

APA-1
Revised 4/2018

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 540 Department or Agency Alabama State Board of Medical Examiners
Rule No. 540-X-9-.10
Rule Title: Joint Guidelines Rules of the State Board of Medical Examiners and Medical Licensure Commission for Medical Records Management

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer William M. Perkins

Date: August 20, 2021

REC'D & FILED
AUG 20 2021

APA-2

ALABAMA STATE BOARD OF MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Medical Examiners

RULE NO. & TITLE: 540-X-9-.10, Joint Guidelines Rules of the State Board of Medical Examiners and Medical Licensure Commission for Medical Records Management

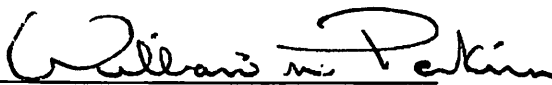
INTENDED ACTION: To amend the rule

SUBSTANCE OF PROPOSED ACTION: Amend rule regarding chaperone requirement and adding clarifying language.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Carla H. Kruger, Office of the General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including October 5, 2021. Persons wishing to obtain copies of the text of this rule and submit data, views, or comments or arguments orally should contact Carla H. Kruger by telephone (334-242-4116) during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments. Copies can also be obtained at the Board's web site, www.albme.org.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Oct. 5, 2021

CONTACT PERSON AT AGENCY: Carla H. Kruger


(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

540-X-9-.10 Joint Guidelines Rules of The State Board of Medical Examiners And
Medical Licensure Commission Ffor Medical Records Management.

(1) Definitions.

(a) ACTIVE PATIENTS. Active patients are any patients treated by the
physician one or more times during the immediately preceding thirty-six (36) months.

(b) NOTIFICATION. Notification shall be conducted by US Mail in a form letter
to the active patients at their last known address or an electronic message sent via a
HIPAA compliant electronic record system or HIPAA-compliant electronic health record
system that provides a means of electronic communication to the patient and is capable
of sending the patient a notification that a message is in the patient's portal.

(c) PERSONAL REPRESENTATIVE. The executor, administrator, or such
other person as may be authorized under Title 43 to act as a fiduciary and to settle and
distribute the estate of a decedent. The trustee of a trust established as a substantial part
of the estate plan of a deceased physician or any other person having legal control over
the medical records of the patients of a deceased physician shall also be responsible for
compliance with these rules in the same manner as a personal representative.

(2) General Guidelines.

(a) Medical records serve important patient interests for present health care
and future needs, as well as for insurance, employment, and other purposes. Medical
records management encompasses not only managing the records of current patients,
but also retaining old records against possible future need, and providing copies or
transferring records to a third party as requested by the patient or the patient's
authorized representative when the physician leaves a practice, sells his or her practice.

~~retires, or dies. (1) Physicians should maintain legible well documented records reflecting the history, findings, diagnosis and course of treatment in the care of a patient. Medical records should be maintained by the treating physician for such period as may be necessary to treat the patient, in compliance with these rules, and for such additional time as may be required for medical-legal purposes indicated for medical and legal purposes.~~

(2) (b) Access. ~~On the request of a patient, and with the authorization of the patient, a physician should provide a copy or a summary of the medical record to the patient or to another physician, attorney or other person designated by the patient. By state law, a physician is allowed to condition the release of copies of medical records on the payment of the requesting party of the reasonable costs of reproducing the record. Reasonable cost as defined by law may not exceed one dollar (\$1.00) per page for the first twenty five (25) pages, fifty cents (\$.50) per page for each page in excess of twenty five (25) pages, plus the actual cost of mailing the record. In addition, the actual cost of reproducing x rays or other special records may be included. For medical records provided in an electronic file, a flat fee that would not exceed the cost of providing the records in paper form may be charged. Records subpoenaed by the State Board of Medical Examiners are exempt from this law. On a legally compliant request of a patient or a patient's legal representative, a physician or his or her practice shall provide a copy of the medical record to the patient or to another physician, attorney, or other person designated by the patient or the patient's legal representative. A patient or his or her legal representative may authorize a physician or his or her practice, at the physician's or practice's discretion, to provide a copy of a specific portion or a summary~~

of the medical record when the medical record is in non-electronic form and the patient or his or her legal representative knowingly waives his or her right to a copy of the full record. The cost of reproduction shall not exceed what is authorized under state and federal law. Records subpoenaed by the State Board of Medical Examiners are exempt from this subsection. Physicians charging for the cost of reproduction of medical records should give primary consideration to the ethical and professional duties owed to other physicians and their patients, and waive copying charges when appropriate.

(c) Retention of Medical Records. Medical records shall be retained for a period of not less than seven (7) years from the physician's (and/or other providers within his or her practice) last professional contact with the patient except for the following:

1. Immunization records which have not been transmitted to the immunization registry maintained by the State Board of Health shall be retained for a period of not less than two (2) years after the minor reaches the age of majority or seven (7) years from the date of the physician's (and/or other providers within his or her practice) last professional contact with the patient, whichever is longer.

2. X-rays, radiographs, and other imaging products shall be retained for at least five (5) years after which if there exist separate interpretive records thereof, they may be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years.

3. Medical records of minors shall be retained for a period of not less than two (2) years after the minor reaches the age of majority or seven (7) years from the date of the physician's (and/or other providers within his or her practice) last professional contact with the patient, whichever is longer.

4. Notwithstanding the foregoing, no medical record involving services which are under dispute shall be destroyed until the dispute is resolved, so long as the physician has formal notice of the dispute prior to the expiration of the retention requirement.

~~(3) — Transfer or Disposal. When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for ensuring that active patients receive reasonable notification and are given the opportunity to arrange for the transfer of their medical records. A physician or physician group should not withhold information from a departing physician which is necessary for notification of patients. A physician or the estate of a deceased physician transferring medical records in connection with the sale of a medical practice should notify the physician's active patients that the records are being transferred and should provide the patient with information sufficient to secure the transfer of the medical record.~~

(d) Destruction of Medical Records.

1. No medical record shall be singled out for destruction other than in accordance with the established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules and state and federal privacy requirements.

3. Records may be destroyed by burning, shredding, permanently deleting, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for not less than four (4) years. The record of destruction need not list the individual patient medical records that were destroyed but

shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(e) Retention and Access by Physicians Practicing Telemedicine. Physicians who practice medicine via telemedicine have the same duty as all other physicians to adhere to these rules relating to medical records. Physicians who provide care via telemedicine must retain access to the medical records which document their delivery of health care services via telemedicine. A physician who is unable to access and produce the medical records documenting his or her practice of medicine via telemedicine upon demand for inspection or review by the Board of Medical Examiners or Medical Licensure Commission shall be in violation of Ala. Code §§ 34-24-360(2) and (23).

(3) Minimum Requirements for Patient Notification. The retirement, death, license suspension or revocation, and the departure of a physician from a practice group all create conditions under which patients must be notified of the triggering event. At a minimum, the notification to patients shall identify the physician who treated the patient, the general reason for the patient to being notified, an explanation of how the patient may obtain his or her medical records, a HIPAA authorization for the patient to complete, how long the medical records will be made available to the patient, and the intended disposition of the medical records if no instructions are received within the time provided.

(4) Disposition of Patient Medical Records. All physicians shall plan for the disposition of patient medical records in accordance with this rule.

(a) Disposition of Patient Medical Records upon Physician's Death. When a physician dies while in active medical practice, notification shall be sent by the physician's practice if in a group practice within thirty (30) days following the death of the physician.

If the physician is not a member of a group practice, the notice shall be sent by the personal representative of the physician's estate within thirty (30) days of appointment of an executor or administrator by the Probate Court to all his or her active patients. The notification to active patients shall contain a HIPAA-compliant form for the patient to sign to authorize copies of the patient's records be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records. The party sending the notice shall bear the costs of notifying the physician's patients.

1. For physicians who are in solo practice, the physician should include compliance with these rules as part of his or her estate planning.

2. In addition to the notice requirement stated above, the personal representative of a physician's estate should take reasonable steps for all medical records to be transferred either to the custody of another physician or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form for the retention periods specified above, during which time the personal representative shall make the medical records available for transfer to the deceased physician's active patients. After the expiration of the retention period, the personal representative may dispose of or destroy the medical records in compliance with state and federal law.

(b) Disposition of Medical Records upon Physician's Retirement. When a physician retires, it is his or her, if in solo practice, or his/her group practice's responsibility to send notification of retirement not less than thirty (30) days prior to retirement to all active patients. The physician must take reasonable steps for all medical records to be

transferred to the custody of his or her active patients, to another physician, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA-compliant form for the patient to sign to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records.

(c) Disposition of Medical Records upon Physician's License Suspension or Revocation. When a physician's medical license is suspended or revoked, the physician or his or her practice shall send notification of the suspension or revocation within thirty (30) days of the suspension or revocation to all active patients. The cost of sending the patient notifications shall be borne by the physician whose license is suspended or revoked. The notification must contain a copy of the Medical Licensure Commission's Order of Suspension or Revocation. The physician must take reasonable steps for all medical records to be transferred either to the custody of the physician's active patients, to another physician, a physician practice group, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA-compliant form for the patient to sign in order to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer

of records.

(d) Disposition of Medical Records upon Departure from the Group. The responsibility for notifying patients and paying for the cost of the notification of a physician who leaves a group practice but continues to practice medicine shall be governed by the physician's employment contract with the group practice. If no contractual provision exists pertaining to medical records upon departure, and the group does not elect to notify the patients, then the departing physician shall be responsible for notifying all active patients and be responsible for the cost of such notification. Absent a contractual provision to the contrary, the party who notifies the patients of the departure shall bear the costs of notification and reproducing or transferring medical records. Patient notification, records retention, and record dispersal shall be accomplished in accordance with this rule.

1. Any provision of the physician's employment contract notwithstanding, the departing physician's active patients shall be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice.

2. A group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician. The patient's freedom of choice in choosing a physician shall not be interfered with, and the choice of physician in every case should be left to the patient. The patient shall be informed that upon authorization, his or her records will be sent to the physician of the patient's choice.

3. Absent a contractual provision to the contrary, when the group or medical practice undertakes to notify patients of the physician's departure, the group shall bear

the cost of notifying patients and reproducing or transferring medical records. When the departing physician is responsible for notifying patients of his or her departure, the practice shall cooperate with the physician by providing the physician a list of the active patients and their last known mailing address and contact information, and the physician shall bear the cost of notifying his or her patients and reproducing or transferring medical records.

(e) Sale of a Medical Practice. A physician, a physician group practice, or the estate of a deceased physician may sell the elements that comprise his or her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Notwithstanding the above, the sale of a physician owner's equity in a medical practice that continues to operate, and which does not constitute the sale of the entire practice, does not constitute a medical sale for the purposes of this rule. Therefore, the transfer of records of patients is subject to the following:

1. The selling physician, his or her estate, or group practice must take reasonable steps for all medical records to be transferred to another physician or covered entity or business associate operation on its behalf. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c).

2. All active patients shall be notified within thirty (30) days of the transfer that the physician, his or her estate, or group practice is transferring the practice to another physician, group practice, or entity who will retain custody of their records, and that at their written request the copies of their records will be sent to another physician, the

patient, or the patient's representative.

(f) Disposition of Medical Records when a Physician is Unavailable. When a physician goes on vacation, goes on sabbatical, takes a leave of absence, leaves the United States, or is otherwise voluntarily unavailable to his or her patients, the physician shall arrange to provide his or her patients access to their medical records.

(g) Abandonment of Records. It shall be a violation of Ala. Code §§ 34-24-360(2) and (23) for a physician to abandon his or her practice without his or her practice making provision for the maintenance, security, transfer, or to otherwise establish a secure method of patient access to their records.

(5) Violations. Violation of any provision of these rules is grounds for disciplinary action pursuant to Ala. Code §§ 34-24-360(2) and (23).

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama §§ 12-21-6.1, 34-24-53, 34-24-53.1

History: Approved for Publication: January 21, 1998. Approved/Adopted: April 15, 1997. Effective Date: Thursday, May 21, 1998. Amended/Approved: October 16, 2013. Effective Date: January 16, 2014. Amended/Approved: December 13, 2017. Amended filed: February 27, 2018. Effective Date: April 13, 2018. Approved for Publication: August 18, 2021.