
SECTION VI

APPENDIX E

Ownership, Retention and Patient Access to Medical Records

The ACR adopted suggestions and rationales for policy statements about medical record retention, ownership, and access; 1990, amended 1992, amended 1993, 2003 (Res. 12-f). Because of the variability in federal and state requirements and the fact that some, but not all, states have record retention laws and regulations, no single retention period can be recommended. Other obstacles in specifying a single retention period include (1) regulations that prescribe different retention periods for x-rays as opposed to “medical records” per se and (2) the problem of deciding which health care providers must retain their patients’ records—most laws mention hospitals specifically, while others refer generally to “health care providers.”

In reading these suggestions, it is important to remember that unless otherwise specified by statute, the rules are the same for both hospital and office settings. Similarly, unless otherwise specified, the term “medical records” includes radiographs and other images produced in the course of radiological examinations.

RECORD RETENTION

Retention Periods

Radiologists should investigate and comply with all pertinent federal and state laws and regulations regarding the retention of medical records. Hospital radiology records, including copies of reports, films, scans, and other image records, should be kept for five years, in compliance with Medicare regulations. Furthermore, all records and images produced by radiologists should be kept for the retention period required by law or regulation in each state. If a state has no required retention period, records and images should be kept at least for the maximum period that the state’s statute of limitations allows for the filing of medical malpractice actions. Some states have specific retention periods for mammograms. Optimally, medical records should be kept for whichever period is longer—the statute of limitations or the prescribed retention period.

Rationale

State laws concerning the retention of medical records and radiologic images vary considerably; for instance, in Massachusetts, hospital records must be retained for 30 years after the patient’s discharge or final treatment. In some states, the records of minors must be retained for as long as their 28th birthday. The scope of the “discovery rules” in other states mean that records should conceivably be held indefinitely. Evidence of “fraud” could extend the statute of limitations indefinitely.

Federal regulations relating to radiologists generally require all relevant documents to be retained for three years, but hospitals participating in Medicare have to keep copies of reports, printouts, films, scans, and other images for at least five years. For workers regarded as being exposed to a designated list of “hazardous materials,” the federal Occupational Safety and Health Administration requires that health records be retained for the lifetime of patients plus 30 years. OSHA made no determination of whether “records” means examination reports or images.

The AMA recommends that physicians keep patients’ charts for five to seven years from the last office visit.

Some states require patient notification before mammograms are destroyed. In Rhode Island, physicians, hospitals, or any health care entity that takes mammograms must keep the films for the life of the patient. However, the film can be destroyed if the patient has had no contact with the physician or facility for more than 15 years. In Indiana, at the end of the required five-year retention period for mammograms, the provider must notify the patient in writing that she has 30 days to claim and pick up the mammogram for her own use.

Microfilming or Digital Archiving

Micro-filmed and digital images are generally acceptable for record archiving and storage unless otherwise specified by state or federal law. Microfilming and digitization are not appropriate for chest radiographs used to detect pneumoconiosis or other dust retention respiratory diseases, and for mammograms. The selection of other image storage techniques depends on the quality of the image in the alternative format.

Rationale

Microfilming of records is expressly allowed in at least 13 states, so it would seem to be an acceptable record archiving and storage alternative. In Mississippi, for example, the original records can be retired after three years. Most states view the micro-filmed record and the original as equivalents, either immediately or after a certain specified period.

Magnetic Tapes

Magnetic tapes containing the digital versions of MRI or CT studies are not permanent “medical records” and do not have to be retained for the statutory or recommended retention periods as long as a hard copy of the image (radiographic film) is placed in the patient’s permanent file and kept for the required or recommended period.

Rationale

No state expressly requires that magnetic tapes from CT and MRI be retained as part of the medical record, nor does Medicare require them for reimbursement. In addition, magnetic tapes deteriorate quickly and usually require special storage conditions to preserve the data. Therefore, as long as a hard copy of the study is placed in the record, retention of the original tapes is unnecessary.

Cessation of Practice

When a radiologist terminates his or her practice, the images produced should be retained according to paragraph 1 above, “Retention Periods.” Under extraordinary circumstances, if records must be destroyed before the expiration of the retention period, reasonable efforts should be made to contact the patient about the disposition of his or her records.

Rationale

Some states have laws requiring that hospitals or physicians try to contact the patient before his or her records are destroyed. For instance, in Maryland, after the death of a physician, the estate must forward a notice to the patient before records are destroyed or transferred; if the patient cannot be located, a notice must be published in a local newspaper about the date and location of the disposal. In Colorado, the patient must be notified before any records or x-rays are destroyed. In Hawaii, if a health care provider stops operations, he or she has to make arrangements for the retention and preservation of the records for the prescribed period, subject to health department approval. In Tennessee, records must be sent to the local department of health when a practice or hospital is closed. In Florida, the physician’s estate must keep patients’ records for one year from the date of death.

OWNERSHIP AND PATIENT ACCESS

Ownership

Unless otherwise agreed by the parties or mandated by law, images produced by radiologists and interpretations should be regarded as the property of the hospital or the entity that produces them, subject to the right of the patient to access the information contained in the image and hospital records.

Rationale

According to most state laws and regulations, medical records and x-rays are the property of the hospital, subject to the patient’s interest in the information contained in the record. In a few states (e.g., Arkansas, Louisiana, Mississippi), an x-ray or radiological image is distinguished from its interpretation, and only the latter is regarded as part of the medical record. Some state regulations concern only “hospitals,” while other states’ record ownership and access rules cover “health providers” in general.

SECTION VI

Confidentiality and Access

All radiological images, reports, and other related materials are confidential, and the information in them cannot be disclosed without the written consent of the patient or his or her representative, unless authorized otherwise by state law.

Rationale

Some states allow access only to the information in the record but not the record itself. The records of minors may be subject to other access rules. In about one-fourth of the states, requests for records must be in writing.

Reproduction

If possible, original images should remain in the possession of the radiologist at the facility where they were made. However, in some circumstances clinicians may require the re-lease of the original images, and the radiologist should comply with this request. For example, radiologists are urged to cooperate by releasing original mammographic images that can be used by other radiologists for comparison with new mammograms. Careful notation should be made of the location of the original images.

In some circumstances, when requests are made by a patient or by his or her representative or attorney, copies of the images should be provided. The patient can be charged a reasonable fee for making the copies. If subpoenas are issued for original films, copies can be retained by the radiologist.

Rationale

This policy is in line with laws and regulations in most states (e.g., California, Indiana, and Massachusetts); 1990 (Res. 29); amended 1992 (Res. 28); amended 1993, 2003 (Res. 12-f).