

TEXAS BOARD OF MEDICAL EXAMINERS
BOARD RULES – CHAPTER 165 – MEDICAL RECORDS
Updated March 4th, 2004

165.1.Medical Records.

(a) Contents of Medical Record. Each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) The documentation of each patient encounter should include:

(A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;

(B) an assessment, clinical impression, or diagnosis;

(C) plan for care (including discharge plan if appropriate); and

(D) the date and legible identity of the observer.

(2) Past and present diagnoses should be accessible to the treating and/or consulting physician.

(3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.

(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:

(A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;

(B) any referrals and consultations;

(C) patient/family education; and,

(D) specific instructions for follow up.

(7) Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(8) Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(9) Records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(10) The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1)-(10) of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) Maintenance of Medical Records.

(1) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(2) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(3) A physician may destroy medical records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved.

(4) Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(5) Physicians may transfer ownership of records to another licensed physician or group of physicians only if the physician provides notice consistent with §165.5 of this chapter and the physician who assumes ownership of the records maintains the records consistent with this chapter.

(6) Medical records may be owned by a physician's employer, to include group practices, professional associations, and non-profit health organizations, provided records are maintained by these entities consistent with this chapter.

165.2. Medical Record Release and Charges.

(a) Release of Records Pursuant to Written Request. As required by the Medical Practice Act, §159.006, a physician shall furnish copies of medical and/or billing records requested or a summary or narrative of the records pursuant to a written release of the information as provided by the Medical Practice Act, §159.005, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The physician may delete confidential information about another patient or family member of the patient who has not consented to the release. If by the nature of the physician's practice, the physician transmits health information in electronic form, the physician may be subject to the Health Insurance Portability and Accountability Act (HIPAA) 45 C.F.R. Parts 160-164. Unless otherwise provided under HIPAA, physicians subject to HIPAA must permit the patient or an authorized representative access to inspect medical and/or billing records and may not provide summaries in lieu of actual copies unless the patient authorizes the summary and related charges.

(b) Deadline for Release of Records. The requested copies of medical and/or billing records or a summary or narrative of the records shall be furnished by the physician within 15 business days after the date of receipt of the request and reasonable fees for furnishing the information.

(c) Denial of Requests for Records. If the physician denies the request for copies of medical and/or billing records or a summary or narrative of the records, either in whole or in part, the physician shall furnish the patient a written statement, signed and dated, within 15 business days of receipt of the request stating the reason for the denial and how the patient can file a complaint with the federal Department of Health and Human Services (if the physician is subject to HIPAA) and the Texas State Board of Medical Examiners. A copy of the statement denying the request shall be placed in the patient's medical and/or billing records as appropriate.

(d) Contents of Records. For purposes of this section, "medical records" shall include those records as defined in § 165.1(a) of this title (relating to Medical Records) and shall include copies of medical records of other health care practitioners contained in the records of the physician to whom a request for release of records has been made.

(e) Allowable Charges.

(1) The physician responding to a request for such information shall be entitled to receive a reasonable, cost-based fee for providing the requested information. A reasonable fee shall be a charge of no more than \$25 for the first twenty pages and \$.50 per page for every copy thereafter. If an affidavit is requested, certifying that the information is a true and correct copy of the records, a reasonable fee of up to \$15 may be charged for executing the affidavit. A physician may charge separate fees for medical and billing records requested. The fee may not include costs associated with searching for and retrieving the requested information.

(2) A reasonable fee, shall include only the cost of:

- (a) copying, including the labor and cost of supplies for copying;
 - (b) postage, when the individual has requested the copy or summary be mailed; and
 - (c) preparing a summary of the records when appropriate.
- (f) **Emergency Requests.** The physician providing copies of requested medical and/or billing records or a summary or a narrative of such records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any State or province of Canada if requested for purposes of emergency or acute medical care.
- (g) **Non-emergent Requests.** In the event the physician receives a proper request for copies of medical and/or billing records or a summary or narrative of the records for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. If payment is not routed with such a request, within ten calendar days from receiving a request for the release of such records, the physician shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical and/or billing record as appropriate.
- (h) **Improper Withholding for Past Due Accounts.** Medical and/or billing records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.
- (i) **Subpoena Not Required.** A subpoena shall not be required for the release of medical and/or billing records requested pursuant to a proper release for records under this section and the Medical Practice Act, §159.006, made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.
- (j) **Billing Record Requests.** In response to a proper request for release of medical records, a physician shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.
- (k) **Prohibited Fees for Records Released Related to Disability Claims.** The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law. In particular, under §161.202 of the Texas Health and Safety Code, a physician may not charge a fee for a medical or mental health record requested by a patient, former patient or authorized representative of the patient if the request is related to a benefits or assistance claim based on the patient's disability.
- (l) **Applicable Federal Law.** Whenever federal law or applicable federal regulations affecting the release of patient information are inconsistent with provisions of this section, the provisions of federal law or federal regulations shall be controlling, unless

the state law is more restrictive/stringent. Physicians are responsible for ensuring that they are in compliance with federal law and regulations including the Health Insurance Portability and Accountability Act (HIPAA) 45 C.F.R. Parts 160-164.

165.3. Patient Access to Diagnostic Imaging Studies in Physician's Office.

(a) Purpose. This section is promulgated to ensure that patients have reasonable access to films and other static diagnostic imaging studies maintained in the physician's office and that the practice of medicine by individual licensees and the delivery of health care to the public shall not be unduly hindered or interrupted by allowing for such access.

(b) Request and release.

(1) Upon receiving a written request and release of information as provided for in the Medical Practice Act, §159.005, as required for the release of medical records, a physician in possession or control of films or other static diagnostic imaging studies of a patient shall allow access to the films or other diagnostic imaging studies through one or more of the following means:

(A) providing copies of the films or other static diagnostic imaging studies to the patient or recipient as designated in the request; or,

(B) releasing the original films or other static diagnostic imaging studies to the patient or recipient as designated in the request.

(2) Release and transfer of original films or other static diagnostic imaging studies may be evidenced by a signed and dated receipt from a recipient of the original films or other diagnostic imaging studies, or from their authorized representative, acknowledging receipt of and responsibility for the original studies.

(c) Exceptions. As provided for under the Medical Practice Act, §159.005, a physician is not required to release films or other static diagnostic imaging studies directly to a patient if the physician determines that access to the films or static diagnostic imaging studies would be harmful to the physical, mental, or emotional health of the patient. If a physician makes a determination that access would be harmful to the physical, mental, or emotional health of the patient, the physician shall, within the time allowed after receipt of a proper request, provide access to the requested films or static diagnostic imaging studies to an authorized representative of the patient as provided for in subsection (b) of this section.

(d) Time for release and denial. The requested copies or access to films or other static diagnostic imaging studies shall be provided by the physician within 15 business days after the date of receipt of the request. If the physician denies the request, in whole or in part, the physician shall furnish the patient a written statement, signed and dated, within 15 business days of receipt of the request stating the reason for the denial and how the patient can file a complaint with federal Department of Health and Human Services and the Texas State Board of Medical Examiners. A copy of the statement denying the request shall be placed in the patient's medical records.

(e) Fees. The physician responding to a request for copies of films or other static diagnostic imaging studies shall be entitled to a reasonable fee for providing the copies. A reasonable fee shall be no more than \$8 per copy. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery.

(f) Emergency Request. The physician providing copies of requested films or other static diagnostic imaging studies shall be entitled to a reasonable fee prior to release of the copies unless the copies are requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any state or province of Canada if requested for purposes of emergency or acute medical care.

(g) Non-emergent Requests. In the event that the physician receives a proper request for copies of films or other static diagnostic imaging studies for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. If payment is not routed with such a request, within ten calendar days from receiving a request for copies of films or other static diagnostic imaging studies, the physician shall notify the requesting party in writing of the need for payment and may withhold the copies until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record.

(h) Improper Withholding for Past Due Accounts. Access to or copies of films or other static diagnostic imaging studies requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such copies based on a past due account for medical care or treatment previously rendered to the patient.

(i) Subpoena. A subpoena shall not be required for access to or the release of originals or copies of static diagnostic imaging studies requested pursuant to the provisions of this section.

(j) Maximum charges. The allowable charges set forth in this section shall be maximum amounts, and this section shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by prevailing state or federal law.

165.4. Appointment of Record Custodian of a Physician's Records.

- (a) The board may appoint a temporary or permanent custodian for medical records abandoned by a physician when a person or entity applies with the board to be appointed record custodian.
- (b) The records will be considered abandoned if they are without custodial care for a minimum of two weeks without alternative arrangements being made by the physician, the physician's legal guardian, or by the executor of the physician's estate.
- (c) The record custodian appointed by the board shall take custody of and maintain the confidentiality of the physician's records, to include available medical records and billing records, according to the provisions of board rules and state statutes.
- (d) The appointed record custodian shall provide the records, or copies of the records, to the patient or to the patient's designee according to board rules and state statutes. In addition to the reasonable copying fee defined in board rules, the appointed record custodian may charge an additional fee of \$25.00 per patient record.
- (e) The appointed record custodian shall retain care of the records for no less than 90 days and shall publish appropriate notice of pending destruction of the records for no less than 30 days prior to destruction of the records.
- (f) Destruction of medical records shall be done in a manner that ensures continued confidentiality.
- (g) The board may publish a Request for Bids for one entity to function as the appointed record custodian for all areas of the state. If a sole statewide contractor is not selected, the board may publish a Request for Bids for entities to function as regional appointed record custodian or a custodian may be appointed on a case by case basis.

165.5. Transfer and Disposal of Medical Records.

- (a) Required Notification of Discontinuance of Practice. When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for:
 - (1) ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and
 - (2) notifying the board when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.
 - (3) Employers of the departing physician as described in §165.1(b)(6) of this chapter are not required to provide notification, however, the departing physician remains responsible for providing notification consistent with this section.
- (b) Method of Notification.

(1) When a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records.

(2) Notification shall be accomplished by:

(A) publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area;

(B) placing written notice in the physician's office; and

(C) sending letters to patients seen in the last two years notifying them of discontinuance of practice.

(3) A copy of the notice shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

(4) Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.

(1) Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign.

(2) A physician or physician group should not withhold information from a departing physician that is necessary for notification of patients.

(d) Voluntary Surrender or Revocation of Physician's License.

(1) Physicians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the board must notify their patients, consistent with subsection (b), within 30 days of the effective date of the voluntary surrender or revocation.

(2) Physicians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the board must obtain a custodian for their records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.