



Llywodraeth Cymru  
Welsh Government

April 2020

The following information has been developed to assist you in understanding The Health Service (Control of Patient Information) Regulations 2002 and how they can be utilised during the Covid-19 period.

### **What is The Health Service (Control of Patient Information) Regulations 2002 (COPI)?**

The Health Service (Control of Patient Information) Regulations 2002 often referred to as “The COPI Regulations” is a law that allows the Secretary of State the ability to make notices in writing where it is necessary and in the public interest that patient information is processed for specified purposes.

### **Who do these regulations cover?**

The Secretary of State for Health and Social Care had issued four notices under COPI to:

- All organisations providing health services, General Practices, Arm’s Length Bodies of the Department of Health and Social Care and Local Authorities (known as the general notice)
- NHS Digital
- NHS England / NHS Improvement
- UK Biobank

This guidance focuses on the first bullet point above and is applicable to all organisations within the remit listed in England and Wales. The Welsh Government has issued a letter advising consideration of the use of COPI where applicable: [WG Notice](#)

The Specific Notices issued to NHS Digital/England/Improvement and UK Biobank apply only to England.

### **What do these notices mean?**

These notices provide organisations a legal way of setting aside the common law duty of confidence for processing patient information in response to the Covid-19 outbreak.

Normally when processing information you would be required to comply with both Data Protection Legislation and the Common Law Duty of Confidentiality (CLDC).

Under the CLDC organisations for non-direct care purposes will often require patient consent or to obtain another legal mechanism such as a CAG approval under a section 251.

The notice therefore sets this aside such additional requirement for processing Organisations will required in responding to Covid-19.

### **What about Data Protection and the General Data Protection Regulation (GDPR)?**

COPI does not set aside an organisations responsibility under GDPR or the Data Protection Act 2018. GDPR allows health data to be used as long as a condition under both Article 6 and Article 9 are met.

Most processing undertaken for Covid-19 will take place under:

Article 6(e) – The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vesting in the controller

(All organisations processing health data in Wales are likely to be doing so under an official authority or public interest as supported by the COPI notice)

Article 9(h) – processing is necessary for the purposes of preventive or occupational medicant, for the assessment of working capacity of the employee, medical diagnosis, the provision of health or social care treatment or the management of health or social care systems and services.

Other applicable articles may include:

- 9(g) – processing is necessary for reasons of substantial public interest
- 9(i) – processing is necessary for reason of public interest in the protection of public health

COPI will support all such legal basis.

Organisations must however ensure that they adhere to all other elements relating to data protection include for example,

- Shared only with organisations or persons who have a legitimate responsibility for processing or taking receipt of patient information
- providing relevant fair processing information by informing patients how their data may be utilised and only
- using the minimum necessary data for the purpose (data minimisation).

### **What does processing mean?**

For the purpose of the COPI Regulations Processing means:

- The recording and holding of information;
- The retrieval, alignment and combination of information;

- The organisation, adaptation or alteration of information;
- The blocking, erasure and destruction of information.

It also covers the dissemination of information to other organisations that require it for the same purpose.

### **For what purposes can we process data under COPI?**

The notice provides a number of defined purposes listed below, The purposes within the notice provide a wide scope for most perceived Covid-19 requirements but the list is not exhaustive and if data is required to flow for Covid-19 purposes then it can be considered a purpose under this regulation.

- understanding Covid-19 and risks to public health, trends in Covid-19 and such risks, and controlling and preventing the spread of Covid-19 and such risks;
- identifying and understanding information about patients or potential patients with or at risk of Covid-19, information about incidents of patient exposure to Covid-19 and the management of patients with or at risk of Covid-19 including: locating, contacting, screening, flagging and monitoring such patients and collecting information about and providing services in relation to testing, diagnosis, self-isolation, fitness to work, treatment, medical and social interventions and recovery from Covid-19;
- understanding information about patient access to health services and adult social care services and the need for wider care of patients and vulnerable groups as a direct or indirect result of Covid-19 and the availability and capacity of those services or that care;
- monitoring and managing the response to Covid-19 by health and social care bodies and the Government including providing information to the public about Covid-19 and its effectiveness and information about capacity, medicines, equipment, supplies, services and the workforce within the health services and adult social care services;
- delivering services to patients, clinicians, the health services and adult social care services workforce and the public about and in connection with Covid-19, including the provision of information, fit notes and the provision of health care and adult social care services; and
- research and planning in relation to Covid-19

### **Do we need to record data flows that fall under COPI?**

Yes – you should maintain a list or register of Information that is shared or flowed under the COPI regulation. This will help you deal with the ceasing of flows of data or applications when required. For example, on expiry of the notification you will need to review all processing undertaken and cease processes that rely on this legal basis of processing or complete a further review and justify your legal requirements to continue to process.

### **Why is the notice only valid until September 2020?**

At this time the Secretary of State for Health and Social Care has issued the notice until the 30<sup>th</sup> September 2020 in order for data to flow for the purposes of responding to the Covid-19 incident as an initial period however, at this time the notice may be:

- Extended for a further period
- Amended and reissued
- Cease at the end of September 2020

This decision will depend on the management of the Covid-19 outbreak across the UK.