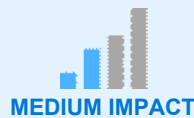




Review Sheet

Last Reviewed
11 Jun '24Last Amended
11 Jun '24Next Planned Review in 12 months, or
sooner as required.

Business impact

Changes are important, but urgent implementation is not
required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This National Data Opt-Out Policy and Procedure provides guidance and support on the measures and requirements in place at Welcome Care Homes Limited. It has been reviewed with no significant changes. Underpinning Knowledge and Further Reading reference links have also been checked and updated.

Relevant legislation:

- National Health Service Act 2006
- Control of Patient Information Regulations 2002
- Data Protection Act 2018
- UK GDPR

Underpinning
knowledge - What have
we used to ensure that
the policy is current:

- Author: NHS Digital, (2024), *National Data Opt-Out*. [Online] Available from: <https://digital.nhs.uk/services/national-data-opt-out/> [Accessed: 11/6/2024]
- Author: NHS Digital, (2023), *7.9 National patient experience surveys*. [Online] Available from: <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-9-national-patient-experience-surveys> [Accessed: 11/6/2024]
- Author: NHS Digital, (2024), *Assuring Transformation (AT)*. [Online] Available from: <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/assuring-transformation> [Accessed: 11/6/2024]
- Author: ICO, (2021), *UK GDPR guidance and resources*. [Online] Available from: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/> [Accessed: 9/12/2024]
- Author: NHS Digital, (2024), *National Disease Registration Service (NDRS)*. [Online] Available from: <https://digital.nhs.uk/services/national-disease-registration-service> [Accessed: 11/6/2024]

Suggested action:

- Encourage sharing the policy through the use of the QCS App

Equality Impact
Assessment:

QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



1. Purpose

1.1 The purpose of this policy is to explain the introduction of the National Data Opt-Out Policy and to ensure that Welcome Care Homes Limited understands the steps it needs to take to comply with the National Data Opt-Out Policy. This policy focuses on key information about the National Data Opt-Out Policy, and Welcome Care Homes Limited acknowledges that it should ensure that it has a thorough understanding of the National Data Opt-Out Policy by reviewing the information referred to in the Underpinning Knowledge/References and Further Reading sections of this policy.

1.2 To support Welcome Care Homes Limited in meeting the following Key Lines of Enquiry/Quality Statements (New):

| Key Question | Key Lines of Enquiry | Quality Statements (New) |
|--------------|--|---|
| WELL-LED | W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed? | QSW5: Governance, management and sustainability |

1.3 To meet the legal requirements of the regulated activities that Welcome Care Homes Limited is registered to provide:

- National Health Service Act 2006
- Control of Patient Information Regulations 2002
- Data Protection Act 2018
- UK GDPR



2. Scope

2.1 The following roles may be affected by this policy:

- All staff

2.2 The following Service Users may be affected by this policy:

- Service Users

2.3 The following stakeholders may be affected by this policy:

- Family
- Advocates
- Representatives
- Commissioners
- External health professionals
- Local Authority
- NHS



3. Objectives

3.1 To ensure that Welcome Care Homes Limited understands the requirements of the National Data Opt-Out Policy.

3.2 To ensure that Welcome Care Homes Limited understands the steps it needs to take to determine whether the National Data Opt-Out Policy applies to Welcome Care Homes Limited and, if it does, the steps Welcome Care Homes Limited needs to take to comply with the National Data Opt-Out Policy.



4. Policy

4.1 Welcome Care Homes Limited understands that it must honour the National Data Opt-Out, showing to what extent information is processed within the scope of the National Data Opt-Out Policy.

4.2 Welcome Care Homes Limited understands that the obligations placed on Welcome Care Homes Limited as data controller under the UK GDPR and Data Protection Act 2018 remain in place and are not affected by the introduction of the National Data Opt-Out Policy.

4.3 Welcome Care Homes Limited understands that it may need to introduce new policies and procedures to ensure compliance with the National Data Opt-Out Policy.

4.4 Welcome Care Homes Limited understands that the National Data Opt-Out Policy applies if an organisation confirms it has approval from the Confidentiality Advisory Group (also known as Section 251 approval) for the disclosure of confidential Service User information held by Welcome Care Homes Limited. Where Welcome Care Homes Limited is the data controller, it may, if it wishes, disclose the information to the data applicant without breaching its duty of confidentiality. Welcome Care Homes Limited understands that it is in these cases only that the National Data Opt-Out Policy applies.

4.5 Welcome Care Homes Limited understands that it should read, understand and, if necessary, seek advice on Section 251 and Section 259 of the National Health Service Act 2006 in order to fully understand the application of the National Data Opt-Out Policy. Welcome Care Homes Limited acknowledges that this policy does not provide a detailed overview of the legislation and that Welcome Care Homes Limited must determine the extent to which the National Data Opt-Out Policy applies to Welcome Care Homes Limited.

4.6 Welcome Care Homes Limited understands that the National Data Opt-Out Policy applies to "confidential patient information" which is defined in Section 251(1) and Section 251 (11) of the National Health Service Act 2006 as information that meets the following requirements:

- The individual to which the information (for example, the Service User) relates is identifiable or likely to be identifiable; and
- The information is given in circumstances where the individual (for example, the Service User) is owed an obligation of confidence; and
- The information relates in some way to the physical or mental health or condition of an individual (for example, the Service User), a diagnosis of their condition and/or their care or treatment.

4.7 Welcome Care Homes Limited understands that the National Data Opt-Out Policy applies to local authority social care organisations.

4.8 Welcome Care Homes Limited understands that the National Data Opt-Out Policy only applies to Service Users and not to employees of Welcome Care Homes Limited.

4.9 Welcome Care Homes Limited understands that the National Data Opt-Out Policy only applies where the information is being disclosed beyond the purpose of individual care i.e. for research and planning. Where Welcome Care Homes Limited processes information on the basis of implied consent (for example, to provide care), express consent or where there is a legal requirement for disclosure, the National Data Opt-Out Policy does not apply.

4.10 Welcome Care Homes Limited understands that the National Data Opt-Out Policy applies to health and adult social care provided in England. It does not apply to information generated or processed outside of England including Wales, Scotland, Northern Ireland, the Isle of Man or Channel Islands.

4.11 Welcome Care Homes Limited understands that the National Data Opt-Out Policy does not apply retrospectively to data disclosed before a Service User sets an opt out.



5. Procedure

5.1 Welcome Care Homes Limited will consider the following questions to determine whether the current and ongoing data disclosures of Welcome Care Homes Limited fall within the scope of the National Data Opt-Out Policy:

5.1.1 Is the use or disclosure for individual care or research and planning? If the former, the National Data Opt-Out Policy does not apply.

5.1.2 Is Welcome Care Homes Limited using or disclosing confidential patient information? Please see section 4.6 of the Policy section above for more information.

5.1.3 Does Welcome Care Homes Limited have express consent from the relevant individual (such as the Service User) for the use or disclosure? If so, the National Data Opt-Out Policy does not apply.

5.1.4 Is the disclosure for the purpose of monitoring and control of communicable disease or other risks to public health? If so, the National Data Opt-Out Policy does not apply.

5.1.5 Is the information being disclosed because of a legal requirement? If so, the National Data Opt-Out Policy does not apply.

5.1.6 Is the use or disclosure in the overriding public interest? If so, the National Data Opt-Out Policy does not apply.

5.1.7 Is Section 251 approval relevant? If the data or use has Section 251 support obtained under regulation 2 (diagnosis and treatment of cancer) or regulation 5 (general medical and research purposes) of the Control of Patient Information Regulations 2002, Section 251 of the NHS Act 2006, the National Data Opt-Out Policy **will** apply (unless the Confidentiality Advisory Group (CAG) has determined that the National Data Opt-Out Policy has been waived but this is only the case in limited and exceptional circumstances).

5.1.8 Has the use or disclosure been granted a specific exemption? Exemptions where the National Data Opt-out may not apply include disclosures of data for the National Disease Registration Service (NDRS), Assuring Transformation (AT), and National patient experience surveys.

5.1.9 Is the disclosure to NHS Digital? The National Data Opt-Out Policy does not apply where NHS Digital requests data under section 259 of the Health and Social Care Act 2012.

5.1.10 Is the use or disclosure to support payment and invoice validation? The National Data Opt-Out Policy does not apply to disclosure of confidential information for invoice validation for contracted and non-contracted activities to Controlled Environments for Finance.

5.2 If Welcome Care Homes Limited determines that the National Data Opt-Out Policy is applicable to Welcome Care Homes Limited, Welcome Care Homes Limited will apply national data opt-outs by removing the records of anyone who has an opt-out registered before Welcome Care Homes Limited uses or discloses the information. Welcome Care Homes Limited understands that NHS Digital has developed a technical service which enables Welcome Care Homes Limited to check whether the Service Users have requested a national data opt-out. The service can be used by Welcome Care Homes Limited submitting a list of NHS numbers, in which case the service will return a "cleaned list" of those that do not have a data opt-out, or Welcome Care Homes Limited can submit NHS numbers for all Service Users with whom they have a legitimate relationship and temporarily store the list of Service Users who do not have an opt-out at the current time.

5.3 If Welcome Care Homes Limited is required to apply the National Data Opt-Out Policy, all records associated with the individual must be deleted or removed in their entirety. Welcome Care Homes Limited may retain data it uses for individual care purposes, but all data used for research and planning must be deleted.



6. Definitions

6.1 National Data Opt-Out Policy

- The policy was proposed by the National Data Guardian, accepted by the Government and directed by the Department of Health and Social Care
- Relevant organisations were required to comply with the National Data Opt-out Policy by 31 July 2022

6.2 Data Protection Act 2018

- The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK. It sits alongside the UK GDPR and replaces the Data Protection Act 1998

6.3 UK GDPR

- The UK GDPR is the retained EU law version of the GDPR that forms part of English law

6.4 Information Commissioner's Office (ICO)

- The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals

6.5 National Data Opt-Out

- The national data opt-out is a service that allows people to opt out of their confidential patient information being used for research and planning

6.6 National Disease Registration Service (NDRS)

- An international leader in population-based disease registration services, real-world clinical data, quality assurance, surveillance, analysis and monitoring

6.7 Assuring Transformation (AT)

- NHS Digital is working in partnership with NHS England on the Assuring Transformation collection
- Previously managed by NHS England, NHS Digital assumed responsibility for this collection in January 2015. Previous information about the collection and documents to support management of patient objections for commissioners and patients are available on the NHS England website



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- Welcome Care Homes Limited must understand and apply the National Data Opt-Out Policy



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- Requests made by individuals (including Service Users) to opt-out of the use/disclosure of their information in line with their rights in the National Data Opt-Out Policy will have requests complied with



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

NHS Digital provides useful information relating to the National Data Opt-Out Policy on its website, including the following pages:

Compliance with the National Data Opt-Out:

<https://digital.nhs.uk/services/national-data-opt-out/compliance-with-the-national-data-opt-out/>

Guidance for Health and Care Staff:

<https://digital.nhs.uk/services/national-data-opt-out/guidance-for-health-and-care-staff>

Understanding the National Data Opt-Out:

<https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out>

NHS Digital also provides detailed information on patient confidentiality requirements:

<https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>

NHS - Understanding the National Data Opt-Out:

<https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out>

External and Employee Privacy Policy and Procedure at Welcome Care Homes Limited



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- The wide understanding of the policy is enabled by proactive use of the QCS App
- Welcome Care Homes Limited has implemented processes to ensure that all opt-outs requested under the National Data Opt-Out Policy are complied with
- Welcome Care Homes Limited has conducted a data protection impact assessment on the data processing activity being taken to apply national data opt-outs



Forms

Currently there is no form attached to this policy.