

RETENTION OF MEDICAL RECORDS



By: James E. Peters

Electronic Medical Records ("EMRs") have become more and more common place in the health care industry. With increased utilization and implementation of EMRs, a common question arises regarding the length of time which medical records must be retained. The inquiry is typically posed as it relates to physical patient files; however, the record retention considerations which will be discussed in this article are applicable to both physical patient files and EMRs.

Although Ohio does not have a specific statute which requires medical records to be retained for any minimum period of time, there are a number of Ohio and federal statutes which must be considered when determining how long to retain medical records. Please consider the following:

Medicaid Patients: Ohio Revised Code §2913.40 (D) mandates that a health care provider retain all records dealing with the treatment of a Medicaid patient for a period of at least six (6) years.

Medicare Patients: As a condition of participation in the Federal Medicare Program, a health care provider agrees to retain all records dealing with the treatment of a Medicare patient for a period of at least five (5) years.

HIPAA Requirements: Provisions of the Health Information Portability and Accountability Act of 1996 ("HIPAA") require covered entities (most health care providers) to retain the patient's signed HIPAA notice of privacy practices for at least six (6) years. This notice is typically maintained in the patient's medical record.

Statute of Limitations Considerations: It is best practice to maintain all medical records for at least a length of time equal to the statute of limitations associated with the treatment which was provided. Pursuant to Ohio Revised Code §2305.113, an action for medical malpractice must typically be commenced within one year after the cause of action "accrues." There are limited exceptions to this general one-year statute, including, a two-year statute of limitations for wrongful death cases and the tolling of the statute until the age of majority, for treatment involving a minor child. Based upon the multitude of factors that need to be considered when attempting to determine the applicable statute of limitations for a specific patient, it is recommended that a case-by-case evaluation be conducted when determining how long to retain a medical record under the statute of limitations criteria.

Ethical Considerations: Pursuant to Ohio Revised Code §4731.22 (B)(18), physicians licensed to practice medicine in the State of Ohio can be disciplined by the Ohio State Medical Board for violating any of the American Medical Association's ("AMA") ethical rules. Accordingly, all Ohio physicians must be mindful of the ethical mandates of the AMA. AMA Ethical Opinion 7.05 specifically addresses medical record retention. The Opinion cites statute of limitations considerations, along with specific references to the 5-year Medicare retention requirement and the rules regarding treatment of a minor. Additionally, the Opinion states that immunization records must be kept *indefinitely*. The Opinion also indicates that: "medical considerations are the primary basis for deciding how long to retain medical records." Additionally, before a medical record is destroyed, the physician must make an attempt to contact the patient and give the patient a reasonable opportunity to claim the records or to have the records sent to another physician.

Because there are numerous legal and ethical considerations which must be taken into account before destroying or discarding medical records, it is highly recommended that a Records Retention Policy be adopted before any records are destroyed or discarded. This Policy should specify a detailed procedure (considering all of the legal and ethical considerations) to evaluate the length of time which each medical record is required to be retained. A checklist and decision matrix can be developed to identify the length of time which a record must be retained. Once adopted, the Policy should be reviewed on an at least annual basis to ensure its continued compliance with all pertinent laws and ethical considerations.

As a general rule it is recommended that, when possible, medical records be retained indefinitely. However, circumstances may arise when it is not practical for a health care provider to continue to retain all of its patient records. In those circumstances, careful consideration must be given to pertinent legal and ethical considerations.

If you have any questions regarding medical records or documentation, or any other questions regarding healthcare administration, please call any of our Health Care Practice Group Members.

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