Developing Your Records
Retention Schedule: It’s Bigger Than Just Health Records

Webinar
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Faculty

**Keith Olenik, MA, RHIA, CHP**

Keith Olenik, MA is principal of the Olenik Consulting Group in Kansas City, MO. Mr. Olenik has over 25 years of experience in a variety of healthcare settings, and is a visiting professor for the University of Cincinnati Health Information Management Program. He is also an author and frequent speaker on topics including electronic health records (EHRs), electronic discovery, project management, ICD-10 preparation, and HIM functions.

**Indra Osi, RHIA, CHP**

Indra D. Osi is director of HIM at West Jefferson Medical Center (WJMC) in Marrero LA. Ms. Osi had the distinction of being on duty during Hurricane Katrina and its aftermath. WJMC is located on the west bank of the Mississippi river across from New Orleans. Without electricity, water, or computers, the medical center remained open throughout the disaster without the loss of one patient, and requests for medical records and other essential activities were maintained.
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Learning Objectives

- Establish a record retention strategy
- Develop a record retention schedule
- Create a record and information inventory
- Consider destruction of information in connection with retention

Polling Question #1

Does your organization have a record retention schedule?

a) Yes
b) No
Definitions

What is a record?

- A record is information created, received, and maintained by an organization or person that is evidence of its activities or operations, and has value requiring its retention for a specific period of time.
- It can be used in pursuance of legal and regulatory obligations.

According to section 1(c) of the Uniform Preservation of Business Records Act, business records consist of the following:

- books of account
- vouchers
- documents
- canceled checks
- payrolls
- correspondence
- records of sales
- personnel
- equipment and production reports relating to any or all of such records
- other business papers
Definitions

- Federal law does not define hospital business records. The federal adaption of the Uniform Photographic Copies of Business and Public Records Act, 28 USC 1732 defines business records as “... any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event ... in the regular course of business ...”

Retention Examples

- Department of Labor
- Equal Employment Opportunity Commission
- OSHA
- Food and Drug Administration
Definitions

- Four Levels of Custodians
  - Level 1: Primary or Direct Custodian
  - Level 2: Data Owners or Stewards
  - Level 3: Business Associates and Third Parties
  - Official Record and System Custodians

New Regulations

- Federal Rules of Civil Procedure
  - December 1, 2006
- State Rules
  - Uniform Rules Relating to the Discovery of Electronically Stored Information - August 2, 2007
  - Conference of Chief Justices
  - Individual State Actions - 41 states
Record Retention Questions

1. Do you know the statutory or regulatory obligations?
2. Is anyone in charge of record retention?
3. Do you have a committee that evaluates record retention?
4. Has any education been provided on record retention?

5. Is legal counsel aware of your record retention policies?
6. Do you need technology to support retention activities?
7. Are you destroying any information?
8. Do you know what information your employees are keeping in paper?
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Polling Question #2

Does your organization have a policy for destruction of information?

a) Yes  
b) No

Record Distribution

Storage  CD/DVD  PDA (Blackberry Treos)  Memory Stick/Flash Card  Zip Drive  Home Computer  Deleted Files  Archived Files  Temporary Files  Email Server  Backup Email  Backup Server  Backup Media
Retention Strategy

1. Establish a group to develop a retention strategy and provide oversight to the on-going function;

2. Evaluate the value of information to the organization and develop criteria to determine retention requirements;

Retention Strategy

3. Identify and document the method, location, and native file format of information created within the organization;

4. Evaluate the technology available within each application to determine automatic tools for retention and destruction;
Data Inventory Example

<table>
<thead>
<tr>
<th>Application</th>
<th>Purpose</th>
<th>Clinical (C)</th>
<th>Financial (F)</th>
<th>HR (H)</th>
<th>Operational (O)</th>
<th>Email (E)</th>
<th>No Data (N)</th>
<th>Data Format</th>
<th>Archive</th>
<th>Automated Archive Function</th>
<th>Yes or No</th>
<th>Yes or No</th>
<th>Data Destruction</th>
<th>Yes or No</th>
<th>Automated Data Destruction</th>
<th>Yes or No</th>
<th>Custodian</th>
<th>Retention Period</th>
</tr>
</thead>
</table>

Retention Strategy - Permanency

- Important factor for record retention as electronic health records are subject to change or technology obsolescence which can impact permanency.
  - Maintain records in software-independent format
  - Reformat and migrate records to new software systems
  - Maintain hardware and software
Retention Strategy

5. Specifically delineate the organization’s electronic records maintenance, storage, and destruction schedules;

6. Provide education on the retention schedule;

7. Determine how the organization would define “good faith operation” of its electronic information system if called upon to do so;

Retention Strategy

8. Establish internal audits or controls to measure compliance with the organization’s storage, retention, and destruction policies; and

9. Recognize that emerging laws are placing new burdens related to the retention and production of electronically created information.
Retention Requirements

- Consider retention needs of:
  - Physicians
  - Patients
  - Researchers

Regulatory Requirements

- Research all applicable regulatory, statutory and legal requirements.
  - Medicare Conditions of Participation
  - State Licensure Requirements
  - Accrediting Bodies
  - Professional Associations
  - Community Standards
**Regulatory Requirements**

- Electronic Discovery
- Sarbanes Oxley
- Data Protection/Privacy
- Industry Specific
- HIPAA
- GLBA
- False Claims Act

**Life Cycle of a Record**

1. CREATION
2. DISTRIBUTION
3. MAINTENANCE USAGE
4. DISPOSITION
**Records Management**

- Written records management policies should address both paper and electronic records.
- Documentation should address all retention decisions.

**Polling Question #3**

Does your organization allow clinicians to use portable devices with patient information?

- a) Yes
- b) No
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**Notes/Comments/Questions**

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### Special Considerations

- Metadata
- E-Mail
- Portable Devices
- Back-up Tapes/Media

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### Metadata

- **What is metadata?**
  - Descriptive data that characterize other data to create a clearer understanding of their meaning and to achieve greater reliability and quality of information
- Inventory what data is collected and available
- Evaluate retention
E-mail Considerations

- Safeguards to ensure integrity
- Establish retention and destruction guidelines and provide education
- Consider paper retention and distribution issues

E-mail Considerations

- Proactive on-line archiving
  - E-mails archived in a single on-line repository
  - Data maintained for a fixed period of time
  - Information is indexed by any criteria - employee, location, subject matter, date, etc.
Polling Question #4

Does your organization have a policy for the retention or destruction of e-mail?

a) Yes
b) No

Portable Devices

- Perform needs assessment
- Develop protocols for devices:
  - Selection
  - Use policies - retention of data
  - Maintenance/ replacement
- Use wise risk-management evaluation
Backup Function

- How are backups performed?
- How often are backups performed?
- Where is the backup media retained?
- Does the backup process perform a full system backup, or is it incremental?

Backup Function

- What is backed up?
  - Servers
  - Individual and network devices
  - Mobile devices
- Can you restore individual e-mails?
- How will a legal hold be applied to backup media?
Destruction Strategy

- Develop instructions and guidelines for destruction
- Consider when destruction should be delayed or stopped
- Include all types of information
- Establish safeguards for inappropriate destruction

Consider methods of destruction
- Physically destroy the media
- Shredding of CD and DVD
- Overwriting of hard drives using DoD software
**Education**

- Policies and Procedures
  - Retention
  - Destruction
  - E-mail
  - Portable Devices

**Compliance and Monitoring**

- Establish a monitoring program
- Perform periodic audits
- Create written reports and communicate
- Provide corrective action as needed
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Resources

- Enterprise Content and Record Management for Healthcare
  - AHIMA Practice Brief, October 2008
- Storage Media Profiles and Health Record Retention Practice Patterns in Acute Care Hospitals
  - Perspective in HIM, June 2008

Resources

- AHIMA Model E-Discovery Policies: Retention, Storage, and Destruction of Paper and Electronic Health Information and Records
  - AHIMA Practice Brief, February 2008
- Retention of Health Information (Updated)
  - AHIMA Practice Brief, June 1999
Resources

- Retaining Healthcare Business Records
  - AHIMA Practice Brief, March 2002

Audience Questions
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Resource/Reference List

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