



## North Carolina Department of Health and Human Services Office of the Controller

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November 18, 2004

### **MEMORANDUM**

**TO:** County Managers  
Area Directors  
Local Health Department Directors  
District Health Department Directors  
Councils of Government Executive Directors

**FROM:** Laketha M. Miller

**SUBJECT:** DHHS Records Retention and Disposition Schedule / Medicaid Records Alert

Chapters 121 and 132 of the General Statutes of North Carolina govern the retention and disposition of all records located in and/or maintained by all public offices, whether municipal, county, state government, or state-supported institutions of higher learning. The N. C. Department of Cultural Resources, Division of Archives and History ("Cultural Resources"), has the statutory responsibility of working with State agencies in developing a workable schedule for the retention and disposition of public records of all kinds. Department of Health and Human Services ("DHHS") divisions and local governments have in effect such a retention and disposition schedule prepared conjointly with and published by Cultural Resources that covers a wide array of specific types of programmatic, administrative and budgetary records that are unique to that agency. Each agency-specific records retention and disposition schedule contains a description of the records maintained with instructions for their retention and disposition. The schedule specifies how long records must be kept and whether records are to be destroyed or transferred.

Cultural Resources has begun the process of updating these schedules, with the County Departments of Social Services being the first. The updated County Social Services schedule, which has now been endorsed and adopted by most counties, includes language that requires written DHHS Controller authorization prior to the destruction of records that pertain to specific federal programs because there are **no** standard record retention timeframes for Federal grants. All other future updated schedules will include similar language.

While most federal records require a three-year record retention, the start of this three-year period is usually based on the date the final grant expenditure report is submitted, which normally occurs several months after the end of the federal grant year. It should also be noted that amended final expenditure reports restart the three-year period. Thus, a pre-defined period of time (i.e. as of July 1, \_\_\_\_ ) cannot be used as a record disposition date. All financial and programmatic records, supporting documents, statistical records, and all other records pertinent to a federal award must be retained for a minimum of three (3) years from the date of submission of the final or revised final financial status report.

The DHHS Controller's Office maintains these critical dates and issues written guidance to divisions, local governmental and non-governmental entities regarding which fiscal year and which particular federal grant

records may be purged based on specific date parameters as required by 7 CFR 3016.42, 45 CFR Part 74.53 and 45 CFR Part 92.42. The financial reports referenced here are prepared and filed by the State, and are different from any reports that local governments file with the State to obtain funding. Furthermore, if any federal, State or county litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period described above, the records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular 3-year period, whichever is later. The Department can only address audits, investigations and legal actions involving the State; therefore, local governmental entities are responsible for ensuring that there are no local level actions, investigations or litigation pending before destroying records.

The attached DHHS Records Retention and Disposition Schedule provides by funding source and state fiscal year the date that records for the funding source may be destroyed. All State and local government agencies that administer programs funded by these sources are expected to maintain compliance with both this guidance regarding all programmatic and financial records that pertain to expenditures funded by federal grants and any agency-specific programmatic record retention requirements that are more stringent than the guidance provided in this letter. In cases where the attached schedule differs from the Cultural Resources schedules in terms of the retention period, you should use the more restrictive (i.e., the longer) retention period. In the event that a federal or State legal requirement or statute requires that a record be kept longer than specified in the retention schedule(s), the longer retention period shall be applied. In all circumstances, records shall be retained for the longest applicable period.

Why are there two different schedules? (1) The attached DHHS Retention and Disposition Schedule (a) is based solely on the requirements of 45 CFR Part 74.53 and 45 CFR Part 92.42, and (b) pertains to all records supporting specific federal funding sources, which may include specific types of programmatic, administrative and budgetary records. Litigation, audits or State amended expenditure reports extend the normal retention period. (2) The Cultural Resources schedules are organized by record series types such as program client records, medical records, invoices, etc. and denote normal retention time frames. Disposition instructions are determined by various federal and/or State regulations which may require retention periods that are longer than those listed in our schedule. Some examples include Medicaid provider records that must be maintained for five years after the last date of service, Adoption Files that are to be retained permanently, and Foster Care court orders that must be retained as long as the case is open plus three years from date of submission of the final revised annual financial report for the year in which the case was closed, provided that no litigation, claim, fiscal and/or program audit or other official action involving the record has been initiated before the expiration of the three year period.

**To reiterate, you are subject not only to the attached retention and disposition schedule, but also to the agency-specific schedules published by Cultural Resources and any APA rules and State or federal statutes if they are more restrictive.**

A County Indirect Cost Plan that is prepared and approved annually permits a county department of Social Services to claim federal reimbursement for its indirect cost. It is important that the Plan and supporting documentation and audit trail for developing it are retained as long as other County records for that federal funding source are retained (until cleared for disposition by the DHHS Controller's Office). There is no specific item covering the indirect cost plan in the County Management Schedule but the records associated with the plan are commingled with other budget items. It is the responsibility of the local agencies to coordinate with the individuals implementing the County Management Schedule to ensure that indirect cost plans and supporting documentation are retained for as long as required. Therefore, you should provide to your county fiscal office a copy of this memorandum and attached schedule and make certain that responsible staff understand which records may be purged and which must be retained.

**ALERT: IMPORTANT INFORMATION REGARDING MEDICAID ELIGIBILITY RECORDS**

**In 1997, the Centers for Medicare and Medicaid Services (CMS) revised the Medicare disproportionate share (DSH) payment policy. DSH policy establishes a process where hospitals treating a high number of indigent patients with or without insurance can receive additional reimbursement (i.e., DSH payments) to cover a portion of the unreimbursed care provided.**

**The CMS change recognized patient days where an individual was eligible for Medicaid in determining the DSH payment. These days were considered regardless if Medicaid would pay for these particular items/services. More than 250 lawsuits challenging the scope of applicability of this Ruling are now pending in the United States District Court for the District of Columbia.**

**Since the outcome of the lawsuits is unknown, CMS is requesting that States retain Medicaid eligibility records until the litigation ends as described in the attached "CMS Program Issuance Transmittal Notice". Therefore, all existing Medicaid eligibility records must be retained until further notice.**

Please note that we will issue similar guidance about every six months. Because the dates of disposition will vary greatly by federal program, a copy of this memorandum and the attached schedule should be posted and provided to all employees who are or will be involved in the records retention and disposition process. Millions of dollars could be at Federal payback risk for records that are prematurely destroyed.

In addition, a copy of this memorandum should be provided to all subrecipient agencies with which your agency has financial assistance relationships. This information should also be provided to entities that you contracted with in the past 3 years, but don't have a current year contract. This will ensure that these contractors do not purge records inappropriately. Pass-through entities are responsible for the compliance of their subrecipients with record retention and other funding requirements.

This memorandum and the accompanying schedule are also available on our web site and can be accessed at the following Internet address: <http://www.dhhs.state.nc.us/control/>. If you have questions relating to the above, please contact either Don McLamb at (919) 855-3740 or by e-mail at [Don.McLamb@ncmail.net](mailto:Don.McLamb@ncmail.net), or Anna Wasdell at (919) 855-3738 or by e-mail at [Anna.Wasdell@ncmail.net](mailto:Anna.Wasdell@ncmail.net). Thank you in advance for your continued cooperation and assistance.

LMM/dmcl

Attachments: "CMS Program Issuance Transmittal Notice" dated October 6, 2003  
"DHHS Records Retention and Disposition Schedule" dated October 30, 2004

cc: Secretary Hooker Odom  
Executive Committee  
Division Directors  
Division Budget Officers  
Division Records Officers  
County Directors of Social Services  
County Finance Officers  
Area Program Finance Officers  
Councils of Government Finance Officers  
District Health Department Finance Officers  
Regional Accountants  
DHHS Controller's Office Section Chiefs  
Ed Southern, Dept. of Cultural Resources

Filename: "Records-Retention-Memorandum-November-2004.doc"

**CMS PROGRAM ISSUANCE**  
**Transmittal Notice**  
**REGION IV**

**DATE:** October 6, 2003

**PROGRAM IDENTIFIER:** MCO-03-03  
**TO:** Title XIX Agencies in AL, AR, IL, IN, IA, KY, MS, NC, SC, TN  
Director's Office



**SUBJECT:** Preservation and Release of Medicaid Eligibility Information for Purposes of Pending Litigation of the Medicare DSH Payment Adjustment

In Agency Ruling 97-2 (Feb. 27, 1997), CMS revised Medicare disproportionate share ("DSH") payment policy to recognize patient days where an individual was eligible for Medicaid under an approved State plan, regardless of whether particular items or services were payable by Medicaid. Many hospitals have challenged the scope of applicability of this Ruling. For example, more than 250 lawsuits, involving about 2500 fiscal periods, are now pending in the United States District Court for the District of Columbia.

To the extent hospitals may ultimately become entitled to have the Ruling applied for particular fiscal periods, the hospitals will have the burden of proving the total number of Medicaid patient days for each fiscal year at issue. Information about Medicaid "paid days" (i.e., days where the State Medicaid plan provided for payment on behalf of the patient) is often available from the hospital's own records. However, in order to establish the number of Medicaid "unpaid days" (i.e., days where a patient was eligible for Medicaid but the State plan did not provide for payment on behalf of the patient), the provider needs information contained in the State's Medicaid eligibility records.

CMS requests the full cooperation of the State Medicaid agencies and/or the States' contractors in responding to hospital requests for Medicaid eligibility information. Specifically, the States are strongly encouraged to retain Medicaid eligibility records until the pending Medicare DSH litigation comes to an end, even if current record retention schedules might otherwise allow the earlier destruction of eligibility records. Also, because of the litigation, States may release information for this purpose to a hospital for a period of eligibility more than twelve months prior to the provider's request, notwithstanding section 2080.18 of the State Medicaid Manual.

If you have any questions concerning this memorandum, please call Donna Cross at (404) 562-7406.

*Ronald L. Murray, for*

Susan Cuerdon  
Acting Associate Regional Administrator  
Division of Medicaid & Children's Health