NATIONAL ASSOCIATION OF
Community Health Centers

Important Content Note:

This technical assistance resource was developed prior to the August 2017 release of the Health Center Compliance Manual by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). The BPHC Compliance Manual, issued August 2017, indicates where PINS, PALs and other program guidance are now superseded or subsumed by the BPHC Compliance Manual.

See: https://bphc.hrsa.gov/programrequirements/pdf/healthcentercompliancemanual.pdf

NATIONAL ASSOCIATION OF Community Health Centers

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Note that in all Information Bulletins:

The term **"health center"** refers to public or private nonprofit entities that: (1) receive grants under Section 330 of the Public Health Service Act (Section 330), including Sections 330(e), 330(f), 330(g) and 330(h) (collectively "Health Center Program Grantees"); and (2) entities that have been determined by the Department of Health and Human Services (DHHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant ("health center look-alikes").

The term **"Section 330-Related Requirements"** refers to requirements set forth in:

- Health Center Program Statute: Section 330 of the Public Health Service Act (42 U.S.C. §254b),
- Program Regulations: 42 CFR Part 51c and 42 CFR Parts 56.201-56.604
- Health Center Program Requirements: http://www.bphc.hrsa.gov/programrequirements/index.html

The term **"Grant Requirements"** refers to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: 2 CFR Part 200, as adopted by DHHS at 45 CFR Part 75.

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Record Retention Requirements for Business, Financial, and Clinical Information

State and federal laws require that health centers keep particular records for specific periods of times. For example, the Internal Revenue Service ("IRS") requires organizations to keep employee tax records for four years.

This Information Bulletin:

- Addresses health center recordkeeping requirements that apply to business, clinical, and litigation records
- Discusses the importance of having an appropriate record retention and destruction policy, which covers the storage and disposal of all types of records (including, but not limited to, electronic records, especially email)
- Provides "tips" on the key features of an effective policy. Not only will such a policy increase administrative efficiency and cost savings by eliminating retention of unnecessary records and documents, it will help ensure that necessary documents are not inadvertently destroyed, such as when an audit, investigation, or litigation in which the records are material is imminent or underway.

It is important to understand that this Information Bulletin focuses on federal requirements. State laws may require a health center to retain additional records, or may specify a record retention period longer than the comparable federal requirement. Accordingly, it is advisable to consult with qualified local legal counsel to identify how state law affects your recordkeeping policies.

BUSINESS RECORDS REQUIRED UNDER FEDERAL LAW

These include:

- Corporate Governance Documents
- Corporate Tax Records
- Corporate Compliance Documents
- Grant-Related Documents
- Contracts and Purchase Agreements
- Records of Federal Interest in Real Property, Equipment, and Supplies
- Medicare/Medicaid Requirements
- Pharmacy Records
- Insurance Policies
- Provider Employee Background Check Information

Corporate Governance Documents

Every Federally Qualified Health Center (or, typically, the co-applicant in a public health center) has Articles of Incorporation, and is governed in accordance with Board-approved Bylaws. These organizational documents, and any amendments to these documents, should be kept indefinitely, including organizational documents for any subsidiary corporations.

While there are generally no specific federal requirements as to how long the minutes of the board meetings must be retained, it is prudent to keep them indefinitely as well. Not only do the minutes document the board's decision-making process regarding actions taken, they may provide useful information regarding the health centers' activities such as real estate transactions and affiliations. Be sure to confirm what state law requirements, if any, apply to the retention of corporate governance documents.

It is also advisable to maintain current versions of:

- Health center mission statement;
- List of directors and officers of the board (distinguishing between patient and non-patient members)
- ·Organizational chart (and past organization chart(s) if any reorganization has occurred within the previous 3 years)

Corporate Tax Records

The health center's application for tax-exempt status, supporting documentation, and tax exemption letter from the IRS should be kept indefinitely. On the other hand, records to support tax returns, including the IRS Form 990, should be kept for three years (the period in which an organization can amend its return to claim a credit or refund, or that the IRS could assess additional tax), and employee tax records should be kept for four years. Those retention periods are a minimum; in certain cases, the required retention period is longer (such as if an expense is determined to be an improper excess benefit transaction[1] by a tax-exempt organization).[2] In some situations, such as fraud or a failure to file, the IRS's right to access records is not

1 An excess benefit transaction would occur when an economic benefit is provided by a health center, either directly or indirectly, to a "disqualified person" (i.e., someone in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization, or their family member) and the value of that economic benefit provided exceeds the value of the goods or services received by the health center.

2 26 U.S.C. § 4958.

subject to any limitation period.[3] Thus, it is important to recognize that while a statute of limitations may establish a time limit on access to records, other specific retention requirements may apply. As a prudent matter, tax records should be kept at least six years.

Corporate Compliance Documents

In addition to the records mentioned above, there are other specific documents that should be maintained as part of the health center's corporate compliance program.[4]

The following list is not all-inclusive; each health center should evaluate what other documents should be retained based on the center's particular circumstances:

- Compliance Officer: Job description, qualifications
- Board of Directors Compliance Committee: Charter, members, minutes.[5]
- ·Staff-level Compliance Committee: Charter, members, minutes
- Annual compliance work plan
- Corporate compliance program policies and procedures related to the elements of the compliance program[6] and addressing the health center's risk areas, including:
- ·Standards of conduct
- Conflict of interest policy
- Documentation related to compliance investigations and audits
- Corrective action plans and related documents
- Corporate integrity agreements
- Program reviews, such as Health Resources and Services Administration ("HRSA") Operational Site Visits and reviews by the Joint Commission Compliance training plan and training records including records pertaining to the education of employees, contractors and agents about federal and state false claims acts and whistleblower protections, which is required under the Deficit Reduction Act of 2005.

Grant-Related Documents

Records pertinent to a federal award must be retained for at least three years[7] from the submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. This includes, but is not limited to:

- Grant application(s)[8]
- Notice of §330 Grant Award, including any special terms and conditions

3 26 U.S.C. § 6501.

4 Of particular importance to health centers is the OIG Compliance Program for Individual and Small Group Physician Practices, 65 F.R. 59434, Oct. 5, 2000.

5 Department of Health and Human Services (DHHS) Office of Inspector General (OIG), *The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement* (2011).

6 65 F.R. 59434, Oct. 5, 2000

7 45 C.F.R. § 75.361

8 Note that FQHC Look-Alikes should retain indefinitely the application for designation, the designation recommendation by the Health Resources and Services Administration (HRSA), the designation decision by the Centers for Medicare and Medicaid Services (CMS) and all related correspondence, including any change in scope requests and DHHS approvals.

- Notices of other Grant Awards and related applications
- Financial and programmatic records, including the operating and capital budgets, strategic plan and capital plan, financial status reports, audits, technical assistance and/or HRSA site visit reports, supporting documents, and statistical records
- All correspondence with the Department of Health and Human Services ("DHHS"), including scope change requests and approvals, and replies to and release of special grant conditions
- All other records that are required by the terms of a grant, or may reasonably be considered pertinent to a grant

A health center may decide to retain the above records longer than the required three years as such documents may have long-term value. For example, retaining documents related to HRSA's scope change approvals may be beneficial to retain if there are later disputes regarding such approval. However, it is important to note that such documents, if retained, will be accessible to the federal government and may be subject to audit. Accordingly, a health center must weigh the advantages and disadvantages of retaining these grant-related documents beyond the required retention period.

Records relating to grants from non-government entities such as foundations should be kept in accordance with the terms of the particular grant.

Contracts and Purchase Agreements

Health centers must maintain records on every procurement action involving federal grant funds, including, at a minimum:[9]

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for the contract price

For purchases in excess of the "simplified acquisition threshold," which is currently defined as $150,000,[10] health centers must also maintain records for a cost or price analysis.[11]

If a contract is supported by federal grant monies, the health center is required to maintain all financial and supporting records for the duration consistent with the record retention policy for all other grant related documents. Though the federal grant procurement standards do not explicitly apply to every single transaction conducted by health centers, it is good practice to maintain the same level of documentation, for at least the same three-year period of time for all procurement transactions. Regardless of funding source, all contracts should be held at least as long as they are in effect. Often contracts have provisions that "survive" termination or expiration of the agreement such as confidentiality provisions, record-keeping, and record access provisions. Having a system that assures those records are kept for at least as long as the agreement requires is imperative.

9 45 C.F.R. § 75.327.

10 Please note that the simplified acquisition threshold may be modified. Information regarding the current simplified acquisition threshold may be found at 45 C.F.R. § 75.2; C.F.R. § 200.88.

11 45 C.F.R. § 75.332.

While not exhaustive, specific contracts to retain include:

- Medicare, Medicaid, and CHAMPUS/TRICARE/VA provider agreement(s)
- Contract pharmacy agreements
- Managed care contracts or agreements
- Agreements with other providers and Provider Service Networks, including referral agreements, service contracts, and residency and other provider training agreements with hospitals, oral and behavioral health providers, specialists, public health departments, and others
- Agreements with government entities
- Integrated Services Delivery Initiative agreements
- Clinical capacity agreements
- Administrative service agreements
- Leases for real property and equipment
- Consultant agreements
- Purchase orders

If the health center contracts with a third party to assist in the performance of the grant, be sure to request that the contractor provides the health center with the records so that if a dispute arises with a government agency or foundation, the health center will be able to produce all relevant records.

In addition, for contracts supported with federal grant funds health centers must ensure that such records are kept by consultants, auditors, and subcontractors for the required three years (or longer if claims, funding audits or litigation involving the records occurs) as the health center is accountable to DHHS for all expenditures of grant funds, even if paid to third parties. The agreement with any contractor working on grant-related activities or supplying goods or services paid for, in whole or in part, with federal funds should also authorize the health center, DHHS and the Comptroller General full access to the records and to relevant personnel.[12]

Note: Federal procurement rules only require that the access requirements specified above be included in contracts greater than the "simplified acquisition threshold." However, health centers are liable for, and may have to produce, documents for lesser expenditures. Therefore, it is advisable that all contracts, regardless of the level of federal funding, include such terms.

Records of Federal Interest in Real Property, Equipment, and Supplies

When federal grant funds are used to purchase supplies, equipment or real property, the federal government has an interest in the supplies, equipment or real property.[13] DHHS regulations define "supplies," "equipment," and "real property" as follows:

- "Supplies" includes all tangible personal property other than those described as "Equipment" below. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the federal grant recipient for financial statement purposes or $5,000, regardless of the length of its useful life. [14]

12 45 C.F.R. § 75.333.

13 45 C.F.R. § 75.318; 45 C.F.R. § 75.320(c); 45 C.F.R. § 75.321.

14 45 C.F.R. § 75.2.

- "Equipment" includes tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the federal grant recipient for financial statement purposes or $5,000. DHHS may also require that grant recipients place the public on notice of any such federal interest in real property by recording liens or other appropriate notices of record.[15]

- "Real property" means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.[16]

Subject to certain exceptions, records of purchases of supplies made, in whole or in part, with federal grant funds, must be retained for three years from the date of submission of-the relevant quarterly, annual or final expenditure report.[17] On the other hand, inventory records of equipment and real property, acquired or improved in whole or in part, with federal grant funds, must be retained as long as the health center owns the equipment or real property, and for three years after final disposition of the property or three years after the end of the useful life.[18] Equipment inventory records must include the following:

- Description of equipment
- Serial number, stock number, or other identification number
- Source of equipment, including the award number
- Whether title vests in the Federal government or the health center
- Acquisition date and total cost
- Percentage of DHHS' share in cost of equipment
- Location, condition of equipment and date reported
- Unit acquisition cost
- Ultimate disposition data including date of disposal and sales price or method used to determine the fair market value[19]

Real property inventory records must include the description of the property, the amount, and source of funds used to acquire or improve the property, as well as any notice of Federal interest for construction projects or major renovation projects.

Those records will be essential in any attempt to sell or otherwise dispose of the equipment or property, and may be necessary to use the equipment as collateral for refinancing or financing a capital improvement project. All DHHS approvals and instructions to encumber, transfer or dispose of equipment and real property must be secured in writing from the Office of Grants Management ("OGM") at HRSA prior to the disposition.

Health centers must impose the same record-keeping requirements on subrecipients that expend federal funds for the purchase or improvement of equipment and real property under a subaward.[20]

Health centers should also maintain a current fixed asset policy consistent with 45 C.F.R. Part 75.

15 45 C.F.R. § 75.2.

16 45 C.F.R. § 75.2.

17 45 C.F.R. § 75.361.

18 45 C.F.R. § 75.361(c).

19 45 C.F.R. § 75.320(d)(1).

20 45 C.F.R. § 75.101.

Medicare/Medicaid Requirements

Health centers should maintain records relating to Medicare and Medicaid programs, including, but not limited to records, including books, documents, contracts, and other records for at least 10 years.[21]

Health centers must retain Medicare records applicable to cost report material. Specifically, health centers must maintain all data necessary to support the accuracy of the entries on the annual cost reports, including original invoices, canceled checks, and provider copies of material used in preparing them. Records necessary to certify the nature and extent of claimed costs must be accessible to DHHS, the Comptroller General, or other authorized government agents.

Be aware that there are specific records retention requirements under Medicare for-programs such as the Medicare Prescription Drug Program (at least 6 years)[22] and the Medicare Advantage Program (at least 10 years).[23] Further, state law may include specific records retention requirements applicable to Medicaid.

Pharmacy Records

Records related to on-site pharmacy licensure, Section 340B Drug Program Prime Vendor participation agreements, and Office of Pharmacy Affairs "Acknowledgement of Entity Participation" forms should be kept for at least 3 years.

Insurance Policies[24]

Insurance policies should be maintained at least as long as they are in effect, or for as long as any claims are still possible from the coverage period. This includes, but is not limited to, policies for:

- Commercial or general liability insurance
- Directors and officers liability insurance
- Fire and property casualty insurance
- Insurance for volunteers (if required
- Medical malpractice insurance

21 It is recommended that health centers maintain these records for 10 years, which functions as the outer limit for False Claims Act purposes pursuant to 31 U.S.C. § 3731.

22 42 C.F.R. § 403.813(b)(1):
An endorsed sponsor must retain records that it creates, collects, or maintains while participating in the Medicare Drug Discount Card and Transitional Assistance Program as part of its operations of an endorsed program for at least 6 years following termination of such program, or, in the event the endorsed sponsor's endorsement is terminated …at least 6 years following termination of such endorsement. The Secretary may extend the six-year retention period if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the Department of Health and Human Services Office of Inspector General, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

23 42 C.F.R. § 422.504(e)(4):
HHS, the Comptroller General, or their designee's right to inspect, evaluate, and audit extends through 10 years from the end of the final contract period or completion of audit, whichever is later unless— (i) CMS determines there is a special need to retain a particular record or group of records for a longer period and notifies the MA organization at least 30 days before the normal disposition date; (ii) There has been a termination, dispute, or allegation of fraud or similar fault by the MA organization, in which case the retention may be extended to 6 years from the date of any resulting final resolution of the termination, dispute, fraud, or similar fault; or (iii) CMS determines that there is a reasonable possibility of fraud or similar fault, in which case CMS may inspect, evaluate, and audit the MA organization at any time.

24 Please visit www.nachc.com and browse other Information Bulletins in the NACHC Governance Series for additional information pertaining to insurance and liability.

Health centers are strongly encouraged to review their insurance policies and check for any record retention requirements. Be sure to confirm the written policy terms, and do not simply rely on representations of insurance agents or brokers.

If applicable, DHHS Federal Tort Claims Act ("FTCA") deeming letters and annual re-deeming letters should be retained indefinitely.

Prospective Employee Background Check Information[25]

Health centers must maintain certain background information that supports decisions to either hire or fire employees. For instance, health centers have an obligation to preserve personnel records for 1 year from the date the record was created, or from the date upon which the personnel action occurred, whichever is later. In the event that a health center employee or job applicant files a charge of discrimination, health centers must maintain these records until the close of the case.[26] These records include application forms and background information such as that obtained and utilized in compliance with the Fair Credit Reporting Act ("FCRA").[27]

Once the health center has satisfied the recordkeeping requirements applicable to background check information, health centers are to dispose of the reports securely. For paper documents, this involves burning, pulverizing, or shredding the documents, and for electronic information, this requires disposal that renders the electronic information unreadable and prevents reconstruction.

CLINICAL RECORDS

These include:

- Documents Related to Patient Medical Records
- Quality Assurance/Peer Review and Risk Management

Documents Related to Patient Medical Records

The records that health centers retain concerning patients are subject to both state and federal laws. Thus, health centers must confirm which state law requirements apply.

Be aware that there may be longer retention requirements for certain categories of patients. For example, states generally require that providers keep medical records on minors until the minor reaches age 18 or 21 (or longer, including retention until a specific time period has expired).

Pursuant to standards articulated by the Centers for Medicare and Medicaid Services ("CMS"), health centers must retain clinical records for at least 6 years from the date of last entry, and longer if required by state statute.[28]

25 See NACHC's Human Resources Series Information Bulletins, #3 *Human Resources Record-Keping Requirements for Health Centers*, on the NACHC website.

26 *Background Checks: What Employers Need to Know*, U.S. Equal Employment Opportunity Commission and the Federal Trade Commission.

27 Fair Credit Reporting Act, Pub. L. No. 91-508, Enacted Oct. 26, 1970.

28 42 C.F.R. § 491.10(c).

Under the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), health centers must retain, make available, and update (as necessary) documentation related to privacy and security practices, disclosures of patient health information and other specified records for 6 years from the date of their creation.[29] Note that these rules do not pertain to medical records themselves, but rather to the policies and procedures applicable to the administrative, technical, and physical safeguards in place to protect the privacy of health information, including:

- Authorization forms
- Notices of privacy practices
- Business associate and data use agreements
- Correspondence and files related to patient requests to amend or correct their records
- Complaint records

HIPAA also permits states to enact stricter patient information privacy laws beyond those contained in HIPAA.[30] With respect to electronic patient records maintained by health centers, HIPAA addresses:

- Security measures [31] to safeguard patient information
- Requirements to implement policies in connection with the final disposition of electronic protected health information, and the media on which it is stored

Thus, a periodic review of the health center's procedures for storing, securing, and disposing of electronic patient data is essential to avoid HIPAA violations.

Quality Assurance/Peer Review and Risk Management

Generally, state law establishes requirements related to medical quality assurance and peer review records. Note that CMS requires access to Medicare patient records by "CMS or any person, organization or agency authorized by the Department or Federal statute to monitor a [Quality Improvement Organization (QIO)]" for quality assurance purposes, but in general refers to state law retention requirements.[32]

In the absence of a specific state law or an accreditation requirement (such as those established by the Joint Commission or a similar organization), quality assurance and peer review records should be retained as long as needed for the process improvement or credentialing issue involved.

It is advisable to keep a list of physicians providing services to health center patients, including their areas of practice (employed and contracted), as well as a list of all-non-physician health professional staff, including titles and responsibilities (employed and contracted).

29 45 C.F.R. § 164.316; 45 C.F.R. § 164.530(j)(2).

30 45 C.F.R. § 160.203(b).

31 45 C.F.R. Part 164, Subpart C.

32 42 C.F.R. § 480.131.

LITIGATION RECORDS

Health centers should be particularly mindful of record retention related to:

- Sarbanes-Oxley Act Requirements
- Federal Tort Claims and Malpractice Litigation Requirements

Sarbanes-Oxley Act Requirements

When a health center has notice of a pending claim or litigation involving its Federal grant(s), Federal grant regulations require that all documents and evidence related to that incident be preserved until settlement or completion of the litigation process and final action is taken.[33] Another source of requirements to maintain records related to Federal investigations or litigation is the Sarbanes-Oxley Act,[34] which was enacted in response to multiple widely-publicized corporate accounting scandals. Although the majority of the Sarbanes-Oxley Act provisions only apply to publicly-traded companies, its document destruction additions to the U.S. Criminal Code[35] impose mandatory obligations on all corporations, including not-for-profit health centers.

Knowingly altering, destroying, mutilating, concealing, covering up, falsifying, or making a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11 (Bankruptcy), or in relation to or contemplation of any such matter or course, shall result in a fine, imprisonment of not more than 20 years, or both.[36]

Once the requirements of the Sarbanes-Oxley Act are triggered, the health center will likely have to implement either the suspension of all records destruction or a "litigation hold" process to review each document for content and subsequently destroy only those documents not related to the official proceeding. Furthermore, health centers should implement procedures to ensure that relevant records are not altered before or during the proceedings. As you can see, the time to get serious about implementing and following a comprehensive document retention and destruction policy is not after the start of a Federal investigation or other proceeding.

Federal Tort Claims and Malpractice Litigation Requirements

There are also record retention requirements that apply when facing malpractice claims or other litigation. If a health center is deemed covered for malpractice liability under FTCA,[37] there is a 2-year statute of limitations from the date upon which the claim accrues at the time the tort claim is presented in writing to the appropriate Federal agency, or unless action is begun within 6 months after the date of mailing notice of final denial of the claim by the agency to which it was presented.[38]

The time for filing a claim arising out of medical malpractice will not start running, however, until the claimant learns (or reasonably should have learned) about the malpractice, which could be long after the diagnosis, treatment, or procedure that allegedly caused the injury. In the case of minors, state law often extends this period several years beyond reaching the age of majority.

33 45 C.F.R. § 75.361(a).

34 Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, enacted Jul. 30, 2002.

35 18 U.S.C. § 1519.

36 18 U.S.C. § 1519.

37 28 U.S.C. § 2674.

38 28 U.S.C. § 2401.

Once a claim is filed, DHHS then has 6 months to make a decision to either settle or deny the claim, and after that, the claimant has 6 months to file suit. Litigation can take years to resolve, thus, the records retention requirements in such cases may be quite long. Even if a malpractice case has settled, it is a good idea to consult with legal counsel before destroying any related records. In the case of FTCA claims against a health center, counsel from the local U.S. Attorney's Office, or the Department of Justice, will handle the case on behalf of the deemed health center and should be consulted.

Finally, there are important considerations regarding the form and content of records that health centers create related to potential claims or litigation (such as documentation of investigations, witness statements, emails and photographs).

Be aware that these records, if not protected by a particular legal privilege (such as the attorney work-product or medical quality assurance privileges) may be subject to discovery by opposing parties in a lawsuit, by the press, or by the general public. The applicability and scope of these privileges vary from state to state. Accordingly, it is essential that health centers seek legal advice immediately when a situation involving a claim or litigation arises, especially if presented with a discovery request for documents or media inquiries.[39]

DEVELOPMENT OF A RECORD RETENTION POLICY

It is important that a health center has procedures in place to create and maintain required records.[40]

At the same time, a health center may not wish to retain records beyond the period that they are legally required or otherwise useful because of the:[41]

- Cost of storage space (both physical and electronic)
- Increased chance of improper disclosure
- Administrative burdens in managing unnecessary documents and files.

Health centers should have an appropriate written record retention and destruction policy not only to promote efficiency and cost savings by eliminating unnecessary records and documents, but also to ensure that necessary records are not destroyed when still required for a pending audit, investigation, or litigation. Improper destruction of documents-can result in the imposition of fines and/or other sanctions and penalties.

39 Please visit www.nachc.com and browse other NACHC Information Bulletins for information regarding how to handle media inquiries.

40 For a more comprehensive discussion of health center record retention procedures, please browse the listing of additional NACHC Information Bulletins at www.nachc.com.

41 Note that federal agencies have the authority to access documents that are held by health centers beyond the required retention period – indeed, for as long as the health center retains them. If the health center retains some but not all relevant documents after the retention period expires, it may assume unnecessary risk.

While federal law does not generally mandate the form of particular records (e.g., paper or electronic) or the nature of how records are maintained (e.g., in what department or record system), there are specific requirements for, among other things:

- Certain tax records (i.e., the IRS requires procedures for maintaining electronic records systems)
- Patient health records (i.e., HIPAA contains specific privacy and security requirements for patient electronic medical and billing records)
- Employee health records (i.e., the Americans with Disabilities Act ("ADA") requires that employers maintain employee medical records in a secure manner and separate from other employee records)

Accordingly, when creating record-keeping policies, be sure to check whether Federal or state laws require particular forms or formats.

An effective health center record retention policy should include the following features:

- Be in writing, dated, and provided to all employees and contractors, as appropriate
- Be written in simple, easy-to-understand language
- Contain a schedule indicating the minimum and maximum period of time each covered record may be retained, as well as where and in what form
- Require provisions in all contracts, as appropriate, to ensure that records access and retention requirements are imposed on contractors (including requirements for access by the federal government if the contractor is paid all or in part with federal funds)
- Ensure that the destruction of health center documents is overseen by appropriate executive-level personnel (e.g., Human Resources officer for personnel records, Chief Financial Officer for payroll and financial documents, etc.)
- Provide for regular audits or reviews of employees' compliance with the policy
- Review and destroy records that no longer are required to be maintained on at least an annual basis
- Include a procedure for notifying employees promptly when records scheduled for destruction are to be retained, such as in the event of an audit, investigation, or litigation involving the records
- Address procedures for the protection of records to prevent changes once needed for audits, investigations, or litigation
- Include a procedure for periodic review and revision of the policy

CONCLUSION

The numerous laws and regulations related to record retention can put quite a burden on health center administrative staff. However, implementation of a comprehensive records retention and destruction policy, with a supervisory follow-up to ensure that records are in fact retained, securely maintained, archived or destroyed appropriately can avoid serious problems.

Because the rules in this area are complex, health centers should seek advice from qualified legal counsel to confirm which state and federal records requirements apply to their health center. Ultimately, a properly designed and supervised health center records retention and destruction program will help prevent significant legal and financial liabilities.

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