

Privacy Notice – Direct Care

NHS North East London (NEL) keeps personal and confidential information about you (Your clinical and Social Care records) relating to Continuing Health Care (CHC), NHS Funded Nursing Care (FNC), Individual Funding Request and Personal Health Budget services where you have applied for these services.

This data is used to assess whether you meet the criteria for funding for these services and to enable provision of services thereafter. Data may also be used for audit and monitoring purposes for service improvement.

People who have access to your information will only normally have access to that which they need to fulfil their roles.

You have the right to object to our sharing your data in these circumstances, but we have an overriding responsibility to comply with our legal obligations. Please see below.

We are required by Article 13 in the General Data Protection Regulation to provide you with the information in the following 9 subsections.

1) Controller contact details	NHS North East London 4th Floor – Unex Tower 5 Station Street London E15 1DA www.northeastlondon.icb.nhs.uk
2) Data Protection Officer contact details	NHS NEL DPO nelondonicb.ig@nhs.net .
3) Purpose of the processing	<p>Direct Care is care delivered to the individual alone. After a patient agrees to a referral for direct care elsewhere, such as a referral to a specialist in a hospital, necessary and relevant information about the patient, their circumstances and their problem will need to be shared with the other health and social care workers, such as specialist, therapists, technicians etc. The information that is shared is to enable the other health and social care workers to provide the most appropriate advice, investigations, treatments, therapies and or care.</p> <p>In order to receive NHS CHC and FNC funding individuals have to be assessed by NEL according to a legally prescribed decision-making process to determine whether the individual has a ‘primary health need’.</p> <p>ICB’s participate in the National Fraud Initiative (NFI) run by the Government Cabinet Office which conducts data matching exercises to assist in the prevention and detection of fraud. Where applications are made for Personal Health Budget funding, your data will be shared for this purpose. More information on the NFI can be found on the Cabinet Office Privacy Notice here https://www.gov.uk/government/publications/fair-processing-national-fraud-initiative/fair-processing-level-3-full-text</p> <p>When we collect your information to support you, we are doing so in our capacity as a public authority so our lawful basis for using your information is under our Public Task duties. In certain circumstances, we need to comply with other relevant legislation that includes but is not exclusive to, the following legislation and associated codes of practice:</p> <ul style="list-style-type: none">• Care Act 2014• Health and Social Care Act 2012 section 251B <p>The duty to share information (for the purposes of providing an individual with health or adult social care) as set out in section 251B of the Health and Social Care Act 2012 applies equally to assessments</p>

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	<p>for NHS continuing healthcare as it does to other health and/or care and support assessments.</p> <ul style="list-style-type: none"> • Mental Capacity Act 2005 • Mental Health Act 1983
4) Lawful basis for processing	<p>The processing of personal data in the delivery of direct care, and for providers' administrative under the following Article 6 and 9 conditions of the GDPR:</p> <p><i>Article 6(1)(e) ‘...necessary for the performance of a task carried out in the public interest or in the exercise of official authority...’.</i></p> <p><i>Article 9(2)(h) ‘necessary for the purposes of preventative or occupational medicine for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services...’</i></p>
	<p>Confidentiality</p> <p>We will also recognise your rights established under UK case law collectively known as the “Common Law Duty of Confidentiality” *</p> <p>Where processing occurs for the National Fraud Initiative the conditions for processing are Article 6(1)e (above) and</p> <p><i>Article 9(2)g ‘processing is necessary for reasons of substantial public interest, on the basis of Union or Member State Law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.</i></p>
5) Recipient or categories of recipients of the processed data	<p>The data will be shared with Health and social care professionals and support staff in this surgery and at hospitals, diagnostic and treatment centres who contribute to your personal care. NEL has engaged the support of an independent specialist Provider Xyla to carry out assessments on behalf of CHC</p> <p>https://www.nhs.uk/pages/home.aspx</p>
6) Rights to object	<p>You have the right to object to some or all the information being processed under UK GDPR Article 21. Please contact the Controller. You should be aware that this is a right to raise an objection, which is not the same as having an absolute right to have your wishes granted in every circumstance.</p>
7) Right to access and correct	<p>You have the right to access the data that is being shared and have any inaccuracies corrected. There is no right to have accurate medical records deleted except when ordered by a Court of Law.</p>
8) Retention period	<p>The data will be retained in line with the law and the National NHS Records Code of Practice Retention Schedule</p>
9) Right to Complain	<p>You have the right to complain to the Information Commissioner’s Office. You can contact them at this link: https://ico.org.uk/global/contact-us/ or by calling their helpline on 0303 123 1113 (local rate) or 01625 545 745 (national rate). There are National Offices for Scotland, Northern Ireland and Wales, (see ICO website).</p>

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* “Common Law Duty of Confidentiality”, common law is not written out in one document like an Act of Parliament. It is a form of law based on previous court cases decided by judges; hence, it is also referred to as 'judge-made' or case law. The law is applied by reference to those previous cases, so common law is also said to be based on precedent.

The general position is that if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information provider's consent.

In practice, this means that all patient information, whether held on paper, computer, visually or audio recorded, or held in the memory of the professional, must not normally be disclosed without the consent of the patient. It is irrelevant how old the patient is or what the state of their mental health is; the duty still applies.

Three circumstances making disclosure of confidential information lawful are:

- where the individual to whom the information relates has consented.
- where disclosure is in the public interest; and
- where there is a legal duty to do so, for example a court order.