



## HEFTY MEDICAL RECORD RELEASE FINES: WHAT YOU DIDN'T KNOW COULD COST YOU

I bet you thought you knew how to process medical record requests. However, the Office for Civil Rights (OCR) takes patient complaints and any deviation from the laws/regulations very seriously. Investigations and settlements are on the rise following the U.S. Department of Health and Human Services (HHS) OCR announcement of their Right of Access Initiative which began in September 2019. The OCR continues to promise to aggressively enforce the rights of patients to timely receive copies of their personal health care records without being overcharged by physician practices. Complaints of non-compliance with the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (*45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the HIPAA Privacy and Security Rules*) are thoroughly investigated to determine if a patient was given proper access to medical records. The HIPAA Privacy Rule provides patients, with limited exceptions, the legal right to access and receive copies of their medical records when requested.

The OCR's commitment to enforcing patient rights is reflected in a statement by OCR Director Roger Severino, "OCR created the Right of Access Initiative to address the many instances where patients have not been given timely access to their medical records. Health care providers, large and small, must ensure that individuals get timely access to their health records, and for a reasonable cost-based fee." Therefore, don't be lulled into thinking that the OCR is only targeting bigger organizations or groups.

There are many examples of physician practices of all sizes paying hefty fines. Settlements ranged up to \$200,000 for potential violations of HIPAA's Right of Access provision. As a cautionary tale, on December 28, 2020, the OCR announced its 13th Settlement with [Elite Primary Care](#) for \$36,000 since the inception of its Right of Access Initiative. Elite Primary Care, located in Georgia, consisted of three primary care physicians and four non-physician providers (NPPs). Upon reviewing the facts of the patient's complaint alleging failure to provide timely access to medical records, the OCR provided the practice with technical assistance. The complaint was originally filed on April 22, 2019.

After a second complaint on October 9, 2019, the practice finally sent the records to the patient's new healthcare provider on November 21, 2019 and to the patient on May 8, 2020. Consequently, Elite Primary Care not only had to pay the fine, but also entered into a corrective action plan (CAP) and a two-year monitoring agreement. At a minimum, Elite Primary Care needed to have an updated written records release policy which included handling of requests from authorized representatives, HIPAA training for all staff, and a protocol for sanctioning staff who fail to comply with medical records policies and procedures.

## Conventus Recommendations

OCR fines can have a significant impact on a practice's bottom line, but can be avoided with simple risk reduction strategies:

1. Follow the NJ Board of Medical Examiners (NJBME) requirements for release of medical records (i.e. within 30 days of the request).
2. Develop and implement a formal written medical records release policy and procedure for your office
3. Train involved staff on medical records release policies, as well as HIPAA and NJ regulations
4. Develop adequate protocols and forms for Notice of Privacy Practices.

For Conventus members, The [Knowledge Center](#) on the Conventus website contains a sample *Notice of Privacy Practices and Acknowledgment*, information on NJBME medical record release requirements, and much more. In addition, we welcome members to contact the Practice Resources Department with any questions at 877-444-0484, x7466.