RECORD RETENTION

MedPro Group
Patient Safety & Risk Solutions

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INTRODUCTION
Healthcare practices generate and maintain many different types of records, including patient health records and business records. These records help practices maintain critical information and deliver quality services and care.

Because of their important role, records need to be appropriately maintained and managed throughout their lifecycle — from creation to destruction.

OBJECTIVES
The objectives of this guideline are to:

- Identify essential elements of a formal record retention policy;
- Discuss the regulatory requirements and claims/risk management considerations used to determine appropriate record retention policies and procedures for patient health records;
- Describe the process for destruction of records;
- Review requirements for transferring records; and
- Provide additional resources regarding the retention of medical and business records.

RECORD RETENTION POLICIES AND PROCEDURES
To protect records, healthcare practices should develop and implement formal record retention policies and procedures. Doing so will help establish a systematic and organized approach to record management. Further, formal policies and procedures may help defend against allegations that records were deliberately or maliciously destroyed.

At minimum, record retention policies and procedures should include:

- The length of time records will be maintained;
- A list of records that will be maintained onsite and/or offsite;
- A designated individual who is responsible for maintaining record retention policies and initiating the destruction of records;
- The required methods for destroying records while preserving confidentiality (e.g., shredding, incineration, physical destruction of hard drives, high-level overwriting of electronic information, etc.); and
- Requirements for documenting the destruction of records.
**PATIENT HEALTH RECORDS**

Patient health records are an important part of patient care. They provide essential patient information, historical details about the course of care, and a record of services provided. Further, thorough and accurate records may play a crucial role in defending a malpractice claim.

When developing record retention policies, healthcare practices should consider federal and state requirements, risk management standards and professional guidance, and other considerations (such as the provider’s specialty).

**Federal Requirements**

The Centers for Medicare & Medicaid Services (CMS) requires healthcare providers and organizations to retain patient records for Medicare beneficiaries for at least 5 years. CMS requires Medicare managed care program providers to retain records for 10 years. Medicaid requirements vary by state.¹

Further, the HIPAA Privacy Rule requires covered entities to apply appropriate administrative, technical, and physical safeguards to protect the privacy of health records and other forms of protected health information (PHI) for as long as they are maintained.²


**State Requirements**

Some states have specific requirements for the retention of patient health records. Often, these requirements are accessible via providers’ professional licensing boards. Healthcare practices are advised to consider state requirements as a minimum guideline, rather than a standard. Further, certain records should be maintained for as long as possible, including:

- Pediatric records;
- Records of patients who complained about the outcomes of their care;
- Records of cases in which providers were displeased with outcomes of care;


• Records of cases involving implanted devices; and
• Records of patients involved in research.

In states that offer no specific requirements, the American Health Information Management Association (AHIMA) recommends that healthcare organizations “keep health information for at least the period specified by the state's statute of limitations or for a sufficient length of time for compliance with laws and regulations.”

Additionally, in some circumstances, the statute of limitations may not begin until the patient realizes that he or she has a basis for a claim. Thus, many practices automatically retain records for as long as practical based upon patient volume and storage availability.

Many states also have specific requirements for the retention of diagnostic study results. In the absence of state guidance, healthcare practices should retain diagnostic study results for a minimum of 7–10 years. Diagnostic study results include, but are not limited to, X-rays and other imaging records, raw psychological testing data, fetal monitoring tracings, and data from EEGs, ECGs, and laboratory studies.

**Risk Management Standards and Professional Guidance**

MedPro Group data collected from 2004 through 2013 indicate that 87 percent of claims are opened within 3 years of the date of service, 95 percent of claims are opened within 5 years of the date of service, and 99 percent of claims are opened within 10 years of the date of service.

These statistics serve as the basis for the following risk management guidance related to medical malpractice cases/claims, which should be used as a guide, not a rule, to determine length of retention (after considering state requirements):

• **Competent adults:** Maintain records at least 7–10 years after the last date of service. This usually allows sufficient time for the statute of limitations and extensions and other delays to be exhausted.

• **Incompetent adults:** Maintain records (a) until/unless the patient becomes competent (then follow guidance for competent adults), (b) at least 7 years after death, or (c) as long as possible (indefinitely).

• **Minors:** Maintain records at least through the state-specific statute of limitations after the child reaches the age of majority (18 years of age in most states). If the patient is 16 or 17 when last seen, it is prudent to retain the records for 7–10 years from that date.

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AHIMA recommends that health organizations (a) keep adult patient records 10 years beyond the most recent encounter, and (b) keep pediatric records up to the age of majority, plus the statute of limitations. AHIMA also advises organizations to permanently keep master patient/person indexes, birth and death registries, and registries of surgical procedures.4

**Other Considerations**

A provider’s specialty — or the nature of the procedures he or she performs — may influence record retention policies. For example, a provider who performs procedures using prostheses or implanted devices might find it prudent to retain records for an extended length of time. Conversely, a practitioner who performs less complicated procedures or therapies might find that a shorter retention period is reasonable.

Regardless of the circumstance, providers should ensure that, at minimum, their policies comply with federal and state laws and professional guidance.

**BUSINESS AND PERSONNEL RECORDS**

In addition to patient health records, healthcare practices also generate various business-related records. Appropriately maintaining and managing these records is essential to reducing organizational risk. The practice’s accounting firm or the Internal Revenue Service (IRS) may offer useful information about the retention of business records.

Federal and state government guidelines may specify record-retention requirements for employee files and other personnel information. For questions or advice related to the maintenance of personnel records, healthcare practices should contact their attorneys or management consultants.

Additional resources are listed in the resources section of this guideline.

**DESTRUCTION OF RECORDS**

Destruction of records, when they are no longer needed, is an important component of the document lifecycle. As such, healthcare practices should (a) include details about record destruction in their record retention policies, and (b) implement procedures to ensure a consistent approach to destruction.

Maintaining confidentiality of PHI is paramount during the destruction of records. HIPAA requires covered entities to “implement reasonable safeguards to limit incidental, and

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4 Ibid.
avoid prohibited, uses and disclosures of PHI, including in connection with the disposal of such information.”

Additionally, some states have specific requirements relative to the destruction of records. When developing retention and destruction policies, practices should be cognizant of state requirements.

Further, practices should establish policies that preclude the immediate destruction of records solely because a patient has died. Such records should be maintained, at a minimum, for the length of the statute of limitations.

**Paper Records**

When paper records are identified for destruction, they should be shredded, incinerated, etc., preferably by a company that provides such services. The method of destruction should ensure that the records are unreadable and unrecoverable.

The company contracted to destroy the records should provide the service at your practice’s facility so the destruction can be confirmed. If the company will be destroying records that contain protected health information (PHI), you will need to have a HIPAA business associate agreement (BAA) with them. (To learn more about HIPAA BAAs, visit [http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/contractprov.html](http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/contractprov.html).)

**Electronic Records**

As technology has advanced over the years, an increasing number of healthcare practices have transitioned to electronic records. Electronic records, like paper records, must be “destroyed with a method that provides for no possibility of reconstruction of information.”

To this end, the HIPAA Security Rule requires covered entities to implement policies and procedures:

- To address the final disposition of electronic PHI and/or the hardware or electronic media on which it is stored; and
- For the removal of electronic PHI from electronic media before the media are made available for reuse.

Depending on the approach, destruction of electronic records may involve overwriting of electronic media, magnetic degaussing, pulverizing, incinerating, cutting, etc.

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5 Office for Civil Rights, Frequently asked questions about the disposal of protected health information.
6 AHIMA, Retention and destruction of health information.
Practices should select the approach that is appropriate for the type of data being destroyed.

Further, prior to selling or destroying computers or any media that holds information, a competent employee or service provider should destroy all electronic documents and database records stored on the equipment.

**Documentation**

As part of the record disposal process, healthcare practices should establish a method to document the destruction of records. AHIMA recommends that organizations maintain a destruction log that includes:

- Date of destruction;
- Method of destruction;
- Description of the disposed records (e.g., name, date of birth, social security number, etc.);
- Inclusive dates;
- A statement that the records were destroyed in the normal course of business; and
- The signatures of the individuals supervising and witnessing the destruction.8

In addition, AHIMA offers a Sample Certificate of Destruction for healthcare organizations to use as a documentation template. To view the sample, visit http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016179.hcsp?dDocName=bok1_016179.

**Transfer of Records**

If a healthcare practice is closed or sold, arrangements must be made for retention of original records for the appropriate amount of time. Under no circumstances should original records be given to patients.

In some instances, healthcare providers who are selling or closing practices may choose to store their records themselves. Many doctors retiring today do not have their records in electronic formats. When this is the case, the doctor assumes responsibility for storing the paper records.

In addition to the space requirements, this approach can be problematic if the records have not been maintained in an ordered system and a former patient requests a copy of his or her records (to which the patient is entitled under HIPAA).9

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8 AHIMA, Retention and destruction of health information.
A second document maintenance option is the contracted services of a records storage company. Although these companies’ fees may be substantial, they offer several advantages. First, they will pick up the records and store them in a climate-controlled facility, which can protect them from environmental damage (e.g., dampness, mold, vermin, etc.).

Second, these companies usually are bonded or insured, thereby reducing a provider’s exposure if stored records are damaged, destroyed, or stolen while in the records storage company’s possession.

A third benefit to records storage services is their ability to respond to patients’ requests for records. Patients can be referred directly to the storage service, which will then locate and copy the records and collect the fee from the patient. (HIPAA allows a reasonable fee to be charged for location and copying.)

At the time of records transfer, a records storage company will execute a BAA with the storing practitioner. This HIPAA-required document obliges the storage company to protect the confidentiality of PHI contained in the patient records to the same standard that the healthcare provider must protect it. Through the BAA, the provider and the patient are assured that the PHI will be secure.

Another possible option for providers who are selling a practice is for the purchasing practitioner to become the custodian of the selling practitioner’s records through execution of a BAA.

In this case, in addition to compliance with HIPAA Privacy and Security regulations, the BAA should specify that the custodian will provide the selling practitioner with access to the physical record upon reasonable notice (such as 2 business days), and that the custodian will not release or dispose of any original records without the seller’s written authorization.

Patients who continue their relationship with the practice can authorize release of their records to the purchasing physician (who is already in physical possession of the records) as part of new patient consent processes. Records of patients who leave the practice can ultimately be placed in storage.

Regardless of how practitioners choose to store their records, compliance with all HIPAA Privacy and Security regulations is essential.

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9 Under HIPAA, the practitioner’s responsibility to provide patients with copies of their records does not terminate with the practitioner’s retirement. As long as the practitioner still possesses the records, he or she must provide copies if patients request them.
CONCLUSION

Healthcare practices are responsible for various types of records, including patient health records, business records, personnel records, and more. To ensure consistency and accountability, practices should implement policies and procedures for the retention, maintenance, and destruction of records.

These policies should be based on federal and state requirements, general risk management and professional guidance, and advice from the practice’s attorneys, management consultants, accountants, and other sources of expertise/authority.

RESOURCES

- American Health Information Management Association — www.ahima.org
- American Medical Association — www.ama-assn.org
- American Society of Association Executives — www.asaenet.org
- ARMA International — www.arma.org
- Centers for Medicare & Medicaid Services — www.cms.gov
- Health Information & The Law: Medical Records Collection, Retention, and Access — http://www.healthinfolaw.org/topics/60
- Internal Revenue Service — www.irs.gov
- National Archives and Records Administration — www.nara.gov
- U.S. Department of Labor — www.dol.gov