



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Voice - (800) 368-1019

TDD - (800) 537-7697

FAX - (415) 437-8329

<http://www.hhs.gov/ocr/>

Office for Civil Rights, Pacific Region

90 7th Street, Suite 4-100

San Francisco, CA 94103

Sent via Email to: [REDACTED]

September 8, 2021

Ms. Melissa [REDACTED]
[REDACTED]

Re: OCR Transaction Number: [REDACTED]

[REDACTED] Melissa [REDACTED] vs Baze Chiropractic

Dear Ms. [REDACTED]

On May 24, 2021, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), received your complaint alleging that Baze Chiropractic, PLLC (Baze), the covered entity, has violated 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 Privacy and Security Rules). Specifically, you allege that on multiple occasions you have requested your medical records, however, Baze has failed to adequately respond to your requests. This allegation could reflect a violation of 45 C.F.R. § 164.524.

Thank you for bringing this matter to OCR's attention. Your complaint is an integral part of OCR's enforcement efforts.

OCR enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rules.

The Privacy Rule provides that an individual or an individual's personal representative (generally, a person with authority under State law to make health care decisions for the individual) has the right to access the individual's protected health information (PHI), maintained by a covered entity in a designated record set, for as long as the PHI is maintained in the designated record set (e.g., medical or billing records). 45 C.F.R. § 164.502(g) and 164.524 (a)(1). A covered entity must act on the request for access no later than 30 days after receipt of such a request, or provide the individual a written statement within 30 days explaining the reason for the delay and the date by which the covered entity will complete its action on the request, which may be no more than 60 days after the receipt of the original request. 45 C.F.R. § 164.524(b)(2).

An individual also has a right to direct the covered entity to transmit PHI about the individual in an electronic health record (EHR) directly to another designated person or entity in an electronic format. An EHR is an electronic record of health-related information on an individual that is

created, gathered, managed, and consulted by authorized health care clinicians and staff.¹ The reasonable, cost-based fee limitation that applies to the individual's right to obtain a copy of PHI does not apply to an individual's request to transmit PHI about the individual in an EHR directly to another designated person or entity in an electronic format.²

Individuals' rights under the HIPAA Privacy Rule to access PHI about themselves extends to PHI in a designated record set maintained by a business associate on behalf of a covered entity. Thus, if an individual submits a request for access to PHI, the covered entity is responsible for providing the individual with access not only to the PHI it holds but also to the PHI held by one or more of its business associates. However, if the same PHI that is the subject of an access request is maintained in both the designated record set of the covered entity and the designated record set of the business associate, the PHI need only be produced once in response to the request for access. *See* 45 C.F.R. § 164.524(c)(1).

With respect to PHI in a designated record set maintained by a business associate, the business associate agreement between the covered entity and the business associate will govern whether the business associate will provide access directly to the individual or will provide the PHI that is the subject of the individual's access request to the covered entity for the covered entity to then provide access to the individual. However, regardless of how and to what extent a business associate supports or fulfills a covered entity's obligation to provide access to an individual, a request for access still must be acted upon within 30 days (or 60 days if an extension is applicable) of receipt of the request by either the covered entity, or by a business associate if the request was made directly to the business associate because the covered entity instructed individuals through its notice of privacy practices (or otherwise) to submit access requests directly to the business associate.

An individual's personal representative (generally, a person with authority under State law to make health care decisions for the individual) has the right both to receive a copy of PHI about the individual in the designated record set(s) maintained by a covered entity and its business associates, and to direct the covered entity, or its business associate if the covered entity instructed individuals through its notice of privacy practices (or otherwise) to submit access requests directly to the business associate, to transmit a copy of the PHI to another person or entity, upon request, consistent with the scope of such representation and the requirements of 45 C.F.R. § 164.524. *See* 45 C.F.R. § 164.502(g). The same requirements for fulfilling an individual's request (e.g., with respect to timeliness, form and format, bases for denial, fee limitations, etc.) also apply to requests made by an individual's personal representative.

The Privacy Rule permits a covered entity to impose a reasonable, cost-based fee to provide the individual or the individual's personal representative with a copy of the individual's PHI (or an agreed to summary or explanation of the PHI). The fee may include only the cost of: (1) labor for copying the PHI requested by the individual, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive) if the individual requests that the electronic copy be provided on portable media; (3) labor to prepare an explanation or summary of the PHI, if the individual both chooses to receive an explanation or summary and agrees to the fee that may be charged, and (4) postage, when the individual requests that the copy, or the summary or explanation, be mailed. *See* 45 C.F.R. § 164.524(c)(4). The fee may not include costs associated with verification; documentation; searching for and retrieving the PHI; maintaining systems; recouping capital for data access, storage, or infrastructure; or other costs not listed above

¹ See Health Information Technology for Economic and Clinical Health Act (HITECH), Pub. L. 111-5, 123 Stat. 226, 259, section 13400 (5) (definition of "electronic health record"), (Feb. 17, 2009), codified at 42 U.S.C. 17921.

² *Ciox Health v. Azar, et al*, No. 18-cv-00040 (D.D.C. January 23, 2020).

even if such costs are authorized by State law. Some methods that may be used to calculate this fee are actual costs, average costs, and a flat fee for electronic copies of PHI maintained electronically provided the fee does not exceed 6.50, inclusive of all labor, supplies, and any applicable postage. Furthermore, while the Privacy Rule permits the limited fee described above, covered entities are encouraged to provide individuals who request access to their information with copies of their PHI free of charge, especially where the financial situation of an individual requesting access would make it difficult or impossible for the individual to afford the fee.

Finally, a covered entity may not withhold or deny an individual access to his PHI on the grounds that the individual has not paid the bill for health care services which the covered entity provided to the individual.

We have carefully reviewed your complaint against Baze and have determined to resolve this matter informally through the provision of technical assistance to Baze. If you continue to experience the issues you described in your complaint, notify OCR by filing a new complaint and include the above OCR Transaction Number: [REDACTED]. You may find instructions on how to file a complaint in writing or online at <http://www.hhs.gov/hipaa/filing-a-complaint/index.html>. Should OCR receive a similar allegation of noncompliance against Baze in the future, OCR may initiate a formal investigation of that matter.

For your informational purposes, OCR encourages you to review its technical assistance materials regarding individuals' right to access their protected health information under 45 C.F.R. § 164.524. Those materials are located at OCR's website at: <http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>.

Based on the foregoing, OCR is closing this case without further action, effective the date of this letter. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

If you have any questions regarding this matter, please contact OCR at (800) 368-1019 (Voice) or (800) 537-7697 (TDD).

Sincerely,



Michael Leoz
Regional Manager

Enclosure: Individual's Right to Access Medical Records

INDIVIDUAL'S RIGHT TO ACCESS MEDICAL RECORDS

The Privacy Rule provides that an individual has a right of access to inspect and obtain a copy of protected health information (PHI) about the individual in a designated record set, for as long as the PHI is maintained in the designated record set. 45 C.F.R. § 164.524 (a)(1).

The covered entity must permit the individual such access, and the covered entity may require the individual to make the request for such access in writing, provided the covered entity informs the individual of such a requirement. 45 C.F.R. § 164.524 (b)(1).

Generally, the covered entity must act on the individual's request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524 (b)(2)(i).

When an individual requests copies of his/her PHI, the Privacy Rule permits a covered entity to impose a reasonable cost-based fee for those copies, provided the fee includes only the cost of: 1) copying, including the cost of supplies for and labor of copying, the PHI requested by the individual; and 2) postage, when the individual has requested the copy be mailed. 45 C.F.R. § 164.524 (c)(4).

Pursuant to 45 C.F.R. § 164.502 (g)(1), a covered entity must treat an individual's personal representative as the individual for purposes of the Privacy Rule. That is, an individual's personal representative has a right of access to inspect and obtain a copy of the individual's PHI in a designated record set, for as long as the PHI is maintained in the designated record set.

- For adults or emancipated minors, a personal representative is a person who has the authority to make decisions related to health care for the adult or emancipated minor. 45 C.F.R. § 164.502 (g)(2).
- For unemancipated minors, a personal representative is a parent, guardian, or other person acting *in loco parentis* who has the authority to make decisions related to health care for the unemancipated minor. 45 C.F.R. § 164.502 (g)(3).
- For deceased individuals, a personal representative is an executor, administrator, or other person who has the authority to act on behalf of the deceased individual or the deceased individual's estate. 45 C.F.R. § 164.502 (g)(4).

Covered entities may not deny access based on an individual's failure to pay a bill and covered entities may not require the payment of a bill as a condition for providing access.