

PATIENT DATA – USE, SHARING AND DISCLOSURE OF PATIENT INFORMATION

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1. Introduction

This protocol exists to provide information and guidance to patients and staff about the use, sharing and disclosure of confidential patient information.

2. What are we trying to achieve?

- Ensure that staff are aware of and act upon the regulatory requirements relating to patient data
- Raise the profile of the importance for compliance with the regulations
- Inform patients of the regulatory requirements affecting their personal records and provide information about the options for patient 'preferences'

3. A quick overview

This information leaflet is quite long. The box below provides a high level summary of the main points

Your information

When you visit the surgery we want you to feel able to discuss anything with your doctor that might relate to your health. This may include your relationships, drugs, drinking, your mental health, your job etc. You need to feel that anything you inform us of will remain absolutely confidential.

We take great care to ensure that no information you give us is passed on either inadvertently or through the deception of others. This includes other family members unless we have your written consent.

Releasing information without your agreement

There are a few situations when your doctor is allowed to release information without your consent. These situations are very rare and are clearly defined by law.

Reports for other people

Sometimes you may need a report prepared by your doctor for someone else who is not involved in your care. This may be your employer, an insurance company or your solicitor. We will never release any information to any other party without your written consent. You have the right to see these reports before they are sent off. If you have any worries we recommend you ask to check them at the time.

Access to medical records

You have the right to see your own medical record, both hand written and electronic.

Practice staff

Practice staffs e.g. Nurses, Medical Secretaries and Patient Services Assistants support the Doctors in providing your care. They are only allowed to access your record if required to directly perform their duties. They are bound by a confidentiality agreement.

4. Registration under the Data Protection Act 1998

The practice maintains an ongoing registration with the Information Commissioner's Office. This can be viewed at www.ico.gov.uk

5. Patient information and confidentiality

Patients have a right to keep their personal health information confidential between themselves and their health care professionals (doctors, nurse etc.) and to know who has access to their records. This applies to everyone, although the law does impose a few exceptions to the rule. Very sensitive, personal information is strictly controlled by the law and anyone who receives information about a patient is under a legal duty to keep it confidential.

Some information held about patients may be shared with other people responsible for their health care, e.g. doctors, nurses, therapists and technicians involved in the treatment or investigation of their medical problems.

The duty of confidentiality owed to a person under the age of 16 is the same as that owed to any other person. However, young people under 16 may not be competent to consent to treatment and it may therefore be necessary to involve their parent or carer in the consenting process.

Providing patient consent has been given, disclosure is justified as long as it will not compromise the confidentiality of another person without that individual's consent. Disclosure to the patient may be withheld if it is thought that it may cause serious harm to the mental or physical health of the person.

There is a requirement to maintain patient confidentiality for deceased people.

Patients' personal health information will be shared with the health care team and can be disclosed to other organisations providing health or social care as part of the management and treatment of medical conditions.

Information will only be disclosed if there is a genuine need. Wherever possible, data is anonymised by the removal of personal details to keep disclosure to a minimum.

Medical information about a patient will not be disclosed over the phone (including test results) unless we are absolutely sure that we are talking to the patient or if we have prior consent to do so.

If a patient feels it is appropriate/useful for their partner/spouse/relative to be able to share their medical information at all times, we require for this to be put in writing.

All staffs have a duty to ensure that unintentional improper disclosure of confidential patient information does not occur and this is a contractual requirement for them.

6. Patient access to medical records

Under Section 7 of the Data Protection Act 1998 patients are entitled to access their medical records.

In February 2010 the Department of Health published amended guidance applicable in England to encompass best practice covering the above legislative process. Practices are recommended to refer to these Guidelines where an access request is received.

Applications must be made in writing and a fee is payable. The Practice is obliged to comply with a request for access subject to certain exceptions, within 21 days of receipt of the application. The Practice also has a duty to maintain the confidentiality of patient information and to satisfy itself that the applicant is entitled to have access before releasing information.

For deceased persons, applications are made under sections of the Access to Health Records Act 1990 (these sections were not replaced by the Data Protection Act 1998). The right of access to the health records of deceased individuals is for their personal representative and others having a claim under the estate of the deceased.

The Medical Reports Act 1988 covers the rights of individuals to access medical reports prepared about them for employment or insurance purposes.

7. Sharing information with patients

A patient has a right to information about their health care, which should be presented in a way that is easy to follow and understand. They have the right to full information about any condition or disease from which they are suffering, including any proposed treatments or onward referrals, in order to allow them to make proper and informed choices about their care. However, we must respect the wishes of any patient who asks us not to give them detailed information.

Patients can be offered an appointment with their GP to discuss their records in order that they can seek explanation of any questions that they may have.

8. Copying letters to patients

Patients have the right to receive copies of letters written about them by our clinicians to another health or social care professional. Patients will not automatically be sent copies of letters, but will be made aware of their right.

Patients may elect to share information with carers, or in the instance of children, their parents. Parents do not have the automatic right to make requests on behalf of their children, (national guidelines apply for confidentiality and consent for young people)

There are some circumstances where it may be impractical, unlawful or undesirable to copy letters, including:

- where the patient does not want a copy
- where the letter contains information about a third party
- where the clinician feels that there is the potential harm to the patient
- where the letter contains abnormal results or significant information that has not been discussed with the patient, in which case alternative arrangements should be made to discuss its contents with the patient
- 'Raw' data such as single test results should not normally be sent directly to the patient, some other means of communicating the results to patients will be necessary.

As a general rule the content of copied letters should reflect the discussion that took place during the patient's consultation with the health professional, there should be no new information in the letter which might surprise or upset the patient.

This procedure only covers letters written by the practice team. Where patients wish to receive copies of letters received by our clinicians from external professionals, the request should be made directly to that professional.

9. Disclosure of children's records

Parents do not have an automatic right of access to their children's medical records. It cannot be presumed that children under the age of 16 lack the capacity to make decisions about their own health. An individual child may demonstrate a level of understanding at a younger age, sufficient in law to be able to make their own decisions.

Although children under the age of 16 have the same rights to confidentiality as any other patient, they may not be competent to give consent to treatment. If a child lacks the capacity to make their own decisions, the doctor or other health team member must provide treatment in the child's best interests, which is usually in agreement with parental wishes.

If the doctor finds himself in conflict with the child's parents then legal advice will be sought.

For requests for access to a child's records, the doctor will assess whether the child is sufficiently mature to understand the implications of allowing or refusing disclosure. If the child is considered competent and mature, disclosure will only be allowed with that child's consent.

10. Patients lacking competence to give consent

Problems occur when it is considered that patients are incapable of giving consent to treatment or disclosure because of immaturity, illness or mental incapacity. In such instances relevant information in their medical interest may be passed on to the appropriate person or authority. Where possible the patient should be informed of any disclosure prior to the information being disclosed.

It should be noted in the patient's records what steps were taken to obtain consent and the reasons for deciding to disclose information.

If patients cannot give or withhold consent when it is believed that they are a victim of neglect or physical, sexual or emotional abuse, it is important that the appropriate person or statutory agency is informed. As long as it is considered to be in the best interests of a child, the person with parental responsibility should be informed.

11. Disclosure after a patient's death

Our obligation to maintain professional confidence extends beyond a patient's death. Information can only be made available in certain circumstances. Where possible information should be anonymised and disclosure should not cause distress to the deceased's partner or family.

Disclosure may be made in order to help determine payment under a life insurance policy; to assist the coroner, or other official in connection with an inquest or fatal accident inquiry; work to help clinical audit, education or research; information included on death certificates and data relating to public health surveillance.

12. Sharing information with the health care team

Medical care is not restricted to the consulting room or given in isolation. Both those who give clinical care and those who provide administrative support have access to personal health information. All those who come into contact with this information must adhere to their duty of confidentiality.

Our doctors, practice nurses, community nurses, midwives and health visitors all have access to the medical records of their patients in order to fulfill their clinical care responsibilities.

Other practice staffs have limited access to a patient's medical records in order to allow them to perform basic administrative duties such as filing and computer updating. By asking for certain information, a patient is giving permission for a member of staff to look in their records for specific clinical data.

13. External agencies

The practice sometimes has / may have inspections carried out by other NHS organisations such as the Clinical Commissioning Group (CCG) or agencies such as the Care Quality Commission (CQC). During these visits it may be necessary to verify certain health related information to check the quality of patient care at the practice and also the quality of our record keeping. On such occasions we will ensure that confidentiality forms are signed by the representative from the organisation and anonymise records that need to be accessed if we do not have patient consent.

14. Summary Care Record (SCR)

The SCR is individual to each patient and contains basic information about allergies, adverse reactions and prescriptions you have recently received.

SCR is a national system and patients are automatically included (beyond the control of the Practice) UNLESS they 'opt out' (please see separate leaflet on this).

The intention is to help the clinicians in A&E and Out of Hours (OOH) to give you safe, timely and effective treatment. Clinicians will only be allowed to access your record if they are authorised to do so and even then only if you give your express permission. You will be

asked if healthcare staff can look at your SCR every time they need to unless it is an emergency, for instance if you are unconscious.

15. Care Data

A separate leaflet is available for Care Data.

Confidential information from your medical records can be used by the NHS to improve the services offered so we can provide the best possible care for everyone. This information along with your postcode and NHS number but **not** your name, are sent to a secure system where it can be linked with other health information. This allows those planning NHS services or carrying out medical research to use information from different parts of the NHS in a way that does not identify you.

Patients have a choice. Patients are automatically '**opted in**' but if you are not happy for your information to be used in this way you can elect to '**opt out**'. If you have any concerns or wish to prevent this from happening, please speak to practice staff and ask for a leaflet. Alternatively more information can be found at www.nhs.uk/caredata.

16. Referrals to other professionals

When a patient consents to proposed treatment it is considered that they have given consent to the disclosure of personal health information in connection with the safe delivery of this treatment.

In instances of medical emergencies, it may be necessary to disclose relevant information about a patient to ensure they receive appropriate care without first discussing this with the patient.

17. Use of information for education, research, audit & monitoring purposes

We also use patient information we hold to help us protect the health of the public generally; to assist with the planning of NHS services to ensure that they run efficiently and meet patient needs in the future; to prepare statistics on NHS performance and activity; to educate medical staff and to carry out health research for the benefit of everyone. We also use the information to review the care that we provide to make sure that it is of the highest standard and to investigate complaints or legal claims.

We may use patient records for education purposes. Information used should be anonymised to protect patient identity. If it is not possible to anonymise information, then the patient's consent to use identifiable data should be sought before any disclosure is made.

18. Disclosing information to Health Authorities

We have to inform Health Authorities of patient registration changes, additions (including births) and deletions. We may share limited information with them in order to help organise national health programmes (such as childhood immunisations, cervical smears and breast screening) and to report on certain procedures undertaken for which we are paid to perform.

19. Statutory or judicial disclosure

We are required by law to pass on certain information about patients including the notification of food poisoning, infectious diseases, notification of drug addicts, notifications of births and deaths.

Law Courts can insist that GPs disclose medical records to them. A judge or presiding officer of a court may order the disclosure of information. Doctors may object to the disclosure if the request appears to relate to irrelevant matters.

Solicitors often ask for medical records but such requests must be accompanied by the patient's signed consent for us to disclose information.

Doctors may disclose information in response to an official request from a statutory regulatory body for any of the health care professionals, where that body determines that it is necessary in the interests of justice and for the safety of other patients. Wherever possible, this should first be discussed with the patient.

20. Disclosures in the public interest

In cases where patients withhold consent, personal information may be disclosed in the public interest where the benefits to an individual or to society of the disclosure outweigh the public and the patient's interest in keeping the information confidential.

DVLA

If a patient is known to have continued to drive against medical advice or when unfit to do so, then the doctor should contact the appropriate medical advisor at the DVLA with any relevant medical information. The patient should be informed of the disclosure and the reason for it.

Prevention of Crime

Disclosure may also be appropriate if it will prevent or detect a serious crime that may put someone at risk of death or harm. The patient again should be informed.

21. Disclosure to third parties

Police

Without the patient's consent the police have no automatic access to personal health information unless it is felt that the crime under investigation is serious enough to warrant disclosure. However, under the Road Traffic Act 1988 a doctor may be obliged to provide information in response to enquiries by police which may lead to the identification of the driver involved.

Social Services & Benefit Agencies

Social Services & the Benefits Agency may, with the patient's consent, require medical reports from time to time to ensure the continuation of benefit payments or other support.

Medical Reports

With a patient's consent, life insurance companies, medico-legal solicitors, Benefits Agency, potential employers or CICA (Criminal Inquiries Compensation Authority) often ask for

medical records from prospective clients / employees. We will disclose all relevant medical conditions, unless the patient asks us not to. In such instances we will advise the insurance company that we have been instructed not to make a full disclosure.

In all cases we will check whether or not the patient wishes to see the report before it is sent off.

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