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FACTSHEET

IHCA Independent Health Complaints Advocacy

Obtaining Patient Records

All NHS staff have a duty of confidentiality towards all patients and their records. Patient records include:

- GP and hospital records
- Nursing records, and those made by other NHS staff
- Records of your visits to a GP, clinic or hospital
- Records of visits to you
- Details of treatment, medication, tests and their results, diagnosis, referrals, etc.
- Dental and Optical records where the service is provided by the NHS

Records can include letters, e-mails and written notes concerning telephone conversations or consultations.

Your rights:

Under current legislation, including the General Data Protection Regulation (GDPR) [Regulation (EU) 2016/679], you have a right to see and receive copies of records unless:

a) Your doctor or responsible health care professional has assessed that to do so would seriously cause harm to your (or another person's) physical or mental health or condition.

   This refusal can apply to part of your records and there is no obligation to inform you of such a partial refusal. It is worth asking if any part of your records has not been made available and, if so, the reason for this and when this decision can be reviewed.

   Only the health professional responsible for the clinical care of the individual concerned can take this decision, e.g. a care home manager could not decide that this exemption applies to one of their residents without first consulting with the relevant health professional.

b) Providing the records would disclose information relating to another person who has not consented to this information being shared.

c) An individual has made clear that they do not want their records to be disclosed to a third party, even if that third party has a right to make the request on behalf of the individual (e.g. the parent of a child or someone appointed to manage the affairs of an individual who lacks capacity).

Retention periods for medical records:

Different retention periods are applicable to different circumstances and types of NHS records (please refer to the Records Management Code of Practice for Health and Social Care 2016 for further detail).

GP records: These should be retained until 10 years after the patient's death or after the patient has permanently left the country, unless they remain in the European Union. Electronic patient records must not be destroyed or deleted for the foreseeable future.

Children and young people: All types of records for children and young people should be retained until the patient is 25 (or 26 if they are 17 when treatment ends) or 8 years after their death, if sooner. If a child's illness or death could be relevant to an adult condition or have genetic implications for their family, records may be kept for longer.

Maternity records (including obstetric and midwifery records): These must be retained for 25 years after the birth of the last child.

Mental health records: Records of people who have been treated for a mental disorder should be retained for 20 years after the date of last contact between the patient and any healthcare professional employed by the mental health provider, or 8 years after the death of the patient, if sooner.

Applying for your records:

- You can apply to see your records by making a **Subject Access Request** (SAR). The SAR must be made in writing and most GP Practices and NHS Trusts have a form specially designed for SARs that you will be asked to complete. Most NHS Trusts also have a specially appointed person, responsible for dealing with SARs.

- Records should be made available without delay and, at the latest, within one month of receipt of the SAR.

- NHS Trusts and GP Practices must provide a copy of the information **free of charge**. However, they can charge a ‘reasonable fee’ (based on the administrative cost of providing the information) when a request is

manifestly unfounded or excessive, particularly if it is repetitive. They may also charge a reasonable fee to comply with requests for further copies of the same information.

Where requests are manifestly unfounded or excessive, in particular because they are repetitive, an NHS Trust or GP Practice may refuse to respond to the SAR. Under these circumstances, they must explain why without undue delay and, at the latest, within one month, and inform you of your right to complain to the supervisory authority and to a judicial remedy.

- Trusts and GP Practices also have to explain to you anything in the records that is not easy to read, or which uses technical language that you do not understand.

- If you are applying to obtain someone else's records, you must have the patient's authorisation in writing. This includes parents applying to see a child's records if the child is able to understand matters. Where a patient is unable to give permission because of incapacity or illness, you may need to seek legal advice and a court authorisation.

- In the case of a deceased patient, disclosure is governed by the Access to Health Records Act 1990 and records can only be obtained by a Personal Representative of the deceased (the executor or administrator of their estate) or by someone who may have a claim arising out of the death, unless the deceased specifically requested in the records that they did not want that person to have access to their records after their death.

Complaints or concerns:

If you think your records are inaccurate, you can ask for them to be corrected. If the NHS Trust or health professional disagrees with the changes you want to make, you can ask for a note recording your disagreement to be attached to the records.

Any complaint can be made to **The Information Commissioner's Office** (see link and number below):

www.ico.org.uk

Tel: 0303 123 1113

May 2018