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Health Board Chief Executives and Special Health
Boards
Health Board E-health Leads
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Health Board Directors of Public Health
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Joint Chairs of Scottish GP IT Group
Chief Officers of IJB's
Health Board Medical Directors

25 October 2023

Dear colleagues

KEY INFORMATION SUMMARY – REMOVAL OF EXPLICIT CONSENT – CHANGE TO CONSENT MODEL

Further to the recent introduction of legal directions on 2 October 2023 sharing of Emergency Care Summary (ECS) and Key Information Summary (KIS) with additional health professional groups, it was considered an appropriate time to also review the consent model for sharing the Key Information Summary (KIS). It has been agreed with stakeholders that the position taken at the start of the pandemic to remove explicit consent will remain in place.

Changes during the pandemic

During the Covid 19 pandemic, the decision was taken to remove the need for explicit consent for sharing the KIS between GPs and other health professionals involved directly with patient care. This was to ensure more efficient data sharing during a time of emergency and to improve patient care. Now that we have moved out of the emergency phase of the pandemic, GP practices and NHS Boards are understandably seeking clarification on this current position on the consent model.

KIS consent model – review

It is now an appropriate time to update the consent model for KIS to align it with legislative changes and make it fit for purpose. The main change is to remove the need for explicit consent.

It is necessary to take into account that the explicit consent model was put in place prior to the introduction of GDPR in 2018 (now UK GDPR). It produced new lawful basis for which are needed to process personal data. This inherently changed the lawful basis for processing health data as it fell under the term 'special category' data. In alignment with the wider NHS

Scotland lawful basis for processing health data, the update has been made from “requiring consent” to that of “public task”, with supported articles in the Data Protection Act 2018. This is relevant, as it supports the legal direction in being able to share healthcare information between appropriate health professionals on a need to know basis. The sharing of this data for the purpose of patient care does not require consent as a legal basis under UK GDPR. Therefore removing the explicit consent model indefinitely, not only provides reassurance and continuity to practices already working on this basis, but brings the KIS consent model in line with UK GDPR and wider NHS Scotland lawfulness of processing health data.

UK GDPR

We are conscious that the data sharing landscape has changed since the initial letters to Boards in 2014, most notably with the introduction of UK GDPR..

In line with UK GDPR and NHS Scotland lawfulness for processing data, consent is not required on the basis that health data is used for patient care. (As with any lawful basis, boards should ensure they are adhering to UK GDPR principles, especially when ensuring the right to be informed eg. Privacy Notices, which are legally required under UK GDPR).

To process data, firstly the UK GDPR article 6 being used is:

6(1)(e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.

Health data is also categorised as a special category under UK GDPR, the processing of which is subject to the following further conditions under Art. 9:

Art. 9 (h) for health or social care purposes

Art. 9 (i) for archiving, research and statistics purposes following proportionate data minimisation controls (e.g. anonymisation as applicable)

Conclusion

Removing the requirement for explicit consent for sharing KIS is supported by the Scottish General Practitioners' Committee of the BMA and the Royal College of General Practitioners. We hope this decision will provide clarity and reassurance. We also ask that local guidance is updated to reflect the change, and we will work with colleagues to address any necessary IT/system changes. We will keep you updated on work on the IT systems, via appropriate networks, as the work progresses.

Yours Sincerely,

Interim Deputy Director, Primary Care



Chief Medical Officer



Jonathan Cameron
Deputy Director, Digital Health and Care

