Joined Up Care Derbyshire

INTEGRATED CARE PARTNERSHIP

ITEM 08

07 February 2024

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Data sharing - Section 251 Update

Purpose

1.1 Data sharing between system partners will enable systematic action to improve access and outcome for our citizens across Joined Up Care Derbyshire (JUCD). Challenges to this were raised at the last meeting of the Integrated Care Partnership (ICP) as part of the Stay Well update. The potential use of a section 251 agreement was raised, and a request was made by the ICP to receive further information at this meeting. The purpose of this report is to provide this update.

1.2 This report outlines the challenges currently being experienced by System partners who are unable to share information (at all / effectively), to facilitate joined up working. Section 251 (shorthand for Section 251 of the National Health Service Act 2006) is one possible component of the solution and would satisfy the common law duty of confidentiality requirements for the flow of data to support Population Health Management (PHM). This paper explores section 251, the risks/benefits and the current IG challenges, in response to the request by the ICP for an update on this item. Further investigation has identified, however, that this alone will not solve all digital barriers experienced currently (e.g. shared Business Intelligence access, access to Teams by all partners including voluntary sector partners, etc.). A full gap analysis to inform an options appraisal would be a beneficial initial step.

Recommendations

2.1 To inform the ICP of the current challenges experienced in relation to data sharing, and how this inhibits effective and efficient system working.

2.2 To inform the ICP what the Section 251 application is and how, in combination with appropriate technical infrastructure, this can contribute to mitigating the current barriers.

2.3 To note and support a gap analysis of current resources / technical infrastructure and associated Data Sharing Agreements, to inform an options appraisal, which may result in a the Section 251 application for the purposes of Population Health Management.

Reasons

3.1 To support the ICP to embed a data-led approach to planning and decision-making to in turn enable it to effectively implement the Derby and Derbyshire Integrated Care Strategy and broader population health management (PHM) approaches to improve the health and wellbeing of the population.

Supporting information

What is the issue?

4.1 Colleagues working across JUCD system partner organisations on the Stay Well Key Areas of Focus (KAOF) have identified that the lack of a legal basis under Common Law and technical inability to effectively share data between partners is a barrier to the rate and scale of progress delivering work related to the Derby and Derbyshire Integrated Care Strategy (the Strategy). It has become apparent during the first Stay Well sprint that this is a critical success factor for successful strategy delivery and, beyond the scope of just the Stay Well KAOF, in enabling Population Health Management (PHM) in general as a System.

Why has this issue come to light now?

4.2 One of the key intentions of the Strategy is to test integrated joined up working. As such, proactive cross-organisation work has been taking place as part of the initial sprint for the Stay Well KAOF. As a result of this sprint work, the issue of no effective or efficient means to share data has come to light. Even sharing information at an aggregate level has introduced lengthy delays, which is a further barrier to successful delivery of the Strategy. The latter has highlighted a lack of clarity across the system as to what can / cannot be shared between partners and in what format (suggesting there are potential “quick wins” that can be achieved with existing resources/process, in advance of a Section 251 should an options appraisal indicate this is required). However, in horizon scanning across the country we have identified the Nottingham/shire system is advanced in this area and has established data sharing arrangements, utilising a section 251 as the legal

framework. A meeting is being arranged with Nottinghamshire colleagues to understand the process undertaken to accomplish this, the local infrastructure in place, and the benefits achieved for their system as a result of this development.

4.3 For the avoidance of doubt, there are two components to the Section 251 application:

1. The legal basis under Common Law upon which data is shared.
2. The technical means through which information is shared / accessed / securely stored etc.

4.4 This paper is focussed on item 1 in the above list. Item 2 is an essential consideration (and likely, workstream), should the JUCD system support a section 251 application following a gap analysis, as this is an essential component of a section 251 application. The work required is a combination of both 1 and 2 and will require appropriate prioritisation and resourcing.

Data policy and guidance

4.5 JUCD is not the only system dealing with complexities around data sharing, analysis and insight generation. There are two sets of guidance from the NHS that identify how JUCD can be data driven with data that is safe and ethically collected and used.

4.6 'Data Saves Lives' is NHS England guidance from 2022 that details strategic actions for national government and for Integrated Care System to use data :

- For the direct care of individuals.
- To improve population health through the proactive targeting of services.
- For the planning and improvement of services.

For the research and innovation that will power new medical treatments.

4.7 The strategic actions provide considerable detail on the why, how, when and who can develop shared data and data driven approaches. This landmark document and call to action provides visions, guidance, tools, methodologies, case studies, blue-prints and information to support confidentiality and trust.

Data control and data sharing guidance

4.8 The Integrated Care System (ICS) comprises of multiple legal entities of partners, providers and commissioners. A key question that forms the basis of information sharing is who the data controller is.

4.9 Recent guidance from 2023 from NHS England clarifies that the following can be data controllers either individually or jointly;

- An Integrated Care Board (ICB)
- Individual organisations within an ICB including local authorities
- Provider collaboratives.

4.10 The guidance states the following cannot be data controllers and they are not legal entities:

- An ICS/Integrated Care Partnership (ICP)
- Place based partnerships
- Provider collaboratives.

4.11 Where there is collaboration between data controllers (like an ICS, ICP) there may need to be the following documents in place:

- Data sharing agreement
- Data processing agreement that is legally binding
- Data protection impact assessment
- Transparency notice/privacy notice.

4.12 A third key guidance from NHS England is 'What Good Looks Like' (WGLL) Framework from 2021. This guidance highlights a framework that an ICS can use to digitise, connect and transform services safely and securely. The WGLL framework, if adopted by Derbyshire ICS, would allow an audit of best practice and show the steps needed to make Derby and Derbyshire ICS become innovative, digitally mature and improve the outcomes, safety and experience for people.

What are the options available?

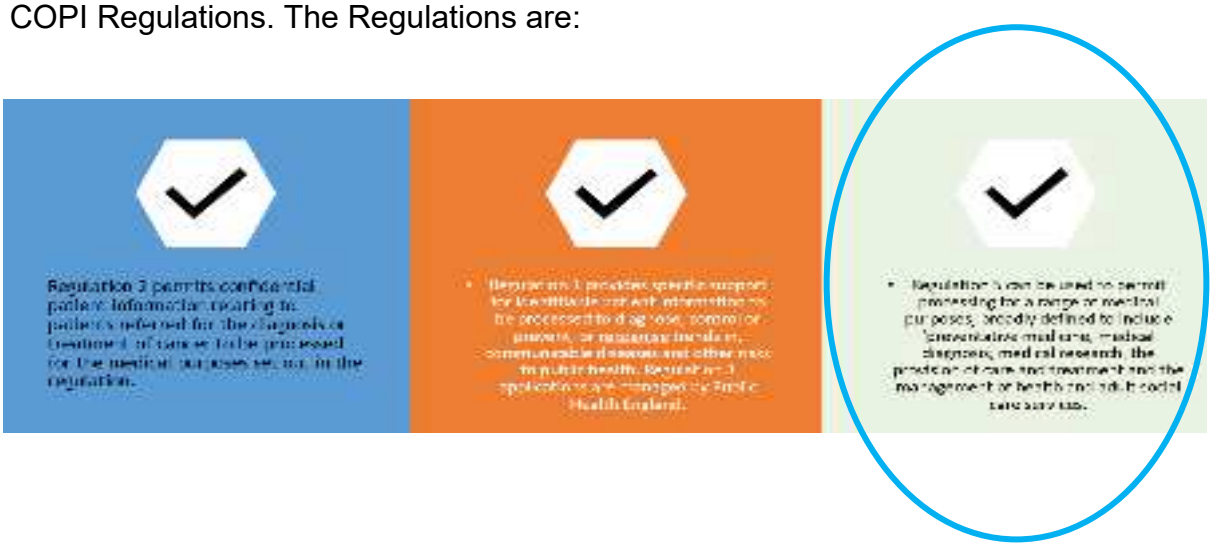
4.13 To allow confidential patient information to be taken into an environment and be processed through a series of treatments, linked to other data and made accessible for PHM purposes, there needs to be a lawful basis under both the data protection legislation and common law duty of confidentiality (CLDoC). Derby and Derbyshire Integrated Care System partner organisations will have to agree the approach to achieving this and assure the wider community (patients and public) that the data has been collected lawfully. This should involve a gap analysis, considering the system PHM requirements and to what extent the current available technical resources meet these requirements. For example, the ICB currently contracts with the North East Commissioning Support Unit (NECS) to provide the RAIDR system. RAIDR is a health intelligence tool bringing together different sources of information, populated with GP data and contains two levels of access. An aggregate view to the ICB, and a patient level view to the appropriate clinical staff within the General Practice. The Data Processing Agreement currently in place is between NECS and each GP practice. This means that currently GP data can be shared with the ICB and GP practice, but no other party.

An hypothetical use-case, should appropriate IG arrangements/approvals be obtained, could be Local Authority Public Health teams being able to identify at any one time the highest concentration of current smokers by practice or PCN, and to what extent does this matches the profile of patients they see engaging in services – where there is a disconnect between the two, this could inform prioritisation and targeting of smoking cessation promotion and outreach provision.

4.14 The RAIDR example above is highlighted to illustrate the need for a gap analysis. It may be the current resources / systems provide the required functionality for the system, but the existing legal basis for accessing these resources / systems is the limiting factor. It is anticipated a gap analysis would result in an options appraisal, and in turn, ensure clarity for System partners as to the preferred direction of travel.

Section 251 of the Health and Social Care Act (2006)

4.15 Section 251 allows the common law duty of confidentiality to be lifted temporarily to enable disclosure of confidential patient information beyond the direct care of the individuals without gaining their consent. While it's commonly referred to as 'Section 251' support is actually given under Regulation 5 of the Health Service (Control of Patient Information) Regulations 2002 more commonly known as the COPI Regulations. The Regulations are:



4.16 Regulation 5 is the lawful basis that would enable identifiable data to flow to a specific organisation so that it can then be pseudonymised using a consistent key. The data could then be linked across all of the approved datasets as required without any other organisation being able to see patient identifiable data.

Benefits

- Clear and unequivocal lawful basis under which JUCD can operate which will provide data controllers across the ICS with assurance that confidentiality issues have been addressed.
- There is already a precedent for this approach to be adopted by ICS's, which is encouraged by NHS England and regionally is in place across Nottinghamshire ICS.
- Subject to agreement from the Confidentiality Advisory Group (CAG) / Research Ethics Committee (REC), amendments could be made to the overarching application where additional linkages are required for project.
- A section 251 is already in place for Derby and Derbyshire ICB to undertake Risk Stratification work using RAIDR

Risks/issues

- CAG local opt out mechanism.
- There is a significant resource requirement to take forward applications on behalf of the Sub-National Secure Data Environment (SNSDE)

The annual review process would mean additional work to maintain the S251 approval.

Public/stakeholder engagement

5.1 None.

Other options

6.1 A gap analysis and subsequent options appraisal is required. Based on advice from colleagues in NECS and the ICB it is understood this is likely to require a Section 251 (regardless of, and in addition to clarifying, the technical infrastructure). Therefore, in order to progress the section 251 agreement, consideration will also be given to other options (in addition to section 251 rather than instead of) to provide effective and timely data sharing to support population health management and integration.

Financial and value for money issues

7.1 None directly arising from this report.

Legal implications

8.1 Section 251 would satisfy the common law duty of confidentiality requirements for the flow of data to support Population Health Management (PHM).

Climate implications

9.1 None directly arising from this report.

Socio-Economic implications

10.1 Effective and appropriate data sharing to support PHM approaches enable identification and targeting of interventions to reduce the socio-economic drivers of health inequalities.

Other significant implications

11.1 None identified.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal		
Finance		
Service Director(s)		
Report sponsor	Jayne Needham, Director of Strategy, Partnerships and Population Health, Derbyshire Community Health Services NHS Foundation Trust	30/01/2024
Other(s)		

Background papers:	None,
List of appendices:	None.