

# Legal Survey Responses Offer Window to IG in Healthcare

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By Ron Hedges

*Editor's note: The views expressed in this column are those of the author alone and should not be interpreted otherwise or as advice.*

For this month's post, I'd like to discuss the results of the 2015 *Legal Hold and Data Preservation Benchmark Survey* released in August and sponsored by Zapproved, Inc. Although this survey was not directed to the healthcare industry, the findings can be discussed in relation to information governance (IG). Survey respondents included various legal professionals from in-house legal teams at organizations, such as:

- Attorneys
- Litigation support management
- Paralegals
- Non-legal professionals (IT and record managers)

There were over 800 respondents, and the final survey population consisted of 421 "who currently issued legal hold notices" because its objective was to capture information about existing litigation holds and preservation. These litigation-related concepts plainly relate to.

I'm going to discuss how the litigation-related concepts in the survey relate to information governance and AHIMA's *Information Governance Principles for Health Care*<sup>TM</sup> (IGPHC<sup>TM</sup>) in a moment, but first want to include some key findings from the survey. These findings, as well as the complete Survey, are available at [https://www3.zapproved.com/Survey\\_2015\\_Legal\\_Hold\\_Benchmark.html?ls=Web&ccn=Website&cid=701G0000000D1IB](https://www3.zapproved.com/Survey_2015_Legal_Hold_Benchmark.html?ls=Web&ccn=Website&cid=701G0000000D1IB).

–More than half of survey respondents still use manual processes for tracking litigation holds, and 3.5 percent communicate litigation holds verbally; nearly half of respondents now have a software system in place.

–34 percent of the survey respondents have had to defend their preservation efforts, a fact that underscores the importance of defensible processes.

–56 percent of respondents consider their organization to be "at risk" when it comes to legal holds.

–When evaluating efforts to create a "culture of compliance" through training, 75 percent of participants say their organization offers training in data preservation, but only 36 percent feel custodians understand their responsibilities.

–When comparing their data preservation process to peer organizations, 62 percent indicate they do "better than most"; however, this figure jumps to 80 percent among respondents using an automated system.

–When automating the legal holds process, organizations report a range of benefits and on average perform nearly 20 percentage points better in key actions tied to best practices such as issuing reminders, custodian follow up, and handling departing employees.

What might these findings mean in the context of the IGPHC and electronic health records (EHR)? (This assumes, of course, that any findings would be similar for the healthcare industry). Some examples:

- Over half of the population used manual processes to track litigation holds. Can manual processes be consistent with the assignment of responsibility to communicate and monitor litigation holds involving voluminous and varied EHR? If so

for at least some healthcare providers, how might the principle of accountability be implemented?

- Over a third of the population had to defend preservation efforts and over half considered their organizations to be “at risk.” These (to me) surprisingly large percentages demonstrate the importance of the principles of transparency, integrity, compliance, availability, retention, and disposition for healthcare providers which may be called upon to demonstrate how those providers managed their records retention policies, issued and monitored litigation holds, and took steps to preserve the content and form of EHRs.
- Three-quarters of the population saw their organizations offer preservation-related training. However, almost a third questioned whether “custodians” of electronic information understood their responsibilities. These percentages demonstrate the importance of the principles of accountability and transparency in educating relevant personnel within healthcare organizations about the meaning and importance of litigation hold processes.

My purpose in writing this particular column was to raise questions about how healthcare providers might respond to the questions posed by the Survey and how those responses might be seen through the lens of the IGHPC. Please feel free to share your thoughts in the comments below.

## Acknowledgment

AHIMA thanks ARMA International for use of the following in adapting and creating materials for healthcare industry use in IG adoption: [Generally Accepted Recordkeeping Principles®](#) and the [Information Governance Maturity Model](#). ARMA International 2013.

## Disclaimer

The author has written and spoken on the 2015 and earlier surveys and is a faculty member of the Preservation Excellence (“PREX”) conferences sponsored by Zapproved. This column expresses only the author’s personal opinions and should not be construed or interpreted otherwise.

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