

Know the Rules

What You Need To Know About Medical Records in Massachusetts

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Many physicians and medical practices are failing to properly handle the release and storage of medical records, and this may needlessly subject them to legal action and penalties.

This article is a review of some of the key points every office needs to know.

General Policy Statement

Every patient in Massachusetts is entitled to inspect and receive a copy of his or her medical records, but not necessarily the original records. The Board of Registration in Medicine requires that medical records be kept available to assist in future care for each patient, regardless of who will be providing that care.

Who Is Entitled to a Copy of the Records?

A patient's medical records can be requested by and released to the patient. Medical records should not be released to a spouse, family member, or any other person without the patient's express authorization, unless there is a written court order. Obviously, if your patient is a minor, his or her parent or legal guardian can authorize the release.

If your patient has died, then only the appointed executor or administrator of an estate has the legal right to seek medical records of the deceased patient. Also, if the medical records requested are psychiatric or mental health records, then it is permissible to provide a summary of the records, if in your opinion there may be a detriment to the mental health of the patient to release the entire record. However, if your patient has requested that those records be released to another health professional or the

patient's legal counsel, then the full record should be released to those parties.

It should be noted that you may require a party seeking patient records to show some form of identification, to verify the ID of the person requesting them. In the case of someone acting under a power of attorney or health care proxy, a copy of the executed document may be requested.

Also, if someone is requesting



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copies of medical records in their capacity as the personal representative of a deceased patient, they should be prepared to provide a copy of the documentation that appointed them to be the executor or administrator of the patient's estate.

You need to be reasonable, but you also need to make sure that you are taking all necessary steps to make sure that patient's rights to privacy are not violated.

What Can Be Charged for the Records?

The Board of Registration has issued very specific regulations regarding what can be charged for the copying of a patient's records. You can only charge "a reasonable, cost-based fee," which can include the actual cost of the copying and postage for the mailing, but which cannot include the cost

of searching for and retrieving the records.

If you are covered by HIPAA, then the restrictions are even greater, with the cost being limited to a base fee of \$15 for each request, as well as a copying charge of 50 cents per page for the initial 100 pages, and then 25 cents thereafter.

If your records are kept electronically, then you are also required to provide an electronic copy of the records if so requested by your patient.

You can charge the actual cost of providing the electronic copy itself. Note that if copies of any records, electronic or paper, are being made on behalf of a beneficiary for the specific purpose of supporting their claim under social security or any other state or federal financial need-based benefit program,

you cannot charge any fee to the patient. Under MA law, you are entitled to request "reasonable documentation" to confirm that the request is actually for a needs-based purpose.

How Long Can a Physician Take to Supply the Requested Records?

Under HIPAA, a physician only has 30 days to provide the requested records if they are maintained on-site. If your records are kept at an off-site location, then the time period is extended to allow 60 days to provide the records. If those dates present a problem, then you can extend the term for an additional 30 days, but only if the patient or third party is provided with a written statement explaining the reasons for the delay and the specific date

by which the records will be provided. The recommended course of action is to get the records to the patient or requesting party within the 30/60 days, and avoid having to get into written explanations for delay in releasing the records. If you are not covered by HIPAA, then the regulations require that the medical records be released in a “timely manner,” which has been interpreted by the board of registration to be two to three weeks.

How Long Must Medical Records Be Retained?

Physicians are required to maintain patients’ medical records, which are kept complete, legible, timely, and which will allow the present and any future medical professional to provide proper diagnosis and treatment to the patient. Also, any other records received from a patient’s other health care providers are required to be maintained as part of the patient’s medical records.

You must keep your patients’ medical records for a minimum of seven years from

the date of the last patient contact, or if the patient is a minor, then either that seven years or longer, if needed for the patient to reach the age of 18.

Once that period of time has passed, you can either supply your patients with their original medical records or destroy them. There is no requirement to first notify your patients before destroying their records. Also, a retiring physician or their successor must maintain a patient’s medical records for the same requisite periods.

What May Happen if Patients Feel Their Rights Have Been Violated?

Both HIPPA and Massachusetts law give rights to parties who feel that their rights have been violated by their healthcare providers in regard to medical records. Aggrieved parties have the right to file a complaint with the federal government’s Office for Civil Rights, or they can also file a complaint with the Mass. Board of Registration in Medicine, the state agency that regulates doctors in Massachusetts.

If the complaint is about a hospital, it

may be made to the Mass. Dept. of Public Health. Sometimes complaints are also made to the Mass. Office of the Attorney General.

What is obvious is that it is far less costly to comply with reasonable requests from parties for inspection or copies of their records, since even a successful defense of a formal complaint for an alleged violation of the statutes is likely to require legal counsel and a substantial investment of time and effort to resolve the matters.

If you have additional questions about how to handle your practice’s medical records, you should consult with your legal counsel or contact the MA Board of Registration in Medicine. ❖

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