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For Action by:

LHB and NHS Trust Chairs
LHB and NHS Trust Chief Executives
LHB and NHS Trust Board Secretaries
LHB and NHS Trust Medical Directors
LHB and NHS Trust Directors of Nursing
LHB and NHS Trust Directors of
Therapies & Health Sciences
LHB and NHS Trust Directors of
Workforce & OD

**For Welsh Government Action (or
information):**

DG/Chief Executive NHS Wales
Deputy Chief Exec NHS Wales
Professional & Policy Leads
DHSS Operations Team
DHSS Social Services Team
DHSS Comms Team
DHSS Digital Team
DHSS Workforce Team
NHS Wales Shared Services

Action required by: Date: 1.1.2020

Sender: Jean White – Chief Nursing Officer

DHSS Welsh Government Contact(s) :

Gillian Knight: Nursing Directorate – OCNOMailbox@gov.wales - 03000 628887

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1. This circular provides guidance for health boards and trusts in respect of good working practice principles for the use of chaperones during intimate examinations or procedures within NHS Wales
2. An intimate examination or procedure is defined as one involving the breast, genitalia or rectum. This also includes intimate investigations, medical photography and audio visual recording.
3. The basis of these good working practice principles is that, there will always be an active offer of a chaperone to all patients before conducting any intimate examination or procedure.
4. The aim of these good working practice principles is to guide all healthcare practitioners in NHS Wales in the appropriate use of a chaperone during intimate examinations and procedures, to ensure safe and effective practice.
5. These good working practice principles are based on current policies and procedures available within NHS Wales, evidence based practice and where applicable, legislation.
6. These good working practice principles will:
 - complement and not supersede existing legislative requirements to support children and adults at risk of harm or abuse, such as the Social Services and Wellbeing (Wales) Act 1, the Mental Capacity Act 2, and the Mental Health Act 3;
 - complement and not supersede existing guidance offered by regulatory or professional bodies; and
 - offer NHS Wales organisations an opportunity to review their policies and procedures in light of these good working practice principles along with other relevant professional practice document.
7. These principles will be considered in conjunction with the Mental Capacity Act (2005) and All Wales Consent to Examination or Treatment Policy.
8. These principles can be used by healthcare practitioner undertaking intimate examinations or procedures in all healthcare setting in Wales to understand their responsibilities and legal obligations and enable them to make safe and ethical decisions when practising.
9. These principles support practitioners to understand their responsibilities, their legal obligations and enable them to make safe and ethical decisions when carrying out procedures.
10. These principles do not include routine personal care which may be part of prescribed nursing care.

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1.0 INTRODUCTION

- 1.1 These good working practice principles are to guide all healthcare practitioners in Wales in the appropriate use of a chaperone during intimate examinations and procedures, to ensure safe and effective practice. They are based on and developed from a range of policies, guidance and procedures available within NHS Wales, evidence based practice and where applicable, legislation.
- 1.2 It is important to note that the chaperone is present to safeguard both patients and healthcare practitioners.
- 1.3 Patients can request a chaperone for any consultation, examination, investigation or procedure including those that are not considered intimate. In these circumstances the principles of these good working practice principles can also be used.
- 1.4 The basis of these good working practice principles is that, there will always be an active offer of a chaperone to all patients before conducting any intimate examination or procedure.
- 1.5 These principles also accept and acknowledge that patients have a right to decline a chaperone.
- 1.6 These good working practice principles will:
 - complement and not supersede existing legislative requirements to support children and adults at risk of harm or abuse, such as the Social Services and Wellbeing (Wales) Act ¹, the Mental Capacity Act ², and the Mental Health Act ³;
 - complement and not supersede existing guidance offered by regulatory or professional bodies;
 - offer NHS Wales organisations an opportunity to review their policies and procedures in light of these good working practice principles along with other relevant professional practice documents; and
 - be considered ⁴ in conjunction with the Mental Capacity Act (2005) and All Wales Consent to examination or treatment Policy.
- 1.7 These working principles can be used by healthcare practitioner undertaking intimate examinations or procedures in all healthcare setting in Wales to understand their responsibilities and legal obligations and enable them to make safe and ethical decisions when practising. ^{2,3} This will support practitioners to understand their responsibilities, their legal obligations and enable them to make safe and ethical decisions when carrying out procedures.
- 1.8 This document **does not include** routine personal care which *may be part* of prescribed nursing care.

2.0 BACKGROUND

- 2.1 Recommendations have been published by the Independent Inquiry Child Sexual Abuse (IICSA)⁵ in relation to chaperones. These are:
- *The Welsh Government develops a National policy for the training and use of chaperones in the treatment of children in healthcare services.*
 - *Healthcare Inspectorate Wales considers compliance with national chaperone policies (once implemented) in its assessments of services.*
- 2.2 Following this the Chief Nursing Officer (CNO), who leads on the safeguarding agenda within NHS Wales, tasked the All Wales Safeguarding NHS Network (“the Network”) to develop good working practice principles (rather than policy) regarding chaperones during intimate examination of adults and children in healthcare settings on behalf NHS Wales.
- 2.3 These good working practice principles have been produced using the ‘Five Ways of Working’ from the Wellbeing of Future Generations Act (2015)⁶. A desktop review of current practice was undertaken using available guidance and policies from healthcare organisations in Wales and examples of best practice principles from NHS England obtained through a literature search.
- 2.4 The views of practitioners and patient groups have also been taken into consideration in shaping this document and have been overseen by a working group who represent various areas within NHS Wales. An Equality Impact Assessment is included within Annex 1 and clearly references how the voice and views of populations with protected characteristics have been taken into account.
- 2.5 Guidance advocating chaperone use has also been published by other professional organisations, including the Faculty of Sexual and Reproductive Healthcare at the Royal College of Obstetricians and Gynaecologists ⁷ and The Royal College of Emergency Medicine. ⁸
- 2.6 These good working practice principles are considered essential by Welsh Government to inform any associated policy development.

3.0 Key Practice Principles: Summary

Intimate examinations or procedures:

An intimate examination or procedure is defined as one involving the breast, genitalia or rectum. This also includes intimate investigations, medical photography and audio visual recording.

Cultural, ethnic, religious beliefs, gender identity and sexual orientation must be considered and respected at all times.

Intimate examinations and procedures must be practised in a safe, sensitive and respectful manner on every occasion.

Consideration will be given to the environment to ensure privacy and dignity must be maintained throughout the procedure.

Healthcare Practitioners:

There must always be an active offer of a chaperone to all patients before conducting any intimate examination or procedure.

A formal chaperone is a person appropriately trained, whose role is to observe the examination/ procedure undertaken by the Health Practitioner. Chaperones are present to support and protect patients and healthcare practitioners.

Cultural, ethnic, religious beliefs, gender identity and sexual orientation must be considered and respected at all times by healthcare practitioners ¹⁰

Communication:

The offer of chaperone should be made clear to the patient before any procedure, ideally at the time of making the appointment

Any preferences and/or objections to intimate examinations should be identified as early as possible to eliminate the potential of causing any unnecessary distress.

A relative or friend of the patient is not usually an impartial observer but you should consider any reasonable request by the patient to have such a person present, as well as a formal chaperone

In order for patients to exercise their right to request the presence of a chaperone, a full explanation of the examination, procedure or treatment to be carried out must be given to the patient. This should be followed by a check to ensure that the patient has understood the information and gives consent.

A patient may request to have chaperone and/or to be examined by a healthcare

practitioner of a specific gender and wherever practical this request should be granted.

Children and Young People:

For children and young people who are undergoing intimate examinations, usual practice would be to have a chaperone present in addition to the parent or carer. For young people, who are deemed to have mental capacity, they have the same rights to consent and confidentiality as an adult.

Adults Who Lack Capacity:

In adults who lack capacity to give consent staff must be aware of and act in accordance with the Mental Capacity Act (2005).

Emergency Situations:

In an emergency or life threatening condition, where the patient can give consent, the principles in this guidance should be followed. However, where the patient is unable to give consent and speed is essential in the care and treatment ⁸of the patient it is acceptable for clinicians to perform intimate examinations without a chaperone. This must always be recorded in the patient's records.

4.0 Intimate Examination

- 4.1 For the purposes of these good working practice principles an intimate examination or procedure is defined as one involving the breast, genitalia or rectum. This also includes intimate investigations, medical photography and audio visual recording.
- 4.2 Healthcare practitioners must be culturally sensitive aware of, and respect patients' individual concepts of privacy, intimacy, dignity and what constitutes appropriate touch¹⁰.

5.0 The Role of Formal Chaperones

- 5.1.0 The offer of a chaperone is a sign of respect. The presence of a chaperone is important for medico- legal protection of both patient and healthcare practitioner ¹¹
- 5.1.2 For most patient's respect, explanation, consent and privacy take precedence over the need for a chaperone and the presence of a third party does not negate the need for this ¹².
- 5.1.3 For the purpose of these good working practice principles, the definition of a Chaperone will be:
- A formal chaperone is a person appropriately trained, whose role is to observe the examination/ procedure undertaken by the healthcare practitioner. Chaperones are present to support and protect patients and healthcare practitioners.*
- 5.1.4 The General Medical Council (GMC) ethical guidance for Intimate examinations and chaperones in Good Medical Practice 2013 ¹³ states:
- “A formal chaperone should usually be a health professional and you must be satisfied that the chaperone will:
- a) be sensitive and respect the patient's dignity and confidentiality;
 - b) reassure the patient if they show signs of distress or discomfort;
 - c) be familiar with the procedures involved in a routine intimate examination;
 - d) stay for the whole examination and be able to see what the healthcare practitioner is doing, if practical; and
 - e) be prepared to raise concerns if they are concerned about the healthcare practitioner's behaviour or actions.
- 5.1.5 Under the Social Service and Wellbeing (Wales) Act, any concerns with regards a child or adult at risk must be managed in line with Part 7 of the Act. ¹Chaperones also ensure safe and effective practice and discourage unfounded allegations of improper behaviour ¹⁴.
- 5.1.6 A relative or friend of the patient is not a suitable formal chaperone, but you should consider any reasonable request by the patient to have such a person present, as well as a chaperone ¹³.
- 5.1.7 Respect for patient's privacy and dignity is always vital especially under circumstances where the examination, care or treatment being carried out is considered to be intimate or embarrassing to the patient. For many patients the presence of a chaperone provides support and reassurance during examinations or procedures by healthcare professionals.¹⁴

6.0 Organisational Responsibilities

6.1 Communication

- 6.1.0 The active offer of a chaperone should be clearly advertised through patient information leaflets, websites (where available) and on notice boards.¹⁵
- 6.1.1 Clinical and patient waiting areas can be used to increase public awareness and understanding, support the more frequent use of chaperones and promote appropriate professional standards for patients and healthcare practitioners’.
- 6.1.2 Information needs to be accessible to everyone to whom it applies. The information needs to be available in different languages and formats for those whose first language is not Welsh or English and/or have different communication requirements.
- 6.1.3 The offer of chaperone should be made clear to the patient before any procedure, ideally at the time of booking the appointment (where applicable).
- 6.1.4 In order for patients to exercise their right to request the presence of a chaperone, a full explanation of the examination, procedure or treatment to be carried out should be given to the patient. This would be followed by a check to ensure that the patient has understood the information and gives consent.
- 6.1.5 A patient may request to have chaperone and/or to be examined by a healthcare practitioner of a specific gender and wherever practical this request should be considered and supported.

6.2 Suitable Environment

- 6.2.0 Consideration is given to the environment to ensure privacy and dignity is maintained throughout the procedure. (Included as a key principle.)

6.3 Healthcare Practitioner Responsibilities

- 6.3.0 Whenever practitioners perform an intimate examination or procedure it is their responsibility to ensure the patient has consented to the procedure and that the care is delivered in a safe, sensitive and respectful manner. The patient’s privacy and dignity must always be upheld at all-time ¹⁷.
- 6.3.1 The presence of a chaperone does not alleviate the requirement to have informed consent for any examination or procedure to be performed. The healthcare practitioner must ensure a full explanation and need for the examination has been discussed with the patient. ¹⁸

- 6.3.2 Although healthcare practitioners have an ethical duty to ensure patients understand what an examination entails and the reasons for it, offering a chaperone demonstrates recognition that an examination may be uncomfortable or embarrassing, which in itself may reassure the patient.^{16,19}
- 6.3.3 Healthcare practitioners must:
- explain to the patient why an examination is necessary and give them an opportunity to ask questions;
 - explain what they are going to do before doing it covering all steps e.g. removal of clothing, provision of covers etc;
 - if any of this differs from what the patient has been told before, explain why and seek their permission again;
 - stop the examination if the patient asks you to; and
 - keep discussion relevant and not make unnecessary personal comments.
- 6.3.4 Practising in a safe, sensitive and respectful manner on every occasion will reduced the risk of misunderstandings which may result in allegations of improper behaviour.⁹
- 6.3.5 Healthcare practitioners must record in the patient record:
- the patient's acceptance or refusal of a chaperone ¹⁹;
 - any decision about continuing with or cancelling an examination or procedure; and
 - the name and designation of the chaperone. ^{7,21,22}
- 6.3.6 Incidents or complaints relating to the examination/procedure or the use of chaperones is recorded in line with organisational policies and procedures.
- 6.4 When Patients Decline The Active Offer Of A Chaperone**
- 6.4.0 Patients have a right to refuse a chaperone.
- 6.4.1 The healthcare practitioner will explain clearly the reasons why the presence of a chaperone is advisable.
- 6.4.2 If the patient refuses to have a chaperone present, the healthcare practitioner needs to consider if it would be safe and appropriate to continue with the examination or procedure.
- 6.4.3 If the patient continues to refuse, and the practitioner does not feel it is appropriate to continue, alternatives will be considered. For example, arranging to see a different practitioner or arranging a different appointment, if the patient's clinical needs allow. These incidences will be clearly noted within the patient's medical notes
- 6.4.4 Note the patient's acceptance or refusal in the records ¹⁹.

- 6.4.5 If a patient declines a chaperone, it is acceptable for a consultation, examination or investigation to be performed without a chaperone ¹⁵. Healthcare practitioners should recognise that they are at increased risk of their actions being misconstrued or misrepresented ⁴ if they conduct intimate examinations where no other person is present.

6.5 No Suitable Chaperone Available

- 6.5.0 When no chaperone is available or the patient is unhappy with the chaperone offered the patient could be asked to return at a different time, if this is considered to be clinically safe.
- 6.5.1 Every effort will be made to provide a chaperone. If the patient has requested a chaperone and none is available at that time, the patient must be given the opportunity to reschedule their appointment within a reasonable timeframe, as long as the delay would not adversely affect the patient's health. This will be explained to the patient and recorded in their medical records. A decision to continue or otherwise should be reached jointly.

6.6 Children and Young People

- 6.6.0 For children and young people who are undergoing intimate examinations, usual practice would be to have a chaperone present. For young people, who are deemed to have mental capacity, they have the same rights to consent and confidentiality as an adult. Children and young people would normally have a parent or carer present during an intimate examination or procedure but this should be in addition to a chaperone where appropriate (see 5.1.8).

- 6.6.1 GMC 0-18 guidance states:¹³

The capacity to consent depends more on young people's ability to understand and weigh up options than on age. When assessing a young person's capacity to consent, you should bear in mind that:

- a. at 16 a young person can be presumed to have the capacity to consent (see paragraphs 30 to 33)*
- b. A young person under 16 may have the capacity to consent, depending on their maturity and ability to understand what is involved.*

- 6.6.2 In an emergency situation the same principles would apply for children and young people as for adults.
- 6.6.3 Parents, guardians and young people must receive an appropriate explanation of the procedure in order to obtain their informed consent to examination.
- 6.6.4 A parent or carer or someone already known and trusted by the child may also be present during the examination or procedure to provide reassurance.

6.7 Patients Who Lack Capacity to Give Consent

- 6.7.0 Staff must be aware of and act in accordance with the Mental Capacity Act (2005) (MCA)².
- 6.7.1 If a patient's capacity to understand the implications of consent to a procedure, with or without the presence of a chaperone, is in doubt, the procedure to assess mental capacity must be undertaken. This must be fully documented in the patient's record, along with the rationale for the decision.
- 6.7.2 Adult patients who cannot give consent and consequently resist any intimate examination or procedure should be managed using the principles of the MCA including best interest decisions.²⁰
- 6.7.3 Family or friends who understand their communication needs and are able to minimise any distress caused by the procedure could also be invited to be present throughout any examination.

6.8 Emergency Situations

- 6.8.0 In an emergency or life threatening condition, where the patient can give consent, the principles in this guidance should be followed. However, where the patient is unable to give consent and speed is essential in the care and treatment of the patient it is acceptable for clinicians to perform intimate examinations without a chaperone. This must always be recorded in the patient's records.

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