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Document Retention Guidance

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Below is a short list of proposed document retention time periods. You should be aware of a couple of caveats. The first of these is that any document that may be subject to a “litigation hold” should be retained throughout the period of the litigation. Any attorney working with you on the litigation will advise you as to when and how such documents may be destroyed. A litigation hold occurs when you are aware that there is either pending litigation or that litigation is likely. In those circumstances, as I indicated, all documents related to litigation must be preserved. You will also want to double-check with your automatic document destruction processes such as e-mail roll off to make sure that documentation in those systems is also maintained in the event of a litigation hold.

The second caveat is that many of the statutes either have conflicting time frames or do not set a time frame at all and, in some instances, my recommendations are based simply on prior experience. If you have any questions or concerns about any of the recommendations, contact me and we will discuss what will be practical for you.

Also note that it is critical all policies be consistently enforced.

General Medical Records. We generally suggest ten (10) years for the retention of medical records. HIPAA requires that the audit log of released records be kept for six (6) years. Under Iowa law ten (10) years meets most general requirements for contract and malpractice claims. Under malpractice it is typically two years from “discovery” but no more than six (6) years after injury unless a device or object was left in your body. 614.1(a) (2008). Therefore, ten (10) years would give you some cushion. The same is true for records of decedents.

Juvenile/Mental Health. These are grouped together in the statute. 614.1(a) (2008). For a minor, where injury occurred when he/she was less than eight (8), an action must be brought by the time the minor is ten (10). The six (6) year rule also applies. Then there is an issue of the age of majority. Depending upon the circumstance the limitation may be tolled for one (1) year from date of majority, which is eighteen (18). For those with mental illness it may be tolled for one (1) year after the illness terminates. There is no way to plan for every contingency given the structure of these statutes. Our suggestion is generally ten (10) years for adults and anywhere between three (3) and six (6) years after a child attains majority as a record destruction date, recognizing this may be overly broad for children’s records.

Specialty Records. Some records such as tumor registries, OSHA toxic substance exposures (for patients and your own employees) under 29 C.F.R. 1910 and a few other items of this type must be retained permanently.

General Personnel Files. First, it is important to determine what you, in fact, keep in a personnel file. Personnel files should not encompass a wide array of items or other documentation. They need to be kept as consistently and cleanly as possible. In general, I recommend that personnel files be kept four or five years after the date of termination. This will normally encompass most claims that might be outstanding, but it is possible that a claim could crop up later. Given the structure of the social security regulations, I believe four years is probably the minimum standard in which to destroy terminated employee records. It is also possible for you to destroy portions of employee records for long-term employees. You could have a destruction policy that resulted in the destruction of all documentation contained in a personnel file that is older than five years. However, such a policy would have to be consistently implemented and regularly followed. It has been my experience that it is difficult to make sure that you cull all records of this type. Consistency can create a bigger problem than simply keeping the extra documents for an employee who is a current employee.

Roster of Medical Staff. 481 IAC 51.5(1) requires that the roster of medical staff members be kept. Although this regulation does not have a time frame indicated, I generally recommend ten years for a roster of medical staff, as this would encompass most of the types of claims that would be raised, with some limited exceptions.

Personnel Health Records, including Work Comp, Disability and Absence Forms. Personnel health records, with some exceptions, are treated in a manner similar to personnel files. In general, personnel health records will not include general medical records, as those will be part of a patient record. I suggest employee health records be kept a minimum of four years after the employee terminates employment. I think implementing any destruction policy for existing long-term employees is significantly more difficult for health records than personnel files, because, as you well know, workers compensation issues and disability issues can crop up again and again. A lack of records for a current employee can be very problematic should we face an ADA claim.

In general, TB tests, immunizations, and hepatitis B are encompassed under personnel health records. OSHA-related items, such as needle sticks and occupational exposures are governed under 641 IAC 11.47(6), and such records must be kept for a minimum of five years. Occupational exposures under 29 C.F.R. 1910 must be kept permanently.

42 C.F.R. § 482.42(a)(2) requires our hospital infection control officer to maintain a log of instances related to infectious and communicable disease exposures. While this regulation does not specify a retention time period, we do recommend the minimum of five years because of the companion state regulation.

I would like to draw a distinction between aggregate information, such as an exposure log and individual personnel health records, such as prophylaxes given to an employee as a result of an HIV/AIDS exposure. Two different types of records are being created here - one for OSHA reporting and internal incident review, and the other for the employee health. When something becomes part of the employee health record, any requirements which would otherwise apply to the personnel file would apply here. In other words, the individual records for the employee, which are kept in the employee specific file, would be kept for the term of the employee, plus a minimum of four years after the date of any termination. The logs and other aggregate information would be kept for the more general five-year period from the date of this log.

Absence Records. If those records include general timekeeping, they must be kept for a minimum of three years pursuant to law, and I generally recommend keeping such wage hour records for five years to avoid any problems should there be a DOL audit.

Medical Staff Credentialing Files. Medical staff credentialing files need to be retained permanently, particularly given the existing case law regarding negligent credentialing.

QI Data Information. Under Medicare conditions for participation, 42 C.F.R. 482.22(c), hospitals are required to maintain medical staff bylaws, as well as have a written plan of quality assurance and document appropriate action to address deficiencies. While no time requirement is specified by these regulations, we recommend that this information be maintained for a minimum of ten years.

Medical Staff Meeting Minutes. These should be retained permanently, as should Committee meeting minutes for medical staff.

Medical Staff Peer Review Documentation. Medical Staff Peer Review documentation is somewhat different than the standard personnel evaluation which may be found in general staffing files. I recommend that peer review documentation, because it relates to medical staff and could have implications in any claim of malpractice, be maintained a minimum of ten years after the date of the employee’s termination.

In terms of document destruction, I suggest shredding or another similar method. Much of the information you have is protected under various laws, such as social security and HIPAA.

If you have questions regarding these recommendations or other issues relating to documentation retention and destruction, please do not hesitate to contact me.