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Ring in 2018 by adding an item or two to your dental practice to-do list

In early December 2017, the Wisconsin Legislature enacted legislation – supported by both the Wisconsin Dental Association and the Association of Dental Support Organizations – relating to the retention and transfer of dental patient records and the management of dental practices. The legislation has three areas of focus:

- retention and transfer of patient records;
- prohibition of quota-based care; and
- clarification of the regulatory authority of the Wisconsin Dentistry Examining Board.

Dentists and dental service organizations must retain patient health care records for 10 years and must transfer those records at the request of the patient.

Prior to the enactment of this legislation, the preservation of dental patient records was governed exclusively by administrative rule. The relevant rule, adopted by the Dentistry Examining Board in 2014, required that dental patient health care records be maintained for 10 years from the date of last entry.

The legislation incorporates into law the requirement that dental patient health care records be maintained for an amount of time determined by the Dentistry Examining Board (which will presumably retain its 10-year requirement). The legislation makes clear for the first time, though, that this obligation rests with the “person who manages or controls a business that offers dental or dental hygiene services,” whether that is a dentist-owned practice or a practice owned by a dental service organization.

In addition, the legislation includes requirements related to the transfer of patient records – an area that was not addressed in the Dentistry Examining Board rule. In particular, the legislation mandates that – again – the “person who manages or controls a business that offers dental or dental hygiene services” is required to transfer a patient’s dental health records at the patient’s request.

The start of the 2018 year is a good time to check that your organization has a clearly written policy regarding patient dental record retention. A records retention policy is the official procedure for the practice with respect to retention and destruction of its documents, files and dental records. A well-crafted records retention policy explains how to organize, store and destroy patient charts, dental records, e-mails, contracts, documents and any other tangible or electronic files. A record retention policy can facilitate organizational flow by streamlining business, employee, and patient procedures, and can alleviate stress in the event of any litigation or audit.

The information in this article is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

Employed dentists and hygienists may not be contractually required to meet minimum quotas for patients seen or procedures performed.

While these quota requirements are rare, they were nevertheless perceived as a sufficient enough threat to patient safety and care for the legislature to specifically ban them.

We do not expect that this explicit ban will affect the practices of many of our clients – but nevertheless, the beginning of 2018 is a good time to review the employment contracts for any employed dentists or hygienists to ensure they do not include any explicit or implicit performance quotas.

The Dentistry Examining Board may regulate business or administrative support functions or services provided to dentistry practices only with respect to mobile dentistry practices and record retention.

Over the last several years, there has been some question as to the extent of the Dentistry Examining Board's authority to regulate dental support organizations, which can own dental practices and/or provide business and administrative support to them, but do not directly engage in the practice of dentistry. This question is clarified in 2017 Wisconsin Act 116, which provides that the Dentistry Examining Board may regulate those business or administrative support functions or services which do not constitute the practice of dentistry or dental hygiene, but are provided to a business that does engage in those practices, only with respect to patient record retention and the operation of mobile dentistry programs.

A review of your dental patient records retention policy and of the employment contracts of your dentists and dental hygienists is a great way to start the new year off right. As the year progresses, remember to contact Jed Roher at 608.284.2269 or jroher@gklaw.com or your regular Godfrey & Kahn attorney with all of your legal questions related to the operation of your dentistry practice or dental support organization.

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