Welcome to the ninth edition of the information governance bulletin

Our regular bulletin about information governance and the work of the task force.

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Background

This bulletin sets out the work that NHS England is carrying out on behalf of the NHS to overcome the information governance (IG) issues created by the legal and organisational changes introduced by the Health and Social Care Act 2012. In previous editions of the bulletin, we have outlined how NHS England’s information governance task force reports to the information governance transition board, which is chaired by the Director of Strategy and Intelligence, Christine Outram. This in turn supports our wider work on information flows within commissioning systems arising from the new structure, which is led by Dame Barbara Hakin, NHS England Chief Operating Officer.

22 December 2013

In this edition we cover:

- Updates from the work streams
- Progress on Section 251 support
- NHS Contracts and IG
- Clinical Audit and Information Governance

Updates 3

Updates from each of the task force groups on progress since the last edition

NHS Contracts 2

IG elements of the national NHS contract.

Updates 3

Updates from each of the task force groups on progress since the last edition

Audience

This bulletin is written for: Anyone who uses data for secondary uses: commissioners inside NHS England and within CCGs; data analytics providers; those working in clinical audit; and researchers, managers, clinicians, and patients.
Achievements since last edition:

Since the last edition we have issued advice on invoice validation and how it can be supported through a new section 251.

Issues and solutions:

NHS contracts

In previous editions of this bulletin, we mentioned that we were planning to review the IG elements of the national NHS contract. Several readers have contacted us to ask what they should be doing with any current contracts or with contractual negotiations currently underway. At this stage, we are advising commissioners and providers to continue to enter into contracts using the current national template. Only when revised national templates or guidance is issued should changes be made. The revised NHS Standard Contract for 2014/15 has been published in December 2013 (http://www.england.nhs.uk/nhs-standard-contract/), with the supporting technical guidance updated in relation to IG following early in 2014.

Commissioners are reminded that any healthcare services they commission should have clear specifications that set out how information will be handled. In particular, they should specify how data will be managed and handled throughout the lifecycle of the contract, including the responsibilities at the end of the contract. Appendix 6 of Dame Fiona Caldicott’s second review of information governance highlights the areas that commissioners should consider as part of the procurement and contracting process. Finally, commissioners should ensure that they have arrangements in place locally to provide them with IG advice.

Clinical audit and information governance

We have received many questions about the information governance within clinical audit. In essence, the Health and Social Care Act 2012 did not make any fundamental changes to the information governance rules that apply to clinical audit. Although often categorised as a clinical function, clinical audit is used for a range of purposes above and beyond direct clinical care. For this reason, it has always been the case that where clinical audit is conducted outside the setting of care, those involved in the audit require a legal basis or explicit patient consent to view confidential information about patients. This rule applies even where the auditors are themselves clinicians.

For example, where a national clinical audit uses personal confidential data (PCD), it has always been the responsibility of the organisers of the audit to ensure that their flow of data is legal, either through obtaining the explicit consent of the patient, or where this is impossible, by specific section 251 support. The Confidentiality Advisory Group (CAG) only grants such support where consent is not possible; otherwise, the audits must work with non-PCD information.

This requirement for a legal basis also applies at regional and local levels (such as at the CCG). The only exception is for clinicians who are auditing direct care they provide. Clinicians can – and indeed should – carry out clinical audits of their work. Clinicians providing direct care may use PCD for their own patients in local audits because such audits are considered part of the process of assuring the quality of their clinical care. Therefore, there is no breach of confidence involved. As part of their “fair processing” duties, all those conducting audit must ensure that patients are informed that their data will be used for this purpose. However clinicians must not share PCD about their patients with their commissioners (e.g., the local CCG). They should only share the aggregated results or findings of their audit.

Likewise, CCG clinicians or other clinicians who are not part...
of the primary care delivery team cannot look at a patient’s PCD as part of a clinical audit unless they have a secure legal basis for doing so, such as having obtained the patient’s consent, or else these clinicians must only see aggregated, anonymised or pseudonymised data.

For further information, or for any queries, please contact the Healthcare Quality Improvement Partnership (HQIP), the organisation with responsibility for clinical audit on behalf of NHS England: http://hqip.org.uk/information-governance-guide-for-clinical-audit/.

Update from the five work streams

The five work streams of the information governance task force are overseen by Dr Geraint Lewis, Chief Data Officer.

1. Data system design work stream

This work stream designs solutions to enable lawful access to data for commissioning purposes.

Invoice validation

All commissioning organisations must ensure that they have a secure legal basis for every purpose for which they intend to use personal confidential data (PCD), such as through statutory provision (e.g. the Civil Contingencies Act 2004, or the Section 251 regulations) or with patient consent.

Because there has been no statutory provision to use PCD in relation to invoice validation, commissioners have been unable to undertake their monthly invoice reconciliation processing since April 2013. As a result, there has been a risk of inaccuracies and misapportionment of costs between CCGs and NHS England. (‘Processing’ is an inclusive term for everything that may be done with data (e.g., obtaining, holding, linking, anonymising and destroying data). The HSCIC was established from 1st April 2013 under the Health and Social Care Act 2012 as the body with powers to collect and process PCD for purposes other than direct care).

Because of these issues, as an interim measure, and after taking advice from the Confidentiality Advisory Group, the Secretary of State for Health has approved support for limited flows of PCD for invoice validation purposes in specific commissioning settings. The new section 251 approval establishes a temporary, lawful basis for the minimum PCD necessary to be used to validate invoices without the need to obtain explicit consent from the individual patient, in settings other than the HSCIC.

The approval is subject to conditions that are explained in supporting advice, which we published on 5 December ("Who Pays - Information Governance Advice for Invoice Validation"). This approval applies only where a commissioning organisation, such as a CCG, creates a so-called ‘Controlled Environment for Finance’ (CEfF) as explained in section 8 of our advice.

It is important to remember that this section 251 approval is an interim measure. Our advice sets out:

- the conditions associated with the approval
- the specific purposes for which PCD can be used
- the steps that must now be taken by clinical commissioning groups (CCGs) and commissioning support units (CSUs) that validate invoices on behalf of a CCG.

The section 251 approval comes into effect on 1 January 2014. As this leaves little time for CCGs, CSUs, and providers to establish compliance with the associated conditions, we are asking CCGs and CSUs to show some flexibility and to
support providers through this period of change to avoid financial damage wherever possible. To support the transition, NHS Shared Business Services (NHS SBS) is publishing advice to help providers understand their responsibilities regarding PCD when invoicing NHS organisations.

As of December 20th, the compliance process for operating a CEfF and SBS Guidance has been posted on the information governance web page (http://www.england.nhs.uk/ourwork/tsd/data-info/ig/in-val/) and further information will be posted there and in future editions of this bulletin.

NHS England is working in partnership with a wide range of organisations, including NHS SBS, the Health and Social Care Information Centre (HSCIC) and the Department of Health (DH) to address a range of outstanding issues.

Finally, we are planning to hold a series of road shows and webinar sessions in January and February. The aim of these events will be is to provide an overview of our advice, to explain what it means for CCGs in practice, and to allow participants time to work through invoice validation scenarios. The day will close with a Q&A session. More details to follow on the NHS England website.

(http://www.england.nhs.uk/ourwork/tsd/data-info/ig/in-val/)

Risk stratification

Work is in progress with the CAG in relation to our section 251 application to cover risk stratification. We have agreed in principle that NHS England will submit a single overarching submission on behalf of CCGs, CSUs and third party data processors. We have already submitted two worked examples of illustrative data specifications for risk stratification. The first scenario involves a CSU using an in-house process, while the second scenario is a third party offering a hosted solution. The CAG has agreed to review these worked examples and provide us with feedback, which we will share in a future edition of this bulletin.

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3. System Change work stream

This work stream addresses a range of strategic information governance issues within NHS management systems

Work on a number of topics is continuing, including the NHS standard contract, the patient identity programme, and the National Health Applications and Infrastructure Services (NHAIS), but the focus of this work stream in recent weeks has been on developing a fair processing strategy for indirect care purposes in England.

Fair Processing Strategy

This strategy will support NHS England, CCGs, GPs and other NHS providers in fulfilling their obligations under Principle 1 of the Data Protection Act 1998 to ensure that ‘personal and sensitive personal data shall be processed fairly’. Meeting this principle of the Act requires the NHS to provide ‘privacy notices’ (i.e., to deliver explanations to individuals as and when information is collected about them). In effect, the NHS must ensure that we explain to patients how their data will be used.

2. Care.data work stream

This work stream oversees the information governance arrangements for the care.data programme. The purpose of care.data is to develop a modern data service for the health and social care system in England, which will provide essential information for patients, commissioners, researchers, clinicians and managers.

We will be publishing the privacy impact assessment for care.data in the next few weeks, and issuing Directions to the HSCIC. The deed of processing will be published in January 2014.
The strategy relates to the communication of privacy notices to patients and will build on the communications work being undertaken as part of the care.data programme. This work includes sending a leaflet to every household in England during January 2014 and posting privacy notices in all general practices in England.

The strategy will set out the range of ways in which people’s data may be used for indirect care purposes, including commissioning, invoice validation and risk stratification. It will provide advice about the content of privacy notices and the range of communication mechanisms that should be used by different parts of the NHS. Finally, the strategy will provide advice to NHS organisations on what they need to do and will contain sample material and templates for posters and websites etc.

We hope to publish this strategy early in 2014.

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4. Communications work stream

This work stream channels information produced by the other work streams. It aims to raise awareness, address myths, disseminate solutions, and offer assurance that there is work underway to resolve IG problems in a coordinated way.

Stuart Notholt (below) has recently joined NHS England as lead for the communications work stream, and he will take over as the editor of this bulletin starting from the next edition.

The bulletin is now monthly.

This bulletin is placed on the NHS England website and is emailed to colleagues via the NHS England regional offices. Links to the bulletin are also placed in a range of other bulletins, including the CCG bulletin, the London Connect IG bulletin, NHS News, the NHS Confederation bulletin, the HSCIC website and other distribution channels.

We hope to publish this strategy early in 2014.

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5. Programme management work stream

This work stream ensures the co-ordination of the IG task force

We continue to post answers to the questions we receive online every week. Our answers are coordinated across the NHS England and the HSCIC websites. See:

http://www.england.nhs.uk/ourwork/tsd/data-info/ig/faqs/
or

http://www.hscic.gov.uk/dataflowtransitionmanual

We are working very closely with the HSCIC on the further development of these FAQs to

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ensure that the information we provide is current, that it provides clarification, and that it is delivered in a consistent manner. We are particularly keen to hear about local solutions that other organisations may be able to adopt and adapt. Kindly send any feedback or any new enquiries to England.information-governance@nhs.net.

Next issue

The next issue of the bulletin will be published in four weeks, on 17 January 2014 and future bulletins will be monthly.

We are keen to draw attention to new issues and new solutions, so we will include them in the newsletter as they arise.

Please let us know about any issues you think the task force should be addressing or any information you would like us to publicise.