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## IPA Hip Tip: Record Retention



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## RETENTION OF RECORDS

*Recently we had a member inquire regarding how long a psychologist must retain records in the state of Idaho. The following is a synopsis of what was conveyed to that psychologist.*

In Idaho there are no state laws regarding the retention of records according to Ron Hodge, J.D., associate executive director and house attorney for the Idaho Medical Association. He states that in Idaho, there is no specific state law regulating how a physician or medical treatment person needs to retain medical records.

Even though this seems like a fairly straightforward question unfortunately there is no standard across all disciplines, all treatment locations, and reimbursement sources. In fact, the APA Ethics Code (2002) does not specifically address this issue. The following guideline provided by American Psychological Association indicates that retention of records should be **seven years after the last date of service delivery for adults or until three years after a minor reaches the age of majority, whichever is later.** This is contained in the December 2007 guidelines provided in the American Psychologist. Guideline 7- Retention of Records is noted below. Please note the caveat: **in the absence of superseding requirement.** However depending on the type of practice, location (outpatient versus hospital) and reimbursement resources and or contracts the psychologist has signed with insurance providers there may be different requirements regarding retention of records. Therefore you cannot solely rely upon the recommendation Guideline 7- Retention of Records since a psychologist may have contractual responsibilities to a hospital, HMO, or an insurance carrier for retention of records.

**Source:** [Record Keeping Guidelines](#). December 2007, American Psychologist.

**Guideline 7—Retention of Records: The psychologist strives to be aware of applicable laws and regulations and to retain records for the period required by legal, regulatory, institutional, and ethical requirements.**

### Rationale

A variety of circumstances (e.g., requests from clients or treatment providers, legal proceedings) may require release of client records after the psychologist's termination of contact with the client. Additionally, it is beneficial for the psychologist to retain information concerning the specific nature, quality, and rationale for services provided. The retention of records may serve not only the interests of the client and the psychologist but also society's interests in a fair and effective legal dispute resolution and administration of justice, when those records are sought to illuminate some legal issue such as the nature of the treatment provided or the psychological condition of the client at the time of services.

### Application

In the absence of a superseding requirement, psychologists may consider retaining full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is later. In some circumstances, the psychologist may wish to keep records for a longer period, weighing the risks associated with obsolete or outdated information, or privacy loss, versus the potential benefits associated with preserving the records (See Guideline 8). There are inherent tensions associated with decisions to retain or dispose of records. Associated with these decisions are both costs and benefits for the recipient of psychological services and for the psychologist. A variety of circumstances can trigger requests for records even beyond 7 years after the psychologist's last contact with the client. For example, an earlier record of symptoms of a mental disorder might be useful in later diagnosis and treatment. In contrast, the client may be served by the disposal of the record as soon as allowed. For example, the client may have engaged in behavior as a minor that, if later disclosed, might prove demeaning or embarrassing. Also, retaining records over long intervals can be logistically challenging and expensive for the psychologist. The psychologist is encouraged to carefully weigh these matters in making decisions to retain or dispose of records.

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The following is from an informational article for physicians, non-physician practitioners, suppliers, and providers submitting claims to Medicare contractors (carriers, fiscal intermediaries (FIs), and Medicare Administrative Contractors (MAC)) for services provided to Medicare beneficiaries. It can be found [here](#).

State laws generally govern how long medical records are to be retained. However, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA) administrative simplification rules require a covered entity, such as a physician billing Medicare, to retain required documentation for **six years from the date of its creation or the date when it last was in effect, whichever is later**. HIPAA requirements preempt State laws if they require shorter periods. **Your State may require a longer retention period**. The HIPAA requirements are available [here](#). Go to 45 CFR 164.316(b)(2).

From 45 CFR 164.316(b)(2) (i) *Time limit (Required)*. Retain the documentation required by paragraph (b)(1) of this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

While the HIPAA Privacy Rule does not include medical record retention requirements, it does require that covered entities apply appropriate administrative, technical, and physical safeguards to protect the privacy of medical records and other protected health information (PHI) for whatever period such information is maintained by a covered entity, including through disposal. The Privacy Rule is available [here](#). Go to 45 CFR 164.530(c).

The Centers for Medicare & Medicaid Services (CMS) requires records of providers submitting cost reports to be retained in their original or legally reproduced form for a period of at least 5 years after the closure of the cost report. This requirement is available [here](#). Go to 42 CFR 482.24[b]1].

CMS requires Medicare managed care program providers to retain records for 10 years. This requirement is available [here](#). Go to 42 CFR 422.504 [d]2[iii].

Regardless of how long you deem appropriate for retention of records, you may consider including this information in your informed consent process.

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*The Idaho Psychological Association Ethics Committee, as a member benefit, provides information regarding ethics as it pertains to the practice of psychology in the state of Idaho. If there is an issue or dilemma that an Ethical Hip Tip could address in a broad fashion please inform one of the members on the Ethics Committee. In addition, if you have any recommendations or corrections to this Ethical Hip Tip please let us know. **Thanks to Kevin Kracke for his work on this resource.***

*For specific issues that require a consultation, please contact a member of the committee directly. Members of the IPA Ethics Committee include Kevin Kracke, Co-Chair; Laura Asbell, Co-Chair; James Bruce; Kendra Westerhaus; Chris Edwards; and Bill Green.*

*The information presented in this article is for informational purposes only and does not constitute legal advice. There are a variety of ways to structure a professional will and your decisions will have legal implications. State and federal law may also limit or define how you can address some of these topics such as client records. Therefore, you should consult with your attorney and make the choices that are best for you.*

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