



amcno

THE ACADEMY OF MEDICINE OF
CLEVELAND & NORTHERN OHIO

Medical Records Fact Sheet Update Effective January 2008

Retention of Medical Records

Medical considerations are the key basis for deciding how long to retain medical records. Rules relating to the maintenance of patient records are to be found in the American Medical Association, Council on Ethical and Judicial Affairs, Code of Medical Ethics, Current Opinion 7.05. Under Ohio Law (R.C. §4731.22 (B)(18)), violations of the AMA ethical rules can result in disciplinary action by the Ohio State Medical Board. Most states, including Ohio, do not have a general state law that requires records be kept for a minimum length of time. Ohio Revised Code §2913.40 (D) mandates the retention of records associated with Medicaid for a period of at least six (6) years after reimbursement for the claim is received by the physician. It is recommended that records relating to a Medicare patient be kept for at least six (6) years after the physician received payment for the service. Medicare's Conditions of Participation requires five (5) year retention. Managed care contracts should be consulted to see if they provide any specified period of retention of medical records. In all cases, medical records should be kept for the length of time of the statute of limitations for medical malpractice claims. Under Ohio Law an action for medical malpractice must be brought within one year after the cause of action "accrues" (R.C. §2305.113). However, there are various exceptions or special rules. For example, the statute of limitations in wrongful death cases is two years after the date of death. In the case of a minor, the statute of limitations does not begin to run until the minor has reached his or her 18th birthday. The statute can be "tolled" or otherwise extended in other situations, and the date on which a cause of action "accrues" can vary. As a practical matter, all of this makes it difficult to define the Ohio statute of limitations with absolute certainty. If you are discarding or destroying old records, patients should be given the opportunity to claim the records or have them sent to another physician. The AMCNO recommends that physicians keep medical records indefinitely, if feasible. *

Update on Charging for Copies of Medical Records

A physician who treated a patient should not refuse for any reason to make records of that patient promptly available on request to another physician presently treating the patient, or, except in limited circumstances, refuse to make them available to the patient or a patient's representative (not an insurer). A written request signed by the patient or by what the law refers to, as a "personal representative or authorized person" is required. Ohio Revised Code §3701.74 obligates a physician to permit a patient or a patient's representative to examine a copy of all of the medical record. An exception arises when a physician who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, in which case the physician is to provide the record to a physician chosen by the patient. Medical records should not be withheld because of an unpaid bill for medical services. Ohio law establishes the maximum fees that may be charged by health care provider or medical records company that receives a request for a copy of a patient's medical record. Ohio law provides for certain limited situations in which copies of records must be provided without charge, for example, where the records are necessary to support a claim by the patient for Social Security disability benefits. EFFECTIVE JANUARY 2008, the maximum fees that may be charged, are as set forth below.

- (1) The following maximum fee applies when the request comes from a patient or the patient's representative.
 - a) No records search fee is allowed;
 - b) *For data recorded on paper:* \$2.74 per page for the first ten pages; \$0.57 per page for pages 11 through 50; \$0.23 per page for pages 51 and higher
For data recorded other than on paper: \$1.87 per page
 - c) Actual cost of postage may also be charged
- (2) The following maximum applies when the request comes from a person or entity other than a patient or patient's representative.
 - a) A \$16.84 records search fee is allowed;
 - b) *For data recorded on paper:* \$1.11 per page for the first ten pages; \$0.57 per page for pages 11 through 50; \$0.23 per page for pages 51 and higher
For data recorded other than on paper: \$1.87 per page
 - c) The actual cost of postage may also be charged

Ohio Law requires the Director of Health to adjust the fee schedule annually, with the adjustment to be not later than January 31st of each year, to reflect an increase or decrease in the Consumer Price Index over the previous 12-month period. If you have any questions regarding this fact sheet or other practice management issues, please contact the AMCNO at (216) 520-1000 ext 102.

Confidentiality of Medical Records in Ohio

Current Law in the State of Ohio

The purpose of the memorandum is to address pertinent issues involving medical records, confidentiality, disclosure, etc.

The issues addressed reflect the position adopted by the Ohio State Dental Board as noted.

Medical Record: Any document or combination of documents that pertains to a patient's medical history, diagnosis, prognosis, or medical condition, and that is generated and maintained in the process of the patient's health care treatment. R.C. 3701.74(A)(2).

Do not include in a patient record:

- Care related to another patient
- peer review/quality assurance information/documents
- correspondence/notes from attorneys
- aberrant/deviant statements

Duty to Retain Records

Ohio statutes do not directly address a physician's/dentist's responsibility regarding the retention of medical records. However, licensed health care facilities must maintain medical records for at least six (6) years from the date of discharge. OAC 3701-83-11(E). Further, under Ohio law, a medical malpractice case must be commenced within one year after the cause of action accrues, except that, if prior to the expiration of that one year period, a claimant gives the provider written notice that he/she is considering bringing a malpractice action. RC 2305.11(B). The statute of limitations is tolled for persons within the age of minority or of unsound mind. RC 2305.16. Federal Medicaid claims have a statutory seven (7) year look back period.

~~X~~ Therefore, it is suggested that a physician/dentist maintain patient records for at least seven (7) years, but the best advice would be to keep the records indefinitely.

Ownership of and Access to Medical Records

Hospital Records

A hospital should prepare a finalized medical record within 30 days after treatment. A patient who wishes to examine or obtain a finalized medical record must submit a signed written request to the hospital. Within a reasonable time, the hospital must permit inspection or a copy within a reasonable amount of time. However, if a physician who has treated the patient determines for clearly stated reasons that disclosure of the requested documents is likely to have an adverse effect on the patient, the hospital must provide the record to a physician designated by the patient. RC 3701.74(C).

Disability- records handling- Ohio School Employees- Catherine Laramie

1. Medical records (paper) are stored separately from member files;
2. Records are held until member is deceased plus 1 year, then purged;
3. No medical records are allowed to be taken from retirement office;
4. Copies of records for committee are destroyed following meeting;
5. Suggestion: if committee member wants to view previous disability, retirement office store record and allow committee member to view record one hour prior to meeting;
6. Records should not be taken off-sight;
7. Records are not under HIPPA but there are tails;
8. If records are stolen and misused- possible \$25,000 fine per incidence and 7 years incarceration.