

Social Workers and Record Retention Requirements

Introduction

Social workers should keep records to provide better care to their clients, to meet ethical and legal requirements, and for legal defense purposes, if needed. Many social workers lack information about how long they are required to maintain client files. This question often arises when a social worker is retiring, closing a practice, or relocating, or in the event that a social worker dies without specific provision for the disposition of existing records. This Legal Issue of the Month provides information about the various state laws pertaining to record retention. As with most legal questions, a complete answer may require an analysis of several sources of law or review with an attorney.

Background

The *NASW Code of Ethics* provides that social workers should comply with state law requirements as to the length of time to retain client records. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not address how long clinicians should retain records, although it addresses the security of records and the procedures for proper disclosure of records to clients and third parties. Therefore, record retention is an issue where state law is the primary guide.

One of the difficulties in providing clear answers to social workers on any state law issue, is the lack of uniformity among the states. Thus, social workers in each state will have to confirm the requirements of their state. To assist social workers in this task, a state-by-state list of applicable laws has been prepared along with a list of state statutes of limitations. These resources are discussed below.

Applicable Sources of Law

As of 2005, nineteen states had record retention provisions that specifically referenced or included social workers. In some instances the record retention requirements apply to health care providers generally and social workers are among the list of included professions (e.g. Connecticut, Maryland). In the State of Washington, where there is a licensing board that includes multiple mental health professions, the record retention provisions are applicable to "counselors," including social workers.

In other states, the record retention provisions are unique to social workers. For instance, in Colorado, very specific requirements are included in the State Board of Social Workers' regulations. In another state, Hawai'i, social workers' records are expressly *excluded* from the state medical records law. In other states, such as Kentucky, hospital record keeping requirements specifically include social work records; however, the status of social work records in other practice settings is not addressed. In some states the record retention requirements are included as part of the standards defining unprofessional conduct (e.g. New York, Utah).

For the first group of states, those that reference social workers and record retention, these laws are found among social work licensing statutes or regulations, medical records statutes, and hospital record keeping laws.

In the majority of states, however, social work record retention is not addressed directly. In those states social workers will need to make a reasonable and informed decision about how long to retain clinical records with an understanding that there may not be a clear legal standard. One guideline to follow may be the state medical records provisions, which are available in some form in every state. Although social work is not equivalent with medical practice, enough similarities exist to make a useful comparison.

Another guideline social workers may wish to consider is the effect of statutes of limitation. A statute of limitation specifies the period of time that a plaintiff has to bring a lawsuit such as a malpractice action; therefore, social workers should retain their records for the length of the statute of limitations. In addition, the statute of limitations may not begin to run until the plaintiff learns of, or reasonably should have learned of, the injury; therefore, a social worker should keep records for the period of the statute of limitations plus an additional period. Again, social workers will need to make a reasonable and informed judgment realizing that there is not a precise standard.

Most states have different statutes of limitation for different types of lawsuits and for when a plaintiff/former client is a minor or incompetent. The statute of limitations for medical malpractice claims may be a useful guide; however, the application of medical malpractice laws to claims against social workers should not be presumed without confirmation. The statute of limitation for lawsuits based on breach of contract may be another useful guide for social workers to consider. In the event of a threatened legal action, interested social workers should consult an attorney to determine which statute of limitations governs their situation.

The minimum period of medical record retention provided in any state law is three years, and many states have requirements of ten years. Social workers who provide services to children should be aware that record retention requirements often last until several years after the child reaches the age of majority. In some states the total requirement may last as long as 28 years for clients who were minors or incompetent at the time of treatment (Mississippi).

NASW Resources

Attached to this Legal Issue of the Month article is a pair of charts that provides a state-by-state list of the applicable laws for clinical record retention, as well as the statutes of limitations in each state for medical malpractice claims and lawsuits based on breach of contract. Two separate tables are provided: one for states with laws that specifically reference social workers, and another for the majority of states that do not reference social work records, but provide medical record retention requirements.

Also worth noting, NASW's Legal Defense Fund publishes a series of monographs on legal topics for social workers, the Law Note Series. The LDF Law Note, *Social Workers and Clinical Notes*, addresses the various definitions and uses for clinical notes and records according to court decisions and state and federal statutes and regulations.

Conclusions

A majority of states do not provide specific requirements for the duration of social work record retention. In the absence of specific social work laws, determining how long to maintain social work records may involve an awareness of clinical practice requirements, parallel laws for related professions, and the statute of limitations for lawsuits that may be filed against social

workers as a result of their professional activities. Social workers should utilize available resources to make a reasonable and informed decision about retaining records, and consult with professional peers, legal counsel, or their professional liability carrier when necessary. Social workers involved in litigation should be aware that their records and notes may be considered evidence and subject to additional legal protection.

References

Morgan, S. & Polowy, C. (2001). *Social workers and clinical notes*, NASW Legal Defense Fund Law Note Series, National Association of Social Workers, Author: Washington, DC.

National Association of Social Workers. (1999). *NASW code of ethics*. Washington, DC: Author.

Resources

Houston-Vega, S. & Nuehring, E. (1997). *Prudent practice*. National Association of Social Workers: Washington, DC.

Alabama, Colorado, Connecticut, Florida, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Ohio, Texas, Utah, Virginia, Washington, and Wisconsin.