

RECORD RETENTION AND DESTRUCTION FOR IDAHO HEALTHCARE ENTITIES

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Record Retention. Ideally, healthcare providers should retain medical and other business records permanently; however, where that is not feasible, the proper retention period depends upon several factors, including the following in descending order of priority:

1. **Patient care.** The foremost consideration for any medical record retention policy is the need to provide proper patient care. For example, AMA standards state:

Medical conditions are the primary basis for deciding how long to retain medical records.... In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time.

(AMA Council on Ethical and Judicial Affairs, Code of Medical Ethics, 7.05 Retention of Medical Records, 1998-99 ed.).

2. **Statutes and regulations.** For certain records, federal and state statutes and regulations establish mandatory record retention periods. For example, Medicare regulations generally require that hospitals maintain medical records for at least five years. (42 CFR §§ 482.24(b)(1) and 486.60(c)). Some of the more relevant statutes and regulations are identified in the chart below.
3. **Payor contracts.** Government payment programs, insurance companies, or other payors may require that records be retained for certain periods as part of their contracts. For example, the Idaho Medicaid provider agreement requires that medical records be maintained for at least five years unless otherwise required by rule. (Idaho Medicaid Provider Agreement (06/11), available at <https://www.idmedicaid.com/Provider%20Enrollment%20Paper%20Maintenance%20Forms/Idaho%20Medicaid%20Provider%20Agreement.pdf>).
4. **Accreditation agencies.** Some accreditation agencies may impose document retention standards.
5. **Insurance company guidelines.** Some insurers may require that records be retained for certain periods as part of a risk management program.
6. **Statutes of limitations.** If the foregoing standards do not require a longer retention period, records should normally be retained for at least the statute of limitations period for claims to which the records may relate. For example, the general statute of limitations for malpractice claims in Idaho is two years subject to certain tolling provisions, including Idaho's six-year tolling limit for minors or incompetents. (See Idaho Code §§ 5-219 and -230). For contracts, the general statute of limitations is four or five years, depending on whether the contract is oral or written. (Idaho Code §§ 5-216 and -217). The statute of limitations for most government fraud and abuse claims is six years, but may be extended in certain circumstances.

Pending or Threatened Investigations. Record destruction should be suspended immediately for any records relevant to any threatened or pending government investigation or litigation. The improper destruction of documents can result in serious civil and criminal penalties ranging from the loss of evidence necessary to prove or defend against a claim to tort liability for spoliation of evidence to severe federal criminal penalties.

Document Destruction. The HIPAA privacy and security rules require that covered entities implement appropriate administrative, physical, and technical safeguards to protect health information. Covered entities must enter business associate contracts with entities that maintain or destroy documents on behalf of the covered entity. The documents must be destroyed in a manner that will protect against improper disclosure.

Record Retention Policies. Hospitals and other health care providers should establish a written records retention and destruction policy for several reasons. First and foremost, the policy will help ensure that records are maintained for the appropriate time period to facilitate patient care and comply with relevant statutes, regulations, contracts, and accreditation standards. Second, HIPAA generally requires that covered entities establish appropriate retention and destruction policies for electronic health information. (See, e.g., 45 CFR § 312(c)(1)). Third, compliance with a proper records retention policy will help establish a defense against any claim or allegation of improper destruction of records. The written policies and procedures should:

1. Establish the length of time that relevant categories of records will be kept.
2. Establish the medium in which the records will be kept (e.g., paper, microfilm, electronic, etc.).
3. Define which records will be kept onsite and which are kept offsite.
4. Designate a person to be responsible for deciding what to keep and destroy.
5. Log the records that have been destroyed, and the date and method of destruction.
6. Provide for a method of disposal (e.g., shredding or incinerating) that destroys all information in the record and prevents inadvertent or intentional disclosure of the information consistent with HIPAA and similar state and federal laws.

Business Associates. To the extent that a healthcare provider uses an outside entity to assist with records retention or destruction, the health care provider must ensure that it has a HIPAA-compliant business associate contract with the entity.

Suggested Document Retention Periods. The following chart summarizes suggested retention periods for various records along with supporting citations. For some records, we recommend a longer period than a particular statute might allow. For example, even though a statute might require the retention of a medical record for only five years, it may be advisable to retain the records for ten years due to the statute of limitations for federal fraud and abuse claims. **Caution: record retention requirements may vary by provider type and applicable state or federal laws. Providers should confirm the record retention requirements applicable to their situation and discuss record retention with relevant stakeholders, including clinical personnel, risk management, finance, human resources, compliance, legal, etc.**

Record Description	Department	Retention Recommendations	Authority/Comment
ADMINISTRATION			
Organizational or governance records, e.g., -Articles of incorporation	Administration	Permanent	31 USC §§ 3729, 3731(b) IC § 30-29-1601

Record Description	Department	Retention Recommendations	Authority/Comment
-Bylaws -Operating agreements -Board meeting minutes -Shareholder meeting minutes -Board resolutions -Record of shareholders, including name, address, and number and class of shares held -Actions taken by shareholders or board of directors, including committees of the board -Annual reports -Appraisal reports			AHIMA guidelines
-Written communications to shareholders -Financial statements provided to shareholders	Administration	3 years	IC § 30-29-1601(5)(d) and (e)
-Minutes of member meetings -Records of actions approved by members	Administration	3 years	IC § 30-30-1101(5)(d)
-Written communications to members, including financial statements provided	Administration	7 years	IC § 30-30-1101(5)(e)
Property records, e.g.: -Deeds -Titles	Administration	Permanent	AHIMA guidelines
-Licenses -Permits	Administration	Permanent	AHIMA guidelines
Construction records	Administration	Permanent	IC § 5-216 AHIMA guidelines
Correspondence	Administration	Depends on the subject matter; however, as a general rule, maintain significant correspondence for at least 6 years.	31 USC §§ 3729, 3731(b) IC § 5-216 AHIMA guidelines
Admission register		Permanent except that daily and monthly reports can be destroyed after year-end statistics are compiled.	AHIMA guidelines
-Contracts -Leases	Administration	6 years from last effective date, including any warranty period.	31 USC §§ 3729, 3731(b) IC §§ 5-216, 28-2-725

Record Description	Department	Retention Recommendations	Authority/Comment
			AHIMA guidelines
Policies and procedures	Administration	6 years from last effective date.	31 USC §§ 3729, 3731(b) AHIMA guidelines
Daily census	Administration	5 years	AHIMA guidelines
Reports from departments	Administration	Generally 3 years except that reports that implicate fraud and abuse issues should be retained for at least 6 years. Many daily and non-annual reports may be destroyed after year-end statistics are compiled.	AHIMA guidelines
Statistics on admissions, services or discharges	Administration	Permanent	AHIMA guidelines
BUSINESS AND FINANCE RECORDS			
General financial records and business transactions, e.g., -Accounts payable/receivable -Patient accounts -Financial reports -Financial audits -Bank records (statements, checks, etc.) -Budgets	Finance	10 years	31 USC §§ 3729, 3731(b) (statute of limitations for False Claims Act is 6 years from submission of claim or 3 years after date material facts are known or reasonably should have been known by gov't official, but not more than 10 years after date of violation) IC § 41-3909 IDAPA 16.03.09.330 IDAPA 16.03.09.564 IDAPA 16.03.10.040 AHIMA guidelines
Daily census		6 years	AHIMA guidelines
Employment and social security taxes		4 years after taxes due (or paid, if paid after due date) or claim filed	26 CFR § 31.6001-1(e)
ERISA benefit plan records		Date of filing plus 6 years	29 USC § 1027
COMPLIANCE RECORDS			

Record Description	Department	Retention Recommendations	Authority/Comment
Compliance documentation, e.g., -Policies and procedures; -Employee training; -Auditing and monitoring; -Reports of problems; -Investigations; -Correspondence with regulators; -Self-disclosures	Compliance	10 years	31 USC §§ 3729, 3731(b)
HIPAA records, e.g.: -Notice of Privacy Practices -Authorizations -Privacy officer designation -Disclosure log -Patient requests -Business associate contracts -Employee training -Employee sanctions -Policies and procedures -Complaints -Security assessment -Security standards documentation	Compliance, Privacy, and/or Security Officer	6 years from later of the date created or last effective date	45 CFR § 164.530(j)(2) 45 CFR § 164.316(b)
COMPREHENSIVE OUTPATIENT REHAB FACILITIES (CORFS)		5 years after patient discharged	42 CFR § 485.60(c)
DIETARY SERVICES	Records of menus served	30 days	IDAPA 16.03.14.320.05
EMERGENCY			
-List of on-call physicians -Central log of emergency patients	Emergency Dept.	5 years	42 USC § 1395dd(d)(2)(C) 42 CFR § 489.20(r)
HOME HEALTH AGENCY		5 years after the month the cost report to which the records apply is filed.	42 CFR § 484.48(c)
HOUSEKEEPING			
Housekeeping contracts	Materials Management	5 years (written contracts)	IC § 5-216
HUMAN RESOURCES/PERSONNEL			

Record Description	Department	Retention Recommendations	Authority/Comment
Employment info (FLSA), e.g.: -Payroll -Job descriptions -Wages -Job evaluations -Employment contracts -Time cards -Wage rate schedule -W-2s -W-4s	Human Resources	5 years from date of last employment for written contracts 4 years from date of last employment for oral contracts	29 CFR § 516.2-.6 29 CFR § 1627.3 IC § 5-216 IC § 5-217
Employment actions, e.g.: -Hiring -Promotion -Demotion -Transfer -Termination -Layoff =Pay rates or compensation terms	Human Resources	5 years from date of last employment for written contracts 4 years from date of last employment for oral contracts	29 CFR § 1602.14 29 CFR § 1627.3 IC § 5-216 IC § 5-217
Records related to employment taxes	Human Resources	4 years	26 CFR § 31.6001-1(e)(2)
Medical and exposure records pertaining to employee exposure to toxic substances or harmful physical agents (OSHA), e.g.: -Employment questionnaires or histories; -Employment medical exams; -First aid records; -Medical opinions or diagnoses; -Descriptions of treatments and prescriptions; -Medical complaints	Human Resources	30 years from date of last employment	29 CFR § 1910.1020(d)(1) 29 CFR § 1926.33
LABORATORY			
General	Laboratory	6 years after test	31 USC §§ 3729, 3731(b) 42 CFR § 493.1105(a) IC § 39-1394(1)(b) AHIMA guidelines
Immunohematology	Laboratory	Later of 10 years after records of processing have been completed or 6 months after the latest expiration date.	42 CFR § 493.1105(a)(3)(ii), (6)(i) 21 CFR § 606.160(d)

Record Description	Department	Retention Recommendations	Authority/Comment
Pathology	Laboratory	10 years after report	42 CFR § 493.1105(a)(6)(ii)
Specimen blocks	Laboratory	2 years after examination	42 CFR 493.1105(a)(7)(ii)
Stained slides	Laboratory	10 years after examination	42 CFR 493.1105(a)(7)(i)(B)
MARKETING AND PUBLIC RELATIONS			
Marketing materials	Marketing/Public Relations	6 years from last effective date	31 USC §§ 3729, 3731(b) 42 CFR § 1003.1570 IC § 5-216 IC § 5-217 AHIMA Guidelines
Contributor records; Publications	Public Relations	Permanent	AHIMA Guidelines
MEDICAL RECORDS			
General	Medical Records	10 years from date of last contact with provider. If that is not practical, the records should be kept for a minimum of the later of 7 years from the relevant patient encounter.	31 USC §§ 3729, 3731(b) 42 CFR § 482.24(b)(1) 42 CFR § 485.60(c) 42 CFR § 485.638(c) 42 CFR § 1003.1570 IC § 5-219 IC § 5-230 IDAPA 16.03.09.04(5) IDAPA 16.03.09.564(d)
Abortions and related medical services documentation	Medical Records	At least 7 years or majority plus 2 years, whichever is longer.	42 CFR § 50.309
Aged and Disabled Waiver Services	Medical Records	5 years following date of service	IDAPA 16.03.10.328.09
Children's Waiver Services	Medical Records	5 years following date of service	IDAPA 16.03.10.684.06
Minors and Incompetent patients	Medical Records	10 years from the date of last contact (which should cover the 6-year statute of repose and the 2 year statute of	IC § 5-230

Record Description	Department	Retention Recommendations	Authority/Comment
		limitations for malpractice). However, given possible constitutional concerns with the statute of repose, it is safer to retain the records from the later of 10 years from the patient encounter or 2 years past the age of majority.	
Mammography	Medical Records	5 years or not less than 10 years if no additional mammograms are performed at facility	21 CFR § 900.12(c)(4)(i)
Nuclear medicine	Medical Records	5 years	42 CFR § 482.53(d)(1)
Psychiatric	Medical Records	6 years	42 CFR § 482.61
Primary care	Medical Records	6 years from date of service	IDAPA 16.03.09.564
Radiology, including x-rays	Medical Records	Later of 5 years from date of test or majority plus 5 years	42 CFR § 482.26(d) IC § 39-1394(1)(c)
Registries of births and deaths	Medical Records	Permanent	AHIMA guidelines
School-based services	Medical Records	5 years	IDAPA 16.03.09.854
Transfer records (patients transferred to and from hospital)	Medical Records	5 years from transfer	42 CFR § 489.20(r)(1)
Therapy records	Medical Records	Later of 5 years from date of discharge or majority plus 3 years	42 CFR § 485.721(d) IC §§ 5-219, -230
Immunization and vaccination	Medical Records	Certain information concerning the vaccine must be maintained in a permanent file.	42 USC § 300aa-25(a) 42 USC § 300aa-11(c)
MEDICAL STAFF			
Bylaws Rules Regulations Minutes	Medical Staff Office	Permanent	AHIMA guidelines
Credentialing file	Medical Staff Office	30 years	AHIMA guidelines

Record Description	Department	Retention Recommendations	Authority/Comment
PHARMACY			
Controlled substances dispensed	Pharmacy	2 years	21 CFR § 1304.04(a) 21 USC § 827(b)
RESEARCH			
Institutional review board (IRB) for clinical devices	IRB	2 years after later of the termination of the investigation or the date the records are no longer required to support a premarket approval or a notice of product development protocol completion	21 CFR § 812.140(d); see also 21 CFR § 312.62(e)
IRB for clinical investigation	IRB	3 years after completion of research	21 CFR § 56.115(b) 38 CFR § 16.115(b)
RISK MANAGEMENT			
Accident/incident reports	Risk Management	Up to 11 years	IC § 5-219 IC § 5-230
Liability insurance policies	Risk Management	For occurrence-based policies, 20 years after expiration. For claims-made policies, 6 years after expiration.	AHIMA guidelines
Property and casualty insurance policies	Risk Management	5 years after expiration	IC § 5-216
Medical device reports (MDR), Records of MDR reportable events	Risk Management	2 years	21 CFR § 803.18(c)
Medical device tracking records	Risk Management	Useful life of device	21 CFR § 821.60
SKILLED NURSING, LONG TERM, AND INTERMEDIATE CARE			
		Later of 7 years or majority plus 7 years	42 CFR § 483.70(i)(4) IDAPA § 16.03.02.203.04(b)

For questions regarding this update, please contact [Kim C. Stanger](mailto:Kim.C.Stanger@hhhealthlaw.com). For more information, please visit www.hollandhart.com or www.hhhealthlawblog.com.

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