Additional information from NHSX to implement the Control of Patient Information Notice

23 March 2020

The health and social care system is going to face significant pressures in the coming months due to the COVID-19 outbreak. Staff will need to work in different ways from usual and we want to ensure they can focus on responding to these events. NHSX and NHS Digital have therefore made the decision to [extend the compliance deadline for the national data opt-out](https://digital.nhs.uk/services/national-data-opt-out) and the final date for submission of the [Data Security and Protection Toolkit (DSPT)](https://www.dsptoolkit.nhs.uk/News/71) to 30 September 2020.

The Secretary of State for Health and Social Care has Directed NHS Digital to collect and analyse data from providers and other organisations involved in managing the COVID-19 response and then disseminate information and analysis to other bodies for the purpose of planning and managing the response. NHS England and NHS Improvement have been given legal notice to support the processing and sharing of information to help the COVID-19 response under Health Service Control of Patient Information Regulations 2002.

Individual healthcare organisations, arm’s length Bodies (except NHS Digital and NHS England and NHS Improvement which have been separately notified) and local authorities have now also been given legal notice under the same regulations to support the processing and sharing of information to help the COVID-19 response. This is to ensure that confidential patient information can be used and shared appropriately and lawfully for purposes related to the COVID-19 response. The Notice is attached. This notice applies to:

* all providers of healthcare
* all GP practices
* all Department of Health and Social Care arm's length bodies
* local authorities

Under COPI Regulations 2002, processing means:

* the recording and holding of information;
* the retrieval, alignment and combination of information;
* the organisation, adaption or alteration of information;
* the blocking, erasure and destruction of information.

It also includes the dissemination of information to other organisations that require it for the same purposes.

The Notice includes a non-exhaustive list of COVID-19 relates purposes, and the effect of the Notice is that any processing which is undertaken in pursuance of those purposes will be deemed lawful irrespective of any limitations which the common law duty of confidentiality would ordinarily impose. This is, however, subject to some specific caveats as set out in the COPI Regulations themselves. These include that organisations’ use of the information in question is limited to that which is necessary for the particular purpose, and further that as far as is reasonably practical individual identifiers are removed to the extent that they are not required for the purpose.

These Notices will be reviewed on or before 30 September 2020 and may be extended by further notice in writing. If no further notice is sent, they will expire on 30 September 2020.

Data controllers are still required to comply with relevant and appropriate data protection standards and to ensure within reason that they operate within statutory and regulatory boundaries.  The General Data Protection Regulation (GDPR) allow health data to be used as long as one of the conditions under both Art. 6 and Art. 9 are met. There are conditions under both Articles that can be relied on for the sharing of health and care data – including, under Article 6, pursuance of an organisation’s public tasks and, under Article 9, ‘the care and treatment of patients’ and ‘public health’. We would expect any organisation to disseminate information within legal requirements set out under GDPR.

NHSX is building up information governance resources and information [on this section of the NHSX website](https://www.nhsx.nhs.uk/key-information-and-tools/information-governance-guidance) where there will soon be specific information for information governance (IG) professionals and social care staff. Please check back regularly and help us to spread the word. IG advice for social care can be seen [here](https://www.digitalsocialcare.co.uk/latest-guidance/covid-19-information-governance-and-information-sharing-guidance/) in the interim. This advice sets out temporary measures to improve communication between health and social care during COVID-19.