

The Care and Keeping of Medical Records

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Recent news reports have revealed the mishandling of medical records and the resulting serious consequences. Medical records are subject to many state and federal laws and regulations. A provider who handles medical records—whether an independent practitioner or a health care facility—should be aware of the obligations regarding the proper care and keeping of medical records.

The creator of the medical record, not the patient, owns the medical record. Under Michigan law, private physicians and health care facilities are required to maintain their medical records in a manner that protects the confidentiality of the records and assures accessibility to the information when required. Under the Michigan Public Health Code, medical records must be retained for a minimum period of seven years following the last date of service provided to a patient. However, this recommendation is a very general guideline that is subject to multiple modifications. Certain records, like dental records, must be maintained for longer periods. Other records, like those concerning HIV or mental illness, require very specific retention and destruction periods. Statutes of limitations for false claims and health care related actions may extend the recommended retention period, as well.

Medical records must be retained for the full required retention period, even if a provider or a facility ceases to operate. For example, prior to retiring, a physician in a private practice must arrange for the continued retention of patients' medical records. The records may not be sold. Instead, they should be transferred to the patient, another practitioner, or a record retention company for the remainder of the retention period. The medical records must remain accessible for the duration of the retention period.

Once the full record retention period has passed, the records may be destroyed in a manner that protects the confidentiality of the records and permanently destroys the confidential medical information. For example, shredding paper records and permanent electronic deletion of electronic medical records are suitable methods of destruction. In contrast, throwing medical records in the office trash or in a facility dumpster is an inadequate method of destruction.

Practitioners and facilities are allowed to charge for providing copies of medical records. Certain requestors like the Worker's Disability Compensation Agency or the Social Security Disability Determination Service pay for the medical records in accordance with a set fee schedule. In the absence of a fee schedule, the provider may charge a fee in accordance with the Michigan Medical Records Access Act. That Act provides for an initial fee for the record request as well as a per-page charge.

The mishandling of medical records can lead to substantial civil fines and, in some instances, criminal prosecution.