

Dealing with Damaged or Destroyed Medical Records

Question: Our medical records were severely damaged in the recent storm. What steps should I take to protect patients and my practice?

Answer: A physician's legal obligation to retain patient records for the required period of years is not abated by "acts of God" such as floods or hurricanes. Thus, reasonable steps must be taken to assess the damage suffered to your patients' medical records and to salvage or destroy them as appropriate. Additional steps must be taken to reconstruct a patient's destroyed record for purposes of future treatment and to produce to third parties when the need arises. You should consult any guidance available from your professional licensing board and, if you operate a licensed facility, from the appropriate licensing agency. For example, the New York State Department of Health recently issued guidance regarding how to handle medical records damaged or rendered unusable by Hurricane Sandy: <http://ow.ly/fCghi>. If there is no such guidance available, you should seek instructions from your medical malpractice carrier. For example, Coverys' guidance is available at: <http://ow.ly/fCfd1>

Other websites providing guidance include:

- Recovery methods: Freezing and drying: <http://ow.ly/fCfjN>
- Water damage preservation video: <http://ow.ly/fCfm>

You should take reasonable efforts to reconstruct a patient record by obtaining copies of insurance claims filed for services rendered during the pertinent period, obtaining copies of records available to you from other providers who treated the patient, and by direct communication with patients, such as mailing them a notification of the record loss and requesting they complete and return a history form that can be placed in their file.

There is also the issue of responding to a payor's request for documentation to support payment for services rendered where the original records are no longer available. Instructions for such situations can be found in CMS' Program Integrity Internet Only Manual in Publication 100-08, Chapter 3, § 3.8 entitled Administrative Relief from MR During a Disaster at the following link: <http://ow.ly/fCgQC> and the CERT Process for Handling a Provider's Allegation of Medical Record Destruction at: <http://ow.ly/fCfvJ>

Remember that HIPAA requirements for safeguarding confidentiality continue to apply to these records. This includes having a HIPAA Business Associate Agreement in place with any vendor retained for record recovery or destruction services.

Finally, be sure to document the damage to your records and your efforts at recovery. This should include preparing a memorandum for your files that explains the event (date, severity, etc.) and resulting damage and destruction, photographs and video of the damage, retaining copies of claims made to your property insurer, and maintaining a log of which records were damaged or destroyed.

For more information on this topic, please contact our Managing Partner, Michael J. Schoppmann, Esq at 1-800-445-0954 or via email at MSchoppmann@DrLaw.com.

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