

WELSH HEALTH CIRCULAR



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Title: A Framework and Guidance on the Management of Intellectual Property in the NHS in Wales

For Action by: Senior staff of NHS Trusts, Local Health Boards, National Public Health Service & Independent Providers of NHS Services

Action required *See paragraph(s) :*

For Information to: See attached list

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Enclosure(s):

- 1.A Framework and Guidance on the Management of Intellectual Property in the NHS in Wales.
2. ~~Directions relating to the exercise of powers under section 7(2) of the Health and Medicine Act 1988.~~

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A Framework and Guidance on the Management of Intellectual Property in the NHS in Wales

Dear Colleague

Summary

1. This circular sets out a framework and guidance to help ensure that Intellectual Property (“IP”) originated in, or generated by, the NHS in Wales can be exploited to provide income and improve healthcare delivery.

Background

2. Innovation occurs naturally in the NHS through the work of its employees, through the delivery or the management of patient care, in the education or training of employees or through research and development (R&D) programmes. Examples of innovation include a novel treatment, a new diagnostic technique, a new device, a new drug or the new use of a drug, use of data, software, training material, a treatment protocol, or a new management system.
3. Because such Intellectual Property represents a valuable asset to the NHS, it is important that it is well managed. The Welsh Assembly Government has therefore developed this framework and guidance for the management of IP arising in the NHS in Wales.
4. As it is generally recognised that NHS bodies do not have the in-house capacity to identify and manage the commercial exploitation of IP, and that developing such skills in-house may not be cost-effective, the Welsh Assembly Government has set in place a procurement process to provide a NHS IP service in Wales. This service will be operational from early 2005.

Legal Framework

5. By virtue of the Directions issued by the Assembly in October 2003 under section 7(3) of the Health and Medicines Act 1988, Local Health Boards (LHBs) and NHS Trusts in Wales have been conferred the income generation powers set out in section 7(2) and (7A) of that Act.
6. The Directions empower those bodies to set up companies for the purposes of exploiting IP (“spin out companies”) or to invest in such companies.

Spin out companies

7. There are circumstances in which it may be appropriate to establish “spin out companies”. Details about the types of spin out companies that can be set up, as well as a list of issues to consider when planning to set up spin out companies are given in the guidance.

Ownership of IP: the employer and the employee

8. NHS employment contracts do not normally include provisions for dealing with the ownership and exploitation of IP. In the absence of express contractual provision, ownership of IP will be determined by statute. Generally, in such circumstances the employer will be the owner of IP generated by an employee in the course of his or her normal duties of employment by virtue of the Patents Act 1977. However, it is suggested that specific provision should be inserted into contracts of employment to avoid any confusion.

The guidance provides information about the relationship between NHS employees and their employers and the matters which should be considered in making provision for the ownership or sharing of IP in employment contracts.

IP arising from collaborative work between the NHS and other partner organisations

9. In some instances, IP may arise as a result of collaborative work between the NHS and a partner organisation. This could be a charity, academia or industry. Although the emphasis must be on collaboration between partners rather than competition, it is important that the legal ownership of IP is clearly set out from the beginning of the collaboration. Issues to consider are described in the guidance.

Review of Framework and Guidance

10. The current 'Framework and Guidance on the Management of Intellectual Property in the NHS in Wales' will be reviewed in three years.

Sue Denman
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