

# Retention & Destruction of Medical Records

Maryland Law and Regulations

Stephen H. Johnson, MedChi

September 15, 2015

# HIPAA

- Always turn to HIPAA and its companion regulations first when looking issues pertaining to health information

- On this issue, HIPAA is largely silent
- But does require records of disclosures to be maintained for six years from the time they occurred.

# Other concerns

- Malpractice carrier
- Federal insurance plans  
(may require documentation of service for up to 7 years from date of payment)
- IRS (may also require documentation of tax relevant information for up to 7 years)

# Maryland Law

- Except for a minor patient, unless a patient is notified, a health care provider may not destroy a medical record or laboratory or X ray report about a patient for 5 years after the record or report is made.

# Minors under Maryland law

- In the case of a minor patient, a medical record or laboratory or Xray report about a minor patient may not be destroyed until the patient attains the age of majority plus 3 years or for 5 years after the record or report is made, whichever is later, unless:
  - (1) The parent or guardian of the minor patient is notified; or
  - (2) If the medical care documented in the record was provided under §20-102(c) or § 20-103(c) of this article, the minor patient is notified.

# Minor rather than parent should be notified in these instances

- Record involves treatment or advice regarding drug abuse, contraception other than sterilization, alcoholism, venereal disease, or pregnancy.

# Early destruction can occur if proper notification is made

- Notice must be by 1st class mail to the last known address of the patient;
- Include the date on which the record of the patient shall be destroyed;
- Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30 days of the proposed date of destruction.



# Contents of Notice

- Notice must be by 1st class mail to the last known address of the patient;
- Include the date on which the record of the patient shall be destroyed;
- Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30 days of the proposed date of destruction.

# If the physician is ceasing practice

- The notice can either be in the previous form or
- By publication of a notice for two weeks in a newspaper circulating daily in the local area that
- States the date on which the medical records will be destroyed or transferred
- Designates a location, date, and time where the medical records may be retrieved, if wanted.

# Alternatively-

- The records can also be given to the patient or transferred to either a provider who is taking over the practice or one whom the patient designates.

# Document Destruction Regulations

- Became effective in 2008, after a developmental period of about 6 years

## Principal effects

- Clarified certain questions that had arisen regarding the interpretation of the Medical Records Act regarding medical records retention/destruction
- Established requirement that each health care provider should establish and maintain a “medical records retention schedule”

# Ownership of medical record

- “medical records are the personal property of the entity providing health care.”

(still ambiguous – ownership should be settled in contract)

# Divisibility of records

- (important for purpose of determining when a record may be destroyed.)
- A record is divisible if it “is amenable to separation or division after the expiration of the retention time.”
- Presumed to not be divisible unless in the health care provider’s professional judgment, the record is divisible

# Security precautions

- Office with access restricted to authorized staff
- Computer or other device with appropriate security
- Commercial records storage site with appropriate security and environmental controls
- Other storage options that ensure protection, security, and access control

# Storage Services

- Use of a storage service (allowed but provider still ultimately responsible)



# Electronic storage solutions

- must be assured that provider will be able to generate legible copies and maintain current back-up copies

# Methods of destruction

- Paper: incineration, shredding, pulping or other comparable process that renders the records permanently unreadable.
- Electronic/magnetic media: complete sanitization, not just erasure or deletion.

# 45 CFR 164.310(d)

- **(1) Standard: Device and media controls.** Implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain electronic protected health information into and out of a facility, and the movement of these items within the facility.
- **(2) Implementation specifications:**
- **(i) Disposal (Required).** Implement policies and procedures to address the final disposition of electronic protected health information, and/or the hardware or electronic media on which it is stored.
- **(ii) Media re-use (Required).** Implement procedures for removal of electronic protected health information from electronic media before the media are made available for re-use.
- **(iii) Accountability (Addressable).** Maintain a record of the movements of hardware and electronic media and any person responsible therefore.
- **(iv) Data backup and storage (Addressable).** Create a retrievable, exact copy of electronic protected health information, when needed, before movement of equipment.
-

# Medical Records Retention Schedule

- (a) A list and description of the medical records series of an office or unit;
- (b) The minimum retention period required to keep each medical record series;
- (c) The eventual disposition instructions

# Sample retention schedule

Medical Office of Dr. Joseph L. Jones  
401 West Applegate Avenue  
Crisfield, Maryland, 20760

## MEDICAL RECORDS RETENTION SCHEDULE

ITEM	RECORD SERIES DESCRIPTION	RETENTION & DISPOSAL
1	Patient Medical Records	For adults, retain records in office or storage for five years, and then destroy.  For minors, retain records in office or storage for five years or until patient is 21, whichever is longer, and then destroy.

Signature of Approval \_\_\_\_\_  
Joseph L. Jones, M.D.

\_\_\_\_\_ DATE

# Take away points

- Basic rule is that records can be destroyed **without notice** after 5 years (minors, later of 3 years past age of majority or 5 years since last seen) but check with other authorities such as accountant and malpractice carrier before destroying records.
- Destruction can occur earlier if proper notice is given.

# Take away (2)

- Settle issues involving medical records ownership in employment contract or partnership agreement
- Create and maintain Records Retention Schedule