



Briefing on the Memorandum of Understanding between Department of Health and the Home Office to share patient information

Introduction

1. The **Department of Health (DH)** and NHS Digital (previously the Health and Social Care Information Centre) have signed a **Memorandum of Understanding (MOU)** with the Home Office requiring NHS Digital to share confidential patient information with the Home Office for immigration enforcement. This includes a patient's last known addresses, date of birth, GP's details and the date registered with a GP.¹ The MOU came into force on the 1 January 2017 and was made public on 16 January 2017.
2. The MOU marks a departure from the principle that clinicians and the NHS respect patient confidentiality. Unless required by law² the **General Medical Council (GMC)** only permits clinicians to share patient information when there is a risk of death or serious harm, or a public interest test on the individual circumstances has been carried out. Immigration offences do not present a risk of death or serious harm, and the MOU does not include case-by-case assessment of the public interest.
3. The MOU relies on section 261(5)(c), (d) and (e) of the Health and Social Care Act 2012 which allows patient information to be disclosed "in circumstances where it is necessary or expedient to have the information for the purpose of exercising its functions under or by virtue of any provision of any Act" and notes that the common law duty of confidentiality may be overridden in certain circumstances including where the public interest justifies disclosure.
4. The public interest justifications cited are "maintaining effective immigration controls" and protecting "limited UK resources and public services (including the NHS, jobs, schools, housing) ... from unnecessary financial and resource pressures". The MOU does not consider the public interest in protecting public health or trust in a confidential medical service.
5. NHS Digital shared patient information with the Home Office before the MOU was in place; data obtained under the Freedom of Information Act 2000 shows the Home Office made 8127 requests in the first 11 months of 2016, 5854 of which led to people being traced.³
6. There has been no public consultation on the MOU or debate in the House of Commons. Nor has there been any engagement with clinicians or patients' and migrants' rights groups to establish potential impacts on patients, NHS staff and public health. The Government has not published an impact assessment or a privacy impact statement.
7. A full consultation and proper scrutiny of this agreement, its legal basis and its possible impact are needed urgently. We call on DH and NHS Digital to suspend this MOU until a transparent and public review of its merits has taken place.

¹ <https://www.gov.uk/government/publications/information-requests-from-the-home-office-to-nhs-digital>

² a court order or reporting infectious disease

³ The 'Review of data releases by the NHS Information Centre' from Sir Nick Partridge, and the accompanying Data Release Review by PWC, revealed 12,587 requests from UKBA between 2010 and 2013, 97% were accepted and approved.



Violation of patient confidentiality

8. Patient confidentiality is one of the cornerstones of an ethical and effective healthcare system, and there is a clear public interest in maintaining trust in a confidential medical service. That is why, unless required by law (a court order or reporting infectious disease), the GMC only permits doctors to share patient information if failure to disclose may expose others to a risk of death or serious harm' (such as murder, manslaughter or rape) or in exceptional cases deemed to be in the public interest. Decisions as to the public interest are complex, involve weighing up the costs and benefits to society and the patient's interest in confidentiality, and must be carried out on a case by case basis.
9. The information sharing arrangement in the MOU does not fall within either of the situations outlined in the GMC guidance; suspected immigration offences – such as missing an appointment with the Home Office - do not expose others to a risk of death or serious harm, and the process outlined in the MOU does not include a case-by-case assessment of the public interest. The MOU therefore formalises the sharing of information in circumstances where, were a doctor to do it, they would be in breach of their ethical and legal duty of confidentiality.
10. There is an obvious asymmetry in adding immigration offences as the one further category where information can be shared. It allows for information to be shared irrespective of the gravity of the immigration offence and without requiring a court order.
11. The MOU marks the intrusion of a political agenda into how our medical records are kept and safeguarded. It shows that NHS Digital cannot be trusted to protect our confidential information. Whilst this decision affects only a small minority of patients, such an erosion of rights always begins with someone else but ends up affecting us all.
12. All people using the NHS, irrespective of their immigration status, have exactly the same confidentiality rights under both common law and the Data Protection Act 1998. It is inconsistent and unfair for one group, migrants, to have a different standard of seriousness of offence and legal process applied to their trace requests.

Conflict with medical ethics and doctor-patient relationship

13. The MOU creates a formalised system for the Home Office to trawl the personal information of millions of NHS patients in order to facilitate "hard edged enforcement capabilities – arrest, detention and deportation".
14. This is an inappropriate and unethical use of healthcare services and NHS staff, turning GP practices and hospitals into Home Office outposts and clinical staff into border guards. It conflicts with the medical ethics that all clinicians are bound by. Healthcare services should be safe spaces where everyone feels able to disclose information to healthcare professionals knowing patient confidentiality will be respected.
15. Information sharing undermines the doctor-patient relationship. Clinicians need to establish the trust and confidence of their patient to do their job effectively. This will be impossible if they are no longer able to ensure patients that personal information will not be handed over for immigration enforcement.



Deterring vulnerable people from accessing healthcare

16. It is inevitable the MOU will have the biggest impact on the most vulnerable people living in our society, including children, pregnant women, victims of trafficking and destitute refused asylum seekers. These are groups that are entitled to NHS care but will feel unsafe to access it knowing their information will be shared with the Home Office.
17. Doctors of the World (DOTW) is an international humanitarian organisation providing medical care to vulnerable populations. In the UK, we run a volunteer-led clinic with GPs and nurses that helps the most vulnerable members of the community to get the healthcare they need. Patients include migrants, asylum seekers, refugees, homeless people and sex workers.
18. DOTW sees the impact that fear of information sharing has on vulnerable migrants. In 2015 1,601 patients presented at DOTW clinics, 94% of which were not accessing NHS services. On average they had been living in the UK for 6.5 years before trying to access services, often waiting until they are acutely unwell or pregnant before trying to register with a GP. 11% report that they are too afraid to access NHS services because they fear immigration enforcement. 63% of patients had at least one health problem that hadn't received any treatment and 39% had a chronic condition which had never been reviewed by a doctor. 29% of people attending the clinic reported their health as bad or very bad and 26% reported their psychological health as bad or very bad.⁴

Impact on public health and the NHS

19. Barriers to accessing healthcare present a risk to public health. Public Health England has highlighted the public health consequences of restricting migrant access to healthcare in relation to infectious and vaccine preventable diseases. National Institute of Care and Excellence guidance identifies vulnerable children, such as those whose families are travellers, asylum seekers or are homeless as being particularly at risk of not being immunised.⁵ The MOU will encourage these already at risk groups to disappear from preventative medicine.
20. By deterring patients from accessing healthcare, the MOU will put unnecessary pressure on the NHS and increase the overall cost of treating migrant patients. It is well evidenced that prompt and timely access to treatment reduces the overall cost of a patient's healthcare, avoiding conditions from becoming more advanced requiring complex and expensive care.⁶ Studies have shown that good access to regular preventive healthcare for migrants in an irregular situation is cost-saving for governments.⁷

Lack of consultation

21. The MOU has been agreed without public consultation even though it marks a significant change in the sharing of confidential patient information. The MOU has been published on the DH

⁴ <https://www.doctorsoftheworld.org.uk/Handlers/Download.ashx?IDMF=d0fc6da6-8832-4be1-b50b-a93db8ab58d8>

⁵ NICE Guidelines (2009) 'Immunisations: reducing differences in uptake in under 19s', available at <https://www.nice.org.uk/guidance/ph21/chapter/1-recommendations#recommendation-5-targeting-groups-at-risk-of-not-being-fully-immunised>

⁶ Economic evaluation of extending entitlement to healthcare to irregular migrants. A case study of Type 2 Diabetes. Final report October 2011 by Matrix Evidence.

⁷ European Union Agency for Fundamental Rights (FRA), 'Cost of exclusion from healthcare The case of migrants in an irregular situation' (2015), available at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-cost-healthcare_en.pdf



website alone indicating that standard impact assessments processes, including an equalities impact assessment and a privacy impact statement, have not been carried out.

22. The National Aids Trust, DOTW and other organisations have raised concern with DH and NHS Digital about the impact of patient information sharing, receiving repeated commitments that a formal information agreement would be subject to proper scrutiny. These promises have been broken.

Conclusion

23. By substantially expanding the circumstances in which the NHS will share patient information, this MOU shows the NHS cannot be trusted to keep our medical records safe; when it is politically expedient to do so, our personal information will be shared. It also conflicts with the professional duties of a doctor and the code of medical ethics they are bound by.
24. The Government has sought to extend border control into all aspect of UK life, including class rooms, the rent of homes and now into hospitals and GP surgeries. Everyone living in the UK is entitled to healthcare that is urgent or immediately necessary, but in order to realise this right they must feel safe to do so. The MOU is already deterring vulnerable people from accessing the healthcare they need, presenting a risk to public health and placing increased pressure on the NHS.

Recommendations

- The MOU is suspended until a full impact assessment, including privacy impact statement, and public consultation has been carried out.
- Home Office trace requests for those suspected of committing immigration offences should be subject to the same scrutiny, evidential burden and level of seriousness as trace requests coming from the police – either a court order or evidence of a criminal offence of a comparable degree of seriousness to rape, murder or manslaughter.
- Any future MOU includes appropriate monitoring and regular reporting of requests and decisions.
- DH Commission research into the impact of information sharing with the Home Office on the health-seeking behaviour of migrants living in the UK.

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