

National Data Opt-out SOP

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Related Trust documents			
PPOL-CORP-008	Data Protection Security and Information Sharing Policy		
Overview & purpose			
<p>The purpose of this Standard Operating Procedure (SOP) is to provide operational guidance to apply the national data opt-out policy to the disclosure of Confidential Patient Information (CPI) from Dudley Integrated Health and Care Trust (DIHC).</p> <p>The policy is aimed at all clinical and corporate services who need to contact a patient or use patient data for anything other than their individual care and treatment, for example research or planning purposes.</p>			

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1 PROCEDURE

1.1 Background

The national data opt-out was introduced on 25th May 2018 and implements the opt-out model proposed by the National Data Guardian, which has been accepted by the Government and directed by the Department of Health and Social Care. All Health and Adult Social Care Organisations should adhere to the new Information Standard by March 2022, ensuring that practices have been put in place to meet compliance levels in accordance with the new National Data Opt-Out Policy.

The national data opt-out allows a patient to choose if they do not want their confidential patient information to be used for purposes beyond their individual care and treatment - for research and planning. When a patient sets an opt-out choice, it is recorded against their NHS number on the Spine. It will remain unless the patient changes their mind, even after they have died.

1.2 Scope

The national data opt-out applies to:

1. The use of Confidential Patient Information (CPI). CPI is defined in sections 251 (10) and (11) of the National Health Service Act 2006. Broadly it is information that meets all the following 3 requirements:
 - I. identifiable or likely identifiable (for example from other data likely to be in the possession of the data recipient); and
 - II. given in circumstances where the individual is owed an obligation of confidence; and
 - III. conveys some information about the physical or mental health or condition of an individual, a diagnosis of their condition; and/or their care or treatment.
2. Information about an individual's health and adult social care provided in England. It does not apply to information about an individual's health or care which is generated or processed outside of England including in home countries of the UK, that is Wales, Scotland, Northern Ireland, and the crown dependencies of the Isle of Man and Channel Islands
3. Prior to the launch of the national data opt-out individuals could set two types of general opt-outs, via their GP practice:
 - A type 1 opt-out prevents information that identifies individuals being shared outside of their GP practice, for secondary uses.
 - A type 2 opt-out prevented confidential patient information from being shared outside of NHS Digital for purposes beyond individual care.

Type 1 opt-outs continue to be honoured until September 2020 at the earliest when the Department of Health and Social Care (DHSC) will consult with the NDG before confirming their removal.

Type 2 opt-outs have been replaced by the national data opt-out and are no longer valid. All type 2 opt-outs recorded in GP practices up to and including 11 October 2018 have been migrated to become national data opt-outs.

4. Data disclosures involving CPI for purposes beyond individual care regardless of the data format; structured electronic data (for example csv, XML), unstructured electronic data (for example PDFs, scans or images) and paper records.

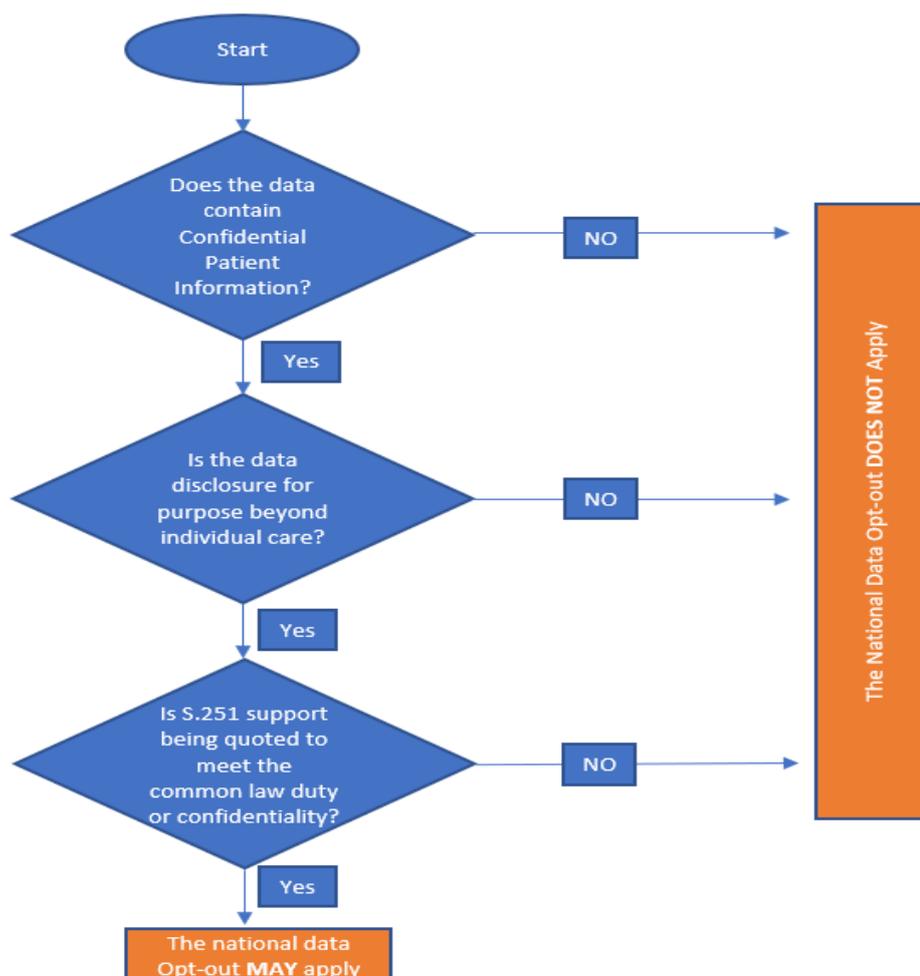
5. Records containing information about multiple individuals, such as a mother and baby in the same record. The entire record irrespective of whether an opt-out is identified for the individual who is the subject of the record (i.e., whom the record primarily relates to) or for a 3rd party whose confidential patient information is contained within the record. However, it is recognised that the national data opt-out can only be applied in these circumstances where the NHS number is present for the third party.

The national data opt-out **does not apply** to:

1. Information that is anonymised in line with the Information Commissioner's Office (ICO) Code of Practice (CoP) on Anonymisation or is aggregate or count type data. As confirmed by the ICO, pseudonymised personal data remains personal data within the scope of GDPR and thus falls within the scope of the national data opt-out.
2. Workforce or staff data.
3. If a patient has agreed to a specific use of data for research study, then the national data opt-out does not apply. Even patients who have registered a national data opt-out can agree to take part in a specific research project or clinical trial, by giving their explicit face to face consent.
4. The national data opt-out does not apply to the disclosure of CPI required for the monitoring and control of communicable disease and other risks to public health.
5. The national data opt-out does not apply to the disclosure of CPI where there is an overriding public interest in the disclosure, i.e. the public interest in disclosing the data overrides the public interest in maintaining confidentiality.
6. The national data opt-out does not apply to the disclosure of CPI where the information is required by law or a court order.

1.3 When?

The procedure is to be applied when a service needs to contact a patient for anything other than their individual care and treatment.



1.4 How?

When a team identifies (from using the flow chart in section 1.3) that national data-opt out applies they need to contact a patient for anything other than for individual care and treatment, the service must contact the DIHC Business Intelligence Team (dihc.bi@nhs.net) to determine whether national data opt-out checks need to be undertaken.

If the national data opt-out criteria are met, the service will be asked to e-mail a list of patient NHS numbers in an Excel document.

The BI team will submit the data to the NHS Spine to undertake national data opt-out checks and respond to the requesting service (with a flag against each NHS Number of those patients who must not be contacted) within one working day.

2 REFERENCES

Review of Data security, consents, and opt-outs review.

<https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs>

Understanding the national data Opt-Out.

<https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out>

National data Opt-out operational policy guidance.

<https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document>

APPENDIX 1: Responsibilities

Title	Responsibilities
<i>All Staff</i>	Responsible for implementing the policy to ensure data protection, confidentiality, and information security compliance across the organisation.
<i>SIRO</i>	Responsible for ensuring that the SOP is developed and implemented and that it is reviewed regularly to ensure that it remains fit for purpose and supports the Trusts compliance with Data Protection Act Legislation.
Caldicott Guardian	Responsible for the confidentiality of data within the Trust
Data Protection Officer	Responsible for Data Protection compliance and assurance across the Trust - Responsible for monitoring and implementation.
Business Intelligence Service Delivery Manager	Responsible for implementing a technical solution to exclude Opted-out patients from relevant data flows.

APPENDIX 2: Glossary

Term	Definition
DIHC	Dudley Integrated Health and Care Trust
CPI	Confidential Patient Information
XML	Extensible Mark-up Language

APPENDIX 3: Equality Impact Statement

DIHC is committed to ensuring that the way we provide services and the way we recruit and treat staff reflects individual needs, promotes equality, and does not discriminate unfairly against any particular individual or group. The Equality Impact Assessment for this policy has been completed and is readily available upon request. If you require this policy in a different format e.g., larger print, Braille, different languages or audio tape, please contact the HR Team or the Equality and Diversity lead.

APPENDIX 4: Sustainability Impact Statement

DIHC is committed to ensuring that the way we provide services is responsible and minimises the impact on the environment e.g., zero waste to landfill, recycling and reuse percentages, commuting and starts to support the reporting of the Trust's annual carbon footprint and progress against Climate Change Act and NHS targets, and on progress against the Green Government Commitments and carbon reduction targets where applicable.

APPENDIX 5: Data Protection and Freedom of Information Statement

This statement reflects legal requirements incorporated within the Data Protection Act and Freedom of Information Act that apply to staff who work within the public sector. All staff have a responsibility to ensure that they do not disclose information about the Trust's activities in respect of service users in its care to unauthorised individuals. This responsibility applies whether you are currently employed or after your employment ends and in certain aspects of your personal life e.g., use of social networking sites etc. The Trust seeks to ensure a high level of transparency in all its business activities but reserves the right not to disclose information where relevant legislation applies.

APPENDIX 6: Monitoring effectiveness of this policy

National Data Opt-Out – Monitoring Framework		
Auditable standard / KPI	Frequency / Method / Person Responsible	Where results and any associated action plan will be reported to and monitored
Number of requests	Monthly	Report to the Information Governance group
Number of Incidents or Complaints relating to national data opt-out	Monthly	Report to Information Governance group

APPENDIX 7: Amendment history

Version	Date approved	Approved by	Date issued	Summary of change
1.0	20/04/2022	PPDG	21/04/2022	New document for DIHC