

Medical Record Custody & Compliance Checklist for Healthcare Attorneys

A practical reference for addressing medical record custody, access, and compliance obligations during healthcare mergers, acquisitions, bankruptcies, and practice closures.



STEP 1 RECORD SYSTEM AUDIT & INVENTORY (Do This First)

- Identify all EMR/EHR systems in use (may be multiple across specialties or locations)**
Knowing which platforms hold patient data determines who controls access and what conversion work will be required.
- Confirm contract renewal/termination dates for every EMR system**
Vendor contracts may auto-renew or include termination fees, which can affect your transition timeline and budget.
- Count the approximate number of patient record/chart volume and the number of providers that served the patient population in the last year in business**
Record volume and active provider count drive storage, archiving scope, and patient notification requirements.
- Identify paper records, imaging (X-ray, MRI), and lab result archives**
Physical records require separate handling and may exist in locations not captured by your digital system inventory.
- Locate any off-site storage for paper charts**
Off-site records are frequently overlooked and may be tied to separate vendor agreements with retrieval fees and lead times.
- Document the current data format and export capability of each system**
Not all systems export data in standard formats, and some vendors limit or charge for data extraction.

STEP 2 CUSTODIANSHIP STRUCTURE & DESIGNATION (Before Filing or Simultaneously)

- Determine who will serve as records custodian post-closure**

Options:

- A. Physician personally
- B. Acquiring practice (only if explicitly agreed in writing)
- C. Third-party custodian

Custodianship must be assigned before closure is finalized; leaving it undefined creates legal liability and can strand patients without access to their records.

- If using a third-party custodian, execute the custodianship agreement before the EHR contract lapses**
A gap between your EHR termination and custodian activation can result in inaccessible records and potential HIPAA violations.



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STEP 2

CUSTODIANSHIP STRUCTURE & DESIGNATION (Before Filing or Simultaneously)

- If using a third-party custodian, execute the custodianship agreement before the EHR contract lapses**
A gap between your EHR termination and custodian activation can result in inaccessible records and potential HIPAA violations.
- Confirm custodian has SOC 2 / HITRUST certification and HIPAA Business Associate Agreement (BAA)**
These credentials confirm that the custodian meets the security and compliance standards required for protected health information (PHI).
- Confirm the custodian can ingest your specific EMR format and paper records**
Not all custodians support every EMR platform or physical record type. Compatibility must be verified before signing any agreement. This includes accounts receivable and claims history beyond the clinical data.
- Confirm custodian will manage all future records requests, subpoenas, and audits**
Post-closure record requests do not stop: patients, attorneys, and auditors will continue to request records, sometimes years later.

STEP 3

DATA EXTRACTION & PRESERVATION (TIME-SENSITIVE)

- Initiate data extraction from all EMR systems before contract termination**
If a staff member doesn't have the skill or access to execute this, contact a patient record archiving service for assistance with this step (See information on Aesto Health on page 3). Once access to the legacy EMR is terminated, data recovery may be impossible or cost \$10,000–\$50,000+.
- Extract all clinical, accounts receivable, and claims history data, not just clinical records**
Retention obligations extend to all historical patients, including their full payment and claims history, not only clinical records.
- Export discrete data (structured) AND document images (scanned notes, imaging reports)**
A complete extraction requires both the underlying data fields and the associated document images. One without the other leaves the record incomplete.
- Verify exported data is complete and accurate. Do not assume export is accurate without Quality Assurance inspection**
EMR exports can contain missing records, corrupt files, or unreadable formats that go undetected until a records request reveals the gap.
- Arrange for scanning and digitization of paper charts**
Paper records must be converted to an accessible digital format before they can be archived, accessed remotely, or transferred to a custodian.
- Document chain of custody for all transferred records**
A documented chain of custody protects you legally and establishes accountability if records are ever disputed, audited, or subpoenaed.



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STEP 4

PATIENT NOTIFICATION (State Law Compliance)

- Send patient notification letters per state medical board requirements**
Typically, 30–90 days' advance notice. Include: closure date, where records will be held, and how to request records. Failure to notify patients within the required window can trigger board complaints, regulatory fines, and personal liability for the closing physician.
- Post notice on website, phone system, and physical location**
Multi-channel notice broadens your reach and demonstrates good-faith compliance; relying on a single channel is rarely sufficient under state board standards.
- Retain proof of notification (certified mail receipts, publication records)**
Documenting how and when patients were notified is your primary defense if compliance is later questioned by a board, regulator, or a plaintiff's attorney.
- Notify patients of new custodian contact information for future records requests**
Patients need a clear point of contact after closure; without it, record requests stall, and the burden often falls back on the physician.

STEP 5

POST-CLOSURE COMPLIANCE & LIABILITY MANAGEMENT (Post-Discharge)






- Confirm custodian is actively managing and responding to inbound records requests**
Once closure is complete, records requests continue. Confirming the custodian is operationally ready prevents delays that can expose you to complaints and legal action.
- Confirm HIPAA compliant breach notification protocol is in place**
A data breach involving archived records still triggers federal and state notification requirements, even after the practice has closed.
- Retain a copy of the executed custodianship agreement in the client's personal files**
This document is your proof of proper transfer of responsibility; it should be stored in a location accessible to you, independent of the custodian.
- Confirm the physician's personal liability is covered by the custodian's professional liability insurance**
Without this confirmation, a records-related claim or breach could fall back on the physician personally, even years after closure.
- Set calendar reminders for state-required record destruction dates (if applicable)**
Most states mandate a minimum retention period before records can be destroyed. Premature destruction carries significant legal risk, and missing the window means unnecessary ongoing storage costs.
- Specialized Support for Legacy Medical Record Management**
Aesto Health provides end-to-end medical records archiving and custodianship for healthcare practices on its archiving platform, coupled with business partnerships to help navigate bankruptcy, dissolution, retirement, and M&A.



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Aesto Health extracts data from any EMR system or paper records, archives it in a SOC 2 audited and HITRUST r2 Certified environment, and can set it up for formal 3rd party assumption of legal custodianship responsibility, so you're providing a clear and structured path for transferring ongoing responsibility.

What Aesto Health provides for attorneys and their clients:

-  **Send patient notification letters per state medical board requirements**
Typically, 30–90 days' advance notice. Include: closure date, where records will be held, and how to request records. Failure to notify patients within the required window can trigger board complaints, regulatory fines, and personal liability for the closing physician.
-  **Extraction from any major EMR platforms (Epic, athena, eClinicalWorks, Practice Fusion, and 200+ others).**
Your clients won't need to negotiate with their EMR vendor or hire a separate technical team. Aesto handles extraction regardless of the platform.
-  **Paper chart scanning and digital conversion**
Physical records are converted to an accessible, digital format so nothing is left outside the archive.
-  **HIPAA Business Associate Agreement and formal custodianship transfer**
Aesto's custodianship partners assume legal custodianship responsibility in writing, giving your client a documented, defensible transfer of ongoing compliance obligations.
-  **24/7 records access for audits, subpoenas, and patient record requests**
Records remain accessible around the clock, so response deadlines for legal and regulatory requests are never missed.

Contact us: (866) 558-8098 | info@aestohealth.com | www.aestohealth.com/practice-transitions

RETENTION WINDOWS AT A GLANCE

Record Type	Minimum Common	Federal/State	Range Note
Adult Patient Records	6 years (HIPAA)	7–10 years	From date of last service
Pediatric Patient Records	Until age 21 + 3 yrs	Until age 23–25	Verify your state's specific law
Medicare/Medicaid Records	7–10 years	Same or longer	From date of service
Controlled Substance Logs	2–3 years (DEA)	Varies by state	May differ from medical records retention requirements