

Going Paperless? Keep Those Arbitration Agreements!

Whether paperless is a realistic goal, we know that many of the documents in physicians' offices, including medical records, can be assimilated into an electronic medical record (EMR). But, not all!

The CAP Risk Management Hotline is often asked, "Must the original arbitration agreement be maintained after it has been scanned into the EMR?"

The answer? "Yes" because submitting "secondary evidence" (e.g., a copy – even a color copy) instead of the original agreement creates a risk that the copy will be excluded from evidence. As a result, the case may not be permitted to proceed in arbitration. Schmid and Voiles attorneys must prove that the original arbitration agreement meets certain requirements. Those requirements include the red, 10-point type notice that advises the patient that he/she is giving up the right to a jury or court trial.

Another scenario occurs when the patient either does not remember signing the agreement, or denies having done so, and examination of the original signature is necessary.

Your EMR vendor may advise you that scanned signatures are legal and valid. While that is true, the best evidence to authenticate the arbitration agreement is still the original arbitration agreement. However, if the original is not available, a color photocopy or a nonerasable color optical image reproduction of the agreement may be submitted as secondary evidence.

Your office has expended considerable effort to discuss arbitration with patients and to collect and maintain the arbitration agreements. CAP suggests that, while you may color scan the agreements into your EMR, the hard-copy agreements should also be maintained. These agreements will occupy far less space than the medical records and could be filed alphabetically for easy retrieval.

If you have further questions about arbitration agreements, please call CAP Risk Management & Patient Safety at 800-252-7706.

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