

Access to Medical Records in California Nursing Homes

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Residents of nursing homes and their families have the right to access the resident's medical records.ⁱ Facilities and health care providers must provide medical records to the resident or family member within a short period of time, as specified by law. Also, residents and appropriate third parties have the right to make copies of the records.

Residents Have the Right to Inspect Their Own Medical Records.

If residents want to look at any of their records in a nursing home, including medical or financial records, the facility must provide them for inspection within 24 hours of an oral or written request.ⁱⁱ Weekend and holiday hours are not counted toward the 24-hour requirement.

Example: A resident asks the nursing home to let her see her medical records on a Friday afternoon. Since weekend hours are not counted toward the 24-hour limit, the nursing home has until Monday afternoon of the following week to show the medical records to her.

Residents Have the Right to Copies of Their Own Medical Records.

Residents also hold the right to obtain copies of their medical records. Once the resident asks for a copy of all or part of his or her medical records, the facility has up to two business days to provide the resident with a copy of the records. The resident is responsible for the cost in making these copies, which cannot exceed twenty-five cents (\$0.25) per page or fifty cents (\$0.50) per page copied from microfilm, in addition to any reasonable clerical costs.ⁱⁱⁱ

Example: A resident asks his nursing home for a copy of his medical records to take to a new physician. The resident's records are a total of 30 pages, and facility charges ten cents (\$0.10) per page, so the resident pays \$3.00 for the copied records.

Authorized Third Parties May Have Access to a Resident's Medical Records.

A resident's representative has the same access to the resident's medical records as the resident does. According to the California Health and Safety Code^{iv}, a resident's representative can be 1) the parent or guardian of a minor resident; 2) the conservator of an adult resident; 3) an agent under a power of attorney for the resident's health care decisions,^v or 4) a beneficiary of an inheritance, will, or trust^{vi}. A representative may also be a family member who is making health care decisions on behalf of an impaired resident.^{vii}

Residents may also authorize third parties to access records, usually by signing a release form. Authorized third parties or resident representatives have a right to review the resident's records within 24 hours, weekend and holiday hours excluded. They also have a right to copies of these medical records within two working days and cannot be charged more than twenty-five cents per page or fifty cents per page copied from microfilm.

Accessing Records of a Deceased Resident.

A third party "beneficiary" of a resident has the right to access a deceased resident's medical records.^{viii} A beneficiary is either someone to whom the deceased resident transferred land or property at death, had a right to resident's property at death, or a legal heir. The executor or administrator of a deceased resident's estate also has the right to access the resident's medical records.^{ix}

Problems with Accessing Medical Records.

Sometimes, residents and their representatives seeking access to records may face delays from the nursing home. Often, facilities will state that some person or entity must approve a record request before records can be released. Regardless, nursing homes who force a resident or representative to wait over 24 hours to see medical records or two working days to receive copies of the records have violated the law.

Similarly, denying a resident or representative access to medical records or receipt of copies is illegal. Nursing homes who outright refuse to provide records to a resident representative often cite laws regarding health information disclosure. If a representative has proper standing or authorization from the resident, the facility must provide access.

The federal Health Insurance Portability and Accountability Act ("HIPAA")^x and California Medical Information Act ("CMIA")^{xi} were both passed to prevent disclosure of patient records to inappropriate parties. Under HIPAA, a third party must be a personal representative, or there must be written consent from the patient to give the third party authority – to have access to the patient records. Under HIPAA, a personal representative is someone authorized under state law to make medical decisions on behalf of the patient. Here, the same people would likely qualify as personal representatives as under state law.

What May a Resident/Representative Do if Denied Access to Medical Records?

All requests for medical records should be made in writing if possible. If a nursing home fails to make medical records available as the law requires, the resident or representative should file a complaint with the Department of Public Health (for more information on filing a complaint, see CANHR's Fact Sheet "How to File a Complaint"). If that fails, the resident or representative may file a lawsuit against the nursing home, either in small claims^{xii} or with the assistance of an attorney. The facility may be subject to all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce the right to records.^{xiii}

Residents Have the Right to Amend Their Records.

Under federal law, residents or their representatives have the right to request their nursing home to amend inaccurate information that appears in their records.¹⁴ The nursing home has 60 days to respond to the request. If the nursing home denies the request, it must provide a written denial detailing the reasons

and a notice of the resident's right to file a disagreement and to request that the original amendment request and disagreement be included in the resident's records.

Under state law, any patient has the right to have a written addendum of up to 250 words (per disputed item) included in their records to correct inaccuracies or to address incomplete items. The provider may not deny the request unless the addendum contains defamatory or otherwise unlawful language.¹⁵

ⁱ Most rules about access to records in this Fact Sheet are specific to nursing homes only. Some state laws, such as Health & Safety Code §§ 123100-123149.5 apply to all health care facilities, including hospitals.

ⁱⁱ 42 C.F.R. § 483.10(b)(2)

ⁱⁱⁱ Cal. Health and Safety Code § 123110(b)

^{iv} Cal. Health & Safety Code § 123105(e)

^v Cal. Probate Code § 4607(a)

^{vi} Cal. Probate Code § 24

^{vii} Cal. Health & Safety Code § 1599.3; 22 Cal. Code Regs. § 72527(c)

^{viii} Cal. Health & Safety Code § 123105(e); Cal. Probate Code § 24

^{ix} Cal. Probate Code § 58

^x *Health Insurance Portability and Accountability Act of 1996*, 104th Congress (1996)

<http://aspe.hhs.gov/admsimp/pl104191.htm>

^{xi} *California Medical Information Act*, Cal. Civ. Code 56-56.36 (2006), <https://www.privacyrights.org/fs/fsC1/CA-medical-privacy-basics#California-laws-medical-information>

^{xii} CANHR has a small claims guide for nursing home residents. http://www.canhr.org/publications/Consumer_Pubs.html

^{xiii} Cal. Evidence Code § 1158

¹⁴ 45 C.F.R. § 164.526

¹⁵ Cal. Health and Safety Code § 123111

SAMPLE LETTER TO REQUEST RECORDS

Date

Name of Nursing Home
Address

Re: Request for Records

Dear Sir or Madam:

I am [*select the applicable option*] a resident / former resident / legal representative of [*resident name*]. I would like a copy of my / resident's name complete medical / financial records since his / her admission to [*facility name*]. I would like the copies sent to me by [*insert deadline – must give at least two business days*].

This request is made pursuant to Title 42 of the Code of Federal Regulations, Section 483.10(b) and [*if request is made as legal representative*] California Health & Safety Code Section 1599.3 and Title 22 of the California Code of Regulations, Section 72527(c).

[*If applicable*] I am enclosing an authorization for [*resident's name*] health information signed by [*resident's name*].

If you have any questions or concerns regarding the foregoing request, please let me know. Thank you for your anticipated attention to this request.

Sincerely,

[*Signature and Printed Name*]

SAMPLE LETTER TO REQUEST RECORDS OF DECEASED RESIDENT

Date

Name of Nursing Home
Address

Re: Request for Records

Dear Sir or Madam:

I am [*select the applicable option*] a beneficiary / administrator of the estate of [*resident name*], who is recently deceased. A copy of [*resident's name*] death certificate and the documents demonstrating my status related to his / her estate are enclosed. I would like a copy of [*resident's name*] complete medical / financial records during his / her stay at [*facility name*]. I would like the copies sent to me by [*insert deadline – must give at least two business days*].

This request is made pursuant to California Health & Safety Code Section 123105(e) and Probate Code Sections 24 and 58.

If you have any questions or concerns regarding the foregoing request, please let me know. Thank you for your anticipated attention to this request.

Sincerely,

[*Signature and Printed Name*]