

## What's in a Record?

Regardless of the size or complexity of your organization, you are likely to be faced with the issue of determining the difference between a Designated Record Set and a Legal Health Record. Both serve a purpose in your organization, and it is prudent that your organization identify the difference in advance.

A legal health record is the business record generated at or for a healthcare organization. It constitutes the official business record of an organization for evidentiary purposes. It is the record that would be released upon receipt of a request. The legal health record is the officially declared record of healthcare services provided to an individual delivered by a provider and serves to:

- Support the decisions made in patient's care
- Support the revenue sought from third-party payers
- Document the services provided as legal testimony regarding the patient's illness or injury, response to treatment, and caregiver decisions.
- Serve as the organization's business and legal record.



A designated record set is a group of records maintained by or for a covered entity that may include patient medical and billing records; the enrollment, payment, claims, adjudication, and cases or medical management record systems maintained by or for a health plan; or information used in whole or in part to make care-related decisions. The designated record set is generally broader than the legal health record because it addresses all protected health information. While the legal health record is generally the information used by the patient care team to make decisions about the treatment of a patient, the designated record set contains protected health information along with business information unrelated to patient care. Under HIPAA, the designated record set is used to clarify the rights of individuals to access, amend, restrict, and acquire an accounting of disclosures and requests restrictions to disclosures of their PHI.

All record types listed below are included in the designated record set. Your organization will define what it deems important to be included in its legal health record. If your job duties include processing external requests for patient records or PHI disclosures, it is important that you understand how your organization defines its legal health record and the designated record set, if they choose to differentiate.

<p><b>Clinical Record</b></p> <ul style="list-style-type: none"> <li>• History and physical</li> <li>• Orders</li> <li>• Progress notes</li> <li>• Lab reports (including contract lab)</li> <li>• Progress notes</li> <li>• Vital signs</li> <li>• Assessments</li> <li>• Consults</li> <li>• Clinical reports</li> <li>• Authorizations and consents</li> </ul>	<p><b>Source Clinical Data</b></p> <ul style="list-style-type: none"> <li>• X-rays</li> <li>• Images</li> <li>• Fetal strips</li> <li>• Videos</li> <li>• Pathology slides</li> </ul>	<p><b>External Records and Reports</b></p> <ul style="list-style-type: none"> <li>• External records referenced for patient care: other providers' records, records provided upon transfer</li> <li>• Patient generated records</li> <li>• Personal health records</li> </ul>
<p><b>Committee Reports (of patient-specific care decisions)</b></p> <ul style="list-style-type: none"> <li>• Ethics committee or tumor board, if deciding on a course of treatment for an individual patient</li> </ul> <p>Note: Documentation of findings could be reported in the patient's medical record. Other legal privileges may apply to these records.</p>		<p><b>Administrative and Financial</b></p> <ul style="list-style-type: none"> <li>• Super bills/encounter forms</li> <li>• Remittance advice</li> <li>• Case management records</li> </ul>

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*What's in a Record continued...*

One of the main reasons organizations choose to define the designated record set separately from its legal health record is for handling external record and report disclosures. Your organization should consult with legal counsel and weigh the risks and benefits of including external records and reports as part of its legal health record and any disclosures.

Disclosures made as the result of a request from the individual will normally be made from the designated record set. These are your day to day requests for access and/or copies by individuals to whom the information is about. When the request is from a subpoena or court order, the terms of the subpoena or court order will dictate what information must be disclosed and here is where the legal health record may come into play.

Your organization should develop and maintain an inventory of documents and data that comprise of the legal health record and of the designated record set, and explain the two types in an organizational policy. Training should be provided to your staff so they know in advance what can be disclosed under which category. Any questions as to what constitutes the legal health record and the designated record set should be addressed by the privacy officer or legal counsel.

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