
ADVISORY NOTE 06/2022

National Data Opt-Out

25th July 2022

INTRODUCTION

The national data opt-out is a service that allows patients to opt out of their confidential patient information being used for research and planning purposes, in line with the recommendations of the National Data Guardian in her [Review of Data Security, Consent and Opt-Outs](#).

The deadline for health and care organisations to comply with the national data opt-out policy is 31st July 2022.

This Advisory Note provides links to resources that explain what you need to do to comply with the national data opt-out policy.

OVERVIEW

The national data opt-out policy gives everyone the ability to stop health and adult social care organisations from sharing their confidential patient information for reasons other than providing their individual care and treatment.

Patients can view or change their national data opt-out choice at any time by:

- using the online service at www.nhs.uk/your-nhs-data-matters or
- clicking on "Your Health" in the NHS App and selecting "Choose if data from your health records is shared for research and planning"

The national data opt-out applies only to instances where a patient is receiving social care that is provided, arranged, or funded (in part or whole) by Local Authorities or the NHS in England.

WHAT DO YOU NEED TO DO?

Data flows.

Identify which, if any, data flows rely upon Regulation 5 of the Control of Patient Information (COPI) Regulations 2002 as it is these flows where the national data opt-out may need to be applied. All activities supported under Regulation 5 have a reference number and their status is located in the publicly available Register of supported [applications](#). Unless the Register specifies the activity has been exempted from the national data opt-out then the default position is that the national data opt-out or local objection mechanism does apply.

If the national data opt-out applies to any of your data flows, you will need to download the [Messaging Exchange for Social Care and Health](#) (MESH) so that you can check if any of the people you support have opted-out. If they have opted out, then their confidential patient information cannot be used for research or planning purposes where tier data is flowing under Regulation 5 support.

General Data Protection Policy

The following clause should be inserted into your General Data Protection Policy:

National Data Opt-Out:

[Insert Organisation Name] reviews all of our data processing on an annual basis to assess if the national data opt-out applies. This is recorded in our Record of Processing Activities. All new processing is assessed to see if the national data opt-out applies.

If any data processing falls within scope of the National Data Opt-Out we use [MESH](#) to check if any of our service users have opted out of their data being used for this purpose.

Privacy Notice

Once you have checked your data processing, if you are sure that national data opt-out does not apply you can insert the following clause into your privacy policy

At this time, we do not share any data for planning or research purposes for which the national data opt-out would apply. We review all of the confidential patient information we process on an annual basis to see if this is used for research and planning purposes. If it is, then individuals can decide to stop their information being shared for this purpose. You can find out more information at <https://www.nhs.uk/your-nhs-data-matters/>.

Transparency Statement

A '[Transparency Statement](#)' should be added to your website that explains the wider use of a patient's health and care data by local and national NHS and care organisations. The 'Transparency Statement' point patients to the national online resources that have been created to support patients and make them aware that they have a choice about the use of confidential patient information being used for purposes beyond their individual care.

Data Protection Impact Assessment

Depending on the volume of data collected for research and planning purposes, it may be necessary to undertake a [national data opt-out DPIA](#)

Record of Processing Activity & Retention Schedules

Your Record of Processing Activity (RoPA) and Record Retention Schedules will need to be updated to reflect data used for research or planning.

FURTHER GUIDANCE

- NHS Digital Compliance Guide can be found [here](#).
- NHS Digital Operational Guidance Document can be found [here](#).
- Digital Social Care – Basics, can be found [here](#).

CONTACT US

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