

To: N.C. Medical Care Commission

From: DHSR Acute and Home Care Licensure and Certification Section

RE: Adoption of Amendment to Hospital Rule

The Division received a petition for rule change for 10A NCAC 13B .3903, Preservation of Medical Records, from the North Carolina Hospital Association. Subsequently, the Commission granted approval to initiate rule-making at the 8/8/08 meeting. The rule amendment has been published in the N.C. Register, the public hearing has been held and no comments have been received. We submitted the rule to the staff attorney at the Rules Review Commission for a preliminary review, who offered technical changes to the text of the rule.

The current rule has required written authorization of the patient to be maintained in the record for any release or disclosure of health information outside the facility. Hospitals obtain written authorization for release of medical information from the patient upon admission; however, in some cases, the patient is incapacitated and unable to give consent to the sharing of protected health information for purposes of treatment.

Hospitals must be able to share patient information with nursing homes or other health care providers as part of the discharge planning process. Complying with the current state requirement can be impossible in some cases, be disruptive to patient care and can result in unnecessarily extended hospital stays. G.S. 90-21.20B(e) states that protected health information can be shared without patient authorization for purposes of the patient's treatment, for payment or for the provider's healthcare operations unless there is a specific federal or state law requiring patient authorization.

The amendment to the rule will enable hospitals to share medical information with other providers of medical services in a manner that complies with HIPAA regulations and state law while continuing to ensure that only authorized persons have access to protected medical information and that a written authorization is present in the record in those situations where such written authorization is required.

We are asking for adoption from the N.C. Medical Care Commission in order to proceed forward to the Rules Review Commission with this rule for amendment.

1 10A NCAC 13B .3903 is amended with changes as published in 23:09 NCR, pp. 737-738:

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3 **10A NCAC 13B .3903 PRESERVATION OF MEDICAL RECORDS**

4 (a) The manager of medical records service shall maintain medical records, whether original, computer media, or
5 microfilm, for a minimum of 11 years following the discharge of an adult patient.

6 (b) The manager of medical records shall maintain medical records of a patient who is a minor until the patient's
7 30th birthday.

8 (c) If a hospital discontinues operation, its management shall make known to the Division where its records are
9 stored. Records ~~are to~~ shall be stored in a business offering retrieval services for at least 11 years after the closure
10 date.

11 (d) ~~Prior to destruction, The hospital shall give~~ public notice ~~shall be made~~ prior to destruction of its records, to
12 permit former patients or ~~their~~ representatives of former patients to claim ~~their own records,~~ the record of the former
13 patient. Public notice shall be in at least two forms: written notice to the former patient or their representative and
14 display of an advertisement in a newspaper of general circulation in the area of the facility.

15 (e) The manager of medical records may authorize the microfilming of medical records. Microfilming may be done
16 on or off the premises. If done off the premises, the facility shall provide for the confidentiality and safekeeping of
17 the records. The original of microfilmed medical records shall not be destroyed until the medical records department
18 has had an opportunity to review the processed film for content.

19 (f) Nothing in this Section shall be construed to prohibit the use of automation in the medical records service,
20 provided that all of the provisions in this Rule are met and the information is readily available for use in patient care.

21 (g) ~~All medical records are confidential.~~ Only ~~authorized~~ personnel authorized by state laws and Health Insurance
22 Portability and Accountability Act regulations shall have access to ~~the~~ medical records. ~~The~~ Where the written
23 authorization of ~~the a~~ patient is required for the release or disclosure of health information, the written authorization
24 of the patient or authorized representative shall be maintained in the original record as authority for ~~the~~ release of
25 medical information outside the facility. ~~or disclosure.~~

26 (h) Medical records are the property of the hospital, and they shall not be removed from the facility jurisdiction
27 except through a court order. Copies shall be made available for authorized purposes such as insurance claims and
28 physician review.

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30 *History Note:* Authority G.S. 90-21.20B; 131E-79; 131E-97;
31 Eff. January 1, 1996;
32 Amended Eff. April 1, 2009.