

Manager's Guide

FairWarning



Inappropriate access to Health Records (including FairWarning Alerts)

The security of patient data within health authorities has been given a high profile in recent years. The Information Commissioner's Office has increased powers, including the power to fine organisations up to £17.5 million or 4% of their annual turnover for serious breaches. The negative effect on our organisation's reputation could have an even greater impact than a monetary fine.

To assist NHS Boards in continuing to keep patient information secure and confidential, the Scottish Government has provided all NHSScotland Boards with Privacy Breach Detection software.

This software, FairWarning®, can be linked to all of our clinical and staff systems, can analyse activity on our clinical systems, and can report on instances where potentially inappropriate access has occurred.

Examples of this include users looking up records of colleagues, family members, neighbours or even their own records.

The introduction of FairWarning® does not mean any changes for staff. It has always been a condition of employment that access to clinical records is on a strictly need-to-know basis and the NHSScotland Code of Practice: Protecting Patient Confidentiality reiterates this.

Staff are provided with information on how to use electronic systems and sign a declaration that they have read relevant governance statements before gaining access to our network. FairWarning® is therefore simply the means by which we can assure our patients, the Board and the Information Commissioner that the information we hold is handled correctly and in accordance with the law.

As a manager, you must ensure that all of your staff members are fully aware that patients' health records must only be viewed if there is a clinical or business requirement to do so. This means staff must **not be accessing records inappropriately; for example: looking at their own health record** (even to confirm that a clinical system is working correctly or to check test results) **or the records of family, work colleagues, friends, acquaintances** and so on, unless it is a requirement of their job to do so. You should also inform new staff members that they must not use details of family, friends or colleagues for practice or training on a new system.

If a member of staff wants to view their own health records, or those of a dependent relative, they must follow the same process as any member of the public, i.e. the Subject Access Request process as stipulated in the Data Protection Act 2018. Guidance on this process can be provided by the Information Governance team by emailing foidp@nes.scot.nhs.uk

FairWarning Alerts

Information Governance will send you a report if FairWarning identifies any potentially suspicious activity that has been performed by a member of your staff. The type of activity that may generate a report includes, but is not restricted to, viewing their own record or that of a member of their family, a neighbour or a work colleague.

If you, or any member of staff, has a specific concern about who may have been accessing a particular health record, then Information Governance can produce a tailored report for you. This will only be granted if authorised by a line manager/Director and a clear appropriate reason provided.

When you receive this alert, you must check whether there is a legitimate clinical or business reason for the staff member to have accessed these records. If there is, this is known as a “False Positive” and you must report this back to the Information Governance team, explaining why this is a False Positive, e.g. Medical Secretary typing a letter to a neighbour receiving treatment through the specialty they work in. If you do not give sufficient information, the Information Governance team may contact you for further clarification. The False Positives are then removed from the reports and no further action taken.

The introduction of FairWarning® makes absolutely no change to existing laws or policies regarding access to patients’ health records. These **must only be accessed if there is a clinical or business requirement to do so**. A member of staff’s ability to access health records does not automatically grant them the right to do so. FairWarning® will simply identify instances where staff privileges may be being abused.

This document is intended to offer general guidance in the event you receive a FairWarning® alert related to one of your staff members. It is essential, for the benefit of all concerned that the guidance is applied consistently in all cases, regardless of the position or designation of the staff member involved. Compliance with the Data Protection Act is a legal requirement and NHS Education for Scotland must be able to demonstrate that non-compliance is dealt with appropriately.

For more detailed advice, you should refer to the NES FairWarning Guidance for Users of Clinical and Patient Management Systems or contact the Information Governance team.