

HEALTH PLAN CONTRACTS & MEDICAL RECORDS LAW

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What We Will Cover

A. Health Plan/Managed Care Contracts

1. Definitions, Term, Discounts, Fee Schedules, and other issues.
2. All Products Clauses.
3. Prior Authorization.
4. Rental Networks/Silent PPOs.
5. Post Payment Audits .

B. Medical Records Law

1. General Recordkeeping Requirements.
2. HIPAA'S Privacy Rule (Regulating Disclosures).
3. Medical Record Access Act (Regulating Access).
4. 2006 Michigan Medical Records Law (Regulating Retention and Destruction).
5. Responding to subpoenas and other legal process.

Health Plan Contracts: What to Look Out For

- Definitions
 - Medical Necessity
 - Required Services
 - Emergency
 - Clean Claim
 - Policies, Procedures and Manuals

Health Plan Contracts: What to Look Out For

- The Term
 - How long will you be bound to the contract?
 - Is the contract evergreen?
 - How is a non-renewal handled?
 - How is a termination handled?
 - What obligations, if any, “survive” the termination and/or non-renewal of the contract?

Health Plan Contracts: What to Look Out For

- Fee Discounts
 - What are the amounts of the discounts?
 - Who are the enrollees that you are required to offer the discounted fees to?
 - Which services are “covered services” that the fee discounts apply to?
 - Beware becoming a part of a “silent PPO”.

Health Plan Contracts: What to Look Out For

- Fee Schedule
 - Is there one attached?
 - Is there a reference to the source of the fee schedule?
 - Does the fee schedule adequately itemize by procedure code the fees you will be paid?

Health Plan Contracts: What to Look Out For

- Claims Procedure
 - How do you get paid?
 - How are claims processed?
 - How long does processing take?
 - Are there penalties (e.g. interest) for late payments?
 - Is and under what circumstances is balance billing the patient allowed?
 - How are co-pays and deductibles to be collected?

Health Plan Contracts: What to Look Out For

- Effect of Non-Renewal/Termination on Other Contracts.
 - Does the contract contain an “all products” clause?
 - Does the contract expressly state that its non-renewal/termination has no effect on other contracts?

Health Plan Contracts: What to Look Out For

- Access Criteria
 - Are you allowed to participate so long as you meet the managed care entity's utilization, quality, peer review and other standards?
 - Are there undisclosed criteria for participation (e.g. limitations on the number of physicians or types of specialists in a geographic area, specific referral patterns)?

Health Plan Contracts: What to Look Out For

- Amendments
 - Who is allowed to amend the contract?
 - Under what circumstances can the contract be amended?
 - Can amendments be retroactively applied?
 - What is your remedy if the contract is unilaterally amended in an unacceptable way?

Health Plan Contracts: What to Look Out For

- Credentialing
 - How often and under what circumstances are you required to be re-credentialed?
 - What is involved in the re-credentialing process?
 - Does the contract contain appropriate confidentiality protections covering the material you are required to disclose?

Health Plan Contracts: What to Look Out For

- Other Issues:
 - All Products Clauses
 - Prior Authorization
 - Rental Networks/Silent PPOs
 - Post Payment Audits
- You Must Always:
 - Keep a copy
 - Consult an attorney

General Medical Recordkeeping Requirements
Legal Requirements

- Michigan law requires health care providers to:
 - Maintain complete and accurate medical records (all tests, exams and treatments) for each patient; and
 - Take precautions which provide assurance that wrongful alterations or destruction of medical records does not occur.
- It is a crime to falsify a medical record.
- Content of medical record.

General Medical Recordkeeping Requirements

General Principles

- ▣ File Information unrelated to the patient's health care separately (letters regarding billing or complaints regarding treatment vs.. progress being made in treatment, etc.)
- ▣ All entries must be reviewed, signed and dated by the physician or other provider.
- ▣ Patients have a legal right to review and receive a copy of their medical record. Keep this in mind when making any entries to the medical record (i.e. all entries should be factual, professional and have a specific purpose).

General Medical Recordkeeping Requirements

Correcting Medical Records

- When correcting a medical record make a single line through the erroneous entry such that the original entry can still be read. Follow the correction with your initials and the date.
- Do not completely cover or otherwise render the erroneous entry unreadable (e.g. by using liquid paper, black permanent marker, etc.).
- If a large section of a record needs to be corrected consider referring to an addendum with the correct entry completely redone.
- Correction of electronic records.

HIPAA's Privacy Rule

- Has been in effect since April 14, 2003.
- Omnibus Rule enacted in 2013.
- Need to understand HIPAA's effect on medical record:
 - Disclosures in general;
 - Disclosures to Business Associates; and
 - Copying charges.

HIPAA's Privacy Rule Disclosures in General

- You must have created and distributed a Notice of Privacy Practices form to your patients. The Notice of Privacy Practices form must also be prominently displayed in your office.
- With new patients make a good faith attempt to obtain a signature on an Acknowledgment of Receipt of your Notice of Privacy Practices.

HIPAA's Privacy Rule
Disclosures in General

- Once you have complied with both the Notice of Privacy Practices form and Acknowledgment requirements you may make disclosures (without any further authorization from patients) for the following purposes:
 - 1) Treatment;
 - 2) Payment; and
 - 3) Health Care Operations (Quality Assessment, Evaluation, Training, Business Management, and other general administrative activities).

HIPAA's Privacy Rule Disclosures in General

- Disclosures for not for treatment, payment or health care operations may only be made if the disclosure is pursuant to law (subpoena or other court order, is required by statute, etc.) or if the patient has signed an Authorization form.
- The Authorization form must meet several very specific HIPAA requirements including:
 - A specific and meaningful description of how the medical information will be used.
 - An identification of who the information is being disclosed to.
 - An expiration date or event beyond which no further disclosures may be made pursuant to the Authorization, etc.

HIPAA's Privacy Rule Disclosures to Business Associates

- If a disclosure is made to a “Business Associate” you must first have a signed agreement with the Business Associate.
- Business Associates are non-medical persons who you hire to provide services involving the use of medical record information.

HIPAA's Privacy Rule Copying Fees

- Old Michigan law and HIPAA allow you to charge a fee for preparation of a copy of medical record information prior to making a disclosure.
- HIPAA allows you to charge a “reasonable, cost-based fee” which may include only the cost of:
 - 1) Copying, including the cost of supplies for and labor used in producing the copy;
 - 2) Postage; and
 - 3) Preparing an explanation or summary of the information requested, if the patient agreed in advance to the preparation of such a summary.
- **Michigan's Medical Record Access Act Copying Fee Provision should be followed instead of this HIPAA Provision. This will be discussed more fully later.**

Michigan's Medical Record Access Act

- Michigan's Medical Records Access Act ("MRAA") took effect on April 1, 2004 and, generally, mandates disclosures to patients, authorized representatives of patients and deceased patient's heirs at law.
- The requested records must be provided within 30 days if the request is for records located on site or within 60 days if the request is for records kept off site.
- The requesting party must agree to pay a copying fee.

Michigan's Medical Record Access Act

- ▣ Disclosures must be made to:
 - 1) The patient;
 - 2) Authorized Representatives of the patient (i.e. any person given written authorization by the patient to act on the patient's behalf to access, disclose or consent to the disclosure of the patient's medical record); or
 - 3) A deceased patient's: personal representative; heirs at law (including a surviving spouse); or the beneficiary of the patient's life insurance policy to the extent provided by MCLA §600.2157:
 - ▣ A deceased patient's heirs at law, whether proponents or contestants of the patient's will, are considered to be personal representatives of the deceased patient for the purpose of waiving the physician/patient privilege in a contest upon the question of admitting the patient's will to probate.
 - ▣ The beneficiary of a life insurance policy insuring the life of the patient, or the patient's heirs at law, may waive the physician/patient privilege for the purpose of providing the necessary documentation to a life insurer in examining a claim for benefits.

Michigan Medical Record Access Act

- MRRA contains a more exacting copying charge requirement than HIPAA. Under the Michigan Act **(Effective for 2014)** the maximum fees allowed for paper copies are:
 - An initial fee of \$23.42 per request (cannot be charged to the patient).
 - \$1.17 per page for the first 20 pages.
 - \$0.59 per page for pages 21 – 50.
 - \$0.23 per page for pages 51 and over.
- In addition to the fee for preparation of a paper copy if a medical record is in some form or medium other than paper, the actual cost of preparing the duplicate may be charged.
- The cost of postage or shipping may be charged.
- The cost of retrieving medical records that are not kept on site may be charged if the records at least 7 years old.
- Fees for copies of electronic records: HIPAA vs. MRRA.

Michigan Medical Record Access Act
HIPAA v. MRAA

- Until the U.S. Department of Health of Human Services and/or a court decides whether the HIPAA copying provision preempts the copying fee provision contained in MRAA you should follow the more exacting copying fee restrictions contained in the MRAA.

2006 Michigan Medical Records Law.

- New Section 16213 added to Michigan's Public Health Code imposes new requirements for the retention of medical records and their disposition upon your sale, closure, retirement etc. from practice.
- When renewing your license after December 19, 2006 you will have to provide an affidavit with the renewal form stating that you are in compliance with these new requirements.
- You are subject to an administrative fine up to \$10,000 for failure to comply due to gross negligence or willful and wanton misconduct.

2006 Michigan Medical Records Law.
Retention.

- Records must be maintained 7 years unless a longer period is otherwise required by law or generally accepted standards of medical practice.
- If you cannot comply due to space limitations you must contract with a “medical records company” for the storage of the records. The contract must provide for protection, maintenance and access to the records.
- Remember the Statute of Limitations on possible malpractice claims.

2006 Michigan Medical Records Law.
Destruction.

- Records less than 7 years old (10 years old for dental records) may not legally be destroyed unless: (1) written notice is sent to the patient requesting transfer instructions or written authorization to destroy his/her records; and (2) written authorization is obtained.
- Records more than 7 years old may be destroyed.
- Destruction must be by shredding, incineration, electronic deletion or other method that ensures the continued confidentiality of the information.

2006 Michigan Medical Records Law. Sale, Closure or Retirement.

- If you sell or close your practice, retire from practice or otherwise cease to practice you (or your personal representative in case of death) are required to send a written notice to the Department of Community Health specifying who will have custody of your records and how patients may request access to or a copy of their record and transfer the records to either:
 - Another physician;
 - A physician practice;
 - The patients; or
 - A Medical Records Company (with a contract as described above).

2006 MICHIGAN MEDICAL RECORDS LAW
SALE, CLOSURE OR RETIREMENT

- Notice required upon sale, closure or retirement goes to:

Michigan Department of Licensing and Regulatory Affairs
Health Professions Licensing Division – Workforce Development
Attn: Perry Bell
P.O. Box 30670
Lansing, MI 48909

2006 Michigan Medical Records Law.

- If the Department comes into possession of your records it has the authority (after providing you with notice) to comply with these new requirements and assess you the cost.
- Additional factors to consider when establishing retention period:
 - Statute of limitations--malpractice claims
 - Health Plan requirements
 - Ethical standards

Responding to Subpoenas and Other Legal Process Request By Subpoena

- The subpoena must be accompanied by an authorization signed by the patient or a court order signed by a Judge or Magistrate.
- If the subpoena is not accompanied by such an authorization or court order you must contact the attorney issuing the subpoena (who should be identified on the face of the subpoena) and request the patient's authorization or a court order.
- HIPAA allows the disclosure if there is a valid subpoena accompanied by an authorization or court order.

Responding to Subpoenas and Other Legal Process
Attorney Request Without a Subpoena

- Frequently, in medical malpractice cases defense attorneys request the plaintiff's medical records from subsequent treating physicians.
- Michigan law (MCL 600.2912f) does not require the defense attorney to issue a subpoena, obtain a court order or involve the plaintiff or the plaintiff's attorney in the request and/or review of the records.

Responding to Subpoenas and Other Legal Process Attorney Request Without a Subpoena

- ▣ Because there is no subpoena or court order, HIPAA requires that the defense attorney requesting the medical record information provide satisfactory assurances in the form of a written statement and accompanying documentation demonstrating that:
 - 1) A good faith attempt has been made to provide written notice to the plaintiff that the records of the treating physician have been requested;
 - 2) The notice to the plaintiff included sufficient information about the litigation in which the medical information is requested to permit the plaintiff to raise an objection to the court; and
 - 3) The time for the plaintiff to raise an objection to the court has elapsed and no objections were filed or all objections that were filed have been resolved by the court and the disclosures sought are consistent with the court's resolution.
- **Worker's Compensation Subpoenas**

Responding to Subpoenas and Other Legal Process Other Legally Mandated Disclosures

- Several Michigan laws require (and HIPAA would permit) reporting of medical record information in certain circumstances, for example:
 - Child Abuse (MCLA § 722.623);
 - Adult Abuse (MCLA § 400.11a.);
 - Nursing Home Abuse (MCLA § 333.21771);
 - Mental Health Patient Abuse (MCLA § 330.1723);
 - HIV/AIDS – Report to Health Department or Other Health Care Provider (MCLA § 333.5131 (5)(a));

Responding to Subpoenas and Other Legal Process
Other Legally Mandated Disclosures

Examples (continued)

- HIV/AIDS – Disclosure to Contact Person (MCLA § 333.5131(5)(b));
- Emergency Patient/Infectious Agent (MCLA § 333.20191);
- Deceased Patient/Infectious Agent (MCLA § 333.2843b);
- HIV Infection (MCLA § 333.5114);
- Wounds Caused by Violence (MCLA § 750.411);
- Report of Asphyxia (MCLA § 750.411.c.);
- Minor/Prenatal Care (MCLA § 333.9132);
- Minor/Venereal Disease/HIV (MCLA § 333.5127);
- Minor/Substance Abuse Treatment (MCLA § 333.6121);

Responding to Subpoenas and Other Legal Process
Other Legally Mandated Disclosures

Examples (continued)

- Minor/Mental Health Treatment (MCLA § 330.1707);
- Peer Review Information (MCLA § 331.531);
- Licensing Board (MCLA § 333.16244);
- Autopsies (*Swickard v Wayne County Medical Examiner*, 438 Mich 536 (1991));
- Abortions (MCLA § 333.2835(2));
- Birth Defects (MCLA § 333.5721);
- Occupational Disease (MCLA § 333.5611).

Questions and Answers

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