



HIPAA Authorized Requests After *Bocage v. Acton Corporation*

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The February 25, 2016 Office of Civil Rights (OCR) guidance on patient access to medical records was supposed to provide some clarification to health care providers and their vendors regarding access to medical records and the applicable fees. However, in many respects the guidance has raised more questions and created more confusion than clarity.

For example, one of the most common issues involves distinguishing a patient directed request from a patient attorney request and the fees applicable to both. As of February 15, 2018, there is some helpful insight from the United States District Court for the Northern District of Alabama.

The case is *Bocage v. Acton Corporation*, Case No. 2:17-cv-01201-RDP (N.D. Ala. Filed Feb. 15, 2018) and it clarifies this important issue. In *Bocage*, patients' attorneys requested medical records utilizing a law firm request letter coupled with an HIPAA authorization. The defendants responded to the requests with the records and charged a "search and retrieval fee" which providers are expressly prohibited from charging patients under HIPAA/HITECH. The plaintiffs argued that their requests were patient requests and they were entitled to the HIPAA/HITECH fee standards. The defense argued that the law firm submitted request letter and authorization were evidence that the patient was simply authorizing the law firm to obtain a copy rather than the patient requesting a copy.

The court, relied on the February 25, 2016 guidance which states in relevant part, "***Where the third party is initiating a request for PHI on its own behalf, with the individual's HIPAA authorization, the access fee limitations do not apply.***" See *Individuals' Rights under HIPAA to Access Their Health Information* 45 CFR § 164.524, U.S. Department of Health & Human Services (Feb. 25, 2016), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

Ultimately, the court held that "a legal representative who requests an individual's protected health information (and is not a personal representative of the individual) is not entitled to the fee limitations imposed under HIPAA by 45 C.F.R. § 164.524(c)(4)."

With *Bocage*, health care providers have a United States District Court ruling stating that attorney requests for records utilizing an HIPAA authorization are not subject to the HIPAA/HITECH patient fee schedule.

To learn more about HIPAA authorizations and patient privacy, read the AHIOS article "[Top Seven Ways Patient Records are Accessed by Unauthorized Parties](#)" and view these AHIOS videos: "[Understanding The Release of Information Process](#)" and "[Investments in Patient Privacy For the Secure Release of Records.](#)"