

Managing Professional Risks

ADA Guidelines for Practice Success™ (GPS™)

ADA FAQ on Releasing Dental Records

Is it better to send original records instead of copies?

In this age of electronic data keeping, the concept of sending original vs. copies of dental records could soon be a moot point.

That said, practices that maintain paper records should almost never release the original records. Copies of the record, and any associated radiographs, will be sufficient in most cases. One example of a situation where original records may be required is when the request is made by a government agency with proper authority, such as a court order, or in some states, a subpoena. If this situation occurs, make copies of the original records for your office files.

When sending dental records, be certain to make a notation in the patient's chart that details when, where and to whom the copies were sent. Send the records via a delivery or courier service that allows you to track the status of the delivery and provides proof of delivery. Keep any proof of delivery documents in the chart. Be aware that HIPAA covered dental practices may be required to email unencrypted patient information if the patient has requested that the information be sent via unencrypted email and the practice has warned the patient of the potential risks associated with transferring this electronic information without the preferred safety measures.

Can information in a dental record ever be disclosed without a patient's consent?

While uncommon, there are some situations where disclosure without consent may be permitted. Examples of those situations may (depending on a number of fact-specific circumstances) include:

- Defense of a claim challenging the dentist's professional competence
- Claim for payment of fees
- Third party payer relating to fees or services furnished
- Court order to a police or federal agency as part of a criminal investigation
- Identify a deceased individual
- Report a legal violation of another healthcare professional if the dentist reasonably believes it is necessary to disclose the information to comply with Public Health Code

Under HIPAA, covered dental practices may transfer records for certain purposes without the patient's explicit permission. For example, a covered dental practice may share records with other healthcare providers for treatment purposes. Also, covered entity dental practices may share portions of the patient records as needed to obtain payment for their services. However, with certain exceptions, such disclosures must be limited to "minimum necessary" amount of information for the intended purpose (i.e., obtain payment).

Dental practices are considered covered entities if they transmit electronic "covered transactions," such as electronic claims, to dental plans. It's also possible to become a covered entity by contracting with an outside service, such as a clearinghouse, to submit electronic covered transactions on behalf of the dental practice. More information on covered entities is available in the ADA Guidelines for Practice Success™ (GPS™) module on [Managing the Regulatory Environment](#) section on the Office for Civil Rights. See [The Privacy Rule](#) and the ADA [Tip Sheet on Certain Provisions of the HIPAA Privacy Rule](#) articles for more information.

HIPAA regulations (and possibly state laws) may not require an authorization to release a patient's record if the release is in response to a valid subpoena or court order. Because these situations are complicated and require careful analysis, check with qualified legal counsel about what is required.

You may want to consider using the ADA [Sample Request for Access form](#), courtesy of the [ADA Complete HIPAA Compliance Kit](#), for situations when the patient is requesting the release of his/her dental records.

Additional considerations:

- ✓ It's a good idea to have a policy regarding who has the authority to release patient records. All staff members should be aware that patient information should never be disseminated without the dentist's knowledge and approval. It's also a good idea to check with your attorney to ensure that your policy keeps the practice legally compliant and minimizes any potential risk.

Resources:

- Articles from the ADA Guidelines for Practice Success™ (GPS™) module on [Managing the Regulatory Environment](#)
 - [The Privacy Rule](#)
 - ADA [Tip Sheet on Certain Provisions of the HIPAA Privacy Rule](#)
- ADA [Sample Request for Access](#), courtesy of the [ADA Complete HIPAA Compliance Kit](#)

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