identify protected health information that has been restricted by the individual to ensure that it is not inadvertently disclosed.
- If services are bundled, the provider has the right to inform the patient that such services cannot be unbundled for the purpose of restricting information, but that the entire bundle can be paid for out-of-pocket and thus restricted.
- A provider who discloses restricted PHI to a health plan will be subject to criminal penalties, civil monetary penalties, or corrective actions.

**For More Information:**

- [Learn](#) about state and federal laws related to privacy.
- [Read](#) our overview of HIPAA and related resources.

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<sup>1</sup> 42 U.S.C. § 17930, et seq.

<sup>2</sup> 78 Fed. Reg. 5566 (January 25, 2013) (to be codified at 45 CFR pts 160 and 164).