

Data Policy Priorities in Health and Care: Overview

Data and Information Governance and the Digital Special Health Authority

- Section 251 of the NHS Act 2006 - was established to enable the common law duty of confidentiality to be lifted to enable disclosure of confidential patient information for medical purposes, where it is not possible to use anonymised information and where seeking consent was not practical, having regard to the cost and technology available.
- As a safeguard to these regulations, the **Confidentiality Advisory Group (CAG)** was established as the independent panel to provide expert advice and scrutiny on applications. The CAG provides advice to the Secretary of State for Health (SoS) for applications which require access to patient identifiable information where patient consent or the use of anonymised information is not practicable. The use of S251 also extends to applications in form of national collections of data used by the NHS Wales Informatics Service (NWIS) and Public Health Wales Trust (PHW). In the past, NHS Digital, responsible for providing data to Wales, have challenged our legal basis to receive health data.
- As part of the establishment of the new Special Health Authority Digital Health and Care Wales (DHCW), an equivalent to CAG for Wales is being explored to allow DHCW and programmes such as the National Data Resource to operate without the need to seek the permission of the UK SoS for Health to utilise Welsh patients data.

Data Promise Policy and post-COPI landscape

- Since the Coronavirus pandemic Regulation 3 of the Control of Patient Information (COPI) provides that confidential patient information can be used and shared appropriately and lawfully for specified purposes. This has allowed for greater data sharing between public bodies to support the pandemic response, but cannot be relied on indefinitely.
- The Data Promise looks to reiterate the current commitment of NHS Wales to ensure the confidentiality of patient information. Discussions to date have seen the Data Promise policy being progressed by setting up a governance structure that:
 - allows stakeholders to the NDR to operate on the basis of the “best interests” of patients whilst satisfying legal obligations; and
 - places a commitment on certain organisations to work towards longer term statutory responsibilities to collect and process patient information for secondary uses (such as research and development or service improvement).
- In addition, a national conversation with practitioners and patients will be required in line with the principles of the Well-being of Future Generations Act (2015). The scale of this conversation is yet to be decided – it will take place after the next Welsh Parliament election in 2021.
- As this is linked to standards setting and would inform the new health and care digital strategy for Wales the CDO for Health and Care would (once appointed) take a strong leadership role in this working with the other CDOs in Wales and the new digital governance framework for Health and Care (to be established) to provide assurance and advice on the policy.
- A large amount of patient data in Wales is gathered and held by independent Primary Care practitioners. When collecting data from these sources, relevant GDPR and data governance laws and guidelines taken into account. Practitioners and contractors will need to be assured that their legal obligations are not compromised when accessing this data.