

## The Health and Social Care (Safety and Quality) Act 2015: Duty to share information

### 1. Purpose

The Health and Social Care (Safety and Quality) Act 2015 (see Appendix 1) introduces a new legal duty requiring health and adult social care bodies to share information where this will facilitate care for an individual. This guidance note explains what this new legislation requires and provides a clear message that subject to the preferences of the individuals concerned, sharing for the care of individuals is a requirement, not an option.

### 2. Introduction

Dame Fiona Caldicott's 2013 review "To share or not to share" provided a clear steer on information sharing that was endorsed by the Government. Sharing relevant information to support care is essential. It is not acceptable that the care a patient or service user receives might be undermined because the different organisations providing health and care to an individual do not share information effectively. Sharing personal information effectively is a key requirement of good information governance, and many projects, pilots and demonstrators have highlighted how sharing information securely can work for the benefit of patients and service users.

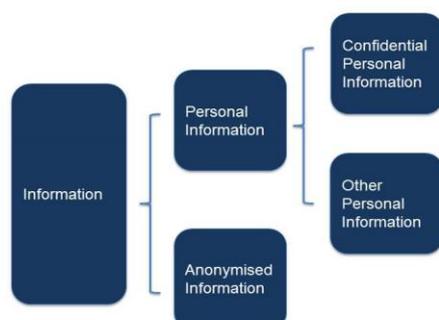
### 3. What does the Health and Social Care (Safety and Quality) Act 2015 do?

The new Act reinforces existing good practice and obligations on health and social care professionals and provides statutory support for the seventh Caldicott principle that - "*the duty to share information can be as important as the duty to protect patient*". It makes it clear that unless an individual objects, when information can be lawfully shared between health or adult social care commissioners or providers for purposes likely to facilitate the provision of health services or adult social care and are in an individual's best interests, then it must be shared.

### 4. What does this mean in practice?

Health and adult social care commissioners and providers, including those contracted to provide services, need to consider the circumstances where information can be lawfully shared and the information that might facilitate the provision of health services and adult social care.

Types of Information



There are several different types of information. Effectively anonymised information can be shared lawfully and so where this might facilitate care it must be shared. Where information is associated with an identifiable individual (personal information) then the individual concerned should be informed about the proposed sharing for it to be lawful. Where the information is confidential personal information it is also necessary to have the individual's consent or some other legal basis for meeting the requirements of confidentiality

law<sup>1</sup>. In either case, an individual's objection to the proposed sharing should normally be respected.

## 5. Direct Care

The information that is normally shared to support direct care will be confidential personal information and the purpose will clearly facilitate the provision of care so the information must be shared where it is lawful to do so. This means that individuals need to be informed about the proposed sharing and that some form of consent is required. For most types of direct care (where it would be unlikely that an individual would be surprised by the sharing and hasn't objected) this consent can be implied<sup>2</sup>. Where an individual lacks the capacity to understand about information sharing and give consent information to support their care should be shared in their best interests, but where they have capacity then some form of consent is required. Consideration also needs to be given to what information might need to be shared e.g. information about an individual's speech, language and communication needs must also be shared where this might facilitate the provision of care.

## 6. Purposes other than Direct Care

Sharing information between commissioners and providers to facilitate the provision of care clearly extends beyond direct care. However, where the information is confidential and personal then the requirements to inform and to have consent or some other legal basis must be met. For purposes other than direct care it is rare that consent can be implied and explicit consent would need to be obtained. However, where that consent has been given the duty to share will have effect and again what was a matter of good practice will become a legal duty.

## 7. Non-Confidential Personal Information

As noted above where information is personal but not held in confidence, there is a need to ensure that individuals have been informed about any proposed sharing and have not objected to it, but where this has been done the duty to share will have effect. In practice however it can be extremely difficult to be clear whether or not information is held in confidence or not. An individual's name and address is not necessarily confidential but when associated with other information e.g. about attendance at a clinic, it is. It is important to protect the privacy of service users so the key question has to be whether sharing information reveals anything new about an individual that they might object to being shared. An example of circumstances where sharing would be lawful and fall under the duty to share is the matching of NHS numbers held by one organisation to a list of service users provided by another organisation where the individuals concerned have been informed that this will occur and haven't objected. Populating records with the NHS number will facilitate the provision of care and in these circumstances there will have been no breach of confidentiality. The IGA will develop FAQs and examples of information sharing covered by the Act over coming months and we would encourage anyone faced with a complex issue to review these FAQs or, where they do not cover the issue, to contact the [IGA@nhs.net](mailto:IGA@nhs.net).

<sup>1</sup> See the Department of Health guidance *Confidentiality: NHS Code of Practice* for detailed guidance on confidentiality. This is available at <https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>

<sup>2</sup> See separate IGA guidance on the circumstances where consent can be implied

## Appendix 1

### Health and Social Care (Safety and Quality) Act 2015: Duty to Share Information

In Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information), after section 251A (as inserted by section 2 of this Act) insert—

#### “251B Duty to share information

- (1) This section applies in relation to information about an individual that is held by a relevant health or adult social care commissioner or provider (“the relevant person”).
- (2) The relevant person must ensure that the information is disclosed to—
  - a. persons working for the relevant person, and
  - b. any other relevant health or adult social care commissioner or provider with whom the relevant person communicates about the individual,
  - c. but this is subject to subsections (3) to (6).
- (3) Subsection (2) applies only so far as the relevant person considers that the disclosure is—
  - a. likely to facilitate the provision to the individual of health services or adult social care in England, and
  - b. in the individual’s best interests.
- (4) The relevant person need not comply with subsection (2) if the relevant person reasonably considers that one or more of the following apply—
  - a. the individual objects, or would be likely to object, to the disclosure of the information;
  - b. the information concerns, or is connected with, the provision of health services or adult social care by an anonymous access provider;
  - c. for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (2).
- (5) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—
  - a. any provision made by or under the Data Protection Act 1998, or
  - b. a common law duty of care or confidence.
- (6) This section does not require the relevant person to do anything which the relevant person is required to do under a common law duty of care (and, accordingly, any such requirement is to be treated as arising under that common law duty and not under this section).”