

### **Retention of Medical Records**

Medical considerations are the key basis for deciding how long to retain medical records. Rules relating to the maintenance of patient records are to be found in the American Medical Association, Council on Ethical and Judicial Affairs, Code of Medical Ethics. Current Opinion 7.05. Under Ohio Law (R.C. §4731.22 (8)(18)), violations of the AMA ethical rules can result in disciplinary action by the Ohio State Medical Board. Most states, including Ohio, do not have a general state law that requires records be kept for a minimum length of time. Ohio Revised Code §2913.40 (D) mandates the retention of records associated with Medicaid for a period of at least six (6) years after reimbursement for the claim is received by the physician. It is recommended that records relating to a Medicare patient be kept for at least six (6) years after the physician received payment for the service. Medicare's Conditions of Participation requires five (5) year retention. Managed care contracts should be consulted to see if they provide any specified period of retention of medical records. In all cases, medical records should be kept for the length of time of the statute of limitations for medical malpractice claims. Under Ohio Law an action for medical malpractice must be brought within one year after the cause of action "accrues" (R.C. §2305.113). However, there are various exceptions or special rules. For example, the statute of limitations in wrongful death cases is two years after the date of death.

In the case of a minor, the statute of limitations does not begin to run until the minor has reached his or her 18<sup>th</sup> birthday. The statute can be "tolled" or otherwise extended in other situations, and the date on which a cause of action "accrues" can vary. As a practical matter, all of this makes it difficult to define the Ohio statute of limitations with absolute certainty. If you are discarding or destroying old records, patients should be given the opportunity to claim the records or have them sent to another physician.

**The OHFAMA recommends that physicians keep medical records indefinitely, if feasible.**

### **Update on Charging for Copies of Medical Records**

A physician who treated a patient should not refuse for any reason to make records of that patient promptly available on request to another physician presently treating the patient, or, except in limited circumstances, refuse to make them available to the patient or a patient's representative (not an insurer). A written request signed by the patient or by what the law refers to, as a "personal representative or authorized person" is required. Ohio Revised Code §3701.74 obligates a physician to permit a patient or a patient's representative to examine a copy of all of the medical record. An exception arises when a physician who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, in which case the physician is to provide the record to a physician chosen by the patient. Medical records should not be withheld because of an unpaid bill for medical services. Ohio law establishes the maximum fees that may be charged by health care provider or medical records company that receives a request for a copy of a patient's medical record. Ohio law provides for certain limited situations in which copies of records must be provided without charge, for example, where the records are necessary to support a claim by the patient for Social Security disability benefits. EFFECTIVE JANUARY 2015, the maximum fees that may be charged, are as set forth below.

*(1) The following maximum fee applies when the request comes from a patient or the patient's representative.*

- a) No records search fee is allowed;
- b) *For data recorded on paper:* \$3.11 per page for the first ten pages; \$0.65 per page for pages 11 through 50; \$0.26 per page for pages 51 and higher  
*For data recorded other than on paper:* \$2.13 per page
- c) The actual cost of postage may also be charged

*(2) The following maximum applies when the request comes from a person or entity other than a patient or patient's representative.*

- a) A \$19.17 records search fee is allowed;
- b) *For data recorded on paper:* \$1.26 per page for the first ten pages; \$0.65 per page for pages 11 through 50; \$0.26 per page for pages 51 and higher  
*For data recorded other than on paper:* \$2.13 per page
- c) The actual cost of postage may also be charged

| Method to determine % change in Consumer Price Index (CPI) to Increase or Decrease Costs Associated with Providing Medical Records in Accordance with Ohio Revised Code Section 3701.742              |             |          |  |  |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------|--|--|--|
| CPI for current period (2016)                                                                                                                                                                         | 240.01      |          |  |  |  |
| Less CPI for previous period (2015)                                                                                                                                                                   | 237.02      |          |  |  |  |
| Equals Index point change                                                                                                                                                                             | 2.99        |          |  |  |  |
| Divided by previous period CPI (2015)                                                                                                                                                                 | 237.017     |          |  |  |  |
| Equals                                                                                                                                                                                                | 0.013       |          |  |  |  |
| Result multiplied by 100                                                                                                                                                                              | 1.26        |          |  |  |  |
| Equals percent change                                                                                                                                                                                 | 1.26%       |          |  |  |  |
| Costs for Calendar Year 2017 Based on a 1.26% change in the CPI                                                                                                                                       |             |          |  |  |  |
| If the request is made by the patient or the patient's personal representative, total costs for copies and all services related to those copies shall not exceed the sum of the following:            |             |          |  |  |  |
| With respect to data recorded on paper or electronically, the following amounts:                                                                                                                      |             |          |  |  |  |
| For the first ten pages:                                                                                                                                                                              | \$3.11      |          |  |  |  |
| For pages eleven through fifty:                                                                                                                                                                       | \$0.65      |          |  |  |  |
| For pages fifty-one and higher:                                                                                                                                                                       | \$0.26      |          |  |  |  |
| With respect to data resulting from an X-ray, MRI, or CAT scan, recorded on paper or film:                                                                                                            | 2.13        |          |  |  |  |
| The actual cost of any related postage incurred by the health care provider or medical records company.                                                                                               | Actual Cost |          |  |  |  |
| If the request is made other than by the patient or the patient's personal representative, total costs for copies and all services related to those copies shall not exceed the sum of the following: |             |          |  |  |  |
| An initial fee which shall compensate for the records search:                                                                                                                                         | 19.17       |          |  |  |  |
| With respect to data recorded on paper or electronically, the following amounts:                                                                                                                      |             |          |  |  |  |
| For the first ten pages:                                                                                                                                                                              | \$1.26      | per page |  |  |  |
| For pages eleven through fifty:                                                                                                                                                                       | \$0.65      | per page |  |  |  |
| For pages fifty-one and higher:                                                                                                                                                                       | \$0.26      | per page |  |  |  |
| With respect to data resulting from an X-ray, MRI, or CAT scan recorded on paper or film:                                                                                                             | \$2.13      | per page |  |  |  |
| The actual cost of any related postage incurred by the health care provider or medical records company.                                                                                               | Actual Cost |          |  |  |  |