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Title: PRESERVATION, RETNETION AND DESTRUCTION OF GP GENERAL MEDICAL SERVICES RECORDS RELATING TO PATIENTS

For action by: Chief Executives - Health Authorities		**Action required: See paragraph(s):** 2:

For Information to: See Attached List

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Dear Colleague,

PRESERVATION, RETENTION, AND DESTRUCTION OF GP GENERAL MEDICAL SERVICES RECORDS RELATING TO PATIENTS
*(*Replacement for FHSL(W) 42/94)

Summary

1. This circular is a replacement for the existing circular FHSL(W) 42/94. In addition it introduces new guidance in respect of the retention of GP medical records relating to persons serving in HM Armed Forces or those serving a period of imprisonment.

Action

2.
- Directors of Contractor Services of Health Authorities should make arrangements to ensure that any GP medical records held by their authorities in respect of service personnel or prisoners are marked as being "not for destruction".
- Directors of Contractor Services are asked to copy this circular to the chairperson of their Local Medical Committee.

Background

3. This circular refers only to GP medical records. Guidance on general record keeping is issued by the Departmental Records Officer. The current guidance is in circulars **WHC(89)60** and **WHC(94)23**; these are in the process of being revised.

4. In this circular, the term "GP medical records" is used to describe those records maintained by a general practitioner by virtue of his obligations under paragraph 36 of Schedule 2 to the NHS (General Medical Services) Regulations 1992 or under paragraph 20(1) of Schedule 1 to the Directions to Health Authorities Concerning the implementation of Pilot Schemes (Personal Medical Services). These records should be returned to the Health Authority under the terms of this legislation on the death of the patient, or at the request of the Health Authority (usually when the person is no longer a patient of the general practitioner).

5. Under the existing guidance in FHSL(W) 42/94 Health Authorities may be destroying the GP medical records of service personnel and serving prisoners ten years after the conclusion of their last treatment by a general practitioner. Health Department have received a significant number of complaints from these people when, on returning to GP care, they find that their previous medical histories have been destroyed.

6. The potential extent of the problem is illustrated by the fact that the current average length of service for male service personnel is about 14 years, and for females about 7 years.

7. As a consequence it has been decided to amend the recommended minimum retention periods for GP medical records for service personnel and serving prisoners. In future all such records should be marked as being "not for destruction".

8. NHS Central Register will continue to notify the deaths of service personnel and prisoners in the normal way. On receipt of these notifications Health Authorities are advised that the "not for destruction" marking may be removed, the record then being retained in the same way as for any other deceased person.

9. Appendix A contains the revised retention guidance.

Associated Issues

10. National Health Service records are public records for the purpose of the Public Records Acts 1958 and 1967. The Public Record Office (PRO) advises Government Departments' Departmental Records Officer (DRO) on how to manage Departmental and all types of NHS records. The DRO is the liaison point with the

PRO.

11. Health Authorities handle a wide number of records relating to General Medical Services. Existing, and planned, guidance from the Departmental Records Officer does not fully cover the destruction of these records. Health Authorities will be aware that the latest general guidance on the destruction of such records is contained in Executive Council Letter (ECL) 2/68 entitled "Disposal of Records which have lost their value". We recommend that, when considering the destruction of these records, Health Authorities should, where there is no other specific guidance, identify the forms listed in ECL 2/68 which served a similar purpose and apply that retention period. For example form EC1 was completed by a patient wishing to join a GP's list in 1968, today the patient would use a form GMS1 and it would be appropriate to apply the same retention period. Where this is not possible they should be guided by the general principles in WHC(89)60 and its planned replacement which should be released in the New Year.

12. The new Information Strategy of the NHS Executive in England detailed in the publication "Information for Health" contains a specific action point to remove the contractual requirement for GPs to retain paper records from their terms of service. Health Departments have already approached the profession with such a proposal and both sides agreed that some further development of GP computer systems would be required before this change could be introduced. There is a commitment on both sides to introducing this change as soon as circumstances permit.

Yours sincerely

R A WILLIAMS
Primary and Community Health Division

Appendix A

GUIDANCE FOR GENERAL MEDICAL PRACTICES AND HEALTH AUTHORITIES ON PRESERVATION, RETENTION, AND DESTRUCTION OF GP MEDICAL RECORDS RELATING TO PATIENTS

1. RECOMMENDED MINIMUM RETENTION PERIODS FOR RECORDS

1.1 The recommended minimum periods of retention of GP patients' health records are:

i. **Maternity records;**

25 years.

ii. **Records relating to children and young people (including paediatric, vaccination and community child health service records);**

Until the patient's 25th birthday or 26th if an entry was made when the young person was 17; or 10 years after death of a patient if sooner.

iii. **Records relating to persons receiving treatment for a mental disorder within the meaning of the Mental Health Act 1983**

20 years after no further treatment considered necessary; or 10 years after patient's death if sooner.

iv. **Records relating to those serving in HM Armed Forces;**

Not to be destroyed until 10 years after a patient's death.

v. **Records relating to those serving a prison sentence;**

Not to be destroyed until 10 years after a patient's death.

vi. **All other personal health records**

10 years after conclusion of treatment, the patient's death or after the patient has permanently left the country.

1.2 After the appropriate minimum period has expired the need to retain records further for local use should be carefully and if necessary periodically, reviewed. Because of the sensitive and confidential nature of such records and the need to ensure that decisions on retention balance the interests of professional staff, including any research in which they are or may be engaged, and the resources available for storage, it is recommended that the views of the profession's local representatives should be obtained.

1.3 As records could be required in litigation virtually without limit of time, the Department recognises that some records may be destroyed that might otherwise subsequently have been required for litigation. The Department's view, however, is that the cost of indefinite retention of records would greatly exceed the liabilities likely to be incurred in the occasional case where defence to an action for damages may be handicapped by the absence of records.

2. GENERAL STORAGE

2.1 The Department strongly recommends that GPs should make arrangements for secure storage of records used and retained within the surgery.

2.2 Health Authorities are strongly recommended to make arrangements for secure preservation of records for the prescribed time as detailed in paragraph (1) in respect of patients who are no longer registered with a GP. In particular the accommodation should be secure, with proper environmental controls and adequate protection against fire and flood.

3. THE USE OF CLINICAL RECORDS

3.1 GPs are required by their terms of service to keep adequate records. The records are used by doctors to help them in the diagnosis and treatment of their patients, and provide a history of a patient's encounters with his GP. This means neither that it is necessary to retain every piece of paper or to record every item of data received in connection with a patient, nor that everything which is added to a record necessarily becomes a permanent feature of that record which can never be deleted. The Department's view is that the notes should record what is in the patient's best interests and the details of any product which has been used in the course of treatment. Otherwise it is a matter for the judgement of health professionals acting on the advice of professional bodies and organisations to consider what is adequate for the purpose.

3.2 As part of this consideration Health Authorities, and others, may wish to give particular thought to the retention of any X-rays that are held by the GP as part of the GP medical record. In a legal case "Hammond

(Administrator of Estate of Mavis Hammond deceased) v West Lancashire Health Authority - Court of Appeal" the authority was criticised in connection with its handling of the early destruction of X-Rays and their relevance to the patient's records.

4. RETENTION OF CLINICAL RECORDS

4.1 The Department advises that the minimum period for retention of personal health records which are no longer required for clinical purposes should take account of the provisions of the Limitation Act 1980 and the Congenital Disabilities (Civil Liability) Act 1976 and the Consumer Protection Act 1987.

4.2 The Limitation Act 1980 amended the law on the time limits within which actions for personal injuries, or arising from death, may be brought. The limitation period for bringing such actions is 3 years. This period runs from when it is first realised that a person has suffered a significant injury that may be attributable to the negligence of a third party or from 10 years after the application of a product which is found to be defective. The lapse between the 'injury' and 'knowledge' of it is without limit of time. The Congenital Disabilities (Civil Liability) Act 1976, clarifies the right of a child born disabled, as distinct from the right of his mother, to bring civil action for damages in respect of that disability. For a minor the limitation period runs from the time he attains the age of 18 years and may be extended where material facts are not known. The Consumer Protection Act 1987 extends an obligation arising from liability for a defective product to ten years after the product was supplied by a producer. The NHS is affected by these provisions and may be liable as a supplier or user of a product.

4.3 A person of "unsound mind" can, as long as he remains under the disability in question, bring an action without limit of time through his "next friend". After the person's death, the period of limitation will run against his personal representative(s). Health Authorities and GPs will appreciate that, in the context of current practices in the care and treatment of mentally disordered persons, discharge from hospital can no longer be regarded as implying that the person has fully recovered from the disability.

4.4 The limitation period of three years applies only to actions which include a claim for damages in respect of personal injuries. In the case of other claims, eg a claim by a mentally disordered patient that he has been falsely imprisoned, the appropriate limitation period prescribed by Section 2(1) of the Limitation Act 1980 is six years from the date when the patient ceases to be under a disability or dies.

5. COMPUTERISED RECORDS

5.1 With regard to the retention of records produced by computers the normal consideration will apply where printed statements and records are produced. Where the records are held only on microfilm, microfiche or original magnetic data files, the Department recommends that they should be retained, using the same criteria governing the retention of more conventional records, but taking extra care to prevent corruption or deterioration of the data. Re-recording/ migration of data may also need to be considered as equipment and software becomes obsolete.

6. CONFIDENTIALITY RECORDS

6.1 All NHS bodies and those carrying out functions on behalf of the NHS have a common law duty of confidence to patients and a duty to support professional ethical standards of confidentiality. Everyone working for or with the NHS who records, handles, stores, or otherwise comes across information has a personal common law duty of confidence to patients and to his or her employer. The duty of confidence continues even after the death of the patient, or after an employee or contractor has left the NHS.

6.2 In general, any personal information given or received in confidence for one purpose may not be used for a different purpose or passed to anyone else without the consent of the provider of the information. This duty of confidence is long established at common law.

6.3 The implementation in 1999 of the Data Protection Act 1998, which covers both computerised and certain manual personal data, will (by replacing the Data Protection Act 1984) establish a set of principles with which users of personal information must comply, such as the fair and lawful processing of information; the collection and processing of information only for specific purposes; information to be accurate and up to date; and retained in a form which identifies the subject only for as long as is necessary for the purpose.

6.4 The Caldicott Review of Patient Identifiable Information recommended that "Guardians" of patient information should be created to safeguard and govern the uses made of confidential patient information within NHS organisations. Those responsible for the retention and destruction of GP medical records should liaise closely with their local Guardian to ensure that their local strategy is in line with national and local guidance and protocols on confidentiality.

6.5 The Caldicott Committee also recommended that NHS organisations should be held, accountable through clinical governance procedures, for continuously improving confidentiality and security procedures governing access to and storage of personal information.

6.6 Health Authorities are recommended to take care to ensure, before any GP medical records are destroyed, that they are being destroyed in accordance with these guidelines. This is likely to involve, at some point, an examination of the record. Solicitors have advised that such an examination is necessary to comply with this guidance and with the laws of evidence. Doing so is in the public interest and therefore so long as the activity is confined to what is necessary in the public interest and the persons involved are made aware of their absolute duty of confidence Health Authorities should not be subject to a significant risk of a successful legal challenge. Health Authorities are, of course, free to seek their own legal advice on this point.

6.7 To ensure that confidentiality is fully maintained, the methods used for the destruction of confidential records need to be carefully considered. Normally destruction by incineration or shredding is recommended. Where this service is provided by a contractor it is the responsibility of the Health Authority to satisfy itself that the methods used throughout all stages including transport to the destruction site provide satisfactory safeguards against accidental loss or disclosure.

7. LOST RECORDS

7.1 GP medical records can properly be destroyed using this guidance. However, despite our best efforts, from time to time the medical records of patients do become wholly or partially lost in situations where it is clear that they should not have been lost or destroyed. This is particularly distressing for the individual concerned and, however infrequently it happens, can reflect badly on the NHS.

7.2 Health Authorities may wish to consider the merits of providing a patient with a named contact point when they receive a report relating to lost or missing medical records. Every effort should be made using available information from, for example, the patient, general practice, Health Authority records and NHS Central Registry to locate the missing records. A record of the actions taken to locate the record would help in the handling of any complaints subsequently lodged by the patient.

7.3 Health Authorities could also consider what action can be taken to minimise the impact of the loss, for example whether or not parts of existing hospital records might help reconstruct part of the patients medical history.

* For the purposes of the Limitation Act, a person of "unsound mind" is a person, who, by reason of mental disorder within the meaning of the Mental Health Act 1983, is incapable of managing and administering his property and affairs.

(The above definition is consistent with the definition of "disability" in the Supreme Court rules which prescribe how people under a disability mat bring an action.)