Do I have to provide a foreign language interpreter for patients who cannot speak English? What accommodations for disabled patients does the law require?

Physicians are required to provide interpreter services for all Limited English Proficiency patients, per Title VI of the Civil Rights Act of 1964. Title VI outlaws federal agencies and entities that receive federal funds from discriminating against people of a protected minority status. The 1974 case of Lau vs. Nichols expanded the civil rights protections to non-English speakers. By accepting Medicaid and/or Medicare, physicians and clinics are accepting federal funds, and thus are obligated to ensure that all patients receive effective communication about their medical care. This includes providing written healthcare materials in a language that patients can understand.

Further, the 1990 Americans with Disabilities Act makes legal provisions for hearing disabled patients. The ADA does not mandate the use of interpreters in every instance, and healthcare professionals may choose alternatives to interpreters as long as the result is effective communication.

Acceptable alternatives may include note taking, written materials or, if viable, lip-reading. Even with this freedom, courts have found an ADA violation where the healthcare professional does not use an interpreter, and there is evidence that the method used did not result in effective communication.

In both instances, the healthcare professional or facility responsible for the care must pay for the cost of an interpreter. Healthcare professionals or facilities cannot impose a surcharge on an individual with a disability directly or indirectly to offset the cost of the interpreter. For accounting and tax purposes, the cost of the interpreter should be treated as part of overhead expenses.

Family members of patients may act as interpreters, as long as they are effective, and the patients agree on this course of action with the knowledge that they have a right to a professional interpreter. 

If I leave a physician practice group, can I take my patients or records with me? Can I notify my patients that I am leaving?

Not only can you notify patients, you must notify them. Patients who choose to go with you can then arrange to have their records transferred to your new practice. Physicians must comply with Texas Medical Board regulations governing the notice that must be given to patients any time a physician retires, terminates or otherwise leaves a group practice. These regulations are intended to help maintain continuity of patient care by giving patients sufficient notice to decide whether to stay with the practice, follow the departing physician, or go elsewhere. Patients who decide to follow their physician or otherwise not stay with the group must have the opportunity to obtain their records for themselves or request their records be transferred to the departing physician (or other physician not in the group). Additionally, departing physicians must notify the TMB of the date they are relocating, retiring or terminating practice and, therefore, no longer available to patients, and identify who has custody of the medical records and how they may be obtained.

Physicians are required to provide three types of notice to patients before they leave their group practice: newspaper, posted written notice in their office, and letters to patients. The newspaper notice must be published in the newspaper with the greatest circulation in each county in which you practice, as well as in a local paper serving the immediate practice area. The posted notice must be a conspicuous sign, in or on the office façade, which announces that you are terminating, relocating or selling your practice. It must be posted at least 30 days prior to your departure and remain posted until you leave. Letters must be sent to all patients you have seen in the past two years. You must submit a copy of the notice to the TMB within 30 days from the date of termination, sale or relocation.

The physician who is leaving (not the remaining group) is responsible for following these notice requirements. Depending on the circumstances of the departure, this may not be an issue. When the departing physician is retiring or moving out of state, for example, the group often takes care of the notices on his or her behalf. When departures are not so collegial, the regulations prohibit any interference by physicians remaining in the practice; they may not prevent the physician from posting notice and should not withhold information from the physician that is necessary for patient notification.

This is consistent with the Texas statute regarding noncompetition covenants in physician employment agreements. To be enforceable against a departing physician, the covenant not to compete must not deny the physician access to a list of patients he or she has seen or treated within one year and must provide access to the medical records of those patients upon patient authorization.

Although you are wholly responsible for giving proper notice, your patients are wholly responsible for authorizing the release and transfer of their medical records, which must be done in writing. Make it as easy as possible for them to do this — include in the letter you send them a Written Consent to Release Medical Record. I recommend that you essentially complete the form for them, providing old and new practice contact information, so that all each patient needs to do is fill in his or her name and sign the authorization. Transitioning your patients to your new practice should be relatively seamless.

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Legal requirements relative to medical records are vast and varied, depending on federal or state law, and the purposes for which records are being released or maintained. Accordingly, this response will touch on the “high points” of medical record release, storage and retention.

Release of Medical Records

The Department of Health and Human Services issued the Privacy Rule to implement certain requirements of the Health Insurance Portability and Accountability Act of 1996. The Privacy Rule standards address covered entities’ use and disclosure of individuals’ Protected Health Information, which is all individually identifiable health information held or transmitted by a covered entity ... in any form or media, whether electronic, paper or oral.

Every healthcare provider who electronically transmits health information in connection with certain transactions is a covered entity. A covered entity must obtain the individual’s written authorization for use or disclosure of PHI that is not for treatment, payment or healthcare operations, or otherwise permitted or required by the Privacy Rule. An authorization must be written in plain language and include specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, and right to revoke in writing.

The Texas Medical Records Privacy Act, which became effective Sept. 1, 2012, tracks HIPAA, but expands the definition of covered entities and imposes additional requirements regarding access to and use of PHI. It affects providers’ release of medical records by also requiring that, unless an electronic disclosure is made to another covered entity for purposes of treatment, payment, healthcare operations, HMO functions, or otherwise authorized or required by law, a provider may not electronically disclose PHI to any person without a separate written authorization for each disclosure. Additionally, unless a patient is willing to accept medical records in another form, a provider must provide electronic copies within 15 days of a proper written request.

This is the same as the long-standing Texas Medical Board rule on deadlines for release of records, both of which are more stringent than HIPAA’s 30-day response requirement.

Medical Record Storage

Before HIPAA, when medical records were paper, there was no real authority on how they should be stored, other than requiring they remain confidential. HIPAA also has a Security Rule which requires a covered entity to maintain reasonable and appropriate administrative, technical and physical safeguards to ensure confidentiality and prevent intentional or unintentional use or disclosure of PHI. The Security Rule standards cover administrative practices, technical practices and procedures.

Early commentary by the Office of Civil Rights to the standards did address storage of paper records, noting the use of locked and isolated files and/or records rooms and restrictions on the number and qualifications of individuals with access to those files. The Health Information Technology for Economic and Clinical Health Act of 2009 strengthened these requirements in an effort to help ensure that as more information is digitized, it will remain secure. The OCR has issued guidance on the only appropriate methodologies for rendering PHI secure: encryption or destruction. Providers can choose from approved technologies to encrypt PHI and render it unusable, unreadable or indecipherable to unauthorized parties. Providers should limit the collection of stored information to what is necessary to acquire and keep, and limit staff access to data systems to prevent unnecessary or unauthorized printing, e-mailing or downloading of PHI.

Medical Record Retention

TMB regulations require that physicians retain medical records for the period of time imposed by the regulations or mandated by other state or federal law, whichever is longer. Generally, a Texas physician must maintain patient records for a minimum of seven years from the date the physician last treated that patient. If the patient were younger than 18 years old when last treated, the records must be kept for seven years or until the patient turns 21, whichever is longer. Medical records that relate to any civil, criminal or administrative proceeding must be retained until the physician knows the proceeding has been finally resolved.

HIPAA also recognizes that federal medical record retention requirements preempt state laws that require shorter periods. It requires a physician who bills Medicare to retain documentation for the longer of six years from the date of its creation or the date it was last in effect. Medicare managed care program providers must retain records for 10 years.

In the Medicaid program, all medical records should be kept for seven years. All financial records related to services must be kept for five years from the date of services or until all audit questions, appeal hearings, investigations, or court cases are resolved. Once the applicable retention period has been fulfilled, medical records should be destroyed. Recall that destruction is the only alternative to encryption for keeping PHI secure under HIPAA/HITECH. OCR guidance on destruction of media on which PHI has been stored or recorded requires that paper, film or other hard copy media have been shredded or destroyed such that the PHI cannot be read or reconstructed. Electronic media must be cleared, purged or destroyed consistent with National Institute of Standards and Technology guidelines such that it cannot be retrieved.

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