



COMMON MISTAKES WHEN CHOOSING A CUSTODIAL RECORDS PROVIDER

- 1 Trying to manage the records for your closed business or medical practice yourself.** The risk, cost, and disruption of this approach is significant. The statutory retention requirements for most records span many years, and the responsibilities are great. If there is any litigation requiring copies of the records, you could have process servers knocking on your door with subpoenas, or irate patients expecting you to stop what you are doing to deliver copies of their medical records. Storing or handling the records improperly could expose protected information, leading to fines, or the records could become lost due to fire or flood. Electronic information could be accessed by unauthorized people, or the data could become lost.

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- 2 Ignoring the laws for notification or retention.** Federal and State laws require certain business or medical practices to provide various types of notification when the business ceases operations. There are also laws which require records of various types to be stored for specific time periods. You should consult with your attorney, malpractice insurer, or state agency to be certain you are following the laws, as failure to comply could result in fines. Notifications are typically required for patients of a medical facility, former employees, and to alert governmental or regulatory agencies where records can be obtained for activities such as litigation, audits, and worker's compensation.

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- 3 Sending notifications before choosing a Records Custodian.** For many businesses, and almost any type of medical practice, there are laws requiring notification when a business or practice closes. The timing and nature can vary based on the business type and the state you are located in, but your notification should include the contact information of the Custodial Records provider. Failure to include this could result in the cost and effort of sending additional notifications, and defeats the benefit of selecting a Custodial Records provider, which is enabling you to walk away without further involvement in the process.

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- 4 Keeping electronic data in proprietary systems.** If you use any software to manage your business that does not store data in a format that can be easily accessed by common business computing applications, the cost to maintain access to that proprietary system is much higher than performing a one-time export or conversion of the data to a generic format. You also risk losing access to the data in the proprietary format, if the system provider should discontinue the product, be acquired, or go out of business before the statutory retention of your records is met.

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- 5 Choosing a records management vendor that does not have dedicated Custodial Records resources.** Records management suppliers that claim to offer custodial services, but do not have dedicated experts in this area, can get you in serious trouble. Items such as mishandling the records, security breaches, and charging more for copies than the laws allow, can result in fines that extend to you, because you will have signed a contract delegating the records supplier to act on your behalf.
- 6 Assuming there will not be a large number of copy requests after the business or practice has closed.** The level of activity for a record set after a business or practice has closed can be significantly higher than when the business was operating. When the operation was running, records were available in real time, and you may not have realized how frequently they were accessed. Especially for medical practices, any patient that goes to a “next” doctor for continuing care, will automatically need copies of their records, and even patients without acute situations may panic and request their records when hearing their medical provider is closed, simply out of fear that they may not be able to retrieve copies of their records when needed later. The laws require the records to be available for an unlimited number of times during the statutory retention period, so even if a patient received copies of their records at some point, they are still legally able to require additional copies throughout the statutory retention period. Business records, including employment, financial, and legal documents, all carry requirements for storage and management after a business closes. These records should not be overlooked when any type of business closes for any reason.
- 7 Failing to segment records with different retention requirements.** Different types of records can have very different legal retention requirements, and these laws vary in every state. Examples of different retention segments include medical vs. non-medical records, employee health files, records involving litigation, pathology specimens, and business records. Failure to physically segment these records could lead to additional costs in a Custodial Records application, as unsorted records incur charges to either manually sort records to create the necessary segmentation, or simply storing all the records for the longest possible retention, even though certain records may be eligible for destruction sooner.

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