



DPH REVISES REGULATIONS ON PATIENT RECORD RETENTION

Introduction

In The Rogers Law Firm's June/July issue of our Health Care Practice Group Newsletter, we detailed how the Public Health Council ("PHC") of the Massachusetts Department of Public Health ("DPH") recently revised the regulations for hospital and clinic licensure. Included among those revisions were provisions pertaining to the retention of patient records. However, due to concerns by DPH that such revisions could lead to the destruction of a current patient's relevant medical records, PHC has voted: (1) to rescind the amendments to hospital and clinic licensure regulations insofar as those regulations relate to the retention of patient records; and (2) promulgate new hospital/clinic licensure regulations on the retention of patient records. This Advisory details these newly revised regulations.

Background

Pursuant to the "Act to Promote Cost Containment, Transparency and Efficiency in the Delivery of Quality Health Care" (the "Act"), which was signed into law by Governor Deval Patrick on August 10, 2008, DPH issued several regulations pertaining to hospital and clinic licensure. One of the regulations which was amended pertained to the retention of patient records. Specifically, the regulations (105 CMR 130.370 and 105 CMR 140.302) were revised to provide as follows:

- A hospital/clinic shall maintain records of the diagnosis and treatment of patients under its care for a minimum of 20 years (down from 30 years) after the discharge or the final treatment **related to the episode of care** of the patient to whom the record relates . . . At the expiration of 20 years after the discharge or the final treatment **related to the episode of care** of the patient to whom a retained medical record relates, a hospital/clinic may destroy the medical record.

Other amendments made to the regulations for the retention of patient records included: (i) notifying DPH before destroying records; (ii) allowing the conversion of existing paper records to electronic digital format before the expiration of the retention period and to create original records in electronic digital format; and (iii) requiring notification to patients in writing of the hospital/clinic's record retention and destruction policies. There is no requirement under the newly revised regulations that a hospital/clinic notify a patient prior to destroying the patient's record.

Concern Leads to Further Revisions

Following the promulgation of the revised regulations pertaining to the retention of medical records, a concern was raised about the term "related to the episode of care".

Specifically, DPH questioned whether the term could result in a situation where a hospital/clinic destroys a portion of a current patient record (in hard copy or electronic form) that compromises patient care. For example, a situation could arise where a patient is treated for cancer in 1989, discharged, and then returns for treatment of a new and different cancer 19 years later. Pursuant to the amended regulation, a hospital/clinic might destroy the record or portion of the record relating to the 1989 episode of cancer treatment in the next or 20th year because the new cancer might be considered a separate "episode of care".

As a result of such concerns, the PHC voted on June 24, 2009, to rescind the revised regulation pertaining to the retention of patient records and promulgate further revised regulations eliminating the term "episode of care". Therefore, a hospital/clinic must now retain patient records for a minimum of 20 years following discharge or final treatment of the patient. After such period, the hospital/clinic is permitted to destroy the record.

Conclusion

The revised regulations for the retention of patient records by hospitals/clinics became effective as of July 10, 2009. It should be noted that the "other amendments" which were included in the initial amendments (i.e., notifying DPH before destroying records) have not been affected by the recent decision of DPH and thus went into effect on July 10 with the revised regulations. Even with the removal of the "episode of care" language, the revised regulations are concerning insofar as the retention period has been reduced from 30 to 20 years. Hospitals and clinics need to review and update their patient record retention policies and procedures to ensure they comply with the revised regulations.

If you have any questions or concerns regarding the revised regulations pertaining to medical record retention, or about your hospital/clinic's medical record policies, please do not hesitate to contact any of the attorneys at The Rogers Law Firm.



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