

Keeping old patient records⁵

Q How long should we keep a patient's medical record after he or she has transferred to another practice? Should we keep originals or copies? We have only a limited amount of storage space.

A Generally, state laws assert that the medical record belongs to the provider and require the provider to retain the record for multiple years (at least seven years, or two years after a minor reaches adulthood, whichever is greater; see chart below). Medicare and Medicaid have their own record-retention requirements as well, but they are generally shorter than state requirements. Additionally, your practice would be wise to maintain copies of patient records for at least as long as the statute of limitations for medical malpractice lawsuits in your state. For patients covered by government-funded programs, keep copies of their records for up to 10 years after billing for their last service, since the federal government can investigate alleged False Claims Act violations for the previous 10 years.

While it is not legally required that you retain the original medical records, it is a good idea, as they are often preferred as evidence in court and may contain the most readable indications of the care provided.

As you mention, storage space for these records is often a challenging issue. If necessary, consider purchas-

ing or renting additional storage space, contracting with a records storage company or maintaining patient records in electronic form.

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Cash-only practice

Q My practice has had to hire more staff to deal with the hassles associated with insurers. Can we choose not to participate in any insurance programs, including Medicare?

A It is possible to run a "cash-only" practice that does not participate in any insurance plans, including Medicare. As you noted, the advantages are that you no longer have any of the hassles of dealing with insurance companies and you may have lower overhead expenses as a result (since you don't have to file claims, appeal denials, etc.). However, one of the disadvantages is that many of your patients may go elsewhere, since their insurance may not cover your services (or may increase the patient's cost-sharing for your services) if you are not part of the insurer's network of physicians. You may also find yourself at a competitive or marketing disadvantage among your colleagues. Whether the pros outweigh the cons will depend on your individual situation.

If you decide to go "cash-only," consider how you will handle the following:

- Notifying patients, insurers and others (e.g., colleagues) of the change,
- Changing office procedures and policies to reflect the change in payment procedures,
- Re-evaluating your fees,
- Marketing the new arrangement,
- Treating patients outside the practice (e.g., when

you are on call in the hospital).

If you currently have contractual relationships with insurers, you will need to terminate those relationships in a way consistent with the terms of your contracts. Also, if you want to continue seeing Medicare patients without being subject to the Medicare hassles, you will need to become familiar with Medicare's private contracting provisions [see "The Truth and Consequences of Private Contracting," *FPM*, March 1998, page 25, and section 3044 of the *Medicare Carriers Manual*, cms.hhs.gov/manuals/14_car/3b3000.asp].

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Referring to MAs as nurses

Q What are the dangers, if any, of referring to a medical assistant (MA) as a nurse?

A Referring to a medical assistant as a nurse is fraught with legal peril. Almost all state nurse practice acts forbid any persons not licensed as RNs or LPNs to use the term "nurse" in reference to themselves. Violating this law could result in criminal penalties for the individual. An employer who calls an unlicensed employee a nurse may also be court-ing legal sanctions.

Malpractice exposure may also be increased, since a court could hold the unlicensed employee to the higher standard of care of an RN or an LPN. If the unlicensed employee does not meet this standard, the employer could be held liable for negligent provision of care.

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STORAGE GUIDELINES FOR MEDICAL RECORDS

Patient's age on the date of last service	Patient's age when medical record can be discarded
<i>Patients who are not government-funded program beneficiaries</i>	
0-13 years old	20 years old
14+ years old	Patient's age on the date of last service + at least 7 years
<i>Patients who are government-funded program beneficiaries</i>	
0-10 years old	20 years old
11+ years old	Patient's age on the date of last service + 10 years

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