

Medical Record Retention Law Update - MHA/DPH conference call 6/23/10

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Massachusetts Hospital Association (MHA) held a conference call for members only on Wednesday, June 23, 2010 at 1 p.m. Representatives from the Department of Public Health (DPH) were also on the call.

Anuj provided an overview of the Medical Records Retention Law:

Chapter 308 of the Acts of 2008 made four important changes to the HIM process related to the retention of medical records; it: (1) reduced the medical record retention period from 30 years to 20, (2) updated the reference of what constitutes an official medical record to include electronic and digital records, and (3) streamlined the process that hospitals/clinics could follow for notifying DPH when destroying records that exceed the applicable retention period.

The fourth component of the law included the requirement to notify patients of the provider's medical record destruction policy. MHA, working with DPH and the Massachusetts Health Information Management Association, developed language to address hospitals' concerns that adding hospital-specific detailed policies in the NPP will make it more difficult to read and will create more confusion for the patient.

MHA proposes hospitals consider adding the following language to your NPP, to meet the patient notice requirements of chapter 111, section 70:

"_____ hospital/clinic maintains medical records for at least 20 years after the patient's discharge or after the final treatment, as required by state law; a copy of the hospital's medical record retention policy is available upon request."

Anuj mentioned Massachusetts is the only state in the country requiring updated language in the Notice of Privacy Practice (NPP). Anuj reiterated the law was passed in August 2008 and the recommendation made was that hospitals/clinics need to update their NPP quickly.

HIM members asked a few questions pertaining to updating the NPP.

Question:

If you do not plan on destroying medical records do you still have to update your privacy notice?

Comments:

- Does your Patient Bill of Rights or other public document reference your medical record retention policy or does your NPP state this now?
- Do you have a public document stating ~~listing~~ you do not destroy medical records?
- You are definitely safer if you don't destroy medical records from a compliance perspective.
- Lisa thought it was a good idea to have access and retention practices included in a public document such as the NPP or Patient Bill of Rights.
- Lisa and Anuj suggested talking with your Legal Council if a separate document satisfies the Statute.

Question:

Do you need to re-consent patients when you update your NPP?

- No, this is not considered a significant change to the NPP, we are following Mass. State Law

Comment:

- A member suggested new language removing the “for at least 20 years after the patient’s discharge or after the final treatment” and requested adding “in accordance with State Law” with a footnote referencing the 20 years.
 - Anuj cautioned omitting the language in the Medical Record Retention Law and felt this would open other legal liability in the future as to whether you followed State Law in notifying patients of the new medical record retention law.

Question:

- Would it be permissible to begin updating the NPP now with the proposed medical record retention language and wait for the upcoming HITECH NPP language provisions?

Comment:

- Anuj reiterated to begin updating your privacy notice now and document your efforts. If you are waiting to include the HITECH provisions do not wait too long. Six – nine months to update your privacy notice is not considered “quick” and he reminded us the Medical Record Retention law was passed in 2008.

Question:

- What is the liability to a facility if a patient was previously informed that records would be retained for 30 years vs. current law which is 20 years?

Comment:

- Anuj stated that since the change is a result of state law, there is no risk to the provider as long as the facility has met the requirements of the law.