

For attention of the Practice Manager/Data Protection Officer/Caldicott Guardian

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0300 303 5678

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Dear colleague,

ACTION REQUIRED – Preparing to comply with national data opt-out policy

We are writing to remind you that your practice is required to comply with national data opt-out policy by March 2020.

What is the national data opt-out?

The national data opt-out has replaced 'type 2 opt-outs'. It was introduced in May 2018 in line with the recommendations set out in the National Data Guardian's Review of Data Security, Consent and Opt-outs of 2016.

What does my practice need to do?

There are some steps you can be considering now to ensure that your practice is ready to comply with the national data opt-out policy by:

- Ensuring you have a record of all your existing data disclosures, as required under GDPR/DPA 2018.
- Assessing those data disclosures against the national data opt-out policy to see if national data opt-outs should be applied and putting a process in place to consider any new data disclosure requests against the policy. Note: the national data opt-out applies to data disclosures that rely on section 251 approval, please see the "National Data Opt-out FAQs" on the following page for more information.

What guidance is available to help my practice get ready to comply?

Resources are available at: digital.nhs.uk/ndocompliance and include a:

- **Compliance Implementation Guide**, which provides a step-by-step guide on what you need to do to comply with national data opt-out policy
- **Data Uses and Releases Compendium**, which provides real examples of data disclosures where the national data opt-out does and does not apply

An overview of the policy is also available at: digital.nhs.uk/services/national-data-opt-out-programme/understanding-the-national-data-opt-out

Will GP IT system suppliers be providing functionality to support the national data opt-out?

Yes, the four principal GP IT system suppliers are developing new functionality to support the national data opt-out. This will enable your practice to easily remove the records of patients who have registered a national data opt-out from data disclosures **once you have assessed if the national data opt-out applies**. You will however need to check any saved queries you may use and where applicable you will need to edit these or ask the organisation that created the queries to edit them to make sure national data opt-outs are applied when the search is run again.

TPP and EMIS expect to have the functionality ready in September, and Vision and Microtest towards the end of 2019. To understand exactly when the national data opt-out functionality will be available for your practice, you are advised to contact your GP IT system supplier.

What support is available from my Clinical Commissioning Group (CCG)?

We have written to your CCG's Data Protection Officer (DPO) to make sure they are aware of the need to become compliant with national data opt-out policy, the resources available to support this and that they have a role to provide support and assistance to your practice. We would encourage you to speak with your CCG DPO if you require further help in becoming compliant with the national data opt-out.

What training is available for practice staff about the national data opt-out?

In addition to resources on our website (digital.nhs.uk/services/national-data-opt-out-programme) which includes links to the learning materials provided by the Royal College of General Practitioners, we have assisted three training providers to offer classroom and eLearning courses that include content on national data opt-out policy.

For more information on the courses available, please go to any of the following:

- First Practice Management – www.firstpracticemanagement.co.uk
- Practice Managers Association – www.practicemanagersuk.org
- Blue Stream Academy – www.bluestreamacademy.com

What if I need more information?

Provided overleaf is a list of FAQs to help with queries you may have on the national data opt-out.

If, after looking at this letter and the FAQs, you need any further support to help you become compliant please contact your CCG.

For assistance with the resources on our website, please contact us at: enquiries@nhsdigital.nhs.uk or call us on 0300 303 5678.

Yours sincerely,



Dr Arjun Dhillon
Clinical Director and Caldicott Guardian

National Data Opt-out FAQs

1. What is the national data opt-out?

It is a service that enables the public to register to opt out of their confidential patient information being used for purposes beyond their individual care and treatment. It was introduced for the health and social care system in England on 25 May 2018. The public can change their national data opt-out choice at any time via www.nhs.uk/your-nhs-data-matters or by calling NHS Digital contact centre on 0300 3035678 or via the NHS App.

2. Which organisations need to comply with national data opt-out policy?

The national data opt-out applies to data for patients where their care is provided in England by a publicly funded organisation or the care has been arranged by a public body such as the NHS or a Local Authority, it does not apply to data related to private patients at private providers.

3. When do organisations need to comply?

The Department of Health and Social Care require all health and adult social care organisations to comply with the policy by March 2020 as set out in the information standard: [DCB3058 Compliance with National Data Opt-outs](#). Compliance by this date also ensures organisations can complete the evidence item 'compliance with national data opt-out policy' in the [Data Security and Protection toolkit \(www.dsptoolkit.nhs.uk/\)](http://www.dsptoolkit.nhs.uk/) for 2019/20.

4. Which data disclosures do national data opt-outs apply to?

National data opt-outs apply to a disclosure when an organisation e.g. a research body confirms they have approval from the Confidentiality Advisory Group (CAG) for the disclosure of confidential patient information held by another organisation responsible for the data (the data controller), such as an NHS Trust or GP practice.

The CAG approval is also known as a section 251 approval and refers to section 251 of the National Health Service Act 2006 and its current Regulations, the Health Service (Control of Patient Information) Regulations 2002. The NHS Act 2006 and the Regulations enable the common law duty of confidentiality to be temporarily lifted so that confidential patient information can be disclosed without the data controller being in breach of the common law duty of confidentiality.

In practice, this means that the organisation responsible for the information (the data controller) can, **if they wish**, disclose the information to the data applicant (e.g. research body) with section 251 approval without being in breach of the common law duty of confidentiality.

It is only in these cases where the national data opt-out will apply unless a specific exemption has been granted, see the policy overview: digital.nhs.uk/services/national-data-opt-out-programme/understanding-the-national-data-opt-out

National data opt-outs do not apply where:

- information being disclosed is anonymised in accordance with the Information Commissioner's Office anonymisation code of practice
- the individual has given their consent for their information to be used for a particular purpose, (e.g. a specific research study).
- 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), also referred to as the 'public interest test'.
- there is a legal requirement that sets aside the common law duty of confidentiality or the information is required by a court order

In these scenarios section 251 approvals would not have been sought. For more information about CAG and the section 251 approvals process see: www.hra.nhs.uk/approvals-amendments/what-approvals-do-i-need/confidentiality-advisory-group

5. What do organisations need to do?

Put processes and procedures in place, by March 2020, to assess any current or future uses of confidential patient information prior to disclosure to consider and apply national data opt-outs where necessary in accordance with national data opt-out policy.

Organisations are required to communicate when they are compliant e.g. by including a compliance statement in a published Privacy Notice.

For more information on what it means to be compliant and how to apply national data opt-outs see: digital.nhs.uk/ndocompliance