

HOW TO PREVENT SANCTIONS FROM MISSOURI MEDICAID FOR LOST OR DESTROYED DOCUMENTATION

Missouri Medicaid (MO HealthNet) recently posted a “Hot Tip” discussing the procedures providers are expected to follow when medical records are partially or totally destroyed in a natural or man-made disaster. Providers who follow the procedures can shield themselves from liability to MO HealthNet for the failure to maintain mandated documentation.

The procedures in such a situation include:

- [completing an Attestation Form](#), and
- submitting the form to MO HealthNet within 30 days of the destruction or loss of the records.

Potential problems providers should keep in mind:

- Even if medical records are maintained electronically, there may be some types of records that are still maintained on paper (*e.g.*, provider-physician communications, Activities of Daily Living (ADL) forms).
- Some records may predate current electronic medical records and potentially be at risk in a disaster.
- If a building has been partially or totally damaged in a disaster, it may be very difficult to gather and submit the information required on the Attestation Form within 30 days of the disaster.
- If damage due to a disaster is limited, it may not be readily evident that records have been “rendered unreadable and unusable.” For instance, boxes in a basement storage area may suffer moisture damage, but mold and disintegration may not occur immediately.
- Completing and submitting the Attestation Form does not necessarily protect the provider from liability under state licensure laws concerning records retention, or from liability for loss or destruction of records pertaining to Medicare services or other payer sources.

We strongly recommend any provider who has medical record damage, or suspects such damage might have occurred, consult with a lawyer familiar with MO HealthNet requirements. That consultation may help prevent potential

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risks due to destroyed, missing, or illegible records including:

- retroactive denials of payments,
- recoupment from future payments to a provider,
- withholding of future payments until the issue is resolved, and
- suspension or termination from participation in the MO HealthNet program.

It is also recommended that providers review existing disaster checklists, policies and procedures to be sure they reference the need to check on the condition of records, including closed records, and that appropriate and timely follow-up be initiated if there is actual or potential damage.

MO HealthNet's Provider Hot Tips can be found on the [Department of Social Service's website](#).

For questions or assistance, contact your regular AT lawyer, or one of our authors in the Health Care and Life Sciences space as listed below.