



Letter to Medicaid Providers, September 2007

September 13, 2007

NYS Office of Mental Health (OMH) Policy Statement Regarding Electronic Signatures

In New York State, the Electronic Signatures and Records Act (ESRA), provides that an electronic signature shall have the same force and effect as a handwritten signature, unless there is a statutory provision to the contrary (New York State Technology Law Section 302). Consistent with legislative intent, implementing regulations at 9 NYCRR Part 540 encourage the use of electronic signatures and records to facilitate both business in, as well as the business of, New York State. These regulations state: "ESRA recognizes the importance of technology to the State and a need to build the foundation for its acceptance, implementation and use by State agencies, local government, the private sector and citizens."

With the advancement of technology, an increasing number of community providers licensed by the Office of Mental Health (OMH) are seeking to use electronic records to record the care, services and supplies that have been provided. OMH recognizes that other NYS agencies, (e.g., Department of Health (DOH); Office of Alcoholism and Substance Abuse Services (OASAS); and Office of Mental Retardation and Developmental Disabilities (OMRDD)) have issued statements in support of electronic signatures. Likewise, OMH supports the use of electronic records and electronic signatures produced in a system that includes safeguards that provide reasonable assurance that the appropriate individual is making the electronic signature and that confidentiality issues are adequately addressed.

Although OMH supports the use of electronic records and electronic signatures, we are not requiring the use of electronic records. However, for providers that wish to use them, electronic records will be acceptable if:

1. The electronic format conforms to the requirements of federal and State laws and regulations;
2. The electronic record is the original record and has not been altered or, if altered, shows the original and altered versions, dates of creation, and creator;
3. The electronic record is easily accessible to OMH and any other auditing agency (e.g. CMS or the Joint Commission), and is capable of timely reproduction in paper form, upon the request of OMH, at the provider's expense. OMH, or any other government agency, may require a certification that the paper reproduction is an exact copy of the electronic record; and
4. The content of the record meets the applicable regulations governing the program at issue, found in OMH regulations at Title 14 NYCRR.

Please be further advised that confidentiality requirements established in NYS Mental Hygiene Law Section 33.13 and 45 CFR Parts 160 and 164 (HIPAA) are applicable to information contained in a clinical record, and thus are applicable to electronic records.

These guidelines do not supersede requirements which mandate the maintenance and retention of records in the form in which they were originally created.

For your further review and guidance attached is a bulletin issued by the New York Department of Health regarding electronic records.

Sincerely,

John Tauriello
Deputy Commissioner,
Chief Counsel

Chip Felton
Sr. Deputy Commissioner,
Chief Information Officer

Use of Electronic Records by Medicaid Providers

In 2000 the federal "Electronics Records and Signatures in Commerce Act" was enacted into law to facilitate the use of electronic records and signatures in interstate or foreign commerce.

In 1999 New York enacted the Electronic Signatures and Records Act (Chapter 57-A of the Consolidated Laws, also known as ESRA) and subsequently promulgated at title 9 NYCRR Part 540.

With the advancement of technology, an increasing number of Medicaid providers are seeking to use electronic records to support their Medicaid claims and to record the care, services and supplies that have been provided. We are providing these guidelines for the use of electronic records in the Medicaid program. *These guidelines permit, but do not require, the use of electronic records, and are intended for Medicaid providers.*

Electronic records are acceptable under the following circumstances:

1. The electronic format conforms to the requirements of federal and State laws and regulations;
2. The electronic record is the original record and has not been altered or, if altered, shows the original and altered versions, dates of creation, and creator;
3. The electronic record is accessible to any auditing agency and is capable of reproduction in paper form at the provider's expense. The Department, or any other government agency, may require a certification that the paper reproduction is an exact copy of the electronic record;
4. The content of the record meets the applicable requirements of the Medicaid program found in federal and State (18 NYCRR) regulations to support the claim for payment.

Confidentiality requirements mandated by HIPAA and other statutes are applicable to electronic records.

These guidelines do not supercede requirements which mandate the maintenance and retention of records in the form in which they were originally created.

- For example, providers are generally required to maintain original records to support Medicaid claims for a period of six years (18 NYCRR 517.3). Where original records are required, providers may store them off-site and maintain copies (paper or electronically imaged) on site. The original records must be accessible, made readily available upon a lawful request, and the location of the original records must be maintained in writing at the service location site. Any paper copying or electronic imaging of records must result in an exact reproduction of the original record and may be required to be authenticated.

Laboratory providers must also make sure that any electronic records used to order lab services comply with 18 NYCRR 505.7.

These guidelines should not be construed as either authorizing or otherwise applying to electronic signatures.

Should you have any questions regarding this, please direct them in writing to:

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