



4. Policy

4.1 Shire Homecare Service understands that it must comply with the Data Opt-Out Policy by 31st March 2022, showing to what extent information is processed within the scope of the Data Opt-Out Policy.

4.2 Shire Homecare Service understands that the obligations placed on Shire Homecare Service as Data Controller under the UK GDPR and Data Protection Act 2018 remain in place and are not affected by the introduction of the Data Opt-Out Policy.

4.3 Shire Homecare Service understands that it may need to introduce new policies and procedures to ensure compliance with the Data Opt-Out Policy.

4.4 Shire Homecare Service understands that the 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 patient or Service User information held by Shire Homecare Service. Where Shire Homecare Service is the Data Controller, it may, if it wishes, disclose the information to the data applicant without breaching its duty of confidentiality. Shire Homecare Service understands that it is in these cases only that the Data Opt-Out Policy applies.

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

4.6 Shire Homecare Service understands that the Data Opt-Out Policy applies to “confidential patient information” which is defined in Section 251(1) 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 Shire Homecare Service understands that the Data Opt-Out Policy applies to local authority social care organisations.

4.8 Shire Homecare Service understands that the Data Opt-Out Policy only applies to Service Users and not to employees of Shire Homecare Service.

4.9 Shire Homecare Service understands that the 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 Shire Homecare Service 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 Data Opt-Out Policy does not apply.

4.10 Shire Homecare Service understands that the 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 Shire Homecare Service understands that the Data Opt-Out Policy does not apply retrospectively to data disclosed before a Service User sets an opt out.



5. Procedure

5.1 Shire Homecare Service will consider the following questions to determine whether the current and ongoing data disclosures of Shire Homecare Service fall within the scope of the Data Opt-Out Policy:

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

5.1.2 Is Shire Homecare Service using or disclosing confidential patient information? Please see section 4.6 of the Policy section above for more information.

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

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

5.1.6 Is the use or disclosure in the overriding public interest? If so, the 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), the Data Opt-Out Policy **will** apply (unless the Confidentiality Advisory Group (CAG) has determined that the 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 may apply for disclosures of data for the UK Health Security Agency National Disease Register

5.1.9

(see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-5-flows-to-public-health-england-national-disease-registers>), Assuring Transformation (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-8-assuring-transformation>) and national patient experience surveys (see <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>).

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

5.1.11 Is the use or disclosure to support payment and invoice validation? The 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 Shire Homecare Service determines that the Data Opt-Out Policy is applicable to Shire Homecare Service, Shire Homecare Service will apply national data opt-outs by removing the records of anyone who has an opt-out registered before Shire Homecare Service uses or discloses the information. Shire Homecare Service understands that NHS Digital has developed a technical service which enables Shire Homecare Service to check whether the Service Users have requested a national data opt-out. The service can be used by Shire Homecare Service 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 Shire Homecare Service 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 Shire Homecare Service is required to apply the Data Opt-Out Policy, all records associated with the individual must be deleted or removed in their entirety. Shire Homecare Service may retain data it uses for individual care purposes, but all data used for research and planning must be deleted.

If you require any additional information, please contact shire on:

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