

Subject: Guidance for General Practices on the processing of patient confidential data

Purpose

This document is provided as guidance for general practices providing commissioned services for Local Authority hosted Public Health services on the provision of patient data required under the commissioned service contract in compliance with current legislation.

Scope

This document addresses the challenges in the contractual requirement for general practices operating provider services commissioned by Public Health services hosted by Local Authorities. This can be applied to any other non-NHS commissioner of services from general practices.

The provision of information to NHS commissioners is outside the scope of this guidance.

This advice is provided to practices as best practice based on information and legal position at the time of release.

Background

As commissioners Local Authorities (Public Health) have a duty to ensure their use of public funds is appropriate and that this can be demonstrated through audit.

General Practices have a duty of confidentiality to their patients and as independent legal entities are each bound by the Data Protection Act as data controllers. Without individual patient consent (whether explicit or implicit) or other legal basis (such as court order, Health protection) the practice has no legal basis to release.

Note even if a contract for services stipulates that the provider (general practice) is required to release patient identifiable data to the commissioner this is not enforceable if it causes a breach of the Data Protection Act (ie the contract cannot require either party to work outside the current legal framework).

A number of options on data which can be passed to local authorities by practices have been reviewed as described in Annex 3

Recommendation

It is recommended that practices adopt the following process

Pseudonymised Data. The provider (practice) prepares the data with patient identifiable information included. The practice then adds an additional field (column) and populates this with a sequential number for each row (ie a pseudonym). This should then be saved as a unique named file in a secure area within the practice. The patient identifiable fields (columns) are then removed (ie the column is deleted or the contents replaced with blanks but not just hidden). This is then saved as a separate file which can be submitted to the commissioner (LA). The practice should ensure submitted files do not contain any hidden data as hidden columns, rows or tabs.

This information can be supplied as backing data to any invoices raised by the practice, which also should not contain any patient identifiable data.

The commissioner is then able to raise queries referencing the pseudonym reference with the practice who are able to refer to the master file to answer the query.

The recommended data set is shown in Annex 1. Note any other data fields which individually OR in aggregate could uniquely identify the patient (eg DOB, Postcode) must not be included.

Annex 1

Recommended data set for practices submission

1. Date of procedure recorded as DD/MM/YYYY
2. Patient Identifier Pseudonym
3. Procedure
4. Gender
5. Age range listed as 0-11, 12-18, 19-25, 26-40, 41-50, 51-60, 61-70, 71-80, 81-90, 91 plus

Additional data related to the procedure or operational process eg location can be included

Data which individually or in aggregate can identify the patient **must not be included** –

- This includes Names, initials, address, date of birth, postcode.

Annex 2

Circumstances where practices can release patient identifiable data to Local Authorities

1. Where individual patients have given consent
2. Where this is required by a court order
3. Where there is justification to do so under a legal act e.g. sharing of infectious disease information under Health Protection (notification) (and related) regulations 2010 and the Health Service (control of patient information) Regulations 2002.

Annex 3

Options considered for the release of patient data by practices to LA (PH) Commissioners

Option 1

Anonymised data. The provider (practice) can release this to the commissioner. However it does not allow the commissioner any facility to query or challenge any individual elements of the submission eg for accuracy or compliance with the service contract

Option 2

Pseudonymised Data. The provider (practice) prepares the data with patient identifiable information included. The practice then adds an additional field (column) and populates this with a sequential number for each row (ie a pseudonym). This should then be saved as a unique named file in a secure area within the practice. The patient identifiable fields (columns) are then removed (ie deleted or contents replaced with blanks but not just hidden). This is then saved as a separate file which can be submitted to the commissioner (LA). The commissioner is then able to raise queries referencing the pseudonym reference with the practice who are able to refer to the master file to answer the query. NB any other data fields which individually or in aggregate could uniquely identify the patient (eg DOB, Postcode) must not be included – see Annex 1 for recommended data set.

Option 3

De-Identified Data. This approach would remove all patient identifiable data from the submission but would allow the inclusion of NHS Number as a unique identifier. At this time this is only allowable under certain circumstances for NHS commissioners where legacy data is being processed or going forward only where commissioners have achieved NHS Accredited Safe Haven (ASH) status. At this time neither of these scenarios apply to Local Authority Public Health commissioned services.

Option 4

Data with patient identifiers included (eg name, address, dob, postcode). This can only be provided where there is patient consent in place (or other legal basis). This consent would require to be based on a justifiable requirement and use of the data.

Recommendation

At this time option 2 (Pseudonymised) data is the only approach which meets the needs of and obligations on both parties.