

HOW CAN I RESPOND TO A REQUEST FOR AUDIT UNDER THE AFFORDABLE CARE ACT?

Many members have received letters from insurance plans or third parties requesting patient records on behalf of insurance plans. We sent an explanation to the district branches, and one was posted on the Assembly listserv last week based on the information available at that time. Meanwhile, additional facts are emerging. So, please follow the plan below rather than trying to navigate the options in the memo sent out last week.

There does not seem to be a standard approach by insurance companies, and we are not aware of any outreach by the insurance industry to providers to educate them about what is happening. The letters requesting documentation ask for different types of information, and in some instances the requests are very broad. Moreover, the letters do not suggest that providers are *required* to produce records nor do they cite any particular contract provisions requiring compliance or represent that patients have given permission. Several members have reported that when they called the insurance plan and asked if they were required to respond, they were told they were not. Given that, you should not feel obligated to respond without further explanation from the plan. There are two options that you should consider:

1. If you receive such a notice, please send it to hsf@psych.org so that APA can follow up with the plan for some explanation, understand limitations on the audit, and get assurances of patient permission.
AND/OR
2. Write back to the sender saying the following:

Dear (insert name of contact on request letter or just use To Whom It May Concern if no contact name was provided):

I received your letter dated _____ requesting that I produce patient files. I cannot produce these files without first having an indemnification agreement and satisfactory responses to the following from you in writing:

- A. What is the specific statutory or contract provision that requires me to produce these records?
- B. What state law allows me to produce these records?
- C. Please produce a copy of the patients' consent to this records review.
- D. Please specify exactly what portion of the record you are seeking and what specific information is necessary for your audit.
- E. Please provide the rate at which you intend to reimburse me or my staff for time associated with this audit.
- F. Please provide a letter providing me with the following indemnification:
COMPANY NAME has requested records from Dr. _____ and agrees to indemnify, defend, and hold harmless, Dr. _____ from any and all claims, causes of action, liabilities, damages, or expenses, including reasonable attorneys' fees that arise out of or relate to the production of records in accordance with COMPANY NAME's request for information made by letter dated _____.

Sincerely,

Signature

Note that you will need to fill in the blanks and please copy hsf@psych.org on any response you receive to such letters.

Please note that this does not constitute legal advice. APA and its employees do not provide legal advice to members. If you are concerned about an issue, you should contact your own attorney.