
STATUTORY INSTRUMENTS

1993 No. 1250

The Access to Health Records (Northern Ireland) Order 1993

Main provisions

“Health record” and related expressions

3.—(1) In this Order “health record” means a record which—

- (a) consists of information relating to the physical or mental health of an individual who can be identified from that information, or from that and other information in the possession of the holder of the record; and
- (b) has been made by or on behalf of a health professional in connection with the care of that individual;

but does not include any record which consists of information of which the individual is, or but for any exemption would be, entitled to be supplied with a copy under section 21 of the Data Protection Act 1984⁽¹⁾ (right of access to personal data).

(2) In this Order “holder”, in relation to a health record, means—

- (a) in the case of a record made by a general practitioner, or by a health professional employed by a general practitioner—
 - (i) the patient’s general practitioner, that is to say, the general practitioner on whose list the patient is included; or
 - (ii) where the patient has no general practitioner or has died, the Health and Social Services Board in whose area the surgery or main surgery of the patient’s most recent general practitioner is situated;
- (b) in the case of a record made by a health professional for purposes connected with the provision of health services by a health service body, the health service body by which or on whose behalf the record is held;
- (c) in any other case, the health professional by whom or on whose behalf the record is held.

(3) In this Order “patient”, in relation to a health record, means the individual in connection with whose care the record has been made.

Health professionals

4.—(1) In this Order “health professional” means—

- (a) a fully registered person within the meaning of the Medical Act 1983⁽²⁾ (medical practitioners);
- (b) any of the following within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972⁽³⁾—
 - (i) a dental practitioner;

(1) 1984 c. 35
(2) 1983 c. 54
(3) 1972 NI 14

- (ii) an ophthalmic optician; or
- (iii) a pharmacist;
- (c) any of the following within the meaning of the Nurses, Midwives and Health Visitors Act 1979⁽⁴⁾—
 - (i) a registered nurse;
 - (ii) a registered midwife; or
 - (iii) a registered health visitor;
- (d) any of the following within the meaning of the Professions Supplementary to Medicine Act 1960⁽⁵⁾—
 - (i) a registered chiropractist;
 - (ii) a registered dietitian;
 - (iii) a registered occupational therapist;
 - (iv) a registered orthoptist; or
 - (v) a registered physiotherapist;
- (e) a clinical psychologist, child psychotherapist or speech therapist;
- (f) an art or music therapist employed by a health service body; or
- (g) a scientist employed by such a body as head of a department.

(2) The Department may amend paragraph (1) by order subject to affirmative resolution, but before making any such order the Department shall consult such bodies as appear to the Department to be representative of interests likely to be substantially affected by the order.

(3) The provisions of this Order shall apply in relation to health professionals in the public service of the Crown (in right both of Her Majesty's Government in Northern Ireland and Her Majesty's Government in the United Kingdom) as they apply in relation to other health professionals.

Right of access to health records

5.—(1) An application for access to a health record, or to any part of a health record, may be made to the holder of the record by any of the following, namely—

- (a) the patient;
- (b) a person authorised in writing to make the application on the patient's behalf;
- (c) where the patient is a child, a person having parental responsibility for the patient;
- (d) where the patient is incapable of managing his own affairs, any person appointed by a court to manage those affairs; and
- (e) where the patient has died, the patient's personal representative and any person who may have a claim arising out of the patient's death.

(2) Subject to Article 6, where an application is made under paragraph (1) the holder shall, within the requisite period, give access to the record, or the part of a record, to which the application relates—

- (a) in the case of a record, by allowing the applicant to inspect the record or, where Article 7 applies, an extract setting out so much of the record as is not excluded by that Article;
- (b) in the case of a part of a record, by allowing the applicant to inspect an extract setting out that part or, where Article 7 applies, so much of that part as is not so excluded; or

⁽⁴⁾ 1979 c. 36

⁽⁵⁾ 1960 c. 66

- (c) in either case, if the applicant so requires, by supplying him with a copy of the record or extract.
- (3) Where any information contained in a record or extract which is so allowed to be inspected, or a copy of which is so supplied, is expressed in terms which are not intelligible without explanation, an explanation of those terms shall be provided with the record or extract, or supplied with the copy.
- (4) No fee shall be required for giving access under paragraph (2) other than the following, namely—
 - (a) where access is given to a record, or part of a record, none of which was made after the beginning of the period of 40 days immediately preceding the date of the application, a fee not exceeding the maximum prescribed under section 21 of the Data Protection Act 1984(6); and
 - (b) where a copy of a record or extract is supplied to the applicant, a fee not exceeding the cost of making the copy and (where applicable) the cost of posting it to him.
- (5) For the purposes of paragraph (2) the requisite period is—
 - (a) where the application relates to a record, or part of a record, none of which was made before the beginning of the period of 40 days immediately preceding the date of the application, the period of 21 days beginning with that date;
 - (b) in any other case, the period of 40 days beginning with that date.
- (6) Where—
 - (a) an application under paragraph (1) does not contain sufficient information to enable the holder of the record to identify the patient or, in the case of an application made otherwise than by the patient, to satisfy himself that the applicant is entitled to make the application; and
 - (b) within the period of 14 days beginning with the date of the application, the holder of the record requests the applicant to furnish him with such further information as he may reasonably require for that purpose,

paragraph (5) shall have effect as if for any reference to that date there were substituted a reference to the date on which that further information is so furnished.

Cases where right of access may be wholly excluded

6.—(1) Where—

- (a) an application is made under paragraph (1)(a) or (b) of Article 5; and
- (b) the patient is a child,

access shall not be given under paragraph (2) of that Article unless the holder of the record is satisfied that the patient is capable of understanding the nature of the application.

(2) Where an application is made under paragraph (1)(c) of Article 5, access shall not be given under paragraph (2) of that Article unless the holder of the record is satisfied either—

- (a) that the patient has consented to the making of the application; or
- (b) that the patient is incapable of understanding the nature of the application and the giving of access would be in his best interests.

(3) Where an application is made under paragraph (1)(e) of Article 5, access shall not be given under paragraph (2) of that Article if the record includes a note, made at the patient's request, that he did not wish access to be given on such an application.

Cases where right of access may be partially excluded

- 7.—(1) Access shall not be given under Article 5(2) to any part of a health record—
- (a) which, in the opinion of the holder of the record, would disclose—
 - (i) information likely to cause serious harm to the physical or mental health of the patient or of any other individual; or
 - (ii) information relating to or provided by an individual, other than the patient, who could be identified from that information; or
 - (b) which was made before the coming into operation of this Order.
- (2) Paragraph (1)(a)(ii) shall not apply—
- (a) where the individual concerned has consented to the application; or
 - (b) where that individual is a health professional who has been involved in the care of the patient;

and paragraph (1)(b) shall not apply where and to the extent that, in the opinion of the holder of the record, the giving of access is necessary in order to make intelligible any part of the record to which access is required to be given under Article 5(2).

(3) Where an application is made under paragraph (1)(c), (d) or (e) of Article 5, access shall not be given under paragraph (2) of that Article to any part of the record which, in the opinion of the holder of the record, would disclose—

- (a) information provided by the patient in the expectation that it would not be disclosed to the applicant; or
- (b) information obtained as a result of any examination or investigation to which the patient consented in the expectation that the information would not be so disclosed.

(4) Where an application is made under paragraph (1)(e) of Article 5, access shall not be given under paragraph (2) of that Article to any part of the record which, in the opinion of the holder of the record, would disclose information which is not relevant to any claim which may arise out of the patient's death.

(5) The Department may by regulations provide that, in such circumstances as may be prescribed by the regulations, access shall not be given under Article 5(2) to any part of a health record which satisfies such conditions as may be so prescribed.

Correction of inaccurate health records

8.—(1) Where a person considers that any information contained in a health record, or any part of a health record, to which he has been given access under Article 5(2) is inaccurate, he may apply to the holder of the record for the necessary correction to be made.

- (2) On an application under paragraph (1), the holder of the record shall—
- (a) if he is satisfied that the information is inaccurate, make the necessary correction;
 - (b) if he is not so satisfied, make in the part of the record in which the information is contained a note of the matters in respect of which the information is considered by the applicant to be inaccurate; and
 - (c) in either case, without requiring any fee, supply the applicant with a copy of the correction or note.
- (3) In this Article “inaccurate” means incorrect, misleading or incomplete.

Duty of health service bodies to take advice

9.—(1) A health service body shall take advice from the appropriate health professional before it decides whether it is satisfied as to any matter for the purposes of this Order, or forms an opinion as to the matter for those purposes.

(2) In this Article “the appropriate health professional”, in relation to a Health and Social Services Board which is the holder of the record by virtue of Article 3(2)(a), means—

- (a) where the patient’s most recent general practitioner is available, that practitioner; and
- (b) where that practitioner is not available, a registered medical practitioner who has the necessary experience and qualifications to advise the Board on the matter in question.

(3) In this Article “the appropriate health professional”, in relation to a health service body (other than a Health and Social Services Board which is the holder of the record by virtue of Article 3(2)(a)), means—

- (a) where, for purposes connected with the provision of health services by the body, one or more medical or dental practitioners are currently responsible for the clinical care of the patient, that practitioner or, as the case may be, such one of those practitioners as is the most suitable to advise the body on the matter in question;
- (b) where sub-paragraph (a) does not apply but one or more medical or dental practitioners are available who, for purposes connected with the provision of such services by the body, have been responsible for the clinical care of the patient, that practitioner or, as the case may be, such one of those practitioners as was most recently so responsible; and
- (c) where neither sub-paragraph (a) nor sub-paragraph (b) applies, a health professional who has the necessary experience and qualifications to advise the body on the matter in question.