

Retaining Healthcare Business Records

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The healthcare industry not only keeps medical records, it also keeps business records. Sometimes health and business information is combined, as in a remittance advice. Other records are pure business records and do not contain health information.

According to section 1(c) of the Uniform Preservation of Business Records Act, business records consist of the following:

- books of account
- vouchers
- documents
- canceled checks
- payrolls
- correspondence
- records of sales
- personnel
- equipment and production reports relating to any or all of such records
- other business papers

Although many states define medical records or specify their contents, not many define hospital business records. The state of Mississippi, however, provides a good definition. Mississippi Code 41-9-61 defines business records as “all those books, ledgers, records, papers, and other documents prepared, kept, made, or received in hospitals that pertain to the organization, administration, or management of the business and affairs of hospitals, but which do not constitute hospital records . . .” That statute also defines hospital records as medical records.

Federal law does not define hospital business records. The federal adaption of the Uniform Photographic Copies of Business and Public Records Act, 28 USC 1732 defines business records as “. . . any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event . . . in the regular course of business . . .”

Regardless of whether a particular healthcare record is called a business record, a personnel record, a financial record, or someother kind of record, keeping proper business records is critical to the successful operation of a healthcare facility.

Federal Business Records Retention Requirements

The federal government has many requirements for keeping business records. Sometimes a law specifies a retention period. In other cases, no law specifies retention of a particular record, but the entity must keep the record to prove compliance with a law or regulation. Following are some of the major federal requirements applicable to the healthcare industry.

Department of Labor: As an employer, a healthcare entity must keep payroll records for all employed, with employee’s name, address, sex, date of birth, occupation, hours worked each day, total hours worked each week, hourly rate of pay for any work week in which overtime is due, total wages paid, and deductions taken. The employer must also keep certificates, collective bargaining agreements, and individual contracts, as well as sales and purchase records. These records must be kept for three years.¹ Records that must be kept for at least two years include the basic employment and earnings records, wage rate tables, order shipping and billing records, and records of additions to or deductions from wages paid.²

Employers with employee benefit or pension plans must file a summary of the plan with the Department of Labor under the Employee Retirement Security Act of 1974 and keep sufficient records to detail the basic information and data for not less than six years after filing required reports.^{3, 4}

Equal Employment Opportunity Commission: Entities subject to the Civil Rights Act must keep personnel, employment, and other records having to do with hiring, promotion, demotion, transfer, layoff, termination, pay, and selection for training or apprenticeship for six months after making the record or the personnel action that necessitates the record, whichever is longer.⁵

Entities subject to the Equal Pay Act must keep pay records for at least two years.⁶ Those subject to the **Age Discrimination Act** must keep records thereof as follows:

- employee's name, address, date of birth, occupation, rate of pay, and compensation earned each week: three years
- personnel or employment records relating to applications, promotion, discharge, recruitment, aptitude tests, other employer-administered tests, results of physical exams considered in connection with personnel actions, and advertisements: one year
- records relating to employee benefit plans: one year after termination of the plan
- copies of applications for temporary positions: 90 days

Tax records: The statute of limitations for collection of income tax is three years from the date of the return.⁷ If, however, the return under reports income by 25 percent, collection may be had within six years after the return was filed.⁸ If the return is fraudulent, no statute of limitations exists and the IRS can collect tax due at any time. If a non-profit is later determined to be a taxable corporation, its tax-exempt form is deemed an income tax return for these periods of limitation, necessitating retention of records concerning tax-exempt status for at least three years.⁹

OSHA records: Entities must keep Occupational Safety and Health Administration (OSHA) employee exposure records, medical records, and any analyses using employee exposure or medical records for 30 years.¹⁰ Entities must maintain a separate log at each business address of all recordable occupational injuries or illnesses for five years.¹¹ Records of occupational injuries or illnesses must be kept for five years.¹²

Food and Drug Administration: Although no retention period is specified, collectors and processors of blood must maintain a manual of procedures and methods used to determine suitability of donors and a list of names and qualifications of employees who supervise other employees' determination of suitability when a physician is not present.¹³

Health and Human Services: The Department of Health and Human Services (HHS) requires retention of many records often without specifying retention periods. These include Medicare contract and reimbursement records.¹⁴

Health maintenance organizations must maintain financial reports and statistical data for proper documentation of costs payable by Medicare.¹⁵ All contracts for medical assistance, including contracts with private, non-medical institutions and with insurers, must require the contractor to maintain appropriate record systems for services provided to enrolled recipients.¹⁶

Providers of services must maintain sufficient financial records and statistical data to determine costs payable under Medicare, including:

- provider ownership data
- organization and operating data
- fiscal records
- medical records
- tax records
- asset sale
- acquisition or lease records
- patient service charge schedules
- records pertaining to operating costs
- amounts of income received
- funds flow information¹⁷

Recipients of HHS grants must keep financial records, supporting documents, statistical records, accords for equipment purchased under the grant, and any other records pertinent to the grant for three years after the date of submission of an annual or final expenditures report or audit by HHS.

Covered entities must keep records of HIPAA compliance for six years.^{[18](#)}

Other federal agencies: Other federal agencies may require record keeping, including but not limited to the Environmental Protection Agency, the Nuclear Regulatory Commission, and the Veterans Health Administration (VHA). The VHA, for example, requires contractors providing medical resources or services to the VHA to keep records required by the contract for the life of the contract plus three years.^{[19](#)}

State Business Records Requirements

Some states specify what business records certain healthcare providers, typically hospitals and long-term care facilities, must maintain. Florida, for example, requires each nursing home facility licensee to maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. It must retain such records for not less than 5 years from the date the reports are filed or issued.^{[20](#)}

Others do not require specific business records for healthcare entities, but require various types of business organization to keep records. Hawaii's Nonprofit Corporation Act, for example, requires nonprofit corporations to keep correct and complete books and records of account and minutes of the proceedings of its members, board of directors, and names and addresses of members entitled to vote.^{[21](#)} Other state record-keeping requirements pertain to a particular category of patient. In Pennsylvania, for example, providers must retain all medical and fiscal records that fully disclose the nature and extent of services rendered to medical assistance recipients.^{[22](#)}

A complete listing of all such state requirements is beyond the scope of this practice brief, but healthcare business records managers should carefully research all state statutes and administrative regulations to determine which record keeping requirements apply to them.

Records Management

A healthcare entity must keep business records for the following three reasons:

- to help it accomplish its mission (by receiving reimbursement for the services it provides)
- to comply with governmental requirements
- to protect itself in litigation

But just keeping records isn't sufficient. The healthcare entity must manage them to ensure that they accomplish those three purposes. Records management is "the systematic control of all records from creation or receipt through processing, distribution, maintenance, and retrieval, to ultimate disposition."^{[23](#)}

Developing a Business Records Retention Program

Those responsible for healthcare business records must systematically develop a records retention program in the regular course of business, evaluate the records, document development of the retention program, and obtain necessary approvals. A healthcare entity systematically developing a business records retention program must:

- deal with all types of records
- deal with all media
- create retention and destruction schedules
- obtain approvals for the program
- perform day-to-day management of the program
- document the program^{[24](#)}

Addressing All Records and All Media

The entity must address **all types of records** in this process, including **reproductions**. Reproductions often have the same legal effect as originals, so destroying only originals gains nothing. The retention program must also address "information

copies” and similar copies. Opposing counsel in a lawsuit can subpoena such copies and use them against the facility even when it has properly destroyed the originals.

Because **all media** typically have the same legal effect as a paper original, one must address all media, **including microfilm and computer records**. If the records manager can properly destroy an original, the entity does not need to keep copies in any media. If, however, the entity needs to keep a record, the records manager should consider whether good business practice dictates copying the original onto optical disk or otherwise preserving the information more efficiently. The records retention program should provide for the destruction of computer and other media just as it does for paper records.

Creating Retention and Destruction Schedules

After the records manager has identified all the records, including all media, he or she is ready to determine how long to keep them. According to *Developing and Operating a Records Retention Program*, a **records retention period** is:

The period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical, or other purposes. Records should be destroyed after termination of the retention period.²⁵

The question of how long a healthcare entity should keep a particular business record is not necessarily an easy one. Federal or state law specify a retention period; however, the entity may need to keep a record longer than required by law to satisfy business needs.

Many federal and state statutes and regulations provide for a specific retention period. Others require record keeping without specifying a retention period. Regardless of whether a statute or regulation specifies how long to retain a record, **statutes of limitation** have an important role in determining a legally sufficient records retention period.

A statute of limitation does not itself discuss how long the corporation should retain records. However, records are among the most important types of evidence in lawsuits. Thus, certain records should be retained at least for the period of the statute of limitations even if other laws require a shorter period or don’t have a retention period at all. This depends on the entity’s judgment about the possibility and severity of adverse claims and whether the records would help it defend itself.

However, even if the records would hurt the entity’s position in litigation, it should never destroy records that are involved in litigation, government audit, inspection, or even an imminent lawsuit. Such an act constitutes spoliation of evidence, which can result in a separate lawsuit for damages, an instruction to the jury that it may infer that the destroyed records were adverse, or other sanctions.

What should the entity do if the law does not specify a retention period and retention for the period of the applicable statutes of limitation is unnecessary? Part of the answer is to keep the record as long as necessary for the entity’s business needs. If the government does not specify a particular retention period, the corporation only needs to keep the records for a reasonable time.

Although the definition of “reasonable” may vary, keeping records for three years should suffice, because the Uniform Preservation of Business Records Act requires retention of business records for three years from the creation of such records unless the law requires a different retention period. Keeping the record for that period would almost certainly demonstrate that the entity was acting reasonably.

Practical Considerations in Retention

From a legal standpoint, the safest step is probably to keep all records forever. But that would be poor use of valuable office space, and the law does not require “perfectly safe” record keeping but rather, reasonable retention periods. Keeping records is expensive and even with modern reproduction and storage technology, files can eat up space. Thus, business records managers may and should consider the costs of keeping records longer than necessary, such as the cost of transferring to optical disk or storage. Getting rid of unnecessary information has obvious benefits, including saving space, speeding up the retrieval of information, and lessening the potential for errors.

One good technique is to keep important records for 10 years unless the law requires a longer retention period. More than 90 percent of states have statutes of limitation of 10 years or less. This results in a uniform record keeping system without

distinction between the states in which the entity is doing business. But this may mean that the entity keeps records longer than is necessary, with the attendant cost and risk. Less important records can be retained for the three-year period that would be reasonable under the Uniform Preservation of Business Records Act as discussed above.

Obtaining Approvals for the Program

After creating retention and destructions schedules, records managers should obtain **written approvals** for the record retention schedules and procedures. Get—and keep—written approval for both the records retention program and the schedules developed from the entity’s chief executive officer, chief financial officer, compliance officer or legal counsel, and tax advisor (if a for-profit entity). These approvals will help prove that the entity properly implemented the business record retention program in the regular course of business.

Managing the Program

Once the business records retention program is up and running, **follow it**. If the retention period requires keeping records for three years and then destroying them, the records manager should do so unless the records are involved in litigation, inspection, or audit. If some records are destroyed and others are not without a proper reason (such as a need to retain them for litigation), the corporation is not maintaining those records in the regular course of business. Control and manage the operation of the records retention program to ensure that it is up to date and that employees are properly trained, meaning they retain records as specified in the retention schedule, that they destroy records properly, and they stop destroying records—even when permitted by the program—when litigation, government investigation, or audit is pending or imminent.

The records manager should also **periodically review** the existing retention schedules to see whether the law has changed or the organization’s business needs have changed, necessitating or permitting a longer or shorter retention period.

Documenting the Program

Having this comprehensive, legally sufficient records management program does little good unless the entity can **document it**. Much like any other governmental requirement, if the entity cannot demonstrate that it maintained its records properly, the government may assume that the corporation did not and may issue sanctions. Consequently, the entity must maintain documentation supporting the development and implementation of the program.

This documentation must include the following:

- documentation supporting the development of the overall records management program, specifically including the records retention program
- written procedures, including the procedures in effect each year (rather than just the current procedures)
- written approval for the records management program, as discussed earlier
- signed records retention schedules
- documentation for the destruction of records under a records retention program
- audit reports indicating compliance with the program
- a record of legal research performed (e.g., statutes and regulations imposing retention periods, statutes of limitations, and authorized media)

Keep records that document the records management program for a reasonable time—long enough to demonstrate a pattern of activity and regular compliance—unless the law specifies a retention period. Ten years is a good starting point to modify based on the likelihood of litigation or audit and the volume of records involved.

If records managers consider all records and media when they develop records retention programs, create retention and destruction schedules (and get approval for them), manage the program, and document their management, they will likely have legally sufficient and effective records management programs.

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<i>Recommended Retention Periods</i>		
Record	Suggested Period of Retention	Remarks
Administrative Offices		
Accident/incident reports	6 years	
Annual reports	Permanent	
Appraisal reports	Permanent	
Articles of Incorporation	Permanent	
Birth records	Permanent	
Bylaws	Permanent	
Daily census	5 years	
Communicable disease reports	3 years	
Construction records	Permanent	
Correspondence	5 years	Keep only that of continuing interest. Review annually.
Death records	Permanent	
Endowments, trusts, bequests	Permanent	
Insurance policies	6 years after expiration	
Licenses, permits, contracts	Permanent	
Minutes of board meetings (directors, executive committees, medical staff)	Permanent	
Permits (alcohol and narcotics, etc.)	Life of permit plus 6 years	
Physician personnel records	Permanent	
Policies and procedure manuals	Life of manual plus 6 years	
Property records (deeds, titles)	Permanent	
Property records (leases)	Term of lease plus 6 years	
Reports (departmental)	3 years	Many daily and nonannual reports may be destroyed after year-end statistics are compiled.
Statistics on admissions, services, discharges	Permanent	
Admissions and Discharges		
Listings	6 years	
Register	Permanent	

Business Office		
Alien-statement of income paid	As long as contents may be material in the administration of an Internal Revenue Law ²⁶	
Bank deposits	2 years	
Bank statements	6 years	
Budgets	5 years	
Cash receipts	6 years	
Cashier's tapes	6 years	
Charge (slips) to patients	5 years	
Check vouchers	10 years	
Checks (cancelled)	7 years	
Check registers	6 years	
Correspondence		
Credit and collections	7 years	
General	6 years	
Insurance	4 years	
Equipment depreciation records	Permanent	
Income (daily summary)	5 years	
Invoices		
Fixed assets	Life of asset plus 6 years	
Accounts receivable	6 years	
Accounts payable	6 years	
Journals (general)	Permanent	
Ledgers (general)	Permanent	
Ledger cards (patients)	7 years	
Payroll		
Bonds	10 years	
Insurance	8 years	
Individual earnings	Term of employment plus 6 years	
Journals	25 years	
Rate schedules	6 years	
Social security reports	4 years	
Withholding tax exemption (W-4 forms)	4 years	
Withholding tax statements (W-2 forms)	4 years after taxes paid	
Posting audits	7 years	
Unemployment tax records	4 years	
Vouchers		
Capital expenditures	Permanent/life of item plus 6 years	
Cash	10 years	
Welfare agency records	7 years	

Clinic

Appointment books	3 years	
Encounter statistics	1 year	
Patient's name index	Permanent	

Dietary

Food costs	5 years	
Meal counts	5 years	
Menus	2 years	

Engineering

Blueprints	Permanent	
Calibration records	6 years	
Equipment records	Life of equipment plus 6 years	
Equipment maintenance records	5 years (6 years for electronic medical records systems)	
Equipment operating records	Life of equipment plus 6 years	
Inspections of buildings/grounds	1 year	
Maintenance log	6 years	
Purchase orders	10 years	
Work orders	2 years	

Laboratory, Therapy, and X-ray

Appointment books	3 years	
Blood/blood component disposition	5 years	
Refrigeration and blood inspection records	5 years	
Index to patient records	10 years/permanent for unusual cases	
Radioisotopes (receipt, transfer, use, storage delivery, disposal, and reports of over-exposure)	Permanent	
Registers (chronological of tests)	5 years or until statistics are completed	
Requests for tests	2 weeks	
Research papers published	Permanent	

Medical Records

Birth registration copy	Permanent	
Death registration copy	Permanent	

Delivery room log	Permanent	
Disease index	Permanent	
Nursing		
Operation index	Permanent	
Patient records index	Permanent	
Physician index	10 years	
Surgery log	Permanent	
Tumor registry files	Permanent	
Applications (nonemployees)	2 years	
Attendance and time records	2 years	
Minutes of meetings	Permanent	
Personnel records	6 years after termination of employment	
Policies and procedures	6 years after expiration or revision	
Private duty name file	6 years after last use	
Training (attendance, course outlines, and examinations)	Permanent	
Personnel		
Absence reports	5 years	
Applications (nonemployees)	4 years	
Employee health records	5 years after termination of employment	
Employee history	5 years in full, after 5 years reduce to payroll card rate	
Garnishment records	7 years	
Job classifications	Permanent	
Overtime reports	5 years	
Payroll and time records	5 years	
Pension records	Permanent	
Vacation lists	2 years	
Volunteer service (certification of hospital workers)	Permanent	
Pharmacy		
Controlled substances (inventory and orders)	2 years	
Controlled substances (dispensed and administered)	2 years	
Methadone	3 years ^{27}	

Other prescriptions	2 years	
Public Relations		
Clippings (historical)	Permanent	
Contributor records	Permanent	
Marketing materials	6 years	
Photographs (institutional)	Permanent	
Publications (house organs)	Permanent	
Purchasing and Receiving		
Packing slips	3 months	
Purchase orders	2 years	
Purchase requisitions	3 years	
Receiving report	5 years	
Returned goods credit	2 years	

Notes

1. 29 CFR §516.5.
2. 29 CFR §516.6.
3. 29 U.S.C. §§1001 through 1461.
4. 29 USC. §1027.
5. 29 CFR §1602.14.
6. 29 CFR §516.5; 29 CFR §1620.32.
7. 26 USC. §6501.
8. Id. §6501(e)(1)(A).
9. Id. §6501(g)(2).
10. 29 CFR §1910.1020.
11. Id. §§ 1904.2 and 1904.6.
12. Id. §1904.4.
13. Id. §600.12.
14. 42 CFR §§ 420.1 and 420.300.
15. Id. §405.1801.
16. Id. §434.6.
17. Id. §413.20.
18. 65 Fed Reg. 164.530(j)(1).
19. 41 CFR §§ 8-16.9503 and .95043.
20. Florida Statutes §400.191(3).
21. Hawaii Revised Statutes §415B-45.
22. 55 Pennsylvania Code §1101.51.
23. Association of Records Managers and Administrators. *Developing and Operating a Records Retention Program*. Prairie Village, KS, 1986.
24. Although this practice brief addresses healthcare business records, this methodology also works very well for medical records.
25. Prairie Village, KS, 1986.
26. 26 CFR 1.6001-1.
27. 21 CFR §304.04.

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