



Every day we hear from our insureds on the Risk Management Hotline, and we will be sharing some of those questions and answers with you.

Our Risk Management Team is here to help you minimize and mitigate Medical Professional Liability risk.



Closing, Selling, or Leaving Your Practice? What About the Records?

Physicians and practices in the process of closing or selling often find the costs and logistics of medical records retention daunting. State laws, outlined below, require physicians and other professionals to store and ensure access to patient records for years. Yet without a monthly income stream from an active practice, storage and custodian fees add up quickly, especially for a practice caring for minors. To ensure the physician or practice can meet these future obligations, MICA recommends assessing and planning for these costs over the life of the practice.

Whether selling, leaving, or closing a practice, make sure to address the following:

- Designate a custodian for medical records. The custodian will be responsible for safeguarding and retaining records, as well as receiving and responding to future requests for copies of records.
- If closing your practice, records storage services usually provide custodian services as well.
- Whether the custodian is a purchaser of your practice, a storage facility, a cloud based storage solution, or another practice that has agreed to house your records, you will need a HIPAA-compliant Business Associate Agreement (BAA) with the custodian.
- If selling your practice, ensure the purchase contract identifies the custodian.
- If the purchaser will be the custodian, the purchase contract should state the custodian will take possession of all current medical records, not just records for the patients who elect to stay with the practice. Similarly, the contract should state the custodian will be responsible for fielding and responding to all future requests for patient medical records, not just records of patients who stay with the practice after the sale. If the purchaser is not going to integrate your electronic medical records with the practice's records, you may want to confirm that the purchaser will continue the contract with the electronic medical records vendor you were using, so that patient access to the records remains available after the closing.
- The BAA or purchase contract should specify that the custodian will provide access to the records and retain and safeguard the records for the retention period as required by state law or as recommended by MICA, whichever is longer.
- Decide where to store the records.
 - If the practice will continue operating either in the current location or a new location, the records may remain with the practice.
 - If closing, the practice may pay fees to a storage facility that will house paper and electronic records. The practice also could contract with another practice to securely store and provide access to physical and/or electronic records.
- If the practice is closing and/or the records will not remain in the same physical location, physicians and practices in Arizona and Colorado are required by statute to notify patients in writing where and how they can access their records in the future. See Table 2 below.
- Before a physician or advanced health care professional leaves a practice, even if the records will remain in the same location, MICA recommends offering patients the opportunity to obtain a copy of their records.

Table 1: State Records Retention Periods¹

State	Adult Records	MICA Recommendation Adult Records	Minor Records
Arizona ²	6 years	10 years	3 years after patient turns 18 or 6 years after last care provided, whichever is later
Colorado ³	7 years recommended	10 years	7 years after patient turns 18
Nevada ⁴	5 years after record received or produced	10 years	No records may be destroyed for patients younger than 23
Utah	No requirement for practices. Statutory or regulatory requirements apply only to hospitals and other facilities ⁵	10 years	No requirement for practices. Statutory or regulatory requirements apply only to hospitals and other facilities (see FN 5); MICA recommends 5 years after patient turns 18

¹Unless otherwise specified, all time periods run from the date that care was last provided to the patient.

²See A.R.S. § 12-2297. A.R.S. § 12-2297(B) further states that when a health care provider retires or sells the practice, the provider shall take "reasonable measures" to ensure records are retained for these time periods.

³See Colorado Medical Board Policy 40-7.

⁴See N.R.S. § 620.051.

⁵Other facilities include abortion clinics, birthing centers, end stage renal disease facilities, freestanding ambulatory surgical centers, mammography and radiology facilities, mental retardation facilities, and small health care facilities of 4-16 beds.

Table 2: Additional State Records Retention Requirements

State	Requirements
Arizona ⁶	<p>Physicians and other health professionals must prepare a written protocol which addresses secure storage and transfer of records as well as patient access to records. At a minimum, the protocol must:</p> <ul style="list-style-type: none"> ▪ State how the physician or professional will notify patients in a timely manner (prior to selling or terminating the practice) how and where to access the records if the records will not remain in the same physical location. ▪ Describe how the practice will dispose of unclaimed medical records after expiration of the required retention period, and after making good faith efforts to contact the patient. ▪ Specify how the practice will timely respond to patient requests for copies of records. <p>Failure to comply constitutes unprofessional conduct.</p>
Colorado ⁷	<p>Physicians and Physician Assistants (PAs) must develop a written plan addressing:</p> <ul style="list-style-type: none"> ▪ storage and proper disposal of records, and ▪ disposition of records, and ▪ a procedure for patients to promptly access records if the physician or PA dies, retires, or ceases to provide care. <p>Physicians and PAs must advise patients in writing of this procedure to obtain records.</p> <p>Failure to comply may result in licensing board discipline.</p>

⁶See A.R.S. § 32-3211.

⁷See C.R.S. § 12-240-142.

Customer Service 877.215.MICA (6422)

VISIT OUR WEBSITE

FOLLOW US



Questions? Contact us today 1.800.352.0402

Having trouble viewing this email? [Click here](#) to view the web version.