OMIC
OPHTHALMIC MUTUAL INSURANCE COMPANY
A Risk Retention Group

Risk Management Recommendations

Sponsored by the American Academy of Ophthalmology

Medical Record Retention

Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

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RISK ISSUE

Medical record retention policies and procedures should be developed to comply with state and federal laws, provide patient access, ensure continuity of care, and protect against legal or regulatory actions. The majority of medical records are in electronic format, but some practices still use paper or have a hybrid system. The retention requirements apply to both electronic and paper formats. The policy and procedure should address how long records are retained, how they are destroyed, how patients can obtain a copy, the format of the copy, and any associated costs.

BACKGROUND

Record retention requirements are addressed at the federal and state level. The retention time frame starts from the last date of treatment. If state law is silent on retention requirements, it is recommended to retain adult records for 10 years after the last date of treatment. For minors, retain for 10 years after the last date of treatment or until the patient turns the age of majority (usually 18 years old) plus the statute of limitations in the respective state (2-5 years), whichever is longer.

FEDERAL	RETENTION REQUIREMENT	RESOURCE
Medicare Medicare Billing Records	7 years 10 years	CMS 42 CFR § 422.504
Medicare Advantage	10 years	Medicare Advantage
HIPAA Documents	6 years	45 CFR § 164.316 HIPAA Journal
STATE	Range from 5-11 years	State Medical Record Laws Paubox.com
Healthcare Plans	Inquire with Plan	
OMIC	If no guidance from the state: -Adults: 10 years -Minors: 10 years or the age of majority + state statute of limitations, whichever is longer -Deceased patients	 AAP State SOL Date of death + State SOL

ASSESSMENT

Does the HIPAA Privacy Rule require covered entities to keep patients' medical records for any period of time?

No, the HIPAA Privacy Rule does not include medical record retention requirements. Rather, State laws generally govern how long medical records are to be retained. However, the HIPAA Privacy Rule does require that covered entities apply appropriate administrative, technical, and physical safeguards to protect the privacy of medical records and other protected health information (PHI) for whatever period such information is maintained by a covered entity, including through disposal. See 45 CFR 164.530(c).

What medical records do I have to provide to a patient and retain?

- Information Included in the Right of Access: The "Designated Record Set"

  Individuals have a right to access protected health information ("PHI") in a "designated record set." A "designated record set" is defined at 45 CFR 164.501 and includes a group of records maintained by or for a covered healthcare provider that consists of the medical and billing records of an individual.
- It is recommended to include:
  - Patient care (office visits, operative notes, clinical notes, labs, imaging)
  - Billing and scheduling records
  - Patient phone calls, texts, emails, or portal messages
  - Records sent from another provider

Can we refuse to provide records if a patient has an outstanding bill for treatment?

According to 45 CFR 164.524, a patient has the right of access to inspect and to obtain a copy of a designated record set for as long as the PHI is maintained.

- Records must be produced within 30 days from receipt of the request.
- You may not deny access due to an outstanding bill.
- Records should be in the form and format requested if readily producible.
- A patient can receive records through an unencrypted source if warned of the risk of unauthorized access in transit.

Can we charge a fee for the costs to obtain a copy (paper or electronic)?

- Yes, if an individual requests a copy of their medical record you can charge a reasonable fee unless state law requires a patient to receive a free copy. HHS
- You should consider not charging another healthcare provider for records to ensure continuity of care.
- Federal and state laws address reasonable copy charges to include labor, supplies (paper or electronic media), and postage.
    - Federal law maximum fees for copies of medical records - The Privacy Rule permits a covered entity to impose a reasonable, cost-based fee if the individual requests a copy of the PHI. The fee may include only the cost of (1) labor for copying the PHI, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media (e.g., CD or USB drive); (3) postage, when the individual requests that the copy be mailed. **See 45 CFR 164.524(c)(4)**
    - State law maximum fees for copies of medical records

How do we destroy medical records in paper or electronic format?

In general, examples of proper disposal methods may include, but are not limited to:

- For PHI in paper records: shredding, burning, pulping, or pulverizing the records so that PHI is rendered essentially unreadable, indecipherable, and otherwise cannot be reconstructed.
- For PHI on electronic media: clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains), or destroying the media (disintegration, pulverization, melting, incinerating, or shredding).
  FAQs from HHS
  AAP Guidance

How do we manage medical records if there are changes to the practice (closing or leaving the practice)?

Ophthalmologists may leave a practice due to illness, retirement, death, or change in employment status.

- Notify patients about how to obtain their record or request that it be transferred to a new provider.
- Have patients sign a record authorization release prior to transfer.
- Contact the medical board to let them know if closing a practice and where the records will be retained.

- Define in employment agreements who retains the medical record in the event of a physician departure.
- If closing a practice, records must be available for patient access, to comply with federal or state regulations, or to defend a potential claim or lawsuit. Arrangements should be made for secure and safe storage along with accessibility to obtain a copy. This may involve retaining a third party vendor to handle the administration or making an agreement with the purchasing practice to take on the responsibility to retain the records.
- Contact your EMR provider for assistance or plan for physical storage until retention requirements cease.

RISK MANAGEMENT RECOMMENDATIONS

Develop a policy and procedure that includes:

- Medical records retention time frame
- Medical records storage location
- Medical records destruction protocols
- Definition of designated record set for your practice
- Notification to patients how to access records and retention period
- Format and form of copy that will be provided (paper, electronic, etc.)
- Costs for obtaining a copy of medical records
- Safeguarding patients' PHI during storage and destruction
- Tracking mechanism and method for records destruction

RESOURCES

American Academy of Pediatrics Position on Medical Record Retention
American Academy of Pediatrics Position on Destruction of PHI
HIPAA Retention Requirements
Medicare
HHS
Healthit.gov
AMA Management of Medical Records
OMIC Leaving Practice Toolkit

Need confidential risk management assistance?
OMIC-insured ophthalmologists, optometrists, and practices are invited to contact OMIC's Risk Management Department at (800) 562-6642, option 4, or at riskmanagement@omic.com.