

Flood Damaged Medical Records

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Businesses across Louisiana are dealing with challenges presented by the unexpected August flood. Physician practices are no exception. One of the challenges is water damage to medical records and diagnostic films. If you are one of the offices dealing with this issue, there are several important steps you should take.

Time period for retention of medical records

La. R.S. 40:1165.1(A)(3)(a) spells out the legal requirement for retention of medical records. It states the following:

“Medical Records and dental records shall be retained by a physician or dentist in the original, microfilmed or similarly reproduced form for a minimum of **six** years from the date the patient is last treated by a physician or dentist.”

Additionally, the law also provides the following in regards to graphic matters, images, etc...:

“Graphic matter, images, x-ray films, and like matter that were necessary to produce a diagnostic or therapeutic report shall be retained, preserved and properly stored by a physician or dentist in the original, microfilmed or similarly reproduced form for a minimum period of **three** years from the date the patient is last treated by the physician or dentist. Such graphic matter, images, x-ray film and like matter shall be retained for a longer period when requested in writing by the patient.”

Federal regulations also contain retention provisions. HIPAA requires a covered entity, such as a physician billing Medicare, to retain required documentation for six years from the date of its creation or the date when it last was in effect, whichever is later. Furthermore, CMS requires records of providers submitting cost reports to be retained in their original or legally reproduced form for a period of at least **five** years after the closure of the report.ⁱ

When beginning your damage assessment, focus only on the records you are legally required to maintain. The others may be destroyed thereby reducing the volume you will be tackling. Maintain a record of files which will be destroyed as you would in the normal course of business. Finally, if you have not already done so, develop a system of routine record destruction so that you maintain a manageable volume and keep only the records you are supposed to keep.

Documenting the damage

If your office suffered flood damage, report it immediately to your insurance carrier. Take pictures of the damage being careful to note the damage not only to the physical structure but also the

medical records. Take note of any information which may be useful to your carrier or governmental authority.

Damaged records

Check the records and determine which are partially destroyed and may be restored and which are totally destroyed. If the material has been damp for a long time, mold and bacteria can start to grow which presents a health risk to any workers dealing with the material. Similarly, extra precaution should be taken if the documents were exposed to sewage or wastewater.

Water damaged records and films can be restored. The complete restoration of water-soaked documents can be a time consuming and expensive project but it may be wise to attempt to salvage them. The process has to begin as quickly as possible and a restoration company should be contacted. Since the company will be working with your patients' records, make certain to obtain a HIPAA Business Associate agreement with them.

When the records are a complete loss, the challenge to the practice will be twofold. First, the records will need appropriate disposal. Since there are no state laws regarding the proper disposal of medical records, HIPAA governs. 45 CFR 164.530 (c) requires a covered entity to have in place an appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information ("PHI"). This extends to the disposal of medical records. While HIPAA does not mandate the methods to be used to dispose of records, it is clear that abandonment of PHI in areas where public has access (dumpsters, debris piles, etc...) would be considered an impermissible disclosure of PHI. Practices must review their own circumstances and determine what steps are reasonable to safeguard PHI through disposal, and develop and implement policies and procedures to carry out those steps. By way of example, in the wake of Katrina, DHH incinerated unsalvageable medical records from various facilities. Other examples of proper disposal methods may include:

- For PHI in paper records, shredding, burning, pulping, or pulverizing the records so that the PHI is rendered essentially unreadable, indecipherable, and otherwise cannot not be reconstructed.
- Maintaining labeled prescription bottles and other PHI in opaque bags in a secure area and using a disposal vendor as a business associate to pick up and shred and otherwise destroy the PHI. Once the destruction has been completed, make certain to receive a certificate of destruction from the entity.
- For PHI on electronic media, clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing media to a strong magnetic field in order to disrupt the recorded magnetic domains) or destroying the media (disintegration, pulverization, melting, incinerating, or shredding).

As much as practical, the practice should keep a log of all records that are destroyed, as done in the normal course of record destruction. This log should include the following information: name, date of birth, social security information, dates of first and last visit, general procedures performed in the office, documentation of what was destroyed, how it was destroyed and when it was destroyed. Keep

this information in a secure area as you would with any other PHI. In the unlikely event that you are named in a malpractice suit, this evidence will also help you respond to any allegations that records were negligently or willfully destroyed.

The second challenge will be the recreation of the medical record. Reconstruction can be done by pulling together information from other systems and files available to the practice. Patients should be notified of the flood event and the damage done to the records. A history form can be sent to each patient along with the notification letter with a request that the patient complete the form to the best of their ability. A copy of the letter should be filed with the patient's reconstructed medical record. Once the record is recreated, there should be clear documentation explaining that it was reconstructed. The documentation should include at least the following: date chart reconstructed, reason for reconstruction, source of information used, efforts to obtain additional information, and a statement that, due to reconstruction, the information contained in the chart as of the reconstruction date is considered inexact.

Finally, Medicare, Medicaid and other insurance carriers, may also expect to be notified that the patient's record has been lost. Since these organizations expect practices to provide documentation to support patients' claims, they may want a signed form attesting to the unexpected loss of the record.

Prevention

In the past six months, three Presidential disaster declarations have been made encompassing 48 of 64 parishes. While it may feel like it's too late to prevent this sort of damage, each new event seems to affect areas we previously thought were safe. Evaluate your storage facility at least twice a year. Take precaution to guard sensitive material and remove unneeded information. Stack records and films off of the floors and place them in a high place. Finally, develop a system of routine record destruction if you have not already done so.

For more helpful information visit <http://www.archives.gov/preservation/disaster-response/>

ⁱ 42 CFR 482.24[b][1]