

Help with your NHS Complaint – Sheet 8

Medical Records

Under the Data Protection Act 1998, you have the right to see your medical records. Sometimes this is known as a Subject Access Request.

All NHS staff have a duty of confidentiality towards all patients and their records. Patient records are made by any NHS Service you use and include:

- GP Surgery
- Clinic Staff
- Dentist
- Mental Health Services
- Ambulance Service
- District Nurses
- Hospital Doctors
- Hospital Nurses

These should store details of any care or treatment which has been provided such as:

- Medication
- X-rays and scans
- Tests and results
- Referrals and letters
- Diagnosis Consultations
- Outpatient appointments
- In Patient stays

Applying for your records

- You have to apply to see your records, and some organisations have a form specially designed for this that you are asked to complete. Some larger Hospital Trusts may also have a special department dealing with such requests.
- Records should be made available within 40 days of applying to see them, or 21 days if they have been added to within the last 40 days.
- You can ask for someone to view your records with you and explain anything in there which is not easy to read or uses technical, medical language.
- You can request copies of the records, but must be aware that NHS Bodies can charge you up to £50 for the copying of paper based records.
- You can also request copies of electronic records held about you. The Information Commissioners Office states that this should cost no more than £10.

These charges are sometimes waived if they are requested in connection with a complaint, but you will need to check this with the individual organisation. To help reduce the cost and time this might take, it might be a good idea to think about the specific section of records you would be interested in. For example, you could request notes only from a specific department, or for a particular length of time.

What to do if you feel there is information missing from your record or you think your record is incorrect

You do not have the right to demand to have information removed or deleted from your medical records, unless of course these relate to another patient. Equally you don't have the right to have something changed that is already written on the record. However, you can ask to have information added or to have your own comments inserted as an 'Addendum'. This is something you will need to talk about with the NHS body who holds the record you are concerned about.

Obtaining records about someone else

If you are obtaining records about someone else, the NHS Body will usually require the patient's permission in writing. This includes a parent or guardian applying to see the records of a child, if they are unable to understand these themselves. In this case, the NHS Body will decide if it is in the best interests of the child.

Where a patient is unable to give permission because of incapacity or illness, you may need to seek legal advice and a court authorisation. If you are a representative for them appointed by the court, you may be able to access their records, again, if it is considered to be in their best interests.

If you are seeking the records for a patient who has died, these can only be obtained by certain people. This is known as a Personal Representative and is usually an executor, or someone making a claim arising from the death.

If you do not fall into one of these categories, the NHS body will decide whether they will provide the records on a case by case basis. They will consider if you have a valid reason for requesting the notes, your relationship with the patient, as well as any wishes the patient may have expressed about other people viewing the notes.

Be aware - A patient can at any time instruct an organisation that their records are not to be shared under any circumstances. This is the patient's choice, and can also apply when the records refer to someone who is deceased.

The NHS Trust might decide that the notes cannot be shared as this could cause you distress, or damage the reputation of the person who has died. The organisation should consider the views of any surviving family, and make a decision using all the information available.

When can I be refused access to my records?

Under the Data Protection Act 1998 you have a right to see your own records unless:

1. Your doctor thinks that to do so would seriously harm you or another person to see the information contained.

Be aware, 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 if you are worried about this.

2. Providing them would involve "disproportionate effort" on the part of a Trust or GP Practice.

Be aware, "disproportionate effort" is not defined, but the Data Protection Information Commissioner has warned against abusing this clause to block your access to your records.

How we can help

We cannot apply for access to medical records on your behalf and we are not qualified to give you advice to help you to understand them. We can, however, help you to write any letters you might want to send to request access to your records.

We can help you to use details from your medical records in your letter of complaint, or when you are preparing for a meeting. Again, if you need further help or support you can contact us at any point.

Other guidance

There is additional information about access to medical records on the NHS Choices website. You can find it by going to www.nhs.uk then typing the words 'access medical records' in the search box.

Tel: 0161 622 5700

Email: NHSComplaints@healthwatcholdham.co.uk

Web: www.healthwatcholdham.co.uk

