Medical Record Release & Retention: Do You Know the Rules?

Physicians and patients alike have questions regarding medical record release and retention. Physicians may “own” the medical record physical paper or the Electronic Health Record (EHR) system; however, the patient has the right to access the information in his/her medical record. Physicians know that they are required to hold onto a patient's medical records long after they have last seen a patient. But questions still remain. Who else besides the patient has the right to access the medical record and under what circumstances? What is the truth regarding medical record retention and release?

The New Jersey Board of Medical Examiners (NJBME) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provide some answers. Per HIPAA, although the hard copy medical record or server where it is located is the property of the physician, the patient has the right to the information within his/her medical record. Accordingly, a patient can inspect, review and receive a copy of his/her own medical and billing records.

The Board of Medical Examiners Regulations, specifically NJAC 13:35-6.5, has established the following requirements regarding treatment records:

**MEDICAL RECORD RETENTION:**
- Physicians are required to retain most patients' medical records for a period of at least seven (7) years from the date of the most recent entry, after which time they may responsibly dispose of the records in compliance with HIPAA regulations.
- Pediatrics and Obstetrics: While the regulation does not provide guidance for how long records should be kept for pediatric or obstetrical patients, it is advisable that records be kept for seven years after the most recent visit or age 23, whichever is later.
- Medicare and Medicaid: It is important to note that under The False Claims Act, the federal government may look-back up to ten (10) years. It is recommended that when the patient is covered by Medicaid, Medicare, a Medicare Advantage plan or a Medicaid Managed Care plan, that the records be kept for ten (10) years from the last date of service.

**MEDICAL RECORD RELEASE:**
- Patients have a right to receive a copy of their medical record, not the original. The Privacy Rule requires that the copy be provided in the form and format requested, or in an agreed upon hard copy or electronic copy format. In addition, if the patient files a lawsuit, the original will be needed, which provides the most clear and credible documentation.
- It is recommended that requests for medical records be in writing. Written release forms should be HIPAA compliant including, at a minimum: description of the information/records to be disclosed; name of person/practice who may disclose them; to whom medical records can be disclosed; a description of the purpose of the disclosure or the statement “at the request of the individual; an expiration date/event for the authorization; signature of the patient or patient’s representative; date the authorization was signed and a statement from patient/representative that he/she has the right to revoke the authorization at any time. Conventus has developed sample templated HIPAA release forms for its insured members, including a separate release form required for psychotherapy notes.
- Medical records can be released to a patient (or in the case of a minor, the parent or legal guardian, as established by court documents), another physician treating the patient, the patient’s insurance carrier, family members (if authorized by the patient) and the executor or administrator of the patient’s estate.
- The treatment record must include all pertinent objective data (i.e. test results such as MRI, X-ray, CT-Scans, etc.) as well as subjective information. Professional treatment records obtained from other physicians are considered part of the patient’s medical record and must be included. If requested, a physician must also provide a copy of the billing record.
- Psychotherapy notes and any information which a provider has reason to believe that the patient’s mental or physical condition will be adversely affected upon being made aware of the subjective information contained in the professional treatment record or summary thereof may be excluded when providing copies of a patient’s medical record. An accompanying notice setting forth the reason(s) for the refusal must be provided.
MEDICAL RECORD RELEASE (cont’d):

• Unless otherwise required by law, a summary of the record in lieu of providing a photocopy of the actual record may be provided to the patient. The summary must adequately reflect the patient’s history and treatment.

• Per the NJBME, as well as the HIPAA Privacy Law, a physician must provide the copied treatment records to the patient within thirty (30) days of the request. A one-time extension is permitted if more time is required. Patients must be informed of the reason for the delay in writing within the initial 30-day period. Failure to give patients prompt access to or copies of their medical records violates the HIPAA Privacy Rule. Violations are handled by the Office of Civil Rights, where patients can and do file complaints of this nature.

• Physicians may charge a fee for the reproduction of records, which shall be no greater than $1.00 per page or $100.00 for the entire record, whichever is less. If the record requested is less than 10 pages, a physician may charge up to $10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.

• Physicians may also charge for the reproduction of x-rays or any other material within a patient record which cannot be routinely copied or duplicated on a commercial photocopy machine. The charge shall be no more than the actual cost of the duplication of the materials, or the fee charged to the physician for duplication, plus an administrative fee of the lesser of $10.00 or 10 percent of the cost of reproduction to compensate for office personnel time spent retrieving or reproducing the materials and overhead costs.

• Electronic Records: The New Jersey regulations are silent on charging fees for copies of a patient’s electronic records. Under HIPAA, per page fees are NOT permitted for the reproduction of electronic records. HIPAA allows covered entities to charge:
  — A “reasonable, cost-based fee” for a copy of the medical record, including labor and delivery of the record in the format requested (including actual postage); and supplies (e.g. CD or USB drive) **OR**
  — A flat fee of up to $6.50 for electronic copies of electronic records. This includes labor, delivery/postage and supplies.

• Under certain circumstances, a physician is **not permitted to charge** a patient for a copy of the patient’s record:
  — The patient has been terminated from the practice.
  — The physician has left the practice and the patient wishes to remain under the care of the physician in his/her new practice.
  — If the treatment record is illegible or has been prepared in a language other than English, a transcription must be provided at no cost to the patient.

• A physician is not allowed to refuse access/copies of the patient’s record on the grounds that the patient owes the physician an unpaid balance if the record is needed by another health care professional for the purpose of rendering care. Absent these circumstances, a physician has the right to hold onto a patient’s record until payment is received for the costs to reproduce the record.

Medical record release regulations are complex and continue to raise multiple questions as providers try to be compliant with requirements. Future editions of the Conventus Connection will address additional topics related to the release of medical records.

Questions?
As always, Conventus members can call our Practice Resource Department at (877)-444-0484, ext. 7466 to speak with a member of our team for assistance with understanding their medical record retention requirements or to answer any questions that may arise regarding medical record release and/or retention.

For more information please contact us at:
(877) 444-0484 x 7466 │ conventus@conventusnj.com │ www.conventusnj.com/

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