Data Protection Act & Access to Notes / Medical Records

The Data Protection Act 1998...

- gives rights for living individuals to access their records. This right can also be exercised by an authorised representative.
- covers all health records, manual and electronic
- provides additional safeguards for processing sensitive information
- enhances the existing rights of data subjects
- gives the right to have information corrected

Any breach of the 1998 Act is a criminal offence...

If this happens your patient may:

- complain to the Information Commissioner if any part of the 1998 Act has been breached
- seek compensation from the data controller for damage or distress caused by loss, destruction or unauthorised disclosure of either accurate data or inaccurate data in cases where the GP as data controller is unable to prove that he/she has taken such care as was reasonable in all circumstances to comply with the relevant requirement(s) of the 1998 Act.

Access to medical notes under the Data Protection Act

With any request:

- The application must be in writing (this can be electronically)
- The request should provide proof of the identity and enough information for the data controller to locate the information required.
- Where requests are made by a representative, the data controller should be satisfied that the individual has given consent.
- The data controller should check whether all or just come of the health record is required.
- You must respond and advise that any fee that will be charged immediately
- You must be prompt in complying
- The DPA sets the fees you may charge to cover costs - up to £50 (inclusive of postage/package)
- The notes must be checked for any information that breaches confidentiality (this does not include referral letters from a consultant)
- The notes must be checked for any information that could cause serious mental or physical harm to the patient whose notes are being requested or a third party.
Patients wishing to see their own Notes

As an initial response, it is often work chatting to the patient about why they want to see their own notes and it may be that just spending an appointment talking about their concerns and showing them the notes can solve things easily. If they make a request using the DPA then you must follow the guidance.

Patients accessing their own notes - this links to more detailed guidance.

Lawyers/Insurance/Third Party requests for copies of the notes

- Ensure you have the written consent of the patient

It is common for practices to receive requests from lawyers and insurance agencies requesting copies of a patients notes. If the request is made under the DPA then practices can charge up to £50 for copies or £10 for computer printouts (but most practices will hold a combination so up to £50 is the more likely fee) Postage & packaging is included in this fee. Unfortunately you are unable to add this on top.

Some practices send the actual notes but not every GP is happy to risk losing records and you are responsible for the safe keeping of the records. Please contact the LMC office if you would like further advice.

Links:

- Link to the Full Act
- More concise GPC Guidance on Data Protection Act (updated 2007)
- Patients accessing their own notes - more detailed LMC guidance
- Subject Access Request SAR Flowchart and letters
- What to do if you receive correspondence about a patient erroneously

Police Requests for Medical Records

The BMA professional fees committee has received new legal advice regarding medical note requests received from the police, which are detailed below.

There is clear guidance regarding the obligations that GPs have with respect to copying and/or release of the GP record. For your reference, these circumstances are:

- If the police do not have a court order or warrant they may request voluntary disclosure of a patient's health records under section 29 of the Data Protection Act 1998.

- However, while health professionals have the power to disclose the records to the police where section 29 applies, there is no obligation to do so.

- In such cases health professionals remain bound by the long-established common law duty of confidentiality and may only disclose information where the patient has given consent, or there is an overriding public interest. They may also be required to defend their decision to disclose before the GMC which is a statutory tribunal.

- Disclosures in the public interest based on common law are made where disclosure is essential to prevent a serious threat to public health, national security, the life of the individual or a third party, or to prevent or detect serious crime. This includes crimes such as murder, manslaughter, rape, treason, kidnapping and abuse of children or other vulnerable people. Serious harm to the security of the state or to public order and serious fraud will also fall into this category.

Your practice is entitled to a fee for producing the notes for the police.

There is no set fee for producing these notes, as they are not considered a subject access request that you may receive from a patient. Therefore the practice is able to set its own fee.

In order for you to proceed with the police request, please find attached a pro forma that we
recommend you complete and send to the police authority. We recommend that you obtain each of the following:

1. Provide written patient consent to release of their records OR provide written confirmation as to the nature of the serious crime allegedly committed by the patient and an explanation as to why the patient’s records, or other information requested, are considered necessary for the specific purpose you are pursuing. You will require one of these in order to fulfil your responsibilities as the Caldicott Guardian.

2. Confirmation in writing that the fee of £xx will be paid within 28 days of the police receiving the record. This fee is due to the disproportionate effort placed on an already overburdened GP practice to provide these notes which recognises the need to support the police in their investigation of a crime, where appropriate to do so.

3. Written confirmation from a senior police officer – ranked Superintendent or above – that he or she considers that the crime being investigated is a serious crime in line with the examples provided above.

Once you are in receipt of both of these at the practice, and have checked the appropriateness of release of the records, you should respond to the police authority as soon as possible.

Alternatively, should it be appropriate for the police to view the record (based on their answer to requirement 1 above), then there is the option for them to view the record in the practice in the presence of a practice staff member. In this situation there is no fee chargeable.

There is no set fee for providing records in this manner. Therefore it is the responsibility of individual practices to set their own fee for this work. When completing the attached pro forma you must enter the fee you choose to charge.

It is vital that the police agree in writing to pay the fee, otherwise you will not be able to claim for the service. If the police authority do not agree to pay the GP can decide whether they would like to provide the service free of charge, or not at all.

Please note that if the police authorities have a court order or warrant for disclosure of the records, you may be required to comply with the request even where a fee has not been paid or agreed. This will depend on a number of factors, including the terms of the court order or warrant.

GPs should, in all cases where there is no patient consent, consider whether the benefits to an individual or to society of disclosing the records outweigh both the public and the patient’s interest in keeping the information confidential before agreeing to disclose the records.

If you have any further queries about this please contact info.professionalfees@bma.org.uk.

### Electronic Consent Forms – Insurance Companies

We have been made aware of the letter from Legal and General stating that their method for obtaining patient consent will be digital and not with a “wet ink” signature. We have taken advice from the GPC which is as follows:

‘There is good legal basis and precedence to accept digital signatures only. However we have been in discussion with the insurance industry about this proposed change.

We are satisfied in principle but at the last JGPITC meeting they were asked to make some further changes to their proposed process before we agree to them.

Therefore we suggest you advise constituents to decline digital signatures at present citing that there is no agreement with the GPC yet. After there is agreement it will be up to constituents whether to accept these or not and I’m sure the GPC will circulate details once it is fully agreed.’

On the same note we have still not agreed with the Information Commissioner’s Office (ICO) whether it is lawful for insurance companies to use Subject Access Requests (SAR) instead of a Personal Medical Attendant Reports (PMAR). There is a recommended proforma letter on the BMA website that practices can send to their patients when one is requested, which is available at: http://bma.org.uk/practical-support-at-work/ethics/confidentiality-and-health-records.

ABI principles for requesting and obtaining medical information electronically from general
Related guidance...

Confidentiality after Death
Access to Deceased Patients' Health Records Note: the duty of confidentiality continues beyond death.
The Access to Health Records Act...

LMC Update June 2017 - part 2
Email sent by Wessex LMCs, Normally at this time of year the focus for the LMC moves from new contract changes, year end problems,...

Patients Accessing their Own Notes
Patients Requesting Access to their own Health Records When should access be given? There is nothing in the law that prevents health...

Freedom of Information Act 2000
The Freedom of Information Act applies to all NHS bodies, including hospitals, as well as to doctors, dentists, pharmacists and...

Release of Data without Consent
Patient data is sensitive personal data and must always be processed in accordance with the eight Data Protection Principles. It is...

Informing Patients about Confidentiality
You may find it helpful to display the following information in your waiting room CONFIDENTIALITY The Data Protection Act 1998 and...

Confidentiality
Medical confidentiality is at the bedrock of the Doctor-Patient relationship and it is enshrined in a number of codes, guidelines and...

Safeguarding: Domestic Violence and MARAC
Domestic violence accounts for 16% of all violent crime and is defined as 'any incident of threatening behaviour, violence or abuse...