BMA

England

# Accelerated Access to GP-held Patient Records Guidance

Dear colleagues,

Many of you will be aware that a national policy is being implemented across England, as set out in NHS England's letter[1] to GP practices.

The changes NHS England has planned are to be effective from 1 November 2022 and enable all patients over the age of 16 to automatically have prospective (future) access to all medical records held electronically in GP systems, including consultations, documents (sent and received), problem headings, lab results, immunisations and free text entries. The implication of the change is that effectively every time any data is recorded in a patient's GP system record from 1 November 2022, the staff member needs to consider whether this should be visible via the patient online record. This consideration process needs to apply to those working in general practice receiving correspondence and test results, as well as to those working in secondary care, community and mental health services who will be producing some of the material that becomes incorporated into the GP record. Other sources can also create third-party material which can become incorporated into the medical record, for example from family members or work colleagues who may write in to the practice.

Though it would be good practice to assume all records may contain sensitive or harmful data, for the vast majority of patients online access is not likely to pose a specific risk. It can better enable people to manage and understand their health and care. However, suitable safeguards need to be in place for all patients, not only for those who may be considered more vulnerable, such as people at risk of domestic violence or those in coercive relationships. For everyone, the individual risk associated with online records access needs to be considered[2].

[1] https://digital.nhs.uk/services/nhs-app/nhs-app-guidance-for-gp-practices/guidance-on-nhs-app-features/accelerating-patient-access-to-their-record/offering-patients-access-to-their-future-health-information

[2] Around one in 20 adults is estimated to have experienced domestic abuse in the last year. (See paragraph heading "Domestic abuse" in Section 7 of https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingmarch2022#domestic-abuse-and-sexual-offences)

**Redaction - how and what to consider**

When there are safeguarding concerns, practices can prevent patients from having automatic access to the prospective (future) full record at switch on by adding a specific SNOMED code[3] to the patient's record before 1 November 2022. Records with this code will be excluded from the changes, and these patients will then need to be reviewed on a case-by-case basis at a future date to identify if access can be provided without a risk of serious harm. Practices may schedule suitable reviews when resourcing allows or when patients directly request access. These reviews may be time consuming. Access should be granted, subject to contractual safeguards[4], if affected patients do make a direct request to the practice for access. Practices should weigh up any benefits of automatic access carefully against the risks of harm. Even for those more at risk there will be parts of the medical record that it could be appropriate to share in full.

It is also possible to redact any consultation (and thus all the information recorded for that consultation) from the patient's online view that may pose harm to the patient or another individual. Deciding what to redact can be subjective and requires careful thought. Only parts of the record that wouldn't be available via a Subject Access Request should be redacted. Each system supplier has its own way of doing this. These redaction facilities are available on an individual patient level through the existing clinical systems. They should already be in use, particularly for patients who may already have access to their full records and where there is the potential for domestic abuse and third-party access to the record via coercion. The redaction functionality currently available does not allow for individual words and phrases to be redacted or parts of documents. It is currently all or nothing. It is likely there will be material hidden from the patient's online view with current redaction functionality that will still need to be revealed should a Subject Access Request be made. It is questionable as to whether the existing redaction provision fulfils the requirements of the regulations.

It is also necessary to redact information mentioning third parties, where permission from those third parties has not been received, as it would be inappropriate for the patient to be able to view this information.

[3] "Enhanced review indicated before granting access to own health record" (SNOMED 1364731000000104). See https://digital.nhs.uk/services/nhs-app/nhs-app-guidance-for-gp-practices/using-enhanced-review-snomed-codes-when-giving-a-patient-access-to-their-health-record

[4] https://www.legislation.gov.uk/uksi/2015/1862/part/10#regulation-71ZA

**Clinical safety concerns**

Whilst supportive of access to records, GPC England recognises that automated switch on, as part of the accelerated access to records programme, comes at a time of unprecedented pressure on general practice with no additional resource or time to support safe and effective implementation. NHS England has advised in its own communication[5] that, *"Practices and commissioners must be confident that the service can be provided safely."*

To that end, we have been in extensive discussions with NHS England ahead of the planned central switch-on in an effort to mitigate any unintended consequences that might arise from patients being given automatic access to their records. This is particularly pertinent where it concerns known vulnerable patients for whom access to their records may constitute a clinical safety risk, but it is good practice to consider everyone vulnerable until proven otherwise and ensure sufficient safeguards are in place for everyone. We also have significant clinical safety concerns that the redaction software is not fit for purpose as too much material will be hidden from the patient view due to the poor functionality of current software, potentially hiding important clinical information from the patient. The fact that redaction does not remain in place following a GP2GP transfer is particularly worrying, and will also lead to duplicated efforts in reviewing medical records should a patient who had full access request it again after moving practice. GPC England believes there should at the very least be a flag alerting the newly registered GP to the fact the previous GP redacted elements of the record. There has been no public campaign either, warning patients that the NHS app may suddenly become a portal to their detailed health records. Many users have passwords saved in their phones and family members who know PIN codes may find they have easy access to confidential health records.

**The legal background**

Under the Data Protection Act (DPA) 2018 GPs are the Data Controllers for their patients' records (current and previous). The GP system suppliers, via the CCG/ICB Practice IT agreement are their Data Processors. Under DPA 2018 Data Processors cannot be instructed by anyone other than their Data Controller to change record access settings. It is therefore unclear on what legal basis NHSEI will be relying to direct the suppliers to turn on this functionality.

[5] https://digital.nhs.uk/services/nhs-app/nhs-app-guidance-for-gp-practices/guidance-on-nhs-app-features/accelerating-patient-access-to-their-record/offering-patients-access-to-their-future-health-information

**Summary of Options**

Some GP practices may already feel they are fully prepared for this change having worked their way through the GP readiness checklist[6]. In that scenario, the most appropriate option may be to follow NHS Digital's advice in ensuring the system configurations are as described in system-supplier guidance and then simply to await the rollout proceeding as planned.

Other GP practices may not be ready for the automatic switch-on of prospective (future) access to the full GP-held electronic medical record on 1 November 2022. In lieu of a delay to the programme (which may yet be announced), we provide the following options for GP practices, relying on their rights as Data Controllers, to consider when responding to the planned central automated switch on.

Of note, only TPP (SystmOne) and EMIS practices are able to provide prospective (future) full record access at this time. Work is ongoing with Cegedim (formerly known as Vision) to create the same functionality. At present Vision practices will not have an automated switch on centrally activated for them. The advice below is therefore only for TPP (SystmOne) and EMIS practices.

Possible options for TPP (SystmOne) and EMIS practices (and more than one option may be applicable):

1. Write to your system supplier (the Data Processor) before 31 October 2022 using its preferred contact email address (recordaccess@tpp-uk.com for TPP (SystmOne) practices and aapostpone@emishealth.com for EMIS practices) requesting, as Data Controller, that automatic access not be switched on. *Note:* A draft template is provided alongside this guidance.

2. Run a focused search[7] and subsequently apply batch exemption coding to those patients identified through the search using SNOMED code 1364731000000104 ("Enhanced review indicated before granting access to own health record").

3. Apply batch exemption coding for the **full** practice list using SNOMED code 1364731000000104 ("Enhanced review indicated before granting access to own health record"). *Note: this will **not** revoke access to patients who already have online access but it will prevent any of those patients getting prospective (future) full record access if they do not already have it.*

A delay at practice level would allow practices to undertake the necessary preparation and training to facilitate a safe implementation of the programme with practices able to work through the GP readiness checklist at a pace that fits with business continuity whilst maintaining delivery of essential services. It is for practices to decide the best course of action for themselves and their patients, being ever mindful of their responsibilities as Data

[6] https://digital.nhs.uk/services/nhs-app/nhs-app-guidance-for-gp-practices/guidance-on-nhs-app-features/accelerating-patient-access-to-their-record/gp-practice-readiness-checklist

[7] https://drbhatti.com/2022/10/18/prospective-online-searches-emis-web/

Controllers[8]. It remains a contractual requirement to offer and promote online access, and this offer will continue, with access being granted on request subject to practices being confident there will be no adverse impact on their provision of essential services[9].

As Data Controllers of the GP record, and custodians of patient care, GPs have a dual obligation to uphold their responsibilities to their patients in terms of information governance as well as clinical safety. Based on feedback received from members, GPC England is not confident that all practices can uphold these obligations if they allow automatic prospective (future) access to the full electronic medical record to go live on 1 November 2022.

**What next?**

There is a growing feeling that the safest and most effective way of providing access for patients to their online records is through a consent-driven or shared-decision-making process where each patient chooses to opt in allowing practices to check the records carefully before the request for access is granted. Practices choosing this option should be offered support and advice to develop this further as an innovation in the provision of health care and in new ways of working.

NHS England has plans to encourage patients to request access to the full historic electronic record, including full text, during 2023, possibly via requests sent through the NHS app. The workload ramifications of such a policy, if take-up proves high, are unthinkable given the time it will take to review all the documents and free text within potentially many millions of records. As of last month, 30,000,000 patients currently have access to the NHS app[10]. General practice is severely under-resourced and taking clinicians away from providing clinical care in order to spend hours redacting historic medical records for online viewing is not a good use of a scarce resource. The BMA already has guidance on safe workloads, including a safe limit "of not more than 25 contacts per day"[11]. The BMA will continue to represent your interests and ensure any additional work is properly resourced and funded and that priority remains the provision of essential services.

[8] https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/gps-as-data-controllers-under-gdpr

[9] https://www.legislation.gov.uk/uksi/2015/1862/part/10#regulation-71ZA

[10] https://www.bbc.co.uk/news/technology-63048021

[11] https://www.bma.org.uk/advice-and-support/gp-practices/managing-workload/safe-working-in-general-practice

**If you have any questions, please get in touch with info.gpc@bma.org.uk**

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Template letter can be found **here**