The Health and Social Care (Safety and Quality) Act 2015: FAQs

Frequently Asked Questions:

1. **Does the Health and Social Care (Safety and Quality) Act 2015 change anything?**

   **Answer:** The Act requires data sharing to facilitate the provision of care where it is not constrained by law. It also supports use of the NHS number in care contexts where it has not historically been used and drives consistent NHS Number use more generally. It underpins current developments of integrated care teams, the involvement of patients, service users in their care and the of new care provision models including Voluntary and 3rd Sector organisations.

   On the other hand there are no other changes to relevant privacy legislation and both common law confidentiality and Data Protection Act 1998 constraints continue to apply. If there is a legal basis for sharing information (e.g. consent) and the purpose is likely to facilitate care, then the information must be shared and where it would not require unreasonable effort the NHS Number must be included. However, where there is no legal basis for sharing confidential personal information then it cannot be shared.

2. **Does the Health and Social Care (Safety and Quality) Act 2015 enable commissioning staff to access confidential personal information of patients and service users?**

   **Answer:** There is no change to the current legal position for organisations or their staff in the handling of such information as the new provisions do not provide authority to override confidentiality requirements.

   However, where personal information is not held in confidence, e.g. names and addresses where nothing is revealed about an individual’s health or information that should be kept confidential, the duty to share introduced by the 2015 Act will apply. Note that whilst an individual’s name and address is not necessarily confidential, when associated with other information e.g. about attendance at a clinic, it is.

   In practice it can be extremely difficult to determine whether or not an individual might reasonably expect that their name and address will be kept confidential and ensuring that there is a form of consent would be good practice. The requirement to inform individuals about proposed sharing and to respect any objections will still apply.

3. **Does the Health and Social Care (Safety and Quality) Act 2015 provide a basis for care record system privacy functions that enable sharing to be changed to a default setting of “share”?**

   **Answer:** In the absence of the explicit consent of patients and service users the circumstances where it might be possible to have a default setting of ‘share’ is context dependent and a matter of judgement. Where sharing will not go beyond what local patient and service user representatives agree is reasonable, proportionate and unobjectionable and the proposal has been effectively communicated to those whose information will be shared, then the default might be set to ‘share’. Where there are any concerns about the extent of the sharing and/or the effectiveness of communications, then it would be safer to segment the population and concentrate initially on those in regular contact with care services and proceed on an explicit consent basis. By focussing on those who might benefit the most to
demonstrate the benefits, and continuing the efforts to inform the remainder a case may be built for extending the approach to the wider population on an implied consent basis.

4. Does the Health and Social Care (Safety & Quality) Act 2015 introduce a requirement for GPs and Primary Care to share patient data in all circumstances?

Answer: - The new Act does not require GP Practices to share data in all circumstances but they are required to do so where this does not breach confidentiality, the individual has not objected, and the sharing is likely to facilitate the provision to an individual of health services or adult social care in England, and is in the individual’s best interests. There are two elements to this i.e. where it is lawful to share you must and you need to consider what should be shared in order to facilitate the provision of care.

5. Does the duty to share in The Health and Social Care (Safety & Quality) Act 2015 remove the requirement to obtain Data Sharing Agreements with organisations?

Answer: - Data Sharing Agreements are good practice but they have never been legally required. As these agreements help you to meet common law and DPA requirements which still have to be met, agreements will still represent best practice. Work on a simplified approach is in train and the IGA is also supporting work to develop an on-line tool for simplifying the management of agreements.

6. When complying with the duty to share introduced by The Health and Social Care (Safety & Quality) Act 2015 what confirmation do we need from the 3rd party to prove who they are and why they need the information?

Answer: - The new Act does not change requirements so you will need to ensure that you satisfy the DPA and confidentiality law and respect any objections received, including obtaining appropriate assurances from those you disclose information to. It is only when you have done everything needed to make it lawful to share that the duty to share kicks in.

7. Does the Health and Social Care (Safety & Quality) Act 2015 enable the Continuing Health Care Team to lawfully look into patient records directly to confirm if a patient is suitable for Continuing Health Care payments?

Answer: - You still need to comply with common law confidentiality and data protection requirements and case finding such as this is not regarded as something that you can imply consent for. Where consent cannot be implied it must be gained explicitly or a statutory basis for sharing determined.

8. Does the Health and Social Care (Safety & Quality) Act 2015 change how enhanced Summary Care Records are shared?

Answer: - The Summary Care Record is created without consent but is viewed with express consent or in the best interests of a patient who lacks capacity. The new Act does not change this. Before the SCR could be accessed with implied consent there would need to be a communications campaign that updates previous communications with patients.
9. Does the Health and Social Care (Safety & Quality) Act 2015 enable safeguarding staff to access the records of parents/guardians/partners of children or vulnerable adults, where they may be at risk?

Answer: - This is not sharing that would facilitate the care of the individual’s whose records are concerned. There may still be an argument for sharing under existing public interest guidelines, rather than the new Act, but this is a matter for local Caldicott Guardians to determine looking at what data and why.

10. The Health and Social Care (Safety & Quality) Act 2015 includes a requirement for health and social care organisations to use the NHS number as a consistent identifier. Does this requirement apply to charity organisations and if yes, how would these organisations outside of the NHS obtain & verify the NHS number?

Answer: - Yes, this does apply to charities where it is reasonably practicable for them to do so. To obtain & verify the NHS number, please see guidance at: http://systems.hscic.gov.uk/nhsnumber/staff/guidance

11. The Health and Social Care (Safety & Quality) Act 2015 introduces a new legal duty requiring health and adult social care bodies to share information where this will facilitate care for an individual. What is the definition of ‘facilitating care’ as processing and providing data does facilitate care? What data would be considered as non-confidential in this context?

Answer: - The term ‘facilitate care’ should be read in the context of the common dictionary definition, i.e. to make the delivery of care to an individual easy or easier. It should not be read to include sharing that facilitates the administration, resourcing or management of care services easier - does it make it easier to deliver care to the individual concerned? Non-confidential data is data that is not subject to the duty of confidence and is not associated with such data e.g. the fact of a birth, the baby’s and parent names and the registered address are not confidential - the clinical condition of the baby is and if this is associated with the non-confidential elements the whole data set becomes confidential.

12. Does the Health and Social Care (Safety & Quality) Act 2015 change policy and procedures for gender reassignment and adoption, specifically in terms of retaining the existing NHS number?

Answer: - No. Guidance is under development regarding NHS Number changes for Adoptions. Gender Reassignment etc. where there were discussions about retaining the old number.

13. Does the Health and Social Care (Safety & Quality) Act 2015 have any implications for sharing consistent patient identifiers (ideally NHS number) for secondary uses (i.e. not direct care) i.e. does it provide a legal basis for sharing for secondary uses?

Answer: - Where the sharing of the NHS number would facilitate care for an individual then the duty will apply. Provided the NHS number is not associated with other details that are confidential then the duty to share in the new Act would require it to be shared. Once
associated with confidential information the NHS number can only be shared where confidentiality requirements e.g. consent, are satisfied.

14. Does the Health and Social Care (Safety & Quality) Act 2015 change any of the requirements for accessing data for secondary use purposes?

Answer: Where these purposes would facilitate care then information must be shared. However, the requirement for the sharing to comply with confidentiality and data protection law means that a lawful basis for sharing is required e.g. consent, and individuals must be informed about the proposed sharing.

15. Does the Health and Social Care (Safety & Quality) Act 2015 change policy and procedures for obtaining consent for information sharing?

Answer: No

16. Does the Health and Social Care (Safety & Quality) Act 2015 require informed explicit consent to be obtained to enable the sharing of data for direct care?

Answer: This has never been a requirement. Some form of consent is needed to satisfy the common law but for direct care this can often be implied were it is reasonable to believe that individuals understand what will be shared and why, and understand that they have a right to object and have not exercised that right. Explicit consent is an option for meeting DPA schedule 3 but other options exist, e.g. the medical purposes gateway in schedule 3 is broad and covers social care as well as health care.

17. The Health and Social Care (Safety & Quality) Act 2015 introduces a new legal duty requiring health and adult social care bodies to share information where this will facilitate care for an individual and to use the NHS number as a consistent identifier; Do these new duties apply to Public Health commissioned services e.g. drug and/or alcohol services?

Answer: The duty to share will apply to these services but any sharing must still meet the requirements of the Data Protection Act 1998, and where the information is subject to a duty of confidentiality there needs to be a clear legal basis, e.g. consent.

18. The Health and Social Care (Safety & Quality) Act 2015 includes a requirement for health and social care organisations to use the NHS number as a consistent identifier. What happens when people do not have an NHS number?

Answer: The requirement is to use the NHS Number where practicable. If patients don’t have an NHS number and it is not practicable/appropriate to assign one then the requirement doesn’t apply.