**Section 1320.105 Recordkeeping**

*Every licensed optometrist shall keep a record of examinations made and prescriptions issued, which record shall include the names of persons examined and for whom prescriptions were prepared, and* that *shall be signed by the licensed optometrist and retained by him* or her *in the office in which* the *professional service was rendered.* [225 ILCS 80/6]

a) Ownership of Records

1) Independent Optometric Practice

A licensed optometrist shall maintain full and independent responsibility and control over all records, including any prescriptions, relating to the patients. All such records shall remain confidential, except as otherwise provided by law, and shall be maintained by the licensed optometrist in compliance with this Section, Section 6 of the Act, HIPAA and Section 1320.90. For purposes of this subsection (a)(1), "maintain full and independent responsibility and control" means that the records shall be maintained by the licensed optometrist and that the optometrist shall not share, delegate or relinquish either possession of the records, including any prescriptions, or his or her responsibility or control over those records with or to any entity that is not itself licensed by the Division unless the entity is a "covered entity" under HIPAA. The optometrist may transfer custody of his or her records including prescriptions to a covered entity under HIPAA so long as the covered entity has designated an Illinois licensed optometrist or ophthalmologist as the custodian of the records. In this case, the optometrist shall receive copies of any records of his or her patients upon request as needed for continued patient care. The original records shall be available to the optometrist for compliance with statutory and regulatory requirements or for use in other legal proceedings. In no case may records remain in the custody of a non-licensed individual. A custodian named under this Section shall be reported to the Department and shall be responsible for compliance with all laws regarding the maintenance of records.

2) Optometric Practice of an Employee of a Non-Medical Entity Not Licensed by the Division or the Department of Public Health

A) A licensed optometrist shall maintain responsibility and control over all records, including any prescriptions, relating to the patients examined while they are employed. All such patient records shall remain confidential, except as otherwise provided by law, and shall be kept under the supervision of the licensed optometrist in compliance with this Section, Section 6 of the Act, HIPAA and Section 1320.90. However, a person, firm or corporation who is a covered entity under HIPAA may maintain patient records under the supervision of the optometrists employed by the covered entity pursuant to Section 8 of the Act.

B) If the optometrist leaves the employ of the non-medical entity, the patient records, including any prescriptions, shall remain with the employer on the condition that an Illinois licensed optometrist or ophthalmologist is named by the employer as the custodian for the purpose of keeping the records in compliance with HIPAA and the Act. All such records shall maintain patient confidentiality pursuant to HIPAA. The previously employed optometrist shall receive copies of any records of his or her patients upon request as needed for continued patient care. The original records shall be available to the optometrist for compliance with statutory and regulatory requirements or for use in other legal proceedings. In no case may records remain in the custody of a non-licensed individual. A custodian named under this Section shall be reported to the Department and shall be responsible for compliance with all laws regarding the maintenance of records.

3) Optometrists Employed by Other Division Licensees

Patient records, including any prescriptions, are the property and responsibility of the examining optometrist, except when the examining optometrist is employed by an optometrist or ophthalmologist. In this circumstance, the patient records are the property and responsibility of the optometrist or ophthalmologist who employs the optometrist, or remain the property and responsibility of the examining optometrist if agreed to by both parties under contract or other written agreement. In all circumstances, records must be available to the original optometrist for continued patient care and for compliance with statutory and regulatory recordkeeping requirements.

4) Multidiscipline Group Practice

The records including prescriptions relating to the patients of a multidisciplinary group of licensed optometry care professionals, or relating to the patients of a partnership or professional association, may be maintained by the group practice, partnership or professional association on behalf of all licensed optometrists employed by the group practice, partnership or professional association. The optometrist may transfer ownership of his or her records, including any prescriptions, to another licensed optometrist or group of optometrists provided that the records are available to the original optometrist for continued patient care and for compliance with statutory and regulatory recordkeeping requirements.

5) Hospital, Clinic or Nursing Home Facility Practice

If an optometrist examines or writes a prescription for a patient in a hospital, clinic or nursing home, he or she may elect to utilize the recordkeeping system of the facility, if he or she determines that the system is accurate and secure and the records are available to the optometrist for compliance with statutory and regulatory recordkeeping requirements.

b) Transfer of Ownership of Records

Upon the sale of a practice or the disability or death of an optometrist, the records must be transferred to a licensed optometrist or ophthalmologist or a health care facility licensed by the Department of Public Health for compliance with this Section, Section 6 of the Act, HIPAA and Section 1320.90. Patients are to be informed of the location of their records unless they are to be maintained at their original location. Copies of records must be made available, within 10 days after the death of an optometrist, to patients upon their request. Another optometrist or ophthalmologist may use these records to meet the patient's needs until their next regularly scheduled eye exam. Failure to provide records under this Section by a non-licensed individual shall be considered to be a violation under Section 4.5 of the Act and may result in fines or civil penalties provided for in the Act.

c) Necessity for Having Contract Provisions that Preserve the Optometrist's Statutory Recordkeeping Requirement

No agreement, lease or other contract entered into, renewed or extended between an optometrist and any entity that itself is not licensed by the Division as an optometrist or ophthalmologist or by the Department of Public Health as a health care facility shall contain any provision that:

1) Impedes an optometrist's ability to gain access to his or her professional office or patient records, including any prescriptions, provided any such agreement, lease or other contract shall contain a provision that establishes reasonable protocol for the optometrist to gain access to the premises during non-business hours for medical emergencies; or

2) Limits, inhibits or prevents an optometrist's ability to communicate with his or her patients at any time.

d) Record Retention

1) All patient records including prescriptions shall be maintained by the examining optometrist at the location of the examination or shall be available at that location for inspection upon reasonable request if stored in a secure off-site location for 6 years pursuant to Section 1320.90. Records may be maintained on paper or in electronic format, as follows:

A) If records are maintained electronically, an optometrist shall keep either a duplicate hard-copy record or a back-up unalterable electronic record off-site. If a record request is made, and the off-site location is out-of-state, the optometrist is required to obtain the records in order to comply with the request. Electronic records must be keyed to record the time and date of any patient record transactions or alterations.

B) Any patient record that is created or maintained in an electronic format must have the capability of printing a paper record.

2) Failure to keep patient records for the statutory minimum of 6 years shall constitute "dishonorable or unprofessional conduct" as that phrase is used in Section 24 of the Act, and any such action may subject the licensee to disciplinary action by the Division.

3) Records of patients examined in nursing homes and other residential care facilities shall be maintained, in accordance with this Section, at both the facility and the licensed location of the optometrist responsible for the record.

e) Patient Record Requests, Charges and Fees

A copy of patient records shall be provided, upon written request of the patient or any person, entity or organization presenting a valid authorization for release of records signed by that patient or the patient's legally authorized representative and payment of appropriate fees, to the person examined or his or her designee, in compliance with federal law.

f) Other Authorized Record Requests

Releasing records under a lawful subpoena in a criminal or civil proceeding, or pursuant to a subpoena issued by the Division or the Illinois Optometric Licensing and Disciplinary Board, is permissible in accordance with federal law. Document production compliance under a lawful subpoena is mandated by law. If the records sought are maintained at a location other than the optometrist's office where the subpoena was served, the optometrist is responsible for obtaining and producing the records to comply with the subpoena.

(Source: Amended at 41 Ill. Reg. 11400, effective September 8, 2017)