

01.11.2022

Dear Colleagues,

At 18:16 this evening, NHSE published the following response to Prospective Access to Citizens' Records:

<https://digital.nhs.uk/services/nhs-app/nhs-app-guidance-for-gp-practices/guidance-on-nhs-app-features/accelerating-patient-access-to-their-record/update-from-nhs-england>

In particular, please note the following in this guidance:

**For those practices that ask EMIS and TPP by 5pm on 4 November 2022 to not enable the change** we have instructed both suppliers to pause. These practices must use this time to engage with their local commissioners should they need additional support and agree plans to prepare *before their systems are automatically enabled from 30 November 2022*. The [general practice readiness checklist](#) should be used to help with preparations.

**For all other practices that will not have informed EMIS and TPP to pause by 5pm on 4 November**: we will continue to work with EMIS and TPP to implement the change as planned, with prospective data entered into patient records from 1 November 2022 automatically becoming visible in a phased way.

#### **LMC View:**

We would question the “international consensus” about benefits to patients merely by signposting you to this study from Bristol in October’s BJGP:

<https://bjgp.org/content/early/2022/10/21/BJGP.2021.0720>

Further, we suspect the BMA may take issue with this guidance which *advises that updates will automatically be enabled on 30 November irrespective of whether a practice has informed their system supplier of concerns*, as there are potentially competing legal powers at play: Para 59(6)(a) DPA 2018 essentially states that no party has powers to force GPs to enable patient on-line access. This is the part of the DPA 2018 which states that the Data Processor must only act on the instructions of the Data Controller, in this circumstance the GP. So if the GP says “do not turn on on-line access” the processor must not do it, for fear of breaching the law. In the context of para 59 generally the “contract” is the novation by virtue of government enforced changes within the NHS of the Practice/PCT agreement which then became the CCG/Practice agreement and which is now no doubt the ICS/Practice agreement for IT services under the 2004 nGMS contract.

Finally, the regulations:

You will note the wording used by NHSE: *Under the terms of the 2019/20 GP contract, practices have been required to offer citizens digital access to all their prospective data.*

“Offer” does not mean automatically impose to every single person whether they have asked for it or not.

Indeed, 71ZA (3) of the Regs places the following condition on provision of the service:

*“**If** [the patient] accepts an **offer** made under paragraph (2)....”*

Ergo, the service is (according to the Regs) provided on an opt-in basis, and not an opt-out basis.

As you can see, this is far from straightforward and has some distance left to run. Practices must also remember that this is but stage-one of a two-stage process. In 2023, the prospective access will switch to facilitate retrospective access. As a GP, personally, that fills me with horror. I cannot vouch for the tens of thousands of consultations I’ve entered into patient records since 2007 - Can you?

### **Actions for practices now:**

This is a rapidly evolving situation but it is becoming clear that practices who have expressly told their system suppliers NOT to automatically provision prospective access, are in a completely different position to those who have remained silent and not expressed a preference either way. For practices that are not ready/don't feel this is safe, they have until Friday to do so.

For practices happy to have access turned on, no action is required.

**For practices sufficiently concerned by NHSE’s statement, the option remains to bulk add SNOMED code ...104 and to keep a waiting list for patients to access their record through an informed consent process. We are presently preparing materials to support practices who have already taken this decision.**

As a reminder, the BMA advice is here:

<https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/accelerated-access-to-gp-held-patient-records-guidance>