

ILLINOIS STATE MEDICAL SOCIETY

**Resolution 08.2022-10
(A-23)**

Introduced by: Howard Axe, MD, ISMS Member

Subject: Care Partner Access to Medical Records

Referred to: Council on Medical Service

1 Whereas, many people manage their health with the help of others including
2 family members and friends, who are often referred to as informal care partners (or
3 caregivers), and the role of these care partners can include arranging and attending
4 medical appointments, participating in medical decision-making, coordinating services
5 and addressing various patient needs; and

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7 Whereas, despite the vital role played by care partners, they are often unable to
8 access health information in the electronic health record that is necessary to coordinate
9 and manage care; and

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11 Whereas, one study revealed that only two thirds of the U.S. hospitals surveyed
12 offered adult patients the option of granting portal access to a care partner, and among
13 hospitals that did, the process for obtaining proxy credentials was often difficult and
14 time consuming; and

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16 Whereas, shared access to a patient’s medical portal can improve patient and
17 family satisfaction with care, improve agreement with goals of care and treatment
18 decisions, care partner confidence in managing care and can help reduce care partner
19 burden; and

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21 Whereas, few healthcare organizations have a convenient and straightforward
22 procedure for granting proxy access, and even when EHR vendors offer mechanisms for
23 access, healthcare organizations appear to give little thought to the information needs of
24 this group; and

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26 Whereas, using secure patient portals to link care partners to the health care team
27 should be a priority for health care organizations; therefore, be it

28 RESOLVED, that the Illinois State Medical Society (ISMS) should advocate that
29 EHR vendors offer simplified procedures for granting proxy access to care partners (or
30 caregivers) to the electronic health record, including online registration with multifactor
31 authentication to promote security, rather than requiring in person registration; and be it
32 further

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34 RESOLVED, that the ISMS should advocate that vendors should develop a
35 simple mechanism for noting and displaying care partner names and contact information
36 in the EHR, along with privacy settings that allow patients to grant proxy access to
37 selected portions of their records, including easy to understand information on use of
38 this information and a user friendly consent mechanism; and be it further

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40 RESOLVED, that the ISMS submit this resolution to the American Medical
41 Association (AMA) for advocacy on this issue at the national level; and be it further

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43 RESOLVED, that ISMS, along with the American Medical Association (AMA)
44 support and encourage Congress to modernize HIPAA (Health Insurance Portability and
45 Accountability Act) laws to ensure that HIPAA rules for preserving the privacy of
46 patient and associated data also cover third party applications' access to EHRs.

Fiscal Note:

None

Existing ISMS policy related to this issue:

Communications received in confidence by physicians from patients are privileged: the privilege is that of the patient and the physician is the guardian of the privilege and must not betray it. Current day social values dictate that privileged communication must be continued in accomplishment of the treatment of human illness. Section IV of the ISMS Code of Medical Ethics states that: "A physician shall respect the rights of patients... and shall safeguard patient confidences within the constraints of the law." The Illinois State Medical Society reaffirms its belief in this principle and supports activities to guarantee continuation of privacy, while recognizing the need for collection of statistical data and enforcement activities in the public good. ISMS supports the concept that access to individual identifiable employee medical records by employers or government agencies, except as required by law, is contrary to traditional and legal medical practice, in conflict with the patients' best interest, and inimical to public policy. (HOD 1988; Last BOT Review 2011)

Board of Trustees approved legislation to address access to medical records by patients from medical groups, clinics and other health care facilities and entities. (BOT 2002-OCT)

Patient care records contain privileged information of confidential nature. Such records are the property of the hospital, clinic or physician. Information contained therein is held in trust by the holder. In the case of hospital records, patients, patients' attorneys or patients' succeeding physician, upon written patient authorization, have the right of access to hospital records, the ability to review and the right to copy or receive copies. Hospitalized patients may be afforded access to their records upon discharge but not during hospitalization. This access is not afforded in case of psychiatric illness. In the case of nonhospital records, patients' attorney or succeeding physician, but not patients themselves, upon presentation of written patient authorization, have the right of access to said records, with the ability to review and the right to copy and receive copies. Upon receipt of proper, written authorization from the patient, a copy, abstract or summary shall be provided, as required, to legally authorized recipients of such record. Patient records are utilized by official committees of organized medical staffs to accomplish scientific review, peer review or other patient care improvement. Reports and proceedings of such committees are confidential and shall not be disclosed to any person outside the purview of such committees. ISMS will take all appropriate action to preserve the confidentiality of records and activities of medical staff committees. Pursuant to a subpoena for records, a physician must respond in some acceptable way. If the document called for violates the physician-patient privilege, e.g., psychiatric medical record requests, then the physician must file written objections with the court or request that the patient or the patient's counsel do so. It is recommended that the physician obtain a consent form from a patient prior to turning over medical information. Usually, when a patient puts his/her physical condition at issue by filing suit, his/her medical records, which are otherwise confidential, become subject to discovery, pursuant to the patient's own consent. When a physician receives a subpoena for original records, as long as a document or record can be authenticated by testimony or a notarized statement attesting to the authenticity of the copies, it is acceptable to submit photocopies of medical records, as opposed to originals. When a physician receives a court order, copies of the medical record may generally be released. However, there may be circumstances where original records are mandated. In such a case the physician should keep a copy of the medical record and number the pages of the original record before release so that they may be counted when the original is returned. A reasonable charge for record copying service may be made. (HOD 1994; Last BOT Review 2010)

Relevant AMA Policy

H-315.983 Patient Privacy and Confidentiality

1. Our AMA affirms the following key principles that should be consistently implemented to evaluate any proposal regarding patient privacy and the confidentiality of medical information: (a) That there exists a basic right of patients to privacy of their medical information and records, and that this right should be explicitly acknowledged; (b) That patients' privacy should be honored unless waived by the patient in a meaningful way or in rare instances when strong countervailing interests in public health or safety justify invasions of patient privacy or breaches of confidentiality, and then only when such invasions or breaches are subject to stringent safeguards enforced by appropriate standards of accountability...and (e) That the Health Insurance Portability and Accountability Act of 1996 (HIPAA) be the minimal standard for protecting clinician-patient privilege, regardless of where care is received.

...5. The fundamental values and duties that guide the safekeeping of medical information should remain constant in this era of computerization. Whether they are in computerized or paper form, it is critical that medical information be accurate, secure, and free from unauthorized access and improper use.

H-315.990 Confidentiality of Computerized Patient Records

The AMA (1) reaffirms the importance of confidentiality of patient records regardless of the form in which they are stored...