

TO: Temple Sellers CLIENT-MATTER NO. 22171.6
FROM: Jason Bring
DATE: September 6, 2016
RE: Summary of 2016 changes to GHA Document Retention Schedule

This memorandum highlights the substantive changes to the 2016 GHA Document Retention Schedule. All the changes mentioned below are included in a draft copy of the 2016 Retention Schedule (the “Schedule”) in track-changes form with explanatory comments, for approval and incorporation into the final version of the document where appropriate.

I. Statutory, Regulatory, and Procedural Changes

There are very few substantive changes to the Schedule. The following is a list of the statutory, regulatory, and procedural authorities that have changed since the last update.

II. Changes to retention periods

1. Part I: Policies and Procedures for Medicaid/PeachCare for Kids, § 106(Z).

A new revision of Part I was released by GAMMIS in July of 2016. The length of time providers must maintain complete information about the ownership of any subcontractor with whom it had business transactions totaling more than \$25,000 during the previous 12 months and information regarding any significant business transactions between the provider and a wholly-owned supplier or between the provider and any subcontractor has changed from the previous five (5) to the previous six (6) years. References to the manual appear in the Schedule in the *Business, Financial, and Hospital Administration Records* section, on pages 1, 2, 7, 12, 14, 15, and 17; in the *Housekeeping Records* section, on page 30; in the *Marketing and Public Relations Records* section on page 60; in the *Pharmacy Records* section on page 87; in the *Property and Equipment Records* section on pages 97 and 99; and in the *Purchasing Records* section on pages 100–103.

2. Part I: Policies and Procedures for Medicaid/PeachCare for Kids, § 106(R).

The length of time providers must retain Medicaid records after the date of service has changed from five (5) to six (6) years, as well. Records meeting the secure electronic signature requirements remain acceptable. References to the manual appear in the *Business, Financial, and Hospital Administration Records* section of the Schedule on page 17 and in the *Medical Records* section on page 64.

3. 42 C.F.R. § 411.357(e) (Exceptions to the referral prohibition related to compensation arrangements).

An amended version of this regulation went into effect March 8, 2016, changing the amount of time records reflecting actual costs and passed-through amounts associated with physician recruitment must be kept in order to satisfy the exception to the referral prohibition related to compensation arrangements from five (5) to six (6) years. The citation appears in the *Physician Agreement Records* section on page 94 of the Schedule.

4. Ga. Comp. R. & Regs. 391-3-17-.02(6)(c)3.(iv)¹ (Licensing of Radioactive Material).

Effective January 28, 2014, the records retention period for records of leak tests and on/off mechanisms in survey instruments used in radiology and nuclear medicine changed from one (1) year to three (3) years. The citation appears in the *Radiology and Nuclear Medicine Records* section on pages 105 and 112 of the Schedule.

III. Other substantive changes

1. O.C.G.A. § 10-1-401 (Fair Business Practice Act; Limitation of Actions).

Although the length of the statute of limitations remains two (2) years, the language of the statute governing actions under the Fair Business Practices Act has changed to forbid any “private right of action”² rather than simply stating that “[n]o action shall be brought.” The amendment went into effect on July 1, 2015 and appears in the *Marketing and Public Relations Records* section of the Schedule, on pages 59 and 61.

2. Ga. Comp. R. & Regs. 391-3-17-.03 (Standards for Protection Against Radiation)

On page 105 of the Schedule, in the “Disposal of Radioactive Materials” subsection, the citation and the quoted language have been reconciled as follows:

a. The Current 391-3-17-.03 Citation

The current citation on page 105 of the 2014 Schedule is included below:

¹ The citation to 391-3-17-.02 appears three times in the schedule. One of the entries on page 112 references only the retention period for records of leak tests and on/off mechanisms in survey instruments. That citation has been changed to reflect the extension of the retention period from one (1) to three (3) years. The other two citations to the regulation, one on page 112 and the other on page 105, quote language from a different section of the regulations as discussed more extensively in section III.2, below. In those two instances, the language of the citation must be altered to reflect 2014 updates to the regulation.

² 2015 Ga. Laws, Act 187 § 2.

Disposal of Radioactive Materials <i>See footnote to section.</i>	Generally: Permanent.	Ga. Comp. Rules & Regs. 391-3-17-.03(14)(i) (records that “assure that the tests required by” regulation are performed must be “maintained until the Department authorizes their disposition”).
--	-----------------------	---

b. The Proposed Citation for the 2016 Schedule

The proposed new citation will be:

Disposal of Radioactive Materials <i>See footnote to section.</i>	Generally: Permanent.	Ga. Comp. R. & Regs. 391-3-17-.03(14)(i) (“The licensee shall retain the records required” by the Rule “until the Department terminates each pertinent license requiring the record”); Ga. Comp. R. & Regs. 391-3-17-.02(6)(c)3.(iii) and (iv) (records that “assure that the tests required by” regulation are performed must be maintained in accordance with the prescribed retention periods of this and other regulations governing the disposal of radioactive material, typically three (3) years).
--	-----------------------	---

c. Explanation

i) 2013 version of Ga. Comp. R. & Regs. 391-3-17-.02(6)(c)3.(iii) and (iv)

The quoted language that appears in the 2014 Schedule is not found in 391-3-17-.03(14)(i), but rather, comes from the 2013 version of 391-3-17-.02(6)(c)3.(iii) and (iv). Subsection (6)(c)3.(iii) contains the “shall assure that the tests required by” language and subsection (6)(c)3.(iv) contains the language directing that records be “maintained until the Department authorizes their disposition.” The subsection otherwise calls for one-year retention periods for the records of leak tests, on/off mechanism tests, and records of the transfer/disposal of radioactive materials.

ii) 2014 version of Ga. Comp. R & Regs. 391-3-17-.02(6)(c)3.(iii) and (iv.)

The 2014 version of 391-3-17-.02 increased the retention period for records of leak tests, on/off mechanism tests, and records of the transfer/disposal of radioactive material from one to three years. Additionally, the “maintained until the Department authorizes their disposition” language for records required under (6)(c)3.(iii) was removed in favor of a three-year retention period.

iii) Ga. Comp. R. & Regs. 391-3-17-.03(14)(i)

The 391-3-17-.03(14)(i) regulation has remained the same since before the last update to the Schedule, and states:

(i) Records of Waste Disposal.

1. Each licensee shall maintain records of the disposal of licensed materials made pursuant to (13)(b), (13)(c), (13)(d), and (13)(e) of this Rule and of disposal of licensed materials by burial in soil, including burials authorized before July 12, 1982.

2. The licensee shall retain the records required by (14)(i) of this Rule until the Department terminates each pertinent license requiring the record.³

The 2014 Schedule cites to subsection (14)(i) only once (on page 105) and the subsection is not included in Appendix D. The absence of the (14)(i) language in the appendix further suggests the citation on page 105 should have been to 391-3-17(6)(c)3.(iii) and (iv). Nevertheless, 391-3-17-.03(14)(i) does govern the retention period for records related to various methods of radioactive waste disposal described in the regulation, and requires the retention of the records “until the Department terminates each pertinent license requiring the record.”

Incorporating both regulations into the citation avoids the need to justify the permanent retention of records governed by 391-3-17-.02(6)(c)3.(iv) in the face of what are now three-year retention periods for leak tests, on/off mechanism tests, and transfer/disposal records. Absent some other compelling reason to reduce the recommended retention period in the Schedule, the incorporation of both regulations is a safe way to present the permanent retention recommendation because 391-3-17-.03(14)(i) is both relevant to GHA members and contains more open-ended retention requirement language.

On a separate note, because 391-3-17-.02 is cited elsewhere in the Schedule, the language of the regulation in Appendix D will be changed.

IV. Changes to the Overall Recommended Retention Periods

With the possible exception of the retention recommendation for radioactive materials, the changes to statutory, regulatory, and policy manual retention periods do not require changes to the recommended retention periods. The extension of retention periods from five to six years in the Medicare/PeachCare manual occurred in contexts where the recommended retention period is already six years or more. Where changes in the retention periods for records associated with

³ Compare Ga. Comp. R. & Regs. 391-3-17-.03(14)(i) (2013) with Ga. Comp. R. & Regs. 391-3-17-.03(14)(i) (2016)

radiology and nuclear medicine went from one year to three years, the recommended retention periods are already equal to or greater than the new three-year requirements, rendering changes in those recommended periods unnecessary as well.

V. “Softer” changes

First, various places in the 2014 Schedule did not specify the specific statute subsection or regulation subparagraph where the retention requirements are spelled out. Those subsections and subparagraphs have been added for clarity where the language establishing the retention period is self-contained within a single subsection or subparagraph.

Second, where a regulation or a statute breaks across two lines of text, non-breaking spaces or non-breaking hyphens have been inserted to ensure the entire reference appears on a single line of text, to avoid confusion for the reader.

VI. Georgia’s Probationary Status with the NRC

Georgia was placed on probation with the NRC in 2013 for unsatisfactory performance related to the Technical Quality of Inspections and the Technical Quality of Incident and Allegation Activities. The probationary status was lifted on August 25, 2014, with notice published in the September 5, 2014 Federal Register.⁴ As a result, the sentence discussing the probation in a footnote in the Radiology and Nuclear Medicine Records section of the Schedule has been removed.

VII. The Final Overpayment Rule

Review of the Final Overpayment Rule promulgated by the Department of Health and Human Services on February 12, 2016, makes clear the look-back period under the new rule is six years for the purposes of False Claims Act penalties, and not the previously recommended ten-year period. The preamble to the new rule makes clear the six-year period was adopted because it is the more commonly used limitation period under the FCA, while the ten-year period is reserved for cases of intentional fraud that are not representative of the circumstances of typical overpayments.

⁴ 79 FR 53082.