# Insights

## The Cost of Abandonment – Patient Records

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The 120th Indiana General Assembly recently enacted legislation to revise Indiana Code ("IC") 4-6-14 regarding abandoned health records. Under the current statute, the attorney general ("AG") may take possession of, store, maintain, transfer, protect, or destroy health records that the AG determines are abandoned (IC 4-6-14-5). The AG will also notify patients and those individuals identified in the health records that the AG has taken possession of the abandoned records. The current definition of "abandoned" means when a health care provider or regulated professional voluntarily surrendered, relinquished, or disclaimed records, with no intention of reclaiming or regaining possession.

The new legislation expands the definition of abandoned to also include when records are recklessly or negligently treated, such that an unauthorized person could obtain access or possession. The legislation also adds a definition for the previously undefined term "health records," which includes written, electronic, or printed information possessed or maintained by a health care provider concerning any diagnosis, treatment, or prognosis of the patient, including information that is possessed or maintained on microfiche, microfilm, or in a digital format. Health records also include mental health records, alcohol and drug abuse records, and records protected by HIPAA.

Under the new legislation, effective July 1, 2017, if the attorney general determines that health records are abandoned and takes action under IC 4-6-14 to take possession of, store, maintain, transfer, protect, or destroy health records, the AG may also file action against the health care provider or former health care provider who is or was responsible for maintaining or possessing the health records that have been abandoned, to recover costs incurred by the AG to implement IC 4-6-14 with respect to such records. Pursuant to such action, a court may order the health care provider or former health care provider to reimburse the AG's costs, if the court finds that the health care provider or former health care provider intentionally or negligently abandoned the health records.

Therefore, a health care provider or former health care provider that abandons health records, whether in paper or electronic form, by either: (i) voluntarily surrendering, relinquishing, or disclaiming the records with no intention of reclaiming or regaining possession; or (ii) recklessly or negligently treating such records such that an unauthorized person could obtain access or possession, may be required to repay to the AG for any costs incurred by the AG to take over the records and provide notice to affected patients. Practicing health care providers, and health care providers that are retiring or leaving the practice should take great care to ensure health records continue to be properly stored and protected to avoid any determination that the provider's records have been abandoned and the imposition of any cost by the AG. Retiring providers or providers leaving their practice should also ensure that they comply with Indiana law regarding discontinuing a practice, including retirement or leaving the community, as well as patient notification laws for when the providers

withdraws from a case.

The legislation also revises IC 24-4.9-3-3.5 to ensure health records continue to be protected when a health care provider ceases to be a covered entity under HIPAA (such protection shall be in accordance with IC 24-4.9-3-3.5(c) and (d)).

A copy of SB549 is available here: https://iga.in.gov/legislative/2017/bills/senate/549#

For any questions regarding this final rule and article, please contact Meghan M. Linvill McNab or Stephanie T. Eckerle.