

MEMORANDUM

Department of Aging and Disability Services (DADS)
Regulatory Services Policy * Survey and Certification Clarification (S&CC)

TO: Regulatory Services
Regional Directors, Regional Program Managers and State Office
Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: **S&CC 11-01** – Retention of Client Records and Electronic Health
Records

APPLIES TO: Home and Community Support Services Agencies (HCSSAs)

DATE: September 19, 2011

This memo provides guidance regarding compliance with the requirements on the retention of client records and use of an electronic health record (EHR) system to establish and maintain client records.

Retention of Client Records

Texas Administrative Code (TAC), Title 40, Part 1, Chapter 97, §[97.301](#)(b) requires all HCSSAs to adopt and enforce a written policy relating to the retention of client records to ensure the agency:

- 1) retains and stores client records for a minimum of five years after the date of a client's discharge;
- 2) does not destroy a client record that relates to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved; and
- 3) makes arrangements for the preservation of inactive records to ensure compliance with the minimum standards.

A HCSSA certified by the Centers for Medicare and Medicaid (CMS) or applying for certification by CMS as a home health agency or hospice agency must also comply with applicable federal laws and regulations relating to retention of client records as described in Code of Federal Regulations (CFR), Title 42, Part 484 or Part 418 if those laws and regulations are more stringent or in addition to the rules at 40 TAC §[97.301](#)(b).

An inactive client record may be stored as a signed paper record, an electronically signed computer record or a combination. A HCSSA may preserve and retain a signed paper record electronically, including on microfilm, optical disc, or computer disk (Refer to 40 TAC §[97.301](#)(a)(8)).

A HCSSA may maintain a signed paper record by preserving its electronic duplicate in the electronic record for an inactive client. DADS does not require a HCSSA to retain a signed paper record for an inactive client after it is duplicated by electronic means as long as the record is readily accessible and systematically organized. Electronic records must meet all requirements of paper records (Refer to 40 TAC §[97.301\(a\)\(6\)\(B\)](#)).

A HCSSA that permanently closes is required to provide a written notice to DADS of the location of the client records, and the name and address of the client record custodian per 40 TAC §[97.217\(a\)\(1\)](#). In addition, an agency that permanently closes is required to retain and store client records in accordance with 40 TAC §[97.301\(b\)](#).

Use of EHR systems

40 TAC §[97.301\(a\)](#) requires an agency to establish and maintain a client record system to ensure that the care and services provided to each client are completely and accurately documented, readily accessible and systematically organized to facilitate the compilation and retrieval of information. In addition, computerized records must meet all requirements of paper records including protection from unofficial use and retention for a minimum of five years after the discharge of the client (40 TAC §[97.301\(b\)\(1\)](#)).

In addition to 40 TAC §[97.301](#), a HCSSA that is a licensed and certified home health agency must ensure compliance with 42 CFR, Part 484, §484.48 relating to clinical records. A Medicare-certified hospice agency must ensure compliance with 42 CFR Part 418, §418.104 relating to clinical records.

A HCSSA that elects to use an EHR system is required to adopt and enforce policies and procedures to ensure that:

- its EHR system meets all the minimum requirements of signed paper client records;
- each entry to the client record is current, accurate, signed and dated with the date of entry by the individual making the entry;
- its EHRs include all services provided whether furnished directly or under arrangement;
- its EHR system can track corrections or changes to an entry in the EHR after the entry is entered or authenticated, and/or demonstrates the EHR system prevents alterations of EHR entries after they are authenticated;
- each EHR can be readily accessed and systemically organized to facilitate the compilation and retrieval of information at all times;
- the agency maintains a single EHR for the client or separate EHRs for each category of service provided to the client; and
- each EHR is treated with confidentiality, safeguarded against loss, destruction and unofficial use, and is maintained according to professional standards of practice.

A HCSSA using an EHR system for a client may:

- (1) incorporate and file in the client's EHR a signed paper record by preserving its

electronic duplicate in the EHR; or
(2) maintain the client's record as a combination of a signed paper record and an EHR.

A HCSSA that preserves an electronic duplicate of a signed paper record in a client's EHR is not required to retain the signed paper record. However, the HCSSA should have a system for verifying the accuracy of an electronically duplicated paper record before destroying it.

A HCSSA that uses an EHR system must provide the surveyor access to all of its records required by DADS and readily provide the equipment and information necessary to assist the surveyor in the review process.

During the entrance conference the surveyor and the administrator will discuss the agency's processes and procedures for storage and retrieval of the client's EHR. Also, at this time the administrator or designee will discuss what method the surveyor will use to gain access to EHRs in a read-only format or other secure format to avoid any inadvertent changes to the record. A HCSSA may choose among different options for surveyor retrieval and review of the EHR, for example:

- (1) a HCSSA may provide the surveyor with a guest log-on and instructions regarding access of the EHR in read-only format;
- (2) a HCSSA may have an agency staff member sit beside the surveyor during the EHR review; or
- (3) a HCSSA may choose to print all or a combination of the selected EHRs as requested by the surveyor for review.

For questions regarding this memorandum, please contact a HCSSA policy specialist with the Policy, Rules and Curriculum Development unit at (512) 438-3161.