Protecting and Preserving Medical Records During Bankruptcy

*The Patient Care Ombudsman is a Critical Team Member*

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When a healthcare provider is financially stressed, the protection and preservation of medical records is one area that does not receive the required level of attention. Management and consultants are typically more concerned about operations than records. As a result, needed safeguards may be overlooked and regulatory requirements may not be met. In this environment, the use of a patient care ombudsman or privacy ombudsman as a critical team member for the restructure or closure process team is essential.

The Patient Care Ombudsman works with the acquiring entity, the restructured entity or the closing entity to determine which records are to be maintained and where and how such records will be safeguarded.

This role is important not only for hospitals and physician practices, but is a serious consideration for home healthcare providers, pharmacies, nursing homes, physician practices and assisted living facilities, as well as any other entities that provide healthcare services today. **Any entity that has HIPAA responsibilities, has medical management issues in a restructure.**

The Problem

When healthcare organizations are in a highly distressed condition, maintaining or addressing the Health Information Management needs of the entity is frequently overlooked. During these troubled times, a combination of reduced staff, reduced attention to industry or regulatory standards, or deferral of decision making, all work to negatively impact Health Information Management.

When a restructure in bankruptcy is being considered, typically medical records are not high on the radar screen. Attention is rightly focused on patient care and safety, financial performance and operations. However, the lack of attention to medical records management is a potentially critical part of the restructure.

In recent cases, we have noticed medical records are not properly safeguarded, and the ability to access important records is not maintained. In one case, the department responsible for medical records was one of the first to be cut as the downsizing and eventual closure was taking place. The institutional knowledge related to Health Information Management was eliminated. Remaining employees did not understand the regulatory or health impact of medical record management. In another case, patient charts were not up to date, and as closing became imminent there was little leverage to require physicians to complete these charts. Patients were left with incomplete medical records data and extremely limited access to any records.

HIPAA and state regulatory requirements place responsibility for medical records privacy with the management of the institution. As result, individuals have regulatory responsibility to provide security for patients’ medical records. This responsibility is typically overlooked during the stress of the poor financial or operating performance, and the multitude of ways in which records may be compromised is not understood. To show the magnitude of this issue, consider that Rite Aid was fined $1 million for HIPAA violations.
resulting from disposal of empty pill bottles with patient information contained on the labels. This example shows a relatively benign disposal of “garbage” may have a significant financial implication, especially for a struggling medical services provider.

Future accessibility of medical records is also required. As noted earlier, incomplete charts are one issue that confronts medical service providers planning future access to records. Another significant consideration is the cost to maintain the records and the accessibility to those records.

In several cases, we have seen initial estimates for record retention and accessibility reach into the millions of dollars. Depending on the length of time the healthcare provider has been operating, the number of patients served, and the current state of the institution’s medical records, the medical records may be paper, electronic or both. The number of boxes of paper records could be significant and might involve multiple locations.

**The Solution**
A Patient Care or Privacy Ombudsman role is critical to the safeguarding and preservation of medical records. This individual is tasked with maintaining regulatory requirements specific to medical records, utilizing a pre-established budget for that responsibility.

Aspects of this role involve:
- Protecting patient privacy.
- Providing ongoing access to the medical records.
- Destroying medical records, where appropriate, in accordance with established standards.

In a recent case, the Medical Records Ombudsman role was filled by an individual with previous hospital management experience. The hospital management experience of this person meant that all areas where medical records are created were addressed and safeguarded as the hospital ceased operations. Our experiences in this area have ranged from dealing with enterprises that ignored the issues due to the initial cost estimates, to enterprises that realized the potential risks and developed record retention plans that were both cost effective and in compliance with regulatory requirements. In one example, a hospital that had not initially involved patient records ombudsman work in its wind down budget, was able to work with us to establish a reasonable budget for records management, and then develop and implement the records safeguarding and accessibility plan.

**The Conclusion**
Wind down or liquidation budgets related to healthcare providers MUST include a line item for medical records management. Restructure planning also MUST include management of medical records and consider the financial requirements of meeting the regulatory and industry standards.

Depending on the specific situation, the line item could be a significant portion of the wind down or restructure budget. However, if the patient records issue is not resolved, there is both institutional and personal risk to the hospital and its management.
Focus Management Group is a leading business restructuring firm headquartered in Tampa, with offices in Atlanta, Chicago, Cleveland, Dallas, Los Angeles and Philadelphia. For more information on our experience with successful turnarounds or restructuring in the health care industry, contact our experienced Managing Directors listed below:

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Dan McMurray, Senior managing director at Focus Management Group, has more than 30 years experience in the healthcare industry. He has a proven track record of achievements working for healthcare systems, individual hospitals, and medical institutions and associations. Dan has specific expertise in providing consulting services to healthcare institutions in strategic planning, operations, managed care, performance improvement, capital strategy, due diligence, transition management, and continuous quality improvement. Previously, Dan served as COO of the Jackson Memorial Medical Center, one of the nation’s largest medical centers with 1686 beds.

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