

Focus on Subject Access Requests for insurance purposes

July 2015



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Introduction

The BMA has been aware for some time that some insurance companies are obtaining full medical records through the use of Subject Access Requests (SAR) under the Data Protection Act 1998 (DPA), rather than asking for a report from the applicant's GP, as previously agreed with the Association of British Insurers (ABI).

The BMA was concerned that this practice was potentially a breach of the DPA as disclosure of the full medical record would amount to a disclosure of information which was not relevant for the purpose. On behalf of our members we raised this matter with the Information Commissioner's Office (ICO).

The ICO is the UK's independent authority set up to uphold information rights in the public interest, including data privacy for individuals. It is the duty of the Information Commissioner to promote the following of good practice by data controllers. We have now received a view from the ICO on the use of SARs for insurance purposes.

Information Commissioner's view

The ICO has written to the ABI¹ to confirm that the right of subject access is not designed to underpin the commercial processes of the life insurance industry. The Commissioner takes the view that the use of subject access rights to access medical records in this way is an abuse of those rights and that such practice is likely to fall foul of the DPA in a number of ways.

One of the key points from the ICO's advice is that insurance companies which process full medical records are likely to breach the DPA principle which states that information must be 'adequate, relevant and not excessive' in relation to the purpose for which it is processed.

Advice for practices

In light of the ICO's comments, the BMA's advice is that practices should not comply with SARs for insurance purposes. To do so may put GPs themselves at risk of breaching the DPA should they release information which is 'excessive'. Where any requests are received, these can be returned to the insurer on the basis that it would be inappropriate for the practice to provide the patient's medical information in this way. A template letter practices may wish to use is included at Appendix 1.

Whilst awaiting the view of the ICO on the use of SARs for insurance purposes, the BMA had advised practices in receipt of a SAR to write to the patient, giving them the option of having their medical record sent directly to them so that could choose whether to provide this to the insurer, or to ask their insurer to request a GP report from the practice, which would only cover information from the record relevant to the application. This advice has now been withdrawn.

¹ The ABI represents UK insurers and has over 250 member companies, accounting for over 90% of the UK insurance market. The ICO has also written to Legal & General, which is not currently a member of the ABI.

GP reports

It is our expectation that insurance companies will discontinue the use of SARs and will instead revert to requesting medical reports under the provisions of the Access to Medical Reports Act 1988 (AMRA). The BMA has separate guidance on this legislation.²

Practices are able to apply a fee for completion of these reports, in line with the work associated, and should seek to agree the fee with the requestor in advance of completion. Practices may also wish to seek advanced payment. Information on the BMA's recommended fee, plus guidance on completing insurance reports, is on the BMA website³.

Electronic consent for GP reports

The BMA is aware of the move towards electronic patient consent within the insurance industry. Where practices agree with the insurance company to provide a GP report, the legal position is that electronic consent is acceptable. The Electronic Communications Act 2000, sections 7 – 10, confirms the legal status of electronic signatures. Please note however that GPs must satisfy themselves that the patient has consented to the report, and where there is any doubt, they should check with the patient before providing the report.

The Joint GPC & RCGP IT Committee has been in contact with the ABI to identify a set of high level principles for the use of e-signatures, so that safeguards are maintained for patients and practices through an industry-wide standard. More information on these will be available in due course.

Where LMCs have any queries or concerns, they can contact the GPC Secretariat at info.gpc@bma.org.uk

² <http://bma.org.uk/-/media/files/pdfs/practical%20advice%20at%20work/ethics/accesstomedicalreportsjune2009.pdf>

³ <http://bma.org.uk/practical-support-at-work/pay-fees-allowances/fees/fee-finder/fee-finder-insurance>

Appendix 1**Template letter to insurers in response to a SAR**

Patient details:

Dear X

We write in response to your Subject Access Request for the above named patient in respect of an insurance application.

A copy of your request is enclosed.

Following advice from the Information Commissioner's Office (ICO), we are unable to carry out this request on the basis that doing so is likely to breach a number of principles of the Data Protection Act 1998 (DPA). For example, we understand that it is the ICO's view that insurance companies which process full medical records are likely to breach the DPA principle which states that information must be 'adequate, relevant and not excessive' in relation to the purpose for which it is processed.

You may wish to consider requesting a medical report which seeks only that information which is relevant to the insurance application and which is compliant with the provisions of the Access to Medical Reports Act 1988.