

Creating a Legal Health Record Definition

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As a medical record custodian, it is the HIM professional's responsibility to address legal EHR issues proactively rather than reactively. Defining an organization's legal health record (LHR) in advance will enable an entity to be prepared for both routine and high-stress record requests. Every HIM department should establish a legal health record definition project in order to create or audit their legal EHR processes.

The following excerpt from Kelly McLendon's book *The Legal Health Record: Regulations, Policies, and Guidance* outlines the steps organizations can take to define their legal health record.

LHR Definition Project Steps

Several high-level activities comprise LHR definition projects. Adequate time should be allocated to define LHR in your organization. The timeframes are generally long, and these projects are typically performed by staff members who are already overburdened and may be responsible for multiple facilities. However, the importance of managing the risks and liabilities requires that time is spent defining each organization's LHR. At each step in the process, there are requirements for learning new concepts and in researching how other sites have solved similar problems.

There is much to consider when creating an organization-wide LHR definition project. The following steps are based upon common and standard best practices.

Step 1: Determine the LHR stakeholder team.

The stakeholder team will drive the creation and undertake the LHR definition project, and be responsible for its continued maintenance. It is highly recommended the record custodian be in charge or included as a member of the team. Adequate control of records is a primary consideration in managing your LHR. Organize your materials into notebook(s) or an electronically accessible format available to all parties who will need access to it. Determine who will be charged with various segments of the operation and maintenance of LHR-related processes going forward.

In the first steps of undertaking a LHR definition, create a process to move the project along according to formal rules adopted by the enterprise. Creating a definition in a small, physician practice office is simple enough-stakeholders are all nearby and there may be few of them. But the larger the organization, the more complex the electronic record environment and the harder the LHR definition is to achieve.

Therefore, using formal project methodology is highly recommended. LHR definitions are enterprise-wide in nature and are not typically the product of a single individual, unless the organization is quite small. Careful review of potential stakeholders will ensure that appropriate parties are selected to work on the project.

It is up to record custodians and risk and legal staffs to facilitate the project with carefully selected project team members.

Step 2: Determine strategy and plan for the LHR definition project, and get executive sponsorship and empowerment.

Get executive and other appropriate sponsorship and empowerment. Determine timelines, stakeholders, and strategies for accomplishing the various required tasks. It is recommended that the project timeline be embedded within the critical path of the organization's overall implementation of an EHR solution. Be sure to determine who will vet this entire process and when.

Project governance and leadership is another important aspect of an LHR project. Often the HIM department primary record custodian manages these processes; other times, risk management, compliance, or legal staff may lead. Regardless of which staff members provide the leadership, it is crucial that LHR definition projects be managed as formal projects until they are completed. This means that senior management must buy into the process with governance formally assigned to the project leader with their full backing.

As with any formal project, timeframes, project scope, objectives, meetings, and communication structure as well as related tasks must be addressed. Expected timeframes can be from a few weeks to many months or beyond.

The larger the organization, the longer these projects can run as their elements are neither simple nor easy to accomplish.

Step 3: Gather LHR-related knowledge.

Reading, education, networking, keeping up with AHIMA resources, and questioning experts are all excellent methods for learning about the LHR. Your mission is to become one of your facility's experts on legal records. Legal staff members are, of course, valuable personnel who will benefit from your focused expertise in this area. Be sure to understand federal, state, and local record retention requirements and evidentiary and civil procedure requirements that are applicable to your organization.

Step 4: Develop a master source system matrix.

Regardless of its title, the first deliverable from your LHR definition project should be a master list of all clinical, financial, and administrative EHR systems (referred to as EHR modules under the 2010 meaningful use rules) that manage or contribute to your medical record and patient accounts and diagnostic imaging records, if they are a focus of your project. If you are fortunate enough to already have such a list from your IT department, examine it to confirm that it is current and add any other systems necessary to move your project forward. If you must start from scratch, involve your IT staff, as they manage the hardware platforms and software applications that comprise your EHR systems.

Step 5: Create a document matrix of LHR components.

Once you have created an EHR source system matrix, the next step is to develop a list of documents, data, and reports that comprise your LHR as defined for disclosure. If there are too many documents, data, and reports to list them all (some facilities have thousands of these items), at least record the major record sections.

Step 6: Assess and catalog EHR systems for their LHR attributes.

Next, create evaluation criteria in the form of questions to be posed and a space for recording answers. Such criteria will facilitate your assessment of your EHR systems for their attributes that may be important during e-discovery. The key to this assessment is not just asking the suggested questions but asking everything necessary to ensure you clearly understand the EHR, and its functionalities and limitations related to record management. One question will lead to another. Make sure you record the details and create your related policies accordingly. The movement toward electronic records was not steady or uniform or even standards-based prior to ARRA/HITECH. Various vendors systems have wide differences in their abilities to manage LHR-related functionalities. This makes for a more difficult task of defining the details of each system, but with appropriate IT support, they can be developed and listed.

Step 7: Determine and revise related policies and procedures.

It is necessary to create new policies and procedures (P&Ps) related to the LHR definition project. There may also be existing P&Ps that will have to be updated, so take care to review any existing P&Ps that may be impacted. This entire exercise is best executed with detailed documentation that is difficult to challenge in court due to its accuracy and thoroughness. Be sure to vet whatever P&Ps you create or update with your legal counsel and use them as tools to help educate your attorneys so they can render informed advice.

Step 8: Determine LHR maintenance plan.

Be sure to include regular reviews and updates of your related P&Ps to keep them concurrent with the latest rules and trends in legal health records. It is also a good idea to utilize your actual P&P documents to train your workforce members, which will allow the P&Ps to be continually vetted against real operations and will keep the staff well informed on subjects such as litigation response, record security settings, and legal holds for electronic records. Coordination of all facility record custodians should also be an ongoing objective to provide for a uniform, consistent litigation response and advantageous legal processes.

Ongoing LHR maintenance of your EHR systems is required to reduce exposure from litigation, as the legal environment is fluid and changes constantly.

Steps 9 and 10: Create a presentation and conduct education and training for appropriate workforce members.

Educate as many staff as possible so they will understand and have guidance in following defined LHR P&Ps. These education sessions include administrative, departmental, nursing, medical, and IT staff. It is crucial to educate not only the project stakeholders but also key members from across the enterprise on the realities and processes used to create highly defensible medical records, regardless of their format.

Acknowledgment

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