

EXIT TRANSITIONS WHEN PROVIDER OR CLINICS LEAVE YOUR ORGANIZATION

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WHAT COMPLIANCE AND MEDICAL RECORDS CONCERNS TO CONSIDER

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Disclaimer: The information and works presented today express our own views and opinions, and do not represent those of our employer.

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OBJECTIVES

- Understand the risks associated with medical record transition when providers and clinics exit your organization
- Understand the importance and relevance of having written policies and procedures for such transactions
- Understand how the data transfer will occur to protect authenticity of the medical records



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Every year, thousands of physicians retire, sell or move their practices, or they leave their jobs for more lucrative opportunities. In doing so, they usually focus on the new position that seems more satisfying. It's a mistake to neglect details of closing the existing practice when exiting the old position.



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AMERICAN MEDICAL ASSOCIATION ETHICAL OPINION 7.03

A patient's records may be necessary to the patient in the future not only for medical care but also for employment, insurance, litigation, or other reasons. When a physician retires or dies, patients should be notified and urged to find a new physician and should be informed that upon authorization, records will be sent to the new physician. Records which may be of value to a patient and which are not forwarded to a new physician should be retained, either by the treating physician, another physician, or such other person lawfully permitted to act as a custodian of the records.

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AMA CODE OF ETHICS 7.04

(1) The physician (or the estate) must ensure that all medical records are transferred to another physician or entity who is held to the same standards of confidentiality and is lawfully permitted to act as custodian of the records.

(2) All active patients should be notified that the physician (or the estate) is transferring the practice to another physician or entity who will retain custody of their records and that at their written request, within a reasonable time as specified in the notice, the records (or copies) will be sent to another physician or entity of their choice.

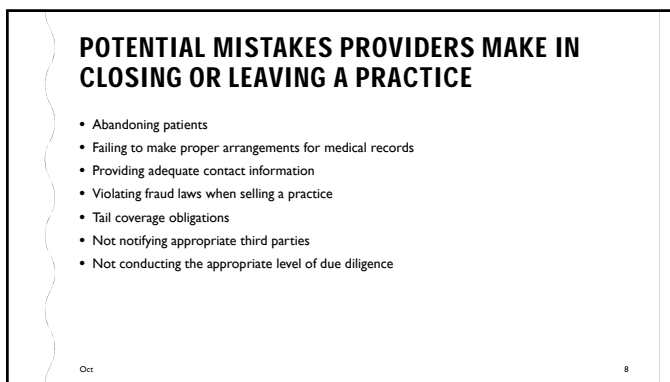
(3) A reasonable charge may be made for the cost of locating, duplicating, and mailing records.

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POTENTIAL SNARES

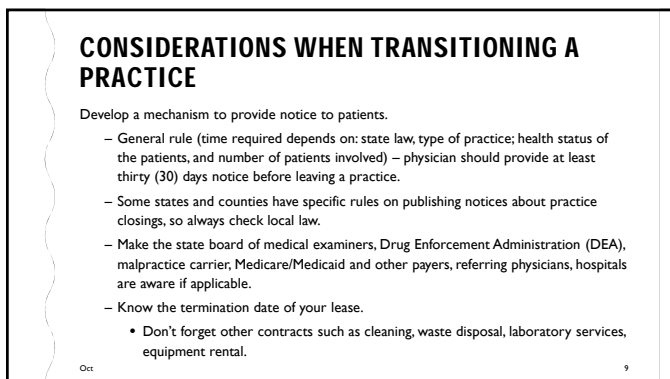
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POTENTIAL MISTAKES PROVIDERS MAKE IN CLOSING OR LEAVING A PRACTICE

- Abandoning patients
- Failing to make proper arrangements for medical records
- Providing adequate contact information
- Violating fraud laws when selling a practice
- Tail coverage obligations
- Not notifying appropriate third parties
- Not conducting the appropriate level of due diligence

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CONSIDERATIONS WHEN TRANSITIONING A PRACTICE

Develop a mechanism to provide notice to patients.

- General rule (time required depends on: state law, type of practice; health status of the patients, and number of patients involved) – physician should provide at least thirty (30) days notice before leaving a practice.
- Some states and counties have specific rules on publishing notices about practice closings, so always check local law.
- Make the state board of medical examiners, Drug Enforcement Administration (DEA), malpractice carrier, Medicare/Medicaid and other payers, referring physicians, hospitals are aware if applicable.
- Know the termination date of your lease.
 - Don't forget other contracts such as cleaning, waste disposal, laboratory services, equipment rental.

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CONSIDERATIONS WHEN TRANSITIONING A PRACTICE

- Do you have contracts with personnel?
- Other entities, i.e. medical directorships or medical staff officer positions.
- Know the statute of limitations on retaining physician office records.
 - Some states like Illinois do **not** have a statute of limitation on retaining physician office records.
- Upon closure of a physician's practice, all drugs should be disposed of properly to prevent harm and to comply with state and federal laws.

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WHAT ABOUT THE MEDICAL RECORD?

INFORMATION AVAILABILITY
DATA TRANSFER

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DATA TRANSFER AND RECORD AUTHENTICITY

- Healthcare entities are responsible to ensure the **availability, integrity and protection of information** that is needed to deliver healthcare and maintain business records of the healthcare provided.
- Inappropriate acquisition or transfer of medical records without proper authority or right to the records may cause **clinical, privacy or legal issues**.



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INFORMATION AVAILABILITY

“Information availability is defined as the ability of an organization to maintain information in a manner that ensures *timely, accurate and efficient* retrieval of information by authorized entity.” – ITH IT Infrastructure White Paper, Health IT Standards for Health Information Management Practices

Regulatory responsibilities include:

- Center for Medicare and Medicaid Services (CMS), compliance with Conditions of Participation (CoP) for medical record integrity and billing
- The Health Insurance Portability and Accountability Act (HIPAA)
- State specific record retention and other regulatory guidelines

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MEDICAL RECORD DIVESTITURE DISCOVERY QUESTIONS

- Is one provider, or the entire practice, leaving the organization?
- Is the practice integrated with the hospital or designated as a provider based clinic?

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MEDICAL RECORD DIVESTITURE DISCOVERY CONSIDERATIONS

Entity's should not fully relinquish or give up access to medical records as part of a transaction, unless the transaction is a full divestiture of the practice/group, the medical record of the practice/group is maintained separately from the hospital record, and The Entity obtains a contractual commitment from the purchasing entity specifying that the purchasing entity agrees:

- ✓ To take possession of and responsibility for all medical records (paper and electronic); and
- ✓ To be responsible for proper handling and administration of the medical records in accordance with applicable state and federal laws and regulations (including but not limited to HIPAA, HITECH, and other record retention laws and regulations).

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MEDICAL RECORD DISCOVERY CONSIDERATIONS CONT.

If medical records are electronic and planning to be sold with the divestiture, engage your electronic health record team (e.g. EHR compliance, medical records leadership, or clinical informatics and governance)

- o If The Entity is transferring the medical record it is encouraged to transfer the entire records (paper and electronic).
- o If the records are comingled (e.g. records in the same system or same files rooms) it may not be feasible.
- o If different purchasing arrangement is contemplated engage medial record leadership to incorporate appropriate language and determine operational capabilities.

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SEVEN (7) KEY QUESTIONS TO BE ADDRESSED DURING DUE DILIGENCE

1. Where are the legal medical records located (which system(s) and file location – paper and electronic)?

Note: Records generally remain with the entity completing the billing as support for the bills submitted.

a) What years of records are available?

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SEVEN (7) KEY QUESTIONS TO BE ADDRESSED DURING DUE DILIGENCE

2. Where is the MPI (*master patient index*) located and will it be provided to the purchaser?

Note: The MPI must be retained permanently in all states.

3. Will the MPI be migrated? If yes, engage the IT application team to evaluate options/feasibility on the data transfer.

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SEVEN (7) KEY QUESTIONS TO BE ADDRESSED DURING DUE DILIGENCE

4. What medical record system does the purchaser utilize?
5. Is the goal to transfer the records and the application together, or to export them to file or another electronic format?
 - If an export (of any type) is needed, must first research fully options/prices/etc. with the applicable IT applications team/vendor on the options and capabilities of the EHR system?
 - Who will pay for export/transfer of medical records?
 - If the application is going to be sold (or license to the application), must work with vendor management to ensure feasibility.
 - If the purchasing entity is buying the EHR, but the transfer isn't completed by day one, documentation is needed in the contract for access to The Entity's EHR system until the transfer.

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SEVEN (7) KEY QUESTIONS TO BE ADDRESSED DURING DUE DILIGENCE

6. Will the purchasing entity be buying the AR (Accounts Receivable)?
 - If yes, discuss processes including payor contracts, etc.
7. Will the divesting entity (providers or facility) have access to the purchasers EHR system on the closing date (their new EHR), or is there any overlap requiring use of The Entity's system after closing?

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THINGS TO CONSIDERS

Be knowledgeable of movement within your organization and legal structure.

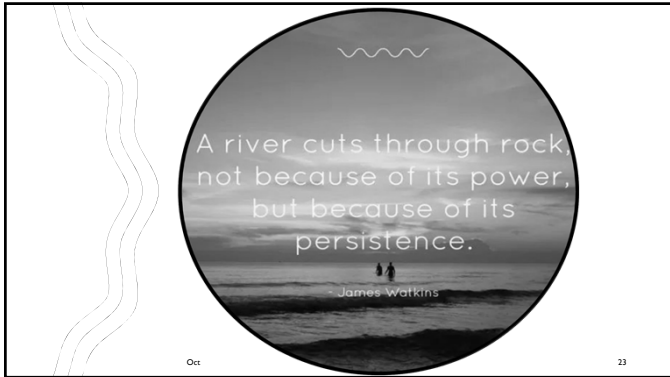
Remain aware of the location(s) of your medical records and how compliance is integrated into medical record integrity

Three ways to accomplish this may include:

1. Becoming familiar with your organizations processes for transfers of clinics and providers
2. Maintain knowledgeable on the location and system in which your medical records are being maintained to ensure integrity of the medical record/EHR systems
3. Stay engaged with strategy teams to ensure compliance and legal professionals are invited to the table early on in the process.

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