

The Power of Metadata

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In an era where long-term care facilities are increasingly implementing the use of electronic medical records, facilities need to be aware of the issues that might come into play during litigation.

Unlike paper charting, electronic medical records contain metadata. Metadata identifies the individual who accesses a patient's medical chart and tracks the dates and times of his or her access and the actions performed, i.e. changes, deletions or additions. When electronic medical records are printed, the metadata is not contained in the paper version of the electronic medical records. However, during litigation, the attorneys for the patients are entitled to this information and are tailoring their requests for production to include this information. The Illinois Supreme Court Rules on the scope of discovery also covers the production of metadata.

Illinois Supreme Court Rule 201 (b)(1) provides that a "a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in these rules, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage. IL. S.Ct. Rule 201(b)(1). (Emphasis added).

Metadata can be very powerful during litigation. Opponents can show that certain entries were modified or deleted after the fact and use Metadata information to refute testimony of the health care providers. For example, in a recent article in the Illinois Bar Journal addressing the topic of electronic medical records and metadata, the authors were involved in a case where a nurse testified she was at bedside providing the documented care to the patient. However, the metadata established she was actually entering the information at a computer system located in a different location in the hospital, impeaching her testimony.[1]

In sum, long-term care facilities should be aware of the issues relating to metadata contained in electronic medical records and take appropriate action to create and implement procedures on the retrieval of metadata and policies to address employees and others' access to a medical chart after litigation is pending.

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[1] Meyer, James G., Thomas, Jonathan P., Neubecker, Lee, "Electronic Medical Records: Metadata as Evidence in Litigation", Illinois Bar Journal, August 2013, Vol. 101.