Managing E-Mail as Records

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by Sandra Nunn, MA, RHIA, CHP

E-mail use is so commonplace today that many HIM professionals do not even think of these routine transmissions as records. However, a growing number are becoming aware of the implications of e-mail and its power to transmit attachments of all kinds anywhere, anytime.

Ken Withers, a researcher in legal issues of electronic records management, considers e-mail at the forefront of information stored in digital form and terms e-mail a "digital tsunami of electronic information."[1] E-mail has become the backbone of interoffice communication, allowing employees to easily confer and collaborate with one another.

Because of e-mail's utility, people can send individuals or groups of people statements, spreadsheets, presentations, drawings, bills, and even medical records. These messages and their attachments can go to dozens or hundreds of people and then be forwarded to hundreds more. Surpisingly, this high volume of information has remained largely unmanaged.

The Legal View

The idea that e-mail should be considered documents or declared records, with the same provisions to preserve and safeguard them as other data content types, has been a hot topic in the judicial arena for some time. Long before healthcare turned its attention to e-mail in response to the provisions of the Federal Rules of Civil Procedure, e-mail and its metadata were already key components in judicial cases at the highest levels.

In 1993 the judge in *Armstrong v. Executive Office of the President* determined that simply printing off e-mail for record production was "arbitrary, capricious and contrary to the U.S. federal records laws."[2] As a result, the government "adopted new recordkeeping procedures ensuring the preservation of federal record e-mail messages, with their attachments, in electronic form."[3]

The Armstrong precedent made it a matter of law to preserve e-mail as records complete with their "contextual information" (i.e., metadata). The court required that the core set of e-mail metadata legally required to be captured includes:

- An intelligent representation of sender name
- An intelligent representation of all recipients' names, including the distribution list of "cc's"
- The date of transmission
- The date/time of an acknowledgment of receipt, only where requested by the sender[4]

As e-mail has become the primary vehicle of communication in organizations, lawyers' efforts to acquire it and its associated metadata have steadily increased. E-mail provides attorneys with information about the author, creation date, attachments, and the identities of all recipients, including those who received a cc or bcc.[5] Conversations take place in e-mail, and the history established in those conversations can reveal the actual events that transpired.

It is important to note that a printed e-mail is not the legal equivalent of the electronic e-mail record. A printed e-mail could not reveal all the names concealed in a generically named distribution list, but that list might reveal everyone with knowledge of the events surrounding a potentially liable event.

Best Practices for HIM Professionals

AHIMA's practice brief "E-Mail as a Provider-Patient Electronic Communication Medium and Its Impact on the Electronic Health Record" includes a comprehensive tool for HIM professionals considering e-mail in the context of patient-provider exchanges of all types. It recognizes that e-mail and text messages are "healthcare organizational business records and are

therefore subject to the same storage, retention, retrieval, medicolegal, privacy, security, and confidentiality provisions as any other patient-identifiable health information."[6]

In some respects, the e-mail exchanged between patient and provider is a good place to begin consideration of e-mail management in general. Some e-mail communications will become part of the medical record (e.g., explanations to the patient of lab results) and other e-mail like appointment scheduling may not, dependent on organizational decisions regarding what should be part of the legal electronic health record.

E-mail considered part of the legal electronic health record will have the same retention as the medical record itself. Archival of e-mail that is part of the record may need to be accomplished electronically, as a feed into the electronic chart. In a hybrid environment, it may need to be printed and filed into the medical record where it may eventually be scanned.

Record management professionals are now starting to realize that the document management systems used to scan remaining paper medical records into their electronic health records may be the tip of the iceberg. It may take many document management systems including an e-mail archiving system to manage the volumes of e-mail typical in most organizations. Other concerns swirling around e-mail include:

- The informality of the language used (e.g., failure to punctuate or capitalize, use of emoticons, or use of pet terms known only to the users)
- The ease and speed of distribution
- The proliferation of attachments
- The exponential growth of e-mail and the tendency to use it to archive information
- The same e-mail saved by many different users with multiple versions of attachments

With e-mail currently rising to as much as 60 percent of all organizational content, HIM professionals must become proficient at categorizing the e-mail to be preserved as medical records (i.e, within state and regulatory guidelines for medical record preservation) and then proceed to add nonclinical, business record e-mail to the retention schedule. They must determine in conjunction with information services exactly how some e-mail will be declared records and the remainder destroyed by following good faith practices documented in policies and procedures developed through collaboration of HIM, information services, legal services, and the organization's business units.

A Standard for Managing E-Mail

The standard ANSI/ARMA 9-2004, "Requirements for Managing Electronic Messages as Records," establishes records management practices for the creation, maintenance, and disposition of e-mail within the context of a formal information and content management program.

Some of the principles are not remarkably different than those for managing other record types, but there are critical differences. E-mail records are created by individuals who may use inappropriate language, and each of these individuals has a different approach to archival of his or her e-mail (e.g., the mail could be on the local drive, a shared drive, or pulled off onto a CD).

HIM personnel can take the following steps to attack and index the formidable mass of e-mail documents. They can begin by determining:

- Types of e-mail that should be kept as records (e.g., e-mail connected to litigation, associated with corporate officers or board activities, or acted upon by physicians in the provision of a patient's care).
- Retention guidelines for the categories of e-mail.
- Selection criteria for an e-mail archiving or document management system.
- Cost of retaining e-mail and the cost of reproducing it when it is requested in litigation or for release of information purposes.
- Appropriate media for long-term retention of e-mail.
- Process for disposing e-mail and how to automate it.
- Components of a communications program to educate employees on the appropriate management of e-mail. Employees must understand that everything they send through e-mail, from jokes to contracts, is content owned by their employer.

The management of e-mail is a problem bearing immediate attention. E-mail consumes enormous organizational resources silently. According to a study, when the "number of e-mails is doubled, the administrative time spent on messaging-related activities increased by 25 percent."[7] Failure to act increases the peril for a healthcare organization from patient safety, risk management, and cost perspectives.

Notes

1. Wilkins, Adam. "E-Mail Records and Knowledge Management: The Hidden Risk." *Information Systems Control Journal* 4 (2002). Available online at www.isaca.org.
2. *Armstrong v. Executive Office of the President,* 810 F. supp. 335 (D.D.C. 1993).
3. *Armstrong v. Executive Office of the President,* 877 F.2d 690, 715 (D.D.C. 1995) (Exh. C).
4. Ibid at 341.
5. LexisNexis. "Embedded Information in Electronic Documents: Why Meta Data Matters." Available online at www.lexisnexis.com/AppliedDiscovery/lawlibrary/whitePapers/ADI_MetaData.pdf.
6. AHIMA. "E-mail as a Provider-Patient Electronic Communication Medium and Its impact on the Electronic Health Record." October 2003. Available online in the FORE Library: HIM Body of Knowledge at www.ahima.org.
7. Wilkins, Adam. "E-Mail Records and Knowledge Management."

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