

Sample Clause for Transfer and Custody of Medical Records

This sample has been taken from TMA's [*Closing or Selling a Medical Practice: Legal and Financial Considerations*](#). This publication offers guidance from TMA's Office of General Counsel on the host of areas a physician must consider when making a practice change.

Sample Clause for Transfer and Custody of Medical Records

This clause may be used for practice sale or merger, or transfer of medical records upon retirement or practice closure.

In partial consideration for turning over the medical records of patients developed in the practice, the buyer agrees to assume control, custody, and possession of all the medical records related to the practice of the seller and shall retain such records in accordance with applicable Texas and federal laws.

As an alternative, an agreement could contain a schedule of retention periods derived from the information previously mentioned (e.g., Medicare/Medicaid records: five years unless a longer period is required by contract).

In addition, the agreement should contain language that recognizes the unique nature of medical records and the ongoing requirements of confidentiality, as follows.

Buyer recognizes that the medical records subject to this agreement are confidential under applicable Texas and federal laws and may not be released to any third party except as provided by law. Buyer agrees to honor lawful requests for release of medical records or information contained in those records in accordance with Texas law (Texas Occupations Code, §159), and may, at Buyer's discretion, charge a reasonable fee in accordance with the current rules of the Texas Medical Board to cover the costs of reproduction, unless such fees are deemed waived by other applicable law.

Physician employment agreements may contain clauses which provide that medical records transferred become the property of the new employer.

Finally, including an access to records clause may be appropriate in any contract of sale whereby the buyer allows the seller access to records to deal with specified medical/legal issues, as follows.

Purchaser shall permit seller, during normal business hours, to have reasonable access to, and to examine and make copies of, medical records of patients treated by the seller which relate to events occurring prior to the closing or events required to audit or maintain or defend positions in connection with any Medicare and/or Medicaid (or other governmental insurance program such as TRICARE) in connection with any investigation or proceeding, in connection with an audit by a managed care company, or to conduct the

defense of any potential professional liability claim, or to conduct the defense of any potential complaint or proceeding before the Texas Medical Board.

Such clauses also may specify what type of notice the seller must provide to the buyer to trigger such rights and may specify that the seller copy records at his or her own expense.

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