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From: Otis Woods, Administrator
Division of Quality Assurance

Electronic Signatures on Health Care Documents

The Division of Quality Assurance (DQA) is sending this information to DQA regulated providers for their information and use.

Background

With the development of electronic recordkeeping, various options exist to electronically obtain and store a health care patient's or resident's signature for necessary documents. For example:

- The patient or resident could sign a paper document that is scanned and placed into the patient's or resident's electronic file.
- The patient or resident could sign a touchpad signature device, similar to when a person makes a credit card purchase. The use of the signature pad produces a graphic image of the person's signature.
- The patient or resident could independently access his/her electronic record, using a unique User ID and password via a sequence of entries, enter a mark that she/he adopts as his/her signature.

Question

Is there a need for a patient or resident to sign a hard copy release for electronic health care records? If so, must the entity retain the hard copy after scanning the hard copy and incorporating the document into the electronic record?

Answer

A hard copy release is not required. If a paper (hard copy) release is used, a scanned copy may be substituted as the "original" for retention/ recordkeeping purposes. Wis. Stat. § 137.15 provides for legal recognition of electronic records, signatures and contracts. The statute specifically recognizes the legal effect and enforceability of signatures and contracts in electronic format. The statute recognizes electronic records as satisfying laws that require a record to be in writing, as well electronic signatures as satisfying laws that require a signature.

Wis. Stat. § 137.11(8) defines "Electronic signature" to include "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." Thus, an electronic signature could be created by scanning a signed document and including the scanned image in the electronic record, including the image from a touchpad signature device, or the entry of a "signature" via use of the consumer's adopted image, symbol or pin number.

Summary

The Wisconsin Statutes recognize the legal effect of electronic signatures and records in transactions where the parties have agreed to conduct the transaction by electronic means. In such transactions, there is not a need for a patient or resident to sign a hard copy or paper document. A binding informed consent health care release may be executed electronically in Wisconsin.

There appears to be no legal requirement for an entity to create and retain a hard or paper copy of an electronically signed release. Entities, however, may have their own policy rationales for retaining copies. A bona fide electronic or hard copy backup is required for all providers. Even if not required, back-up alternatives would represent best practice to preserving or protecting resident or patient information.

Under the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, covered entities must implement policies and procedures for authentication and integrity of electronically stored health information. For information regarding HIPAA and HITECH requirements, visit the U. S. Department of Health and Human Services health information privacy websites at: <http://www.hhs.gov/ocr/privacy/> and <http://www.hhs.gov/ocr/privacy/hipaa/administrative/enforcementrule/hitechenforcementiftr.html>

If you have question about this information, please contact Dinh Tran, DQA Social Services Consultant at (608) 266-6646 or via email at dinh.tran@dhs.wi.gov