

## The Keys to sharing information legally



### **Key 1 – A legal requirement**

A number of Acts create a duty to disclose information. These include: the Road Traffic Act (1988), the Children Act (1989) and the Terrorism Act (2000). Where there is a legal requirement, consent is not needed, but wherever possible, the patient should be informed. If you are unsure whether there is a legal requirement, seek support.



### **Key 2 – Consent**

Consent is only valid if the patient has been informed and understands and freely gives their agreement.

#### **Explicit consent**

This refers to a clear and voluntary indication of preference or choice, usually oral or in writing and freely given in circumstances where the available options and their consequences have been made clear. If personal information is to be shared for purposes that are not directly related to the patient's care, explicit consent **MUST** be obtained.

#### **Implied consent**

This means patient agreement that has been signalled by the behaviour of an informed patient. If patients have been informed of their choices regarding the use and disclosure of their information for healthcare purposes, there is no need to seek explicit consent every time information is shared to provide that healthcare. Consent for the sharing is said to be implied.



### **Key 3 – Public interest**

Where there is no legal requirement or consent, the law permits sharing of information where the sharing is in the substantial public interest.

Public interest disclosures must be necessary and proportionate – and therefore consistent with the requirements of Article 9 of the Human Rights Act 1998. This requires that the public good that might result if the information is disclosed is demonstrable, and that the benefits of disclosure outweigh the confidentiality rights of the individual affected and the need to provide a confidential service for all. Such decisions should be made on a case by case basis by a senior health professional, sometimes in conjunction with legal advice.

If using this key, in most cases the patient should be informed. There will be rare circumstances where the patient should NOT be informed, e.g. doing so would put someone at risk of harm or would disrupt a criminal investigation.

### **Summary & further support**

This leaflet only gives a brief summary of what is involved in handling patient information. If you are unsure what to do or how best to do it in any situation, please seek advice or training. More detailed information can also be found in the Department of Health Confidentiality NHS Code of Practice.

Remember it is important to use your judgement to strike a balance between the harm that could be done to a patient's health if information isn't used and shared and the risk of breaching confidentiality if information is shared. If you feel sharing information is necessary to avoid or reduce harm or preserve life then the legal framework will generally support it.

For further support speak to your line manager, a clinician or the person with responsibility for IG issues:

**Tel: [Insert practice contact details, including Email address]**

Market Street Medical Practice

## **A booklet for staff about patients**



**Better information, better health**

- **Guidance for staff, volunteers and contractors handling patient information**

## What is confidential information?

Any information provided by a patient, including photographs or audio, about their health –**and which may identify them** - is confidential. Any such information you have access to is subject to a legal 'duty of confidence'. The Data Protection Act (1998), the Common Law of Confidentiality, the Human Rights Act (1998) and the Caldicott report set a framework for using information. If you are not using information appropriately it will affect patient care and may lead to disciplinary action. This leaflet sets out the basic requirements for you to follow.

## Keeping patients informed

Patients must be made aware that the information they give will usually be recorded and may be shared to provide them with care and monitor quality. They should also be told that they have a choice about uses of information for activities such as education and research. If you have direct contact with patients, you must make sure that:

- You have available leaflets, posters and other materials describing how patient information is used and that they are displayed and actively offered to patients. You should also ensure that they understand them
- It is made clear to patients to whom and why their information is going to be disclosed
- Patients are made aware of the choices they have about the use of their information
- Any query patients have is answered
- Patients' rights of access, correction and choice are respected where appropriate
- Patients are made aware that information may be shared with appropriate team members in multi-agency teams

## Providing choice to patients

*including children and young people who are competent.*

Informed patients will know that they can restrict the use of their information. If a patient makes a request to restrict the use of their information, they must be made aware of any impact this will have on their care. If, after this has been made clear, they continue with the request, seek further support from your manager or via the further support section in this leaflet.

## **Giving patients choice in relation to the direct provision of care**

Provided you inform patients about the use of information throughout their care, and they do not raise objections at anytime, consent to use information for their care is implied. Do not assume their views will remain the same. It is important to maintain communication.

## **Giving patients a choice about using their information for other purposes**

Anonymous data can be used without patient consent. However if you want to use information for research, education or another purpose and it in any way identifies patients **You must** inform patients and get their explicit consent. There are limited circumstances where identifiable information can be used for other purposes without patient consent, such as where there is legislation passed for audits, for disease registers or if there is a substantial public interest. If you require further details, please seek advice.

## Protecting patient information

Record patient information accurately and consistently

- Write, or enter information on the computer as soon as possible. If writing, make sure it is legible. Check details with the patient
- Ensure that alterations/ additions on paper are dated, timed and signed

- Record relevant and useful information. Do not use unnecessary abbreviations, or jargon and do not include irrelevant speculation or personal opinions

## **Keep patient information secure and available for use by following procedures**

- Mark information private & confidential
- When sending a fax first check the number, then check that it has been received
- Do not share computer passwords with anyone
- Book out, track and return records efficiently
- Lock doors and cabinets
- Keep patient information private. It should only be disclosed with thought and care
- Confirm the identity of anyone asking for information (especially on the phone)
- Find out what the patient wants in regard to sharing information with family and others

## **In deciding whether to share information**

- Establish the purpose of the request and decide if it is reasonable
- Ensure as far as possible that it is in the patient's best interest and will not cause them harm or distress, especially if they are unable to consent or asking them will cause harm or distress
- Make sure you have one of the keys to sharing information, detailed below

## **When sharing information**

- Share the minimum required to provide safe care or satisfy any reasonable request
- Ensure the manner of sharing respects the sensitivity and dignity of the patient, for example, where possible have face to face discussion or telephone conversations in a private area