

FAQ for Billing – How much information can a biller leave on an answering machine when calling for address or insurance updates?

Because the biller cannot know for sure who will listen to the message, even when calling a telephone number provided by the patient, it is wise to leave the minimum amount of information necessary to accomplish the reason for the call. Various legal concerns, including the HIPAA Privacy and Security rules, state confidentiality and privacy laws and debt collection statutes and regulations can be implicated and should be taken into account.

A bare bones message may contain little or no revealing information, and still accomplish the task.

EXAMPLE 1: *“This message is for [patient]. We are calling to verify your current mailing address (or insurance information) in order to bill for recent medical services you received. Please contact us at xxx-xxxx during office hours.”*

Here is another message scenario which gives minimal information.

EXAMPLE 2: *“This is Medical Billing Office calling for [patient]. We need to contact you for updated/corrected mailing address (or insurance information). Please call us at xxx-xxxx at your earliest convenience.”*

Various factors should be considered in deciding how to draft scripts or instructions for your staff regarding outbound messages.

- What is the purpose of the call/message?
- Who is the provider/client? Are they well-known in the community?
- Do they practice in a sensitive specialty (family planning, mental health, etc.)?
- Is there a reason you would need to disclose the client identity (or other detailed information) at all?
- What would be the risk if someone other than the patient or a close family member heard the message?

If additional information would be helpful and would not unnecessarily reveal PHI or sensitive information, it can also be included in the message.

EXAMPLE 3: *“This message is for [patient]. I am calling for the billing office at [General Hospital Radiology Group]. Please contact our office to update your mailing address (or insurance information).”*

CMS has published FAQs that are generally related to this question. By analogy, they support the conclusion that a biller may leave a minimum amount of information on an answering machine to solicit a response and gather information to enable proper billing.

The official HIPAA FAQs can be found on the website of the DHHS Office of Civil Rights at:

<http://www.hhs.gov/ocr/privacy/hipaa/faq/index.html>.

From the Office of Civil Rights HIPAA website (emphasis added):

May physician's offices or pharmacists leave messages for patients at their homes, either on an answering machine or with a family member, to remind them of appointments or to inform

them that a prescription is ready? May providers continue to mail appointment or prescription refill reminders to patients' homes?

Answer: Yes. The HIPAA Privacy Rule permits health care providers to communicate with patients regarding their health care. This includes communicating with patients at their homes, whether through the mail or by phone or in some other manner. In addition, the Rule does not prohibit [covered entities](#) from leaving messages for patients on their answering machines. However, to reasonably safeguard the individual's privacy, covered entities should take care to limit the amount of information disclosed on the answering machine. For example, a covered entity might want to consider leaving only its name and number and other information necessary to confirm an appointment, or ask the individual to call back.

A covered entity also may leave a message with a family member or other person who answers the phone when the patient is not home. The Privacy Rule permits covered entities to disclose limited information to family members, friends, or other persons regarding an individual's care, even when the individual is not present. However, covered entities should use professional judgment to assure that such disclosures are in the best interest of the individual and limit the information disclosed. See [45 CFR 164.510\(b\)\(3\)](#).

In situations where a patient has requested that the covered entity communicate with him in a confidential manner, such as by alternative means or at an alternative location, the covered entity must accommodate that request, if reasonable. For example, the Department considers a request to receive mailings from the covered entity in a closed envelope rather than by postcard to be a reasonable request that should be accommodated. Similarly, a request to receive mail from the covered entity at a post office box rather than at home, or to receive calls at the office rather than at home are also considered to be reasonable requests, absent extenuating circumstances. See [45 CFR 164.522\(b\)](#).

Does the HIPAA Privacy Rule permit a covered entity or its collection agency to communicate with parties other than the patient (e.g., spouses or guardians) regarding payment of a bill?

Answer: Yes. The Privacy Rule permits a covered entity, or a business associate acting on behalf of a covered entity (e.g., a collection agency), to disclose protected health information as necessary to obtain payment for health care, and does not limit to whom such a disclosure may be made.

Therefore, a covered entity, or its business associate, may contact persons other than the individual as necessary to obtain payment for health care services. See [45 CFR 164.506\(c\)](#) and the definition of "payment" at [45 CFR 164.501](#). However, the Privacy Rule requires a covered entity, or its business associate, to reasonably limit the amount of information disclosed for such purposes to the minimum necessary, as well as to abide by any reasonable requests for confidential communications and any agreed-to restrictions on the use or disclosure of protected health information. See [45 CFR 164.502\(b\)](#), [164.514\(d\)](#), and [164.522](#).

It is clear that the common practice of leaving a phone message for a patient or guarantor to facilitate billing for medical services is an allowed activity under HIPAA. However, billers should take care to limit the amount of information left in the message, and make sure that no PHI or personal information is unnecessarily included.

It is important to remember that patients (or their guardian/guarantor) have the initial and ongoing right to make reasonable requests to limit or otherwise restrict the release of or access to their PHI. While providers are obliged to publicize and make available their privacy policies and practices, providers are not required to quiz their patients about their preferences or invite them to request restrictions; that is, it is the patient's duty to exercise their rights, not the provider's duty to propose it.

Based on the patient's ongoing right to request limits on information release, it is reasonable for providers and their Business Associates to rely upon the absence of any restrictions to represent the patient's acceptance of ordinary, routine business practices, including sending statements (in sealed envelopes) to their residence, leaving messages on their residence phone, leaving messages with family members (exercising the aforementioned reasonable care), etc.

Billing companies should take care to establish policies and procedure(s) – in writing – and in collaboration with their client, that obliges the practice to TIMELY inform the billing company IN WRITING whenever any patient requests any restrictions. Absent timely notice from the practice, the practice should hold the billing company harmless from any consequence related to the practice's failure to inform the billing company. These should be incorporated into your Billing Agreement and/or your Business Associate Agreement.

A number of states have passed additional privacy laws, as well as additional laws governing the billing and/or collection of debts. It is important to conduct research and due diligence on applicable laws and regulations when embarking on billing for providers in new state(s), since the state in which the provider/patient relationship exists is the state with jurisdiction regarding any state privacy or collection regulations or laws.

For more detail or for advice on a specific situation, please contact your legal counsel.