

**Important Information**

**on**

**Use of Electronic Records by  
Medicaid Providers**



STATE OF NEW YORK  
OFFICE OF THE MEDICAID INSPECTOR GENERAL  
Riverview Center, 150 Broadway  
Albany, New York 12204

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April 27, 2006

Mr. David Picker, Director  
Bureau of Fiscal Audit  
Division of Administration and Revenue Support  
Office of Mental Retardation and Developmental Disabilities  
44 Holland Avenue  
Albany, New York 12229-0001

Dear Mr. Picker:

This is in response to your March 21, 2006, letter concerning auditing criteria for providers who maintain electronic records. For purposes of clarity, we are using the question and answer format detailed below:

**Question #1:** *What does a DOH auditor/surveyor do when they see electronic records? In other words, what questions, if any, are asked by the auditor/surveyor specifically because of the electronic records/signatures?*

**Response:** Electronic records that reflect actual services provided, that conform to all service-specific requirements, and that are maintained in conformance with the provider's electronic signature policy will be acceptable documentation for Medicaid purposes. There are not currently any set questions that auditors are required to ask providers who maintain electronic records or signatures. But issues that can be raised might include the following:

- o Which components are electronic, e.g., service plans, progress notes, etc.?
- o Which components include electronic signature(s)?
- o Is the document software generated from electronic entry or is it a scanned product from an original paper document?
- o Is the electronic record the entire record available for review, or are other parts maintained as original paper documents?

**Question #2:** *Is there a protocol that is any way differently treated from the protocol asked when the provider maintains only paper records?*

**Response:** No. According to the November 2003 *Medicaid Update* (copy enclosed) electronic records must be as accessible for auditing as would paper records, original or otherwise, and be capable of reproduction in paper form. For audit purposes, there is an expectation, which may be supported by certification, that the paper reproduction is an exact copy of the electronic record.

**Question #3:** *Are auditors/surveyors expected to test or audit the electronic system itself in any way as part of their audit/survey?*

**Response:** To our knowledge, there has not been any established protocols or requirements that auditors are expected to test/audit an electronic system. However, auditors have the prerogative to test the electronic record keeping system if necessary. Ad hoc testing will familiarize auditors with the system, establish assurances about electronic signature security and provide a document trail. For example, a recent audit found that a secure entry field was easily overridden. Therefore, the auditors did not accept records or signatures from the electronic system and asked for original documentation.

**Question #4:** *If any auditors/surveyor suspects a problem or notices an irregularity in how the electronic records are maintained, what is the auditor/surveyor expected to do?*

**Response:** As mentioned in the 11/03 *Update*, there is an expectation that "The electronic record is the original record and has not been altered or, if altered, shows the original and altered versions, dates of creation, and creator, ...". If there is suspicion that the electronic record keeping system lacks integrity, auditors should have the option of requesting original paper documentation. Auditors should inform their supervisors about perceived irregularities with a provider's electronic system, and this may be the basis for warnings, corrective actions, penalties, etc.

**Question #5:** *Are electronic signatures treated differently by the auditor/surveyor than electronic records?*

**Response:** Based on a Bureau of Medicaid Audit *Audit Directive*, use of an electronic signature has the same validity as a signature affixed by hand and auditors are instructed to accept documentation containing electronic signatures. However, providers must be prepared to authenticate or prove that the record was electronically signed by the person authorized to sign the record. *An exception to this rule would apply where the applicable statute or regulation specifically requires a hand written signature.*

**Questions #6 & #7:** *Do DOH auditors/surveyors require that data entry require an attestation? If an attestation is required, where should that attestation be located within the electronic record?*

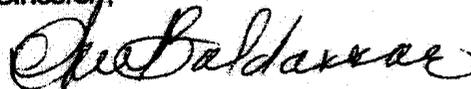
**Response:** To our knowledge, auditors are not currently requiring data entry to require attestation.

For a more comprehensive overview of electronic records and signatures, we suggest the Office of Technology's (OFT) following web sites:

- o The law: [http://www.oft.state.ny.us/esra/ESRA\\_law2002.htm](http://www.oft.state.ny.us/esra/ESRA_law2002.htm)
- o The regulations: [http://www.oft.state.ny.us/esra/esra\\_regs\\_050703.htm](http://www.oft.state.ny.us/esra/esra_regs_050703.htm)
- o The "Best practice Guideline": [http://www.oft.state.ny.us/esra/Guidelines\\_files/files/ESRA-Best Practice Guideline-05-25-2004.doc](http://www.oft.state.ny.us/esra/Guidelines_files/files/ESRA-Best Practice Guideline-05-25-2004.doc)

We are enclosing a copy of the November 2003 *Medicaid Update* article and the Bureau's *Audit Directive* as discussed above. If we can be of any further assistance for this matter, please do not hesitate to contact me.

Sincerely,



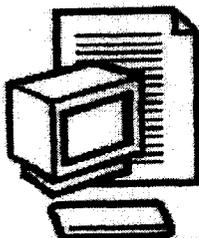
Ann M. Baldassare, Acting Director  
Bureau of Medicaid Audit (Ambulatory Care)  
Office of the Medicaid Inspector General

Enclosure

cc: Tony Mangini  
Bruce Gembala

## USE OF ELECTRONIC RECORDS BY MEDICAID PROVIDERS

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In 2000 the federal "Electronic Records and Signatures in Commerce Act" was enacted into law to facilitate the use of records and signatures in interstate or foreign commerce. In 1999 New York enacted the Electronic Signatures and Records Act (Chapter 57-A of the Consolidated Laws, also known and subsequently promulgated at title 9 NYCRR Part 540.

With the advancement of technology, an increasing number of Medicaid providers are seeking to use electronic records to support their Medicaid claims and to record the care, services and supplies that have been provided. We are providing these guidelines for the use of electronic records in the Medicaid program. *These guidelines permit, but do not require, the use of electronic records, and are intended for Medicaid providers.*

Electronic records are acceptable under the following circumstances:

1. The electronic format conforms to the requirements of federal and State laws and regulations;
2. The electronic record is the original record and has not been altered or, if altered, shows the original and altered versions, dates of creation, and creator;
3. The electronic record is accessible to any auditing agency and is capable of reproduction in paper form at the provider's expense. The Department, or any other government agency, may require a certification that the paper reproduction is an exact copy of the electronic record;
4. The content of the record meets the applicable requirements of the Medicaid program found in federal and State (18 NYCRR) regulations to support the claim for payment.

Confidentiality requirements mandated by HIPAA and other statutes are applicable to electronic records.

*These guidelines do not supercede requirements which mandate the maintenance and retention of records in the form in which they were originally created.*

For example, providers are generally required to maintain original records to support Medicaid claims for a period of six years (18 NYCRR 517.3). Where original records are required, providers may store them off-site and maintain copies (paper or electronically imaged) on site. The original records must be accessible, made readily available upon a lawful request, and the location of the original records must be maintained in writing at the service location site. Any paper copying or electronic imaging of records must result in an exact reproduction of the original record and may be required to be authenticated.

**Laboratory providers** must also make sure that any electronic records used to order lab services comply with 18 NYCRR 505.7.

These guidelines should not be construed as either authorizing or otherwise applying to electronic signatures.

Should you have any questions regarding this, please direct them in writing to:

**Mr. Gregor Macmillan  
New York State Department of Health  
Division of Legal Affairs, Bureau of Medicaid Law  
Corning Tower Building, 24th Floor  
Empire State Plaza  
Albany, NY 12237**

**BUREAU OF MEDICAID AUDIT  
AUDIT DIRECTIVE**

**DIRECTIVE NO:** 21

**DATE ISSUED:**

**SUBJECT:** Electronic Signatures and Records

**PROCEDURE:** The use of an **electronic signature** as defined in ESRA (Electronic Signatures and Records Act-Chapter 57-A of the Consolidated Laws) and Title 9 NYCRR Part 540.4, shall have the same validity and effect as the use of a signature affixed by hand. DOH auditors are instructed to accept documentation containing **electronic signatures**; however, Medicaid providers must be prepared to authenticate or prove that the record was electronically signed by the person authorized to sign the record. An exception to this rule would apply where the applicable statute or regulation specifically requires a hand written signature.

The use of **electronic records** as defined in Title 9 NYCRR Part 540.5 and further explained in the November 2003 volume of the Medicaid Update is acceptable under the following conditions:

1. The electronic format conforms to the requirements of Federal and State laws and regulations;
2. The electronic record is the original record and has not been altered or, if altered, shows the original and altered versions, dates of creation, and creator;
3. The electronic record is accessible to any auditing agency and is capable of reproduction in paper form. The Department may require a certification that the paper reproduction is an exact copy of the electronic record;
4. The content of the record meets the applicable requirements of the Medicaid program found in Federal and State (18 NYCRR) regulations to support the claim for payment.

Questions regarding use of electronic signatures and records should be directed to the audit manager and forwarded to Central Office for discussion. Medicaid providers having questions are asked to submit them, in writing, to DOH's Division of Legal Affairs, Bureau of Medicaid Law.

Regulatory Authority

Title 9 NYCRR  
Part 540.4

**Date issued:** November 1, 2005

**Date Revised:** \_\_\_\_\_