

Protecting Patient Information After a Facility Closure (1999)

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Patients trust their healthcare providers to respect their privacy, maintain the confidentiality of their health information, and assure its availability for their continuing care. When healthcare facilities close or medical practices dissolve, providers must be concerned with the protection of health information.

Procedures for disposition of patient records¹ must take several factors into consideration, including:

- state laws regarding record retention and statutes of limitation
- state licensing standards
- Medicare requirements
- federal laws governing treatment for alcohol and drug abuse (if applicable)
- guidelines issued by professional organizations
- the needs and wishes of patients

In some states, a state archive or health department will store health records from closed facilities. Generally, state regulations recommend records be transferred to another healthcare provider. If a healthcare facility or medical practice is sold to another healthcare provider, patient records may be considered assets and included in the sale of the property. If a facility closes or a practice dissolves without a sale, records should be transferred to another healthcare provider that agrees to accept the responsibility. If this is not feasible, records may be archived with a reputable commercial storage firm. Before records are transferred to an archive or another provider, patients should be notified, if possible, and given an opportunity to obtain copies of their health information. This may be done by publishing a series of notices in the local newspaper.

Regardless of the archival method used, the provider must assure that the integrity and confidentiality of the patient health records will be maintained and that the records are accessible to the patient and other legitimate users.

Background

During the course of treatment, patients share private details of their lives with physicians and other healthcare providers. Patients trust their healthcare providers to respect their privacy, maintain the confidentiality of their health information, and assure its availability for their continuing care. Because of this trust, healthcare providers must be concerned with the protection of health information when facilities close or medical practices dissolve.

Liability Issues

Generally, a healthcare provider remains liable for accidental or incidental disclosure of health information during or after a closure. Therefore, the provider must make appropriate plans to protect the integrity of the records and the confidentiality of the information they contain, while assuring access for continued patient care. State statutes addressing facility or practice closure should be followed. These are usually available from the state department of health. If state statutes are silent on how to proceed, the provider should consider several other factors, as outlined below.

Retention Issues

State Laws/Licensure Requirements

A provider is bound by applicable federal and state statutes after closure, as well as during its operation. Many state health departments and licensing authorities govern healthcare facility closures and may outline to whom records should be transferred. In some states a state archive or health department will store health records from closed facilities. More commonly, state regulations recommend records be transferred to another healthcare provider.

If records cannot be transferred to a state archive or state health department, the state's requirements for record retention for both adult and minor patients should be reviewed before a policy is formulated. *(Note: Many states require approval from the state department of health or licensing authority before any plan is implemented.)*

To minimize storage and/or transfer costs, the provider may wish to destroy records that are past the period of required retention. For example, if state law requires that records be retained for 10 years after the patient's last encounter, records that are more than 10 years old could be destroyed. If state law does not specify the length of time records must be kept, the provider must consider the state's malpractice statute of limitations for both adults and minors and assure that records are maintained for at least the period of time specified by the state's statutes of limitations. A longer retention period is prudent, since the statute may not begin to run until the potential plaintiff learns of the causal relation between an injury and the care received. If the patient was a minor, the provider should retain health information until the patient reaches the age of majority (as defined by state law) plus the period of the statute of limitations, unless otherwise provided by state law.

The provider should also contact its malpractice insurance carrier. Both the provider and the carrier must have access to patient records after the closure in the event a malpractice claim is filed.

Medicare Requirements

If the provider participates in the Medicare program, it must retain records in their original or legally reproduced form for at least five years to comply with the Medicare Conditions of Participation.

Federal Regulations re: Alcohol and Drug Abuse Treatment

If the provider has offered services pertaining to alcohol and/or drug abuse education, training, treatment, rehabilitation, or research, disposition of these records must meet requirements outlined by federal law.² When a program discontinues operations or is acquired by another program, this law requires the patient's written authorization for records to be transferred to the acquiring program or any other program named in the patient's authorization. If records are required by law to be kept for a specified period which does not expire until after the discontinuation or acquisition of the program and the patient has not authorized transfer of the records, these records must be sealed in envelopes or other containers and labeled as follows:

"Records of [insert name of program] required to be maintained pursuant to [insert citation to law or regulation requiring that records be kept] until a date not later than December 31, [insert appropriate year]."

Records marked and sealed as prescribed may be held by any lawful custodian, but the custodian must follow the procedures outlined by law for disclosure. If the patient does not authorize transfer of his records to another program, they may be destroyed after the required retention period.

Recommendations from Professional Organizations

Professional organizations should be contacted for guidelines or recommendations. Such professional organizations may include local or state:

- health information management associations
- hospital associations

- medical societies

Physicians who are closing their practices may wish to contact the American Medical Association and their state licensure board for guidance.

Legal Advice

Advice from legal counsel should be sought to determine the appropriate retention period, assure compliance with state laws and regulatory agencies, and help plan for an orderly closure or transfer.

Budgeting for a Closure

Regardless of which plan of action your facility institutes to deal with the patient records, resources will need to be allocated to carry out the plan. Some of the resources that need to be budgeted for include:

- labor
- copy equipment and supplies
- postage
- telephone
- utilities
- storage boxes and supplies
- transportation costs (to storage unit)
- storage and retrieval costs for required retention period

Recommendations

As soon as a healthcare provider anticipates a facility closure or dissolution of a medical practice, the provider should begin planning for proper disposition of patient health records. The primary objective should be to protect the confidentiality of the information contained in the records. The second objective is to assure future access by patients, future healthcare providers, and other legitimate users.

To assure accurate information for continuing care, all health information must be completed before the records are archived. This includes transcription of all dictated reports and interpretation of any diagnostic tests.

Before records are transferred to an archive or another provider, patients should be notified, if possible, and given an opportunity to obtain copies of their records. Letters may be sent to former patients, or announcements may be repeated in local newspapers and professional journals to notify patients and their physicians about the upcoming closure/practice dissolution and let them know how to access their information. Patients should be given a reasonable amount of time (at least one month unless a longer time period is required by state law) to request copies of their records.

Elements to consider including in the letter to the patient are as follows:

- the date the facility will close
- notification of where the records will be stored and how to access them
- a release of information form to be completed to receive a copy of their medical record

- notification that only written requests for copies of health information will be honored
- notification of any time limitations (submission deadlines) on the period of time during which requests will be accepted
- instructions on how to seek a new healthcare provider

The facility should retain a copy of the actual letter sent to patients, along with the mailing list, post office receipt, and all returned (undeliverable) envelopes.

If the records pertain to treatment for alcohol and/or drug abuse, specific federal regulations³ must be followed.

Closure/Dissolution with a Sale

If a healthcare facility or medical practice is sold to another healthcare provider, patient records may be considered assets and included in the sale of the property. As part of the agreement, the provider should retain the right to access the records and obtain copies, if needed, from the new owners. In addition, if the new owner considers a sale to a third party, the original provider should retain the right to reclaim the patient records.

If the facility or medical practice is sold to a non-healthcare entity, patient records should not be included in the assets available for purchase. The provider should make arrangements to either transfer the records to an archive or another provider who agrees to accept responsibility for maintaining them.

Closure/Dissolution without a Sale

If a facility closes or a practice dissolves without a sale, arrangements should be made with another healthcare provider where patients may seek future care, unless otherwise required by state law. That provider should agree to maintain the records, permit access by authorized persons, and destroy the records when applicable time periods have expired. Health information management professionals at the receiving facility should be familiar with record retention and destruction requirements and confidentiality concerns and have systems in place to allow patients and other legitimate users access to the information. Prior to transferring the records, a written agreement outlining terms and obligations should be executed. The original provider is responsible for assuring that records are stored safely for an appropriate length of time.

If transfer to another provider is not feasible, records may be archived with a reputable commercial storage firm. Such a firm should be considered only if it:

- has experience in handling confidential patient information
- guarantees the security and confidentiality of the records
- assures that patients and other legitimate requestors will have access to the information

If a storage firm is used, specific provisions should be negotiated and included in the written agreement. Such provisions include but are not limited to:

- agreement to keep all information confidential, disclosing only to authorized representatives of the provider or upon written authorization from the patient/legal representative
- prompt return of all embodiments of confidential information without retaining copies thereof upon the provider's request
- prohibition against selling, sharing, discussing, assigning, transferring, or otherwise disclosing confidential information with any other individuals or business entities
- prohibition against use of confidential information for any purpose other than providing mutually agreed upon services

- agreement to protect information against theft, loss, unauthorized destruction, or other unauthorized access
- return or destruction of information at the end of the mutually agreed upon retention period
- assurance that providers, patients, and other legitimate users will have access to the information

Providers may consider giving original records directly to patients, but only copies should be given to patients unless the required retention period has expired. During the required retention period, the provider may need access to the original records for the provider's own business reasons.

Regardless of the archival method used, the provider must assure that the integrity and confidentiality of the patient health records will be maintained and that the records are accessible to the patient and other legitimate users.

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Notes

1. Patient records may include paper, microfilm, optical storage, or computer-based health information, diagnostic images (such as radiology films, nuclear medicine scans, and cineangiography films), fetal monitor recordings, videotaped operative procedures, and information stored on other media.
2. Code of Federal Regulations 42 CFR Ch. 1 (10-1-85). [42 CFR Part 2 Subpart B, Paragraph 2.19]
3. *Ibid.*

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Exhibit 1 -- States with Laws/Regulations/Guidelines Pertaining to Facility Closure

Note: State laws addressing facility closure continue to evolve. If your state is not listed, please check with your state licensing authority. State Summary of Law/Regulation Citation

State	Summary of Law/Regulation	Citation
Alabama	When a hospital ceases to operate, either voluntarily or by revocation of its license, the governing body (licensee) at or prior to such action shall develop a proposed plan for the disposition of its medical records. Such plan shall be submitted for review and approval to the Division of Licensure and Certification and shall contain provision for the proper storage, safeguarding and confidentiality, transfer, and/or disposal of patient medical records and x-ray files.	Rule 420-5-7.10 (1) Hospitals, Rule 420-5-5-.02 (7) (h) End Stage Renal Disease Treatment and Transplant Centers, 420-5-2-.02 (6) (h) Ambulatory Surgical Treatment Facilities, 420-5-1.02 (5) (f) Abortion and Reproductive Health Centers, 420-5-18-.06 (9) Sleep Disorders Facilities
Alaska	When a hospital ceases to operate, a plan approved by the Department of Health and Social Services will outline arrangements for the immediate preservation of its records. Healthcare providers of Medicaid recipients must notify the department. Instructions will be provided by the department as to the disposition of Medicaid records. Nursing homes that cease to operate must contact the department for direction on disposition of their admission and death records.	Alaska Statutes 18.20.085 (c) 7 AAC 43.030 7 AAC 12.040(I) (2)
Arizona	Facilities that cease to operate must submit to the Department of Health a plan for preservation of records in accordance with state regulations.	R9-10-221. R -- General Hospital R9-10-321. R -- Rural General Hospitals
California	Within 48 hours of ceasing to operate, the facility must notify the Department of Health of its plan for the safe preservation of medical records. Should the facility change ownership, written documentation must be provided by both the old and new licensee outlining the arrangements made for transfer of medical record custody, safe preservation of the records, and access to the information by both the new and old licensees and other authorized individuals.	Title 22, section 70751 (d) Title 22, section 70751 (e)
Colorado	When a facility closes, arrangements must be made for transfer of the medical records to a new custodian. A written memorandum of understanding or contract shall be signed by the new custodian outlining the date, location, and receipt of transfer. The written agreement will transfer responsibility for the retention and maintenance to the new custodian. If a willing custodian cannot be obtained, the facility must contact the local health department or other appropriate local government so temporary storage	Guidelines from Colorado Hospital Association, <i>Consent Manual and Guidelines for Release of Health Information</i> , 1996

	may be arranged. Public notice should be provided through the newspaper or general news release. Authorized parties should be given the opportunity to assume identified records.	
Connecticut	A practitioner or agency should be aware of the specific requirements as to the existence and contents of the medical record and at least the legal requirement for retention of the record. The retention period applies even if the agency or individual ceases to operate.	Guideline from Connecticut Health Information Management Association
Florida	Facilities involved in an acquisition, merger, or closing should maintain records in accordance with state law. In a merger, the new facility should merge the old entity's active records with its records and prepare a retention schedule for the inactive records. The merger agreement should include a provision detailing who is responsible for records. Florida General Records Schedule for Hospital Records requires facilities to submit a records destruction request, form LS5E107, and obtain permission from the licensing agency before proceeding with a record destruction. Florida Administrative Code requires a licensee to notify the department of impending closure 90 days before the closure. The facility must advise the licensing agency as to the disposition of medical records.	Florida Administrative Code 59A-3.153
Hawaii	Before a healthcare provider ceases operations, immediate arrangements approved by the Department of Health shall be made to ensure the retention and preservation of its patient records. In an acquisition or merger, the succeeding providers are liable for preservation of basic information from the medical records in accordance with state law.	Title 33, section 622-58 (e)
Idaho	Facilities should adhere to Idaho code and Idaho Practice Acts regarding maintenance and retention of patient information when a facility closes.	Idaho code 39-13941.C IDAPA 16.03.0220304b IDAPA 16.03.14360
Illinois	The licensee shall notify the Department of Public Health of the impending closure of the hospital at least 90 days prior to such closure. The hospital shall implement a policy for the preservation of patient medical records and medical staff credentialing files.	77 Illinois Administrative Code, Chapter I Section 250.120 (b), 250.1510 (e) (2), and 250.310 (a) (16)
Indiana	Upon closure, the facility must transfer the medical records (preferably in microfilmed format) to a local public health department or public hospital in the same geographic area. If the records cannot be transferred to a public health department or public hospital in the same geographic area, the records should be sent to the Board of Health.	Hospital Licensure Rules of the Indiana State Board of Health 410 IAC 15-1-9 (2)
Iowa	When a facility closes or transfers ownership, all active patients should be notified and given an opportunity to obtain copies of their records. In addition to individual notices to patients, a public notice is generally published in the newspaper of	Guidelines from Iowa Health Information Management Association's <i>Guide to Medical Record Laws</i> , 1993

	general circulation advising patients and physicians of the location of the facility's medical records and how access may be gained to them. The facility is liable for preserving the confidentiality and security of the records until ownership is assumed by another or the required retention period has expired.	
Kansas	When a facility closes, it shall inform the state licensing agency of the location where the records will be stored.	Kansas Regulations 28-34-9a (d) (1)
Kentucky	Should the facility discontinue operation as a result of disaster or for any other reason, the facility must provide a written plan for the storage of the medical records to the state licensing agency.	Kentucky Administrative Regulations 902 KAR 20:016 Section 3 (11) 3
Louisiana	The secretary of the Department of Health and Human Resources shall adopt rules, regulations, and minimum standards providing for the disposition of patients' medical records upon closure of a hospital. Such regulations may require submission by a hospital that is closing of a plan for disposition of patients' medical records to the secretary for approval.	Louisiana Health and Human Resources Administration Acts La, RS 40; 2109 E
Maryland	Should a physician practice expire, his/her representative must send a notice to the patient at the patient's last known address and publish a notice in the local newspaper, affording the patient an opportunity to obtain Medical copies of the medical record before the records are stored, transferred, or destroyed. Only home health agencies are required by state regulations to retain medical records after the agency closes.	Code of Maryland Regulations Subtitle 4. Personal Medical Records, 4 -- 403 Destruction of Records
Massachusetts	Should the ownership of a hospital, an institution for unwed mothers, or a clinic change, the new owner must maintain all medical records from the purchased facility. Should an institution permanently close, the institution will arrange for preservation of such medical records for the 30-year retention period. The facility/physician must also inform the state of the location and availability of these records.	Massachusetts Statutes 111, section 70
Minnesota	No specific statutes or regulations exist to address disposition of medical records at the time of a facility or practice closure. Statutes require hospitals to permanently retain those portions of medical records as defined by the Commissioner of Health. Physicians have a professional responsibility for the proper management of medical records, including disposition at the time of a practice closure.	Minnesota Statutes 145.30, 145.32, and 147.091 Minnesota Rule 4642.1000
Mississippi	When a facility closes, it must turn over its records to any other hospital or hospitals in the vicinity that is willing to accept and retain the medical records. If no facility is available or willing to accept the medical records, then they will be promptly delivered to the licensing agency.	Mississippi Code, section 41-9-79

Missouri	New operators of nursing, convalescent, and boarding homes are required to retain the original records of residents.	Section 198.052
Nebraska	When a hospital closes, all medical records will be transferred to the licensed facility to which the patient is transferred. All remaining records shall be disposed of.	Title 175, Chapter 9, 003.04A6
New Hampshire	Should an outpatient clinic, residential treatment and rehabilitation facility, or home health service cease operation, the safe preservation of the clinical records must be provided for.	Administrative Regulations He-P 806.10, He-P 807.07, and He-P 809.07
New Jersey	Before closing, the hospitals' governing authority must submit a plan for record storage and service to the Department of Health.	Section 8: Section 10 NCASC 34B-7.4 (b)
North Carolina	If a (facility) discontinues operation, its management shall make known to the division where its records are stored. Prior to destruction, public notice shall be made to permit former patients or their representatives to claim their own records.	T10: 03C. 3903 -- Hospitals T10: 03H. 2402 -- Nursing Homes
North Dakota	North Dakota Hospital Licensing Rules require that if a hospital discontinues operation, it shall make known to the department where its records are stored. Records are to be stored in a facility offering retrieval services for at least 10 years after the closure date. Prior to destruction, public notice must be made to permit former patients or their representatives to claim their own records.	North Dakota Administrative Code, section 33-07-01.1-20 (1994)
Oklahoma	In the event of closure of a hospital, the hospital shall inform the Department of Health of the disposition of the records. Disposition shall be in a manner to protect the integrity of the information contained in the medical record. These records shall be retained and disposed of in a manner consistent with the statute of limitations.	Oklahoma Hospital Standards 310:667-19-14 (b) (4)
Oregon	Should a hospital or related institution change ownership, the medical records must be retained and become the responsibility of the new owner. Should a hospital close, the medical records may be turned over to any other hospital or hospitals in the vicinity willing to accept and keep them.	Oregon Administrative Rules 333-70-055(13) (14)
Pennsylvania	The Department of Health must be informed of the location of the stored records for the closed hospital. The storage facility chosen must provide retrieval services for five years after the closure. No records can be destroyed until after public notice, in the form of both legal notice and display advertisement, is placed in a newspaper of general circulation. Former patients or their representatives must be provided the opportunity to claim their records prior to destruction.	28 Pennsylvania Statutes, section 115.24
South Carolina	South Carolina Department of Health and Environmental Control regulations specify that	Regulation 61-16 section 601.7D, Regulation 61-14 section 504.3,

	hospitals and institutional general infirmaries must transfer ownership of all medical records to the new owners if the facility is sold. The facility will make arrangements for the preservation of the medical records after a closure. The department will be notified of the arrangements made to preserve the records.	Regulation 61-17, Regulation 61-13
Tennessee	Should a hospital close, it must surrender the hospital records to the Department of Health and Environment. The facility must deliver the records to the department in good order and properly indexed.	Tennessee Code section 68-11-308
Texas	The licensing agency shall be notified by the closing facility of the identity of the record custodian and the location of the stored records. Should a special facility change ownership, the new owners must maintain proof of medical information required for the continued care of the residents.	Texas Hospital Licensing Standards 1-22.1.6 and 12-8.7.6
Utah	Within three business days of closure, the hospital must provide a written plan to the Department of Health outlining steps that will be taken to provide for the safe storage of all medical records and patient indexes for the 10-year retention period. Any plan submitted must include provisions for prompt retrieval of the stored records on demand. A public notice of the storage location and retrieval procedure must be placed in the local newspaper. The facility may choose to store the records with another hospital or transfer the records to the attending physicians provided that either party is still located within the community.	Rule 7.406 A and Rule 7.406 D
Virginia	Virginia has no regulations that address hospital closure, but nursing home closure is addressed in its Rules and Regulations for the Licensure of Nursing Homes. At closure the owners shall make provisions for the safeguarding of all medical records. Should the facility change ownership, provisions will be made for the orderly transfer of all medical records.	Rules and Regulations for the Licensure of Nursing Homes 24.7
Washington	When a hospital closes, it shall make arrangements for the preservation of its records in accordance with applicable state statutes and regulations. Any plan of action must first be approved by the Department of Social and Health Services. If a hospital changes ownership, the medical records, indexes, and analysis of hospital services are not to be removed from the facility and will be retained and preserved by the new owners in accordance with applicable state statutes and regulations.	Title 70 Revised Code of Washington section 70.41.90 and section 248-18-440
Wisconsin	Should a healthcare provider cease practice or business as a healthcare provider, the healthcare provider or the personal representative of the deceased healthcare provider shall do one of the following for all patient health records: A. Provide for the maintenance of the patient health records by	Wisconsin Statute 146-819

a person who states, in writing, that the records will be maintained in accordance with state statutes. The custodian of the medical records will provide written notice to each patient or patient representative describing where the records will be maintained and by whom. This notice will be sent by first-class mail to the patient's last known address. A class 3 notice will be placed in a newspaper in the county where the healthcare provider is located. B. Provide for the deletion or destruction of all or part of the patient health records. The provider or representative shall provide written notice to each patient or patient representative via first-class mail addressed to the patient's last known address, and by publishing a class 3 notice in a newspaper located in the county where the healthcare provider is located. The patients will be provided at least 35 days prior to the deletion or destruction of the records to obtain their medical records. This statute only applies to independent practitioners who cease practice or who die; it does not apply to residential facilities, nursing homes, hospitals, home health agencies, tuberculosis sanitariums, or public health agencies.

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