

Oral Surgery Coding & Reimbursement Alert

Patient Records: Get a Hold on Handling Subpoenas Demanding Access to Patient Info

Valuable tip: You do not have to provide access unless you get a judge's decree.

In a past issue of the Oral Surgery Coding and Reimbursement Alert, you would have got information about how to handle a situation when a patient has requested you to provide access to his/ her medical records.

Problem: What should a medical practice do if a court order or subpoena is issued for the patient's medical records? It's a question we put to **Jim Sheldon-Dean**, principal and director of compliance services for Lewis Creek Systems, LLC, in Charlotte, Vt.

Here's what he had to say.

"First," says Sheldon-Dean, "if what you get is a valid court order, you must obey." "However, you may only disclose the information specifically described in the order," adds **Kent Moore**, senior strategist for physician payment at the American Academy of Family Physicians.

It would also be good practice to inform the patient when you release his information, Sheldon-Dean says, even though the Health Insurance Portability and Accountability Act (HIPAA) does not specifically require you to contact him in most such cases.

There are exceptions, however.

In some cases, a court might subpoena information that requires patient consent, Sheldon-Dean says. This might occur "in lawsuits that involve patient information. But in those cases, the patient has a right to be notified and object to the disclosure."

A subpoena issued by someone other than a judge, such as a court clerk or an attorney in a case, is different from a court order. "If you are a HIPAA-covered provider, you may disclose information to a party issuing a subpoena only if the notification requirements of the Privacy Rule are met," Moore notes. Before responding to the subpoena, you should receive evidence that there were reasonable efforts to:

- Notify the person who is the subject of the information about the request, so the person has a chance to object to the disclosure, or

Seek a qualified protective order for the information from the court.

Advice: Make every effort to inform the patient if you release his information under subpoena, unless you are constricted for some legal reason. If you are unsure about your practice's legal and/or HIPAA responsibilities when you receive patient information subpoenas, consult a healthcare attorney.

Resource: For more information, check this link at <http://www.hhs.gov/hipaa/for-individuals/court-orders-subpoenas/index.html>.

