



## WHITE PAPER

# Medical Canvassing vs. Record Retrieval

When Is It Necessary To Obtain A Patient Authorization?



*In the world of insurance, and as part of the discovery & evaluation process, obtaining a medical canvass and/or medical records may be required to uncover information about the claim. While there are elements of each type of request that are similar, there are many differences. This white paper aims to demonstrate the differences between medical canvassing and record retrieval and to distinguish how and when HIPAA applies to each. INTERTEL, an Ontellus Company, is a medical canvassing provider. Ontellus is the nation's largest pure-play record retrieval partner.*

### Differences Between Medical Canvassing and Record Retrieval

A "medical canvass" is a survey of medical facilities in a specific geographical area to uncover **WHERE & WHEN** a claimant may have received treatment.

- The insurance company provides INTERTEL (medical canvassing provider) with the claimant's information, and INTERTEL calls medical facilities within a specified geographic area to determine whether or not the facility ever treated the claimant, and if so during what time period.
- In conducting these canvasses, INTERTEL is only looking for a "yes" or "no" answer from the facility as to whether a claimant received medical treatment.
- No medical information about the claimant is exchanged when conducting a canvass – in fact, if the answer is "no," then no Protected Health Information (PHI) even exists because the individual was never treated at the facility.
- In instances where the canvassing returns a "yes" answer from the facility, the claimant did go to the facility for treatment, the insurance carrier may later decide to pursue obtaining the medical records.

Record retrieval is the process of legally obtaining patient records from a facility/custodian of records. Ontellus works with the insurance carriers, claims adjusters, and law firms to obtain records on their behalf.

- Depending on the circumstances, record retrieval involves either obtaining records via Patient Authorization, signed by the patient and directed to the specific facility/custodian; or Subpoena, using the subpoena power of the court to direct the facility to release the records.

#### What Is A Medical Canvass?

A Medical Canvass uncovers **WHERE & WHEN** a claimant may have received treatment.

#### What Is Records Retrieval?

Record Retrieval is the process of **legally obtaining patient records** from a facility/custodian of records.

- Patient Authorizations are associated with either pre-litigated or litigated matters, while Subpoenas are associated with litigated matters.

## Where Does HIPAA Come Into Play?

### Covered Entities and Business Associates

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a set of federal privacy protections for individually identifiable health information, commonly referred to as Protected Health Information (PHI). As a result of the enactment of HIPAA, the U.S. Department of Health and Human Services (HHS) over the course of several years published the following rules:

- Privacy Rule to set national standards for the use and disclosure of PHI;
- Security Rule to set national standards for protecting the confidentiality, integrity, and availability of electronic PHI; and
- Final Omnibus Rule to strengthen the privacy and security protections and to finalize the Breach Notification Rule.<sup>1</sup>

These rules collectively apply only to “Covered Entities,” a term narrowly defined to mean health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically. The “Business Associates” of Covered Entities, defined as a person or entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of, or provides services to, a Covered Entity also must comply with the Rules.

INTERTEL and Ontellus work on behalf of insurance carriers and law firms, who in general are not Covered Entities. INTERTEL and Ontellus are therefore neither Covered Entities nor Business Associates. HIPAA is still applicable to the medical canvassing and record retrieval services - but only in the context that Covered Entities are the facilities from which INTERTEL and Ontellus are seeking information.

### Covered Entities and Business Associates

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<sup>1</sup> <https://www.hhs.gov/hipaa/for-professionals/index.html>

### The Privacy Rule

The Privacy Rule defines and limits the circumstances in which an individual's PHI may be used or disclosed by Covered Entities. The rule is that a Covered Entity "may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing." A Covered Entity therefore does not need a Patient Authorization to release PHI so long as the Privacy Rule permits the disclosure. Covered Entities are permitted to use and disclose PHI without an authorization from the patient as part of its "Treatment, Payment, and Health Care Operations." Under that umbrella, a Covered Entity can release PHI without an authorization in order to facilitate payment or reimbursement for services.

Covered Entities are also permitted to use and disclose PHI without a Patient Authorization for twelve national priority purposes:

- Required by Law (statute, regulation, court order);
- Public Health Activities;
- Victims of Abuse, Neglect or Domestic Violence;
- Health Oversight Activities;
- Judicial and Administrative Proceedings;
- Law Enforcement Purposes;
- Decedents;
- Cadaveric Organ, Eye, or Tissue Donation;
- Research;
- Serious Threat to Health or Safety;
- Essential Government Functions; and
- Workers' Compensation

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### HIPAA & Canvassing

For canvassing, INTERTEL is not looking for a Covered Entity to release any medical information about the claimant. Because there is no PHI being requested, HIPAA is not applicable. The Covered Entity is free to disclose to INTERTEL the answer of “yes” or “no” when asked about whether or not the claimant was provided treatment at the facility. Even if HIPAA did apply, Covered Entities are permitted to disclose PHI in connection with Treatment, Payment, and Health Care Operations. The Covered Entity could also release patient information to an insurance carrier, third party administrator, etc. in order to facilitate payment.

### Canvassing Safeguards

All INTERTEL employees undergo HIPAA privacy training on an annual basis. In the event a custodian attempts to provide PHI to INTERTEL as part of the canvassing effort, the custodian is reminded that PHI is not being sought and will not be accepted.

### HIPAA & Record Retrieval

For record retrieval, Ontellus is looking for PHI – medical and billing records from a Covered Entity. For record retrieval to comply with HIPAA, Ontellus therefore needs either a Patient Authorization, or for the request to fall under one of the national priority purposes for which PHI is permitted to be released without an authorization. For example, under the Judicial and Administrative Proceedings purpose, a subpoena qualifies as a permitted reason for a Covered Entity to disclose PHI so long as there are assurances the patient was properly notified. Ontellus is well-versed in what is required for a Covered Entity to release PHI – including its proprietary database of facility-specific authorizations required for record requests.

### Conclusion

In conclusion, when it comes to medical canvassing, the Covered Entity is not releasing any medical information about the claimant and no PHI is being requested, therefore, HIPAA does not apply. When patient records are being obtained from a Covered Entity, (record retrieval) it must comply with HIPAA.

#### A Note About HIPAA

When it comes to medical canvassing, the Covered Entity is not releasing any medical information about the claimant, and no PHI is being requested, therefore, HIPAA does not apply.

## About INTERTEL

INTERTEL, an Ontellus Company, is the national leader in providing medical canvassing and social media intelligence. Discover historical treatment data and social media profiles with the industry's best-in-class partner.

## About Ontellus

Ontellus™ is the nation's largest, full-service procurer of medical records, wage and employment records, diagnostic imaging files, and other claims-related documents in the workers' compensation, vehicle & bodily injury, general liability and medical malpractice verticals.

Processing nearly 4 million records requests annually, Ontellus provides tech-enabled record retrieval, claims management solutions, and medical canvassing on a nationwide scale to support insurance carriers, self-insured entities, law firms and third-party administrators.