

3.2.4 Access to Medical Records by Data Collection Companies

Information contained in patients' medical records about physicians' prescribing practices or other treatment decisions can serve many valuable purposes, such as improving quality of care. However, ethical concerns arise when access to such information is sought for marketing purposes on behalf of commercial entities that have financial interests in physicians' treatment recommendations, such as pharmaceutical or medical device companies.

Information gathered and recorded in association with the care of a patient is confidential. Patients are entitled to expect that the sensitive personal information they divulge will be used solely to enable their physician to most effectively provide needed services. Disclosing information to third parties for commercial purposes without consent undermines trust, violates principles of informed consent and confidentiality, and may harm the integrity of the patient-physician relationship.

Physicians who propose to permit third-party access to specific patient information for commercial purposes should:

- (a) *Only provide data that has been de-identified. [new content consistent with 3.1.2]*
- (b) Fully inform each patient whose record would be involved (or the patient's authorized surrogate when the individual lacks decision-making capacity) about the purpose(s) for which access would be granted.

Physicians who propose to permit third parties to access the patient's full medical record should:

- (c) Obtain the consent of the patient (or authorized surrogate) to permit access to the patient's medical record.
- (d) Prohibit access to or decline to provide information from individual medical records for which consent has not been given.
- (e) Decline incentives that constitute ethically inappropriate gifts, in keeping with ethics guidance.

AMA Principles of Medical Ethics: I,II,IV

Background report(s):

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 6-A-94 Disclosure of records to data collection companies

3.2.4 Access to Medical Records by Data Collection Companies

Information contained in patients' medical records about physicians' prescribing practices or other treatment decisions can serve many valuable purposes, such as improving quality of care. However, ethical concerns arise when access to such information is sought for marketing purposes on behalf of commercial entities that have financial interests in physicians' treatment recommendations, such as pharmaceutical or medical device companies.

Information gathered and recorded in association with the care of a patient is confidential. Patients are entitled to expect that the sensitive personal information they divulge will be used solely to enable their physician to most effectively provide needed services. Disclosing information to third parties for commercial purposes without consent undermines trust, violates principles of informed consent and confidentiality, and may harm the integrity of the patient-physician relationship.

Physicians who propose to permit third-party access to specific patient information for commercial purposes should: [new content sets out context of guidance explicitly]

- (a) *Only provide data that has been de-identified. [new content consistent with 3.1.2]*
- (b) Fully inform each patient whose record would be involved (or the patient's authorized surrogate when the individual lacks decision-making capacity) about the purpose(s) for which access would be granted.

Physicians who propose to permit third parties to access the patient's full medical record should: [new content sets out context of guidance explicitly]

- (c) Obtain the consent of the patient (or authorized surrogate) to permit access to the patient's medical record.
- (d) *Prohibit access to or decline to provide information from individual medical records for which consent has not been given. [new content makes expectation explicit]*
- (e) Decline incentives that constitute ethically inappropriate gifts, in keeping with ethics guidance.

AMA Principles of Medical Ethics: I,II,IV

5. PHYSICIAN ADVISORY OR REFERRAL SERVICES BY TELEPHONE*

HOUSE ACTION: FILED

Telephone advisory services can be a helpful source of medical information for the public. Often, people are not sure where to turn for information of a general medical nature or do not have easy access to other sources of information. Individuals also may be embarrassed about directly bringing up certain questions with their physicians. Although telephone advisory services can only provide limited medical services, they can be a useful complement to more comprehensive services, if used properly.

Any telephone advisory service should employ certain safeguards to prevent misuse. For example, the physician responding to the call should not make a clinical diagnosis. Diagnosis by telephone is done without the benefit of a physical examination or even a face-to-face meeting with the caller. Critical medical data may be unavailable to the physician. Physicians who respond to callers should therefore act within the limitations of telephone services and ensure that callers understand the limitations of the services. Under no circumstances should medications be prescribed.

Physicians who respond to the calls should elicit all necessary information from the callers. When callers are charged by the minute, they may try to hurry their calls to limit their costs. As a result, important information may not be disclosed to the physician. Physicians should also ensure that callers do not incur large bills inadvertently or without understanding the billing system.

Physician referral services can also offer important information to the public. Referral services are often provided by medical societies, hospitals and for-profit entities. To ensure that the service bases its recommendation on medically legitimate considerations rather than the likelihood of being paid by the physician, when the service charges physicians a fee to participate, physicians should not pay the service per referral. Also, callers should be told how the list is created. For example, callers should be informed whether the list includes physicians who pay a flat fee to be listed, members of a particular hospital staff or medical society, or physicians who meet some general quality-based criteria.

While these safeguards are described as applying primarily to telephone services, they should be considered equally applicable to any other communication media, such as radio, television or computer, in which the physician and patient do not meet face-to-face.

(The Physician Advisory or Referral Services by Telephone Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 5.025 and is derived from Principles I, IV and VI of the Principles of Medical Ethics.)

6. DISCLOSURE OF RECORDS TO DATA COLLECTION COMPANIES*

HOUSE ACTION: FILED

Data-collection from computerized or other patient records for marketing purposes raises serious ethical concerns. In some cases, firms have sought to amass information on physicians' prescribing practices on behalf of pharmaceutical houses for marketing purposes. Often, physicians are offered incentives such as computer hardware and software packages in return for agreeing to such an arrangement. They may be told that data-collecting software does not capture patients' names.

These arrangements may violate principles of informed consent and patient confidentiality. Patients divulge information to their physicians only for purposes of diagnosis and treatment. If other uses are to be made of the

information, patients must give their permission after being fully informed about the purpose of such disclosures. If permission is not obtained, physicians violate patient confidentiality by sharing specific and intimate information from patients' records with commercial interests.

Arrangements of this kind may also violate Opinion 8.061 on gifts to physicians from industry.

Finally, these arrangements may harm the integrity of the patient-physician relationship. The trust that is fundamental to this relationship is based on the principle that the physicians are the agents first and foremost of their patients.

(The Disclosure of Records to Data Collection Companies Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 5.075 and is derived from Principles I, II and IV of the Principles of Medical Ethics.)

7. PROFESSIONAL COURTESY*

HOUSE ACTION: FILED

Professional courtesy refers to the provision of medical care to physician colleagues or their families free of charge or at a reduced rate. While professional courtesy is a long-standing tradition in the medical profession, it is not an ethical requirement. Physicians should use their own judgment in deciding whether to waive or reduce their fees when treating fellow physicians or their families. Physicians should be aware that accepting insurance payments while waiving patient co-payments may violate Opinion 6.12.

(The Professional Courtesy Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 6.13 and is derived from Principles II and IV of the Principles of Medical Ethics.)

8. RETENTION OF MEDICAL RECORDS*

HOUSE ACTION: FILED

Physicians have an obligation to retain patient records which may reasonably be of value to a patient. The following guidelines are offered to assist physicians in meeting their ethical and legal obligations:

1. Medical considerations are the primary basis for deciding how long to retain medical records. For example, operative notes and chemotherapy records should always be part of the patient's chart. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time.
2. If a particular record no longer needs to be kept for medical reasons, the physician should check state laws to see if there is a requirement that records be kept for a minimum length of time. Most states will not have such a provision. If they do, it will be part of the statutory code or state licensing board.
3. In all cases, medical records should be kept for at least as long as the length of time of the statute of limitations for medical malpractice claims. The statute of limitations may be three or more years, depending on the state law. State medical associations and insurance carriers are the best resources for this information.