

National Data Opt-out: Factsheet 3 – What data and organisations it applies to

This is one of a series of factsheets about data uses and the national data opt-out

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Factsheet 3 – What data and organisations it applies to

Purpose

This factsheet provides information about the organisations that need to comply with national data opt-out policy and which data and records the national data opt-out applies to.

This is an overview only and more detail is provided in the National Data Opt-out Operational Policy guidance document published at: <https://digital.nhs.uk/national-data-opt-out>.

The national data opt-out (offered to the public as ‘Your Data Matters to the NHS’)

The national data opt-out allows a patient to choose that they do not want their **confidential patient information** to be used for purposes beyond their individual care and treatment.

Confidential patient information

Confidential patient information is defined in section 251 (11) of the National Health Service Act 2006. Broadly, it is information that meets the following three requirements:

1. Identifiable, or likely identifiable (e.g. from other data in possession of the recipient),
2. Given in circumstances where the individual is owed a duty of confidence; and
3. Conveys some information about the physical or mental health or condition of an individual

It cannot be defined in terms of specific data items but by considering the circumstances of the disclosure. For example, with demographic information (like name and address):

Demographic data from a registration record, e.g. Personal Demographics Service (PDS), is personal data, but not confidential patient information as it does not contain information about the physical or mental health or condition of an individual.

Demographic data along with any clinical data, or from a medical record, is confidential patient information.

The health and care organisations it applies to

The national data opt-out must be considered and applied according to the opt-out policy when the data is being used for purposes beyond individual care and has been generated and processed by health and care organisations that are situated in England.

This includes those organisations that may have headquarters or parent organisations located outside of England.

This also includes any subsequent release of that data by organisations acting as data controllers, such as NHS Digital or Public Health England.

The health and care organisations in England that must comply with the national data opt-out policy are any that fall within the following categories:

- Health and care organisations defined within section 251 of the NHS Act 2006 (this includes Local Authorities and any other body or person engaged in the provision of Local Authority adult social care)
- Health and care organisations that come under policy set by the Department of Health and Social Care (DHSC) as defined in published DHSC Annual Accounts (this includes government or crown bodies and Arm’s Length Bodies, such as NHS Digital)
- Health and care organisations whose health and care services are regulated by the Care Quality Commission (CQC). These include ambulance services, adult care homes, hospitals, secure facilities (prisons, young offender institutes etc.), services in the home, doctors/GPs, dentists,

clinics, child health, community and mental health services as well as Defence Medical Services on a voluntary basis

- Health and care organisations regulated by another health or care related professional body such as the General Pharmaceutical Council (responsible for the independent regulation of the pharmacy profession) and the General Optical Council (the statutory body responsible for the professional regulation of optometrists and dispensing opticians)

The national data opt-out policy applies to health and care organisations, as defined above, in England. These organisations must apply the national data opt-out policy to any data they are intending to provide to any other organisation, regardless of where it is located. For instance, data to be provided to another home country (Wales, Scotland, Northern Ireland) or crown dependency (Channel Islands and the Isle of Man) must have the opt-out applied in accordance with the opt-out policy.

The national data opt-out will not apply to data collected and used by health and care organisations in other countries, including home nations and crown dependencies. Those countries may apply their own opt-outs in accordance with their own opt-out policies.

The health and care records that the national data opt-out applies to

The national data opt-out applies to confidential patient information collected about patients where a publicly funded health and care organisation, as defined above, is either providing or co-ordinating the health and care. This includes:

- Data about health and care provided by NHS organisations, including for those patients receiving private treatment within an NHS organisation.
- Data about health and care provided by an adult social care provider including both public and private providers (e.g. care homes), which is coordinated by a public body (typically a local authority).
- Data about health and care provided by private and voluntary sector health and care organisations, that has been funded by the NHS.
- Health and care data held by NHS Digital relating to private patients, including the data collected as a request under section 259 of the Health and Social Care Act 2012.

The national data opt-out does not apply to:

- Health and care data for privately-funded care or treatment by a private provider organisation, unless it is coordinated by a public body, such as a local authority.
- Organisations providing children's social care only as these do not fall within the categories of health and care organisations defined above.

Further information about specific organisations included or excluded can be found in the policy guidance document published at: <https://digital.nhs.uk/national-data-opt-out>.