

Frequently Asked Questions

Medical Records

What information must be included in the medical record?

The New Jersey State Board of Medical Examiners' rules require that medical records must include:

- Dates of all treatments
- The patient complaint
- History
- Findings on examination
- Progress notes
- Orders for tests or consultations and their results
- Diagnosis and impression
- Treatments ordered (including dosages, quantities and strengths of medications; including refills if prescribed, administered or dispensed and recommended follow-up)
- Identity of the provider if more than one provider practices in the same office
- Documentation of communication of test results to a patient when reasonable efforts are unsuccessful
- Documentation of the existence of any advance directive on routine new patient intake form or in appropriate circumstances (such as: treatment for significant illness, treatment for an emergency with a threat to life or surgery with the use of general anesthesia)

How long must a physician keep medical records?

According to the New Jersey State Board of Medical Examiners' rules, medical records must be kept for seven (7) years from the last date of service.

Pediatrics and Obstetrics: While the regulation does not provide guidance for how long records should be kept for pediatric or obstetrical patients, we recommend that records be kept for seven (7) years after the patient reaches majority (18) in pediatric cases and seven (7) years after the child that has been delivered reaches majority in obstetrical cases.

Medicare and Medicaid: It is important to note that under the False Claims Act, the federal government may look-back up to ten (10) years. It is recommended that when the patient is covered by Medicaid, Medicare, a Medicare Advantage plan or a Medicaid Managed Care plan, that the records be kept for ten (10) years from the last date of service.

Physicians should also consider checking with their malpractice and insurance carriers they are contracted with for their requirements on medical record retention before destroying any records.

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May a physician charge patients for copying costs of medical records?

In some cases, yes they may.

It is important to note that patient access to medical records is currently a focus of HIPAA audits. Read more about charging for copies of medical records on the [Fox Rothschild LLP HIPAA Blog](#).

Both federal regulations, HIPAA, and state regulations, under the New Jersey State Board of Medical Examiners (BME) apply. When the federal and state rules differ, the rules that provide the greater patient protections apply. In which case, a physician may only charge the lesser of the amounts allowed under the BME rules or HIPAA. It is considered inappropriate for a physician to profit from the fees charged for the records.

The BME rules specify that:

- A physician may require that the records request be in writing.
- A physician must provide the copied treatment records to the patient within thirty (30) days of the request.
- The treatment record must include all test results (including MRI, X-ray, CT-Scans, etc.).
- Professional treatment records obtained from other physicians are considered part of the patient's medical record.
- If requested, a physician must also provide a copy of the billing record.
- If the treatment record is illegible or has been prepared in a language other than English, a transcription must be provided at no cost to the patient.

Electronic Records: The New Jersey regulations are silent on electronic records. Under HIPAA, per page fees are NOT permitted for the reproduction of electronic records. HIPAA allows covered entities to charge a "reasonable, cost-based fee" for a copy of the medical record, including: labor and delivery of the record in the format requested (including actual postage); and supplies (e.g. CD or USB drive).

HIPAA allows physicians to charge a flat fee of up to \$6.50 for electronic copies of electronic records. This includes labor, delivery, and supplies. This is not intended as a maximum amount that may be charged. It is provided as an alternative for physicians who may not want to calculate actual costs on a case by case basis or calculate the average cost to the practice for standard requests.

Paper Records: The BME rules allow a physician to charge no more than \$1 per page or \$100 for the entire record, whichever is less. If the record is less than ten pages, the physician may charge up to \$10 to cover the costs of postage and incidental expenses.

HIPAA allows covered entities to charge a "reasonable, cost-based fee" for a copy of the medical record, including: labor and delivery of the record in the format requested (including actual postage); and supplies (e.g. paper and toner).

Under HIPAA, physicians may develop a fee schedule based on average costs for standard requests, which may include a per page charge for paper records ONLY. Physicians may also calculate actual costs on a case by case basis for paper records.

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X-Rays and Other Hard to Copy Records: The BME rules allow a physician to charge the actual cost of off-site copying plus \$10 or 10% of the actual cost, whichever is less, when copying x-rays or other documents that are not easily copied on an office copy machine. However, **these administrative fees are NOT permitted under HIPAA.** Only a reasonable “cost-based” fee for the actual cost of copying off-site is permitted.

Summary in lieu of Record: The BME rules allow a physician to provide a summary of the record, in lieu of the actual record. In which case the charge may not exceed the cost that would have been charged for the actual record.

Under HIPAA, a summary may only be provided if requested by the patient and the patient agrees to the fee, which should be based on the cost of labor to produce the summary.

Records Charges that are NOT Permitted:

- Both HIPAA and New Jersey law do not allow for search and record retrieval fees.
- HIPAA does not allow administrative fees for off-site copying; only actual fees may be charged.
- The BME rules state that a physician may not charge a fee for the copying of records in these instances:
 - When the physician has affirmatively terminated a patient; OR
 - When the physician leaves a practice and a patient requests that his/her medical care be continued by the physician at the new practice.

Must a physician copy records for a patient who has an outstanding balance?

Yes. If the patient’s record request is for the purpose of continuing medical treatment, then the physician may not refuse the request because of an unpaid balance. However, if the request is for a reason other than medical treatment (for example, a lawsuit) it may be refused. This is a narrow exception to the general obligation to provide patient records. We encourage physicians to err on the side of providing records, if appropriately requested.

Are there medical records requirements, when a physician ceases practicing?

If a New Jersey physician ceases to practice medicine or anticipates that s/he will be out of practice for more than three (3) months the physician must:

- Establish a procedure for patients to obtain copies of their medical records OR transfer those records to another physician, who is taking over the practice. Please note: When the records will be used for continuing care after the physician has ceased practice, a patient cannot be charged for a copy.
- Publish a notice of the cessation, a procedure for record retrieval, and location where records will be kept permanently in a newspaper in the region where the physician practices. The notice must be published at least once a month for the first three (3) months after discontinuing practice. This notice must also be sent to the [New Jersey State Board of Medical Examiners](#).
- Make a reasonable effort to directly notify patients treated during the six (6) months prior to the date of ceasing to practice while also providing the patients with information regarding the retrieval of records.

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May a physician provide medical records/protected health information to law enforcement without patient authorization?

There is a law enforcement exception to the HIPAA Privacy Rule that allows covered entities to disclose protected health information, without written authorization from the patient, under certain circumstances. These circumstances are outlined on the [U.S. Dept of Health and Human Services' FAQ](#).

Are physicians required to keep paper medical records after the records have been scanned into an Electronic Medical Record System?

Physicians are not required to keep paper records, once the records have been converted and scanned into a compliant EMR system. However, stringent quality checks should be put in place to ensure the entire record is transferred to the new system, especially when an outside firm scans the documents. It is recommended that physicians also check with their malpractice carriers for requirements on medical record retention before destroying any records.

Additional Resources:

- The New Jersey State Board of Medical Examiners' regulation at: [N.J.A.C. 13:35-6.5](#).
- Fox Rothschild LLP HIPAA Blog: [Charges for Copies of Medical Records may Violate HIPAA, Despite Compliance with State Law](#)
- The New Jersey State Board of Medical Examiners' [FAQ's](#)
- U.S. Department of Health and Senior Services' [Questions and Answers About HIPAA's Access Right](#)
- U.S. Department of Health and Senior Services' FAQ: [When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?](#)

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