

## Plan ahead for spring cleaning

# Destruction of Patient Health Information

Are charts taking over your office? Are you running out of storage space? Then the time has come to consider the destruction of old medical records to make room for the new ones. Destruction of patient health information should be performed in accordance with federal and Texas law. The retention schedule to be followed should be documented, and a written destruction policy should be approved by physicians, administrators, medical records personnel and legal counsel. Records involved in any open investigation, audit, or litigation should not be destroyed.

*The following recommendations are excerpted from a Practice Brief of the American Healthcare Information Management Association (AHIMA)\**

In the absence of any state law to the contrary, AHIMA recommends the following:

- Destroy records so there is no possibility of reconstruction of information. Appropriate methods for destroying paper records include burning, shredding, pulping, and pulverizing. Methods for destroying microfilm or microfiche include recycling and pulverizing.

- Some computer system designers do not see any reason to purge and destroy computerized data, as the process may be more expensive than retention. When facilities do make the decision to destroy computerized data, they should develop methods of destruction that destroy the data permanently and irreversibly. Methods include overwriting

data with a series of characters or reformatting the disk (destroying everything on it). Deleting a file on a disk does not destroy the data, but merely deletes the filename from the directory, preventing easy access and making the sector on the disk available so it may be overwritten. Total data destruction does not occur until the back-up tapes have been overwritten.

*continued on page 2*

### Texas State Board of Medical Examiners Rule 165.1 Medical Records

(a) Each licensed physician of the Board shall maintain an adequate medical record for each patient. For purposes of this section, "adequate medical record" shall mean any records documenting or memorializing the history, diagnosis, and treatment of any patient.

(b) 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.

(c) 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.

(d) A physician may not destroy medical records that relate to any civil, criminal or administrative proceeding if the physician knows the proceeding has not been finally resolved.

(e) 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.

# Destruction (continued)

- The laser disks used in write-once-read-many (WORM) document imaging applications cannot be altered or reused, making pulverization an appropriate means of destruction.
  - Reassess destruction methods annually, based on availability of timely and cost-effective destruction services.
  - Document the destruction, including:
    - Date of destruction
    - Method of destruction
    - Description of the disposed record series
    - Inclusive dates covered
    - A statement that the records were destroyed in the normal course of business
  - Where facilities fail to apply destruction policies uniformly or where destruction is contrary to policy, courts may allow a jury to infer in a negligence suit that if records were available, they would show the facility acted improperly in treating the patient.
- The signatures of the individuals supervising and witnessing the destruction
  - Maintain destruction documents permanently. Such certificates may be required as evidence to show records were destroyed in the regular course of business.
- If destruction services are to be contracted, the contract should:
    - Specify method of destruction
    - Specify the time that will elapse between acquisition and destruction of data
    - Establish safeguards against breaches in confidentiality
    - Indemnify the health care facility from loss due to unauthorized disclosure
    - Provide proof of destruction.

\* Issued January 1996. Prepared by Gwen Hughes, ART, Professional Practice Division, AHIMA

## Sample certificate of destruction

Facility name \_\_\_\_\_

The information described below was destroyed in the normal course of business pursuant to a proper retention schedule and destruction policies and procedures.

Date of destruction \_\_\_\_\_

Description of record series disposed of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inclusive dates covered \_\_\_\_\_

Method of destruction

- Burning       Overwriting       Reformatting       Other \_\_\_\_\_  
 Pulping       Shredding       Pulverizing

Records destroyed by \_\_\_\_\_

Witness signature \_\_\_\_\_

Department manager \_\_\_\_\_

*Note: This sample form is provided for discussion purposes only. It is not intended for use without advice of legal counsel.*

# Where Are You on the Millennium Continuum?

A multiple choice quiz for physicians & medical practice administrators

by Judith Fine, RN, MSN, TMLT Risk Management Representative

## The Question:

What do you think about the Year 2000?

## Instructions:

Select the answer which best represents your current thinking.

**A.** Year 2000? That's a whole year away. Why should I think about it now and why are you even asking?

**B.** I understand that there could be some computer problems related to the Year 2000, but I really don't know much about that. I have one computer in my office, and it runs a medical management system. Actually, I don't even use the whole system, but all this Year 2000 talk is making me feel a little uneasy. How could the Year 2000 mess up the computer on my office manager's desk? It seems pretty far-fetched. Besides, they say this is a date problem, and it seems to me that having the wrong date on something isn't a big deal.

**C.** Frankly, I'm concerned. There might be some big computer problems in the Year 2000. I've heard that banks could be affected . . . and credit cards. Maybe they'll forget that I owe a balance. Computers run a lot of machines these days. Maybe some of them would stop working. I wonder if any of the machines in my office or my

home have computers in them? My EKG? My VCR? My watch? It's all too much to contemplate. Surely they're working on this. Any day now they'll tell us everything will be okay.

**D.** I really don't have time for this Year 2000 stuff, but I don't want any problems with my practice. I have a lot of patients who depend on me, not to mention my family. What if my computer system thought it was 1900, and nobody had a balance? Would a third party payor use that as a reason not to pay. What if the whole computer shuts down? What if my patient care equipment stops working? What about the hospital's equipment? Could a patient die from Year 2000 problems? Could I be sued for Year 2000 problems? I need to make a list, figure out what's most important and be sure it gets tested. Then, even if there are some problems, I'll have something on paper that shows that I did my best.

**E.** Year 2000 is pretty much going to be the end of the world, and there is nothing I can do about it. Only food, clothing and shelter will be important. As far as my practice is concerned, it doesn't matter because I probably won't survive and neither will my patients.

## Discussion:

If you answered A or B, you may wish to read the recent TMLT "Important Announcement Concerning the Year 2000 Problem" to increase your knowledge of Year 2000 issues.

If you answered C or E, you may wish to consider what might happen if your expectations, either positive or negative, aren't met. Taking proactive steps now to protect your patients and your practice might be critically important for the future.

If you answered D, you are showing concern for your patients, your practice and yourself. You may wish to refer to the TMLT "Important Announcement Concerning the Year 2000 Problem" for specific suggested steps and helpful forms. The announcement was mailed to all TMLT policyholders in September, 1998. To obtain an additional copy, please contact Shanna Homann at 800-580-8568 ext. 5910.



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## Inside INSURANCE

### Am I Covered for Everything?

by Theo van Eeten, Consultant

Am I covered for everything? What kind of question is that? No single insurance policy in the world provides coverage for everything.

This was demonstrated very clearly when devastating floods hit Central and South Texas recently, and many home and business owners found themselves without coverage for flood damage. It is unfortunate that sometimes events like catastrophic flooding need to happen before people begin to ask about their coverage, so let's talk a little bit about policy exclusions.

If flood damage is not covered by most property policies, doesn't that make you wonder what other items are not covered? Are earthquakes excluded? What about mud-slides? Back-up of sewers?

Power failures?

While policies vary, each of them has exclusions. Some exclusions, such as war and nuclear events, are standard in most policies because these risks are too great for an insurance company to undertake. Other exclusions may be in a policy because another type of policy is better suited to insure the risk. For example, if you own a boat, a car or a plane, you would insure those items by purchasing a policy that is specifically designed for that purpose. Coverage for a boat or a plane would not be included in an automobile policy.

Realizing that no policy will cover everything, what can you do to protect yourself? The recent

floods taught us that trying to find coverage after a loss has occurred is too late. Therefore, the time to think about things that can go wrong is before the loss happens. That may be easier said than done, but asking questions of your insurance carrier is a good first step. Next, take a look at your policy. It may be hard to find the motivation to do this before a loss occurs, but it may save you disappointment later.

What should you do when your reading and your questions reveal excluded areas, such as flood damage, that may be insurable? Don't sit on it. Contact your agent, or if it involves coverage offered by TMLT/TMIC, please give us a call and we will help find a solution.