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Confidentiality and disclosure of information to PCTs in primary care settings

Guidance for GPs

BMA Guidance on Confidentiality and Disclosure of Information to PCTs in Primary Care Settings – GP Issues

1. Introduction

This guidance only covers confidentiality and disclosure of patient identifiable information to PCTs for secondary purposes when the data are held by contractors/GPs who provide or perform general practice services. Patient data may be disclosed for other secondary purposes such as research. Guidance on other such secondary uses is available separately, as is broader information about the general duties of confidentiality in relation to disclosure for GPs.

2. General principles

The regulatory body for medicine, the General Medical Council, makes clear that patients are entitled to privacy. Identifiable information about patients should not normally be disclosed to third parties without patient consent. Such consent can be explicit or implied. Explicit consent is when patients know how their data will be shared and clearly agree verbally or in writing. Implied consent is where patients know how their data will be shared and know that they can object to that disclosure but do not do so.

Patient confidentiality is never absolute and, in the absence of explicit or implied patient consent, identifiable information can legally and ethically be disclosed where there is either a statutory requirement or where there is a clear public interest. (The BMA has separate detailed advice on disclosure in the public interest such as when, for example, a serious crime has been committed – see chapter 5 of Medical Ethics Today, the BMA's handbook of ethics and law.)

Whenever a request for the disclosure of information is made to contractors/GPs, they must consider whether consent (either explicit or implied) can be obtained from the patient, a welfare attorney or proxy decision maker appointed by the patient or the parents of a child who is not yet Gillick competent before disclosure is made. If it can be obtained, the normal requirement is for the contractor/GP to ensure that the individual has consented.

In some circumstances, consent is not obligatory because there is a statutory obligation to report the information or the disclosure is deemed to be in the public interest. The body which has been appointed to judge whether disclosure is justified in the public interest in relation to secondary uses of patient information is the Patient Information Advisory Group (PIAG). (The BMA has issued separate detailed guidance on Secondary Uses of Patient Information and the role of PIAG which is on the BMA website at www.bma.org.uk).

3. When do GPs/contractors need to obtain explicit consent?

Obtaining explicit patient consent is always advisable if the information being disclosed could be considered "sensitive" or if it has significant implications for the individual who will be identified. Circumstances arise where anonymisation of data for secondary uses is impossible or impractical. Consideration should then be given to whether it is possible to obtain explicit or implied patient consent. Whether explicit consent is achievable depends partly on the practicalities of the numbers involved. Explicit consent requires a dialogue orally or in writing between the patient and the GP which should be noted in the record.

4. When and how do GPs/contractors obtain implied consent?

Implied consent is accepted for uses and disclosures of information between clinicians where the use and disclosure directly contributes to the diagnosis, care or treatment of a patient. Patients are aware and accept that safe provision of healthcare requires relevant information about them to be shared with those providing care. If, however, a patient clearly objects to some information, such as their HIV status being communicated, that decision must be respected.

In situations where explicit patient consent cannot be obtained or data cannot be effectively anonymised for secondary uses within the NHS, GPs/contractors need to take steps **either** to ensure that valid implied consent has been provided (**see 7 iv below**) or that PIAG has authorised disclosure.

5. No consent required: Anonymisation or PIAG has authorised disclosure

As mentioned above, consent is not required if disclosure is authorised by PIAG under S60 of the Health and Social Care Act 2001. Nor is it needed in circumstances where information is anonymised and patients cannot be identified. As a general principle, patient data should be anonymised wherever possible for secondary uses unrelated to direct patient care. The obligation to do this will be upon the person passing on the data ie the GP.

6. Obligations of PCTs

- i. In order to ensure compliance with the Data Protection Act and common law duties of confidentiality, PCTs must exercise their functions and utilise their discretion reasonably so as not to impose any risk of non-compliance or breach of any legislation upon the contractor/GP. However, GP's remain accountable for disclosures of information both in law and to their regulatory body the GMC.
- ii. The PCT upon making any request for information should:-
 - a) Inform the contractor as to the purpose of the request;
 - b) Inform the contractor as to how the information will be used;
 - c) State clearly who will have sight or access to the information;
 - d) State what exemption or authority under the Data Protection Act (or any other relevant legislation or enactment) the PCT is relying upon when making the request;
 - e) Ensure that any representative has the appropriate written authority to act on its behalf;
 - f) Ensure that confidentiality obligations are in place in respect of any staff or representative or contractor/GP engaged to carry out the PCT's functions.

7. Obligations of contractor/GP

Contracts for primary medical services require contractors/ GPs to provide:

- i. information which is reasonably required by the PCT for the purposes of, or in connection with the contracts and
- ii. any other information which is reasonably required in connection with the PCT's functions
- iii. the PCT may require the disclosure of either confidential identifiable information or non-identifiable information covering a variety of issues for which the PCT may require to enable it to properly carry out its functions. Where data are non-identifiable, disclosure is straight forward. Where they are not anonymised, contractors/GPs can disclose data for secondary uses in 5 circumstances:
 - a) Where patients have given explicit consent.
 - b) Where patients know about the disclosure and have not objected (ie they have given implied consent – see iv below).
 - c) Where the contractor/GP is satisfied that the legal and professional criteria for disclosure without consent in the public interest have been met.
 - d) Where they are required by statute.
 - e) Where PIAG has authorised disclosure.

If none of these requirements are met, GPs cannot disclose and must inform the PCT that a record or data cannot be disclosed without breaching the law and/or GMC rules.

- iv. To ensure that implied consent is obtained the contractor/GP must do all that is reasonable to ensure that patients are fully aware of what happens to their individual information, how it is being utilised and/or disclosed, to whom and for what purpose. This includes but is not limited

to:

- a) ensuring that appropriate patient leaflets and notices are handed out/or placed in practice premises;
- b) informing patients verbally where possible;
- c) ensuring that the patient is aware of his rights to object or complain to any disclosures and that appropriate procedures for objection/complaint are in place and the patient is as far as reasonably practicable informed of these;
- d) all leaflets, notices and other informative procedures should be updated and/reviewed regularly where appropriate and in any event annually;
- e) procedures to ensure that contractors/GPs, staff and volunteers are aware of their responsibilities regarding confidentiality and security;
- f) employment contracts which should include specific requirements relating to the confidentiality of personal patient information, linked to disciplinary procedures.

Examples of disclosure required by PCTs

- a) Financial audit including Quality and Outcomes Framework annual review process and Post Payment Verification.
- b) Investigation and assuring the quality and provision of clinical care for example, in relation to a written complaint made by, or on behalf of a patient (whether living or dead).
- c) Management of the contract or agreements – for example, where remedial action, or termination of the contract/agreement is being considered (eg because of poor record keeping).
- d) Where there is a serious risk to patient health or safety, to prevent abuse or serious harm to others, investigation of serious fraud or any other potential serious crime. In such circumstances access and disclosure may be justified in the public interest. Disclosures in the public interest should be proportionate and limited to relevant details. Contractors/GPs should be prepared to justify such disclosures to a court or regulatory bodies.
- e) Where the PCT is required to carry out surveys on behalf of other NHS bodies subject to 7(iii) above.