

# *RECORDS RETENTION:*



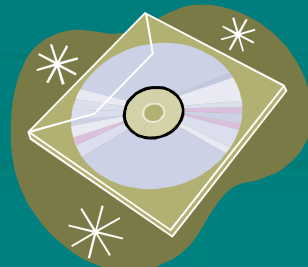
*An Overview of What You Should Know*

# *Violation of Public Records Law*

## **Media Sue Easley Over Public Records**

***Carolina Journal* and nine other media members join  
in the lawsuit on April 15, 2008**

**The lawsuit alleged that Gov. Easley and his staff  
engaged in multiple and "systematic" violations of the  
N. C. Public Records Law.**





The plaintiffs sought two things:

- a declaration that the policies, procedures, and actions of the governor and those who act at his direction or under his authority violated the Public Records Law and
- an injunction to stop further violations

This lawsuit facilitated Governor Easley writing Executive Order 150: *E-mail Retention and Archiving* on January 9, 2009.

# *Further Clarification.....*

- Governor Perdue signed Executive Order 18 on July 7, 2009, which rescinded Executive Order 150. This order identifies the responsibilities of state employees and state agencies concerning the retention and disposition of e-mails. Some of the provisions of this order include:
- A statement should be placed in the signature section of all e-mail to notify recipients that any e-mail sent to and from a State e-mail account is subject to the NC Public Records Law and may be disclosed to third parties.
- Any e-mail messages sent or received in connection with the transaction of State business shall not be permanently deleted for at least 24 hours to allow ITS to back-up e-mail

## *Further Clarification..... (cont'd)*

- Any e-mail that is retained or deleted shall be done so according to the DMH retention and disposition schedules (APSM 10-3 and APSM 10-4) and the General Schedule for State Agencies.
- Each employee is required to take the mandatory online training "*Managing Your Inbox: E-Mail as a Public Record,*" which was developed by the DCR Government Records Branch.



# *What is the Public Records Law?*

The *General Statutes of North Carolina*, Chapter §132, provides this definition of public records:

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

It is essential that all agencies have a records management system to assist in compliance to the law.

# *What is Records Management?*

G.S. § 132-8.1: “...the application of efficient and economical management methods [for] the creation, utilization, maintenance, retention, preservation, and disposal of official records...”

In other words

*Managing the Life Cycle of Records.*

As part of the records management system, the retention and disposition schedules were created for State agencies, LMEs and providers.



## *Why do I need the “Records Retention and Disposition Schedules?”*

These documents are tools for employees to use when managing the records in their offices. They list records commonly found and gives an assessment of their value by indicating when (and if) those records should be destroyed. According to G.S. §121-5 and G.S. §132-3, you may only destroy public records with the consent of the Department of Cultural Resources. The schedules are the primary way DCR gives its consent. Each agency is obligated to obtain DCR’s permission to destroy *any* record, no matter how insignificant.

The schedules are an agreement between DHHS and D CR, and allow for your agency to destroy records according to the provisions detailed in the schedule.





## *What agencies does the schedule apply to?*

The records retention and disposition schedule is the foundation of the records management systems for the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) and the Division of State Operated Healthcare Facilities (DSOHF). The schedule also applies to the *Local Management Entities (LMEs), contract MH/DD/SA service providers, as well as directly enrolled Medicaid providers who are endorsed by LMEs.*

## *What agencies does the schedules apply to? (cont'd)*

As a directly enrolled Medicaid Provider, the Provider agrees to operate and provide services in accordance with all federal and state laws, regulations and rules, and all policies, provider manuals, implementation updates, and bulletins published by the Department, its Divisions and/or its fiscal agent in effect at the time the service is rendered, which is incorporated into the Provider Participation Agreement by this reference.

# *Provider Participation Agreement*

## 7. Inspection; Maintenance of Records; Filing Reports

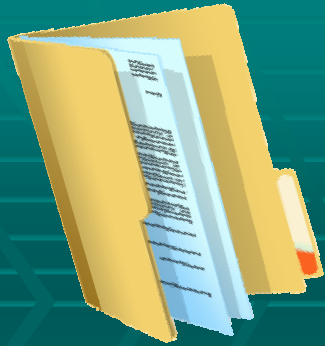
a. For a minimum of six years from the date of services, or longer if required specifically by law or post payment audits, the Provider shall:

i. Furnish upon request any and all documentation in the medium and manner requested by the Department, including recipient records, supporting material, and any information regarding payments claimed by the Provider, whether in the possession of contractors, agents, or subcontractors, for review by the Department, its agents and/or assigns.

# *Provider Participation Agreement* *(cont'd)*

The Provider understands that failure to submit or failure to retain adequate documentation for services billed to the Division may result in recovery of payments for medical or behavioral health care services not adequately documented, and may result in the termination or suspension of the Provider from participation in the Medicaid program.

- ii. Keep, maintain and make available complete and accurate medical and fiscal records in accordance with Department record-keeping requirements that fully justify and disclose the extent of the services or items furnished and claims submitted to the Department. For providers who are required to submit annual cost reports, fiscal records shall include invoices, checks, ledgers, contracts, personnel records, worksheets, schedules, and such other records as may be required by Department law or policy.



## *What records does the schedule apply to?*

For the purposes of record retention, service records have *two* distinct components: *the clinical record and documentation to support reimbursement for services paid for by state appropriated or federal funds.*

“Reimbursement information” includes financial and billing records and personnel records to document that the staff providing services held the proper credentials to do so.

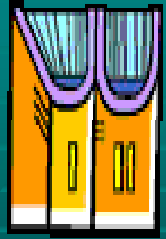
# *What records does the schedule apply to? (continued)*

Providers of publicly-funded MH/DD/SA services under contract with LMEs, the State of NC, or endorsed by LMEs and directly enrolled with Medicaid, must comply with the most current version of the Records

Management and Documentation Manual

<http://www.ncdhhs.gov/mhddsas/statspublications/manualsforms/rmd09/rmdmanual-final.pdf>

# ***RETENTION SCHEDULES***



*Schedule for State and Area Facilities (APSM 10-3):*

*<http://www.ncdhhs.gov/mhddsas/statspublications/manualsforms/aps/apsm10-3retentionupdated5-05.pdf>*

With the revision of the above schedule, there will be two new schedules -- one for LMEs and one for Providers.

Providers may find this retention schedule a good model for them to use in the development of those records management policies and procedures over which they have discretion.

# ***RETENTION SCHEDULES***

- There are two schedules for DMH Staff:

## **General Schedule for State Agencies [2009]:**

[http://www.records.ncdcr.gov/schedules/GS\\_2009\\_updateamendment\\_20090831.pdf](http://www.records.ncdcr.gov/schedules/GS_2009_updateamendment_20090831.pdf)

- Applies to all State employees.

## **Schedule for Central and Regional Offices**

**(APSM 10-4)[1986]:**

<http://www.ncdhhs.gov/mhddsas/statpublications/manualsforms/aps/10-4apsm-recordretention1986.pdf>

- Contains Division-specific record types.



## *G.S. § 132-7.*

# *STORAGE OF PUBLIC RECORDS*

## *Keeping records in safe places.....*

Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

This regulation governs how records are to be stored. The schedules provide the required information that must be documented on a Record Storage Log as well as the required provisions for the storage area for records such as: well-ventilated storage area in fireproof and waterproof storage setting with storage of media at a height/level to minimize damage in the case of a water leak or flood.



# ***DESTRUCTION OF PUBLIC RECORDS***

Each records series listed on this schedule has specific disposition instructions that indicate how long that series must be kept in your offices. In some cases, the disposition instructions are “Retain in office permanently,” which means that those records must be kept in your offices forever.

After your management has approved the destruction log and approval to destroy has been obtained, records should be destroyed in one of the following ways:

- burned, unless prohibited by local ordinance;
- shredded, or torn up so as to destroy the record content of the documents or material concerned;

# *DESTRUCTION OF PUBLIC RECORDS (cont'd)*

- placed in acid vats so as to reduce the paper to pulp and to terminate the existence of the documents or materials concerned;
- buried under such conditions that the record nature of the documents or materials will be terminated;
- sold as waste paper, provided that the purchaser agrees in writing that the documents or materials concerned will not be resold as documents or records.

# *DESTRUCTION OF PUBLIC RECORDS (cont'd)*

— N.C. Administrative Code, Title 7, Chapter 4, Subchapter M, Section .0510

Confidential records should be destroyed in a secure manner so that the information contained in them cannot be used.

The destruction of public records shall be recorded in a permanently preserved document such as a records destruction register. The record shall include the description and quantity of each record or records series disposed of, inclusive of dates of the records, and the date of destruction.



# *Record Destruction Log – Page 2*

RECORD TYPE	RECORD NO.	DOB	TIMEFRAME OF SERVICES (dates)	VOLUME IN INCHES	RECORD MEDIA

The following records were destroyed/disposed of in the normal course of business and in accordance with:

\_\_\_\_\_

(Cite Retention/Disposition Schedule that supports destruction)

Witnesses to Destruction:

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# *Special reminders about record retention and disposition:*

- The schedules only apply to original documents -- not copies.
- The schedules apply to all aspects of conducting state business -- administrative, financial, and management records -- not just to consumer records.
- When a document falls under two different retention schedules, the stricter schedule applies.



## *Special reminders about record retention and disposition: (cont'd)*

- The funding source often determines how long a record must be retained.
- Records associated with federally funded grant programs shall be retained for at least ten years and for three years after the program has ended, provided the organization had a clean audit. [Note: DMA-PI and the Medicaid Investigations Unit can go back up to ten years to investigate or to request recoupment of funds].
- Records should not be destroyed if the records are, or if there is reason to believe that the records will be, subject to investigation, audit or litigation in the future.

# *How DMH Supports Records Management*

- Notify central office and LMEs when records placed in storage at the State Records Center can be destroyed
- Work with DCR and DHHS to update and revise the retention schedules for the central office, state facilities, LMEs and to develop a schedule specific to providers.
- Collaborating with DSOHF and state facility HIM representatives to update the 1988 RMDM for State Facilities
- Convene work groups and focus groups to assure the schedules are relevant and pertinent to our current needs and ways of doing business

# *How DMH Supports Records Management (cont'd)*

- Develop training media and other tools to assist in understanding responsibility for records management and record retention/ disposition.
- Provide technical assistance and guidance to DMH staff, LMEs, and providers on records management issues
- Member of the Executive Board of the NC Health Information Management Association – Behavioral Health Section (NCHIMA-BHS)

*"Effective Records  
Management  
is the Responsibility of  
Each Employee"*



***Ignorance is no excuse!!!!***

*For more information,  
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