



BRITISH MEDICAL ASSOCIATION

BMA House, Tavistock Square, London, WC1H 9JP
Switchboard 020 7387 4499 Direct line 020 7383 6100 Direct Fax 020 7383 6322

From the Chairman of Council:
Mr J N JOHNSON MD FRCS FRCP FDSRCS

09 FEB 2007

Dr Paul Thornton
Pear Tree Surgery
28 Meadow Close
Kingsbury
North Warwickshire
B78 2NR

Our Ref: JNJ/RM

31st January 2007

Dear Dr Thornton

The Lawfulness of CfH Proposals

Further to my letter of 16th October 2006, I am now in a position to respond to your correspondence, which raises concerns about the lawfulness of Connecting for Health proposals.

The Working Party on NHS IT considered your correspondence on 5th October 2006. Members agreed that the BMA should request further information about the legal views obtained by the Department of Health.

The BMA received a response from Lord Warner on 20th December 2006, who confirmed that legal views had been obtained by the Department of Health. However, on account of your correspondence, Lord Warner sought a further legal opinion to ensure complete clarity. The BMA has been advised that 'Officials have received reassurance from counsel that the planned process for uploading data to the Summary Care Record is lawful'.

In your paper, you questioned the legality of requiring patients to have their information uploaded onto a central database. In relation to demographics, held on the Personal Demographics Service, the Department of Health has responded as follows:

'The NHS is required by law to keep a record of which GP practice each person is registered with and reasons of efficiency and probity require this to be held centrally e.g. to prevent multiple GPs from being paid for the same patient and to ensure that the correct commissioning body meets the cost of care provided.'

A register is also needed to enable the Secretary of State to meet her legal obligation to provide healthcare, free at the point of contact, for those patients who are ordinarily resident in England...

*The Department of Health is of the view that the legal basis for holding demographic data within the NHS CRS is sufficient to exempt this data from the provisions within the Data Protection Act that entitle people to object to data processing. This exemption necessarily extends to local repositories of demographic data that are linked and feed the PDS.**

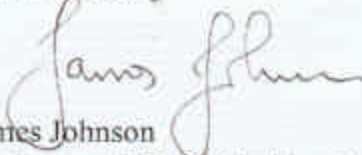
With regard to the summary record, the Department of Health acknowledge that patients have a legal right to raise objections about the processing of this data but state that 'we are giving patients far more choice in respect of the Summary Care Record than the law requires'. The BMA has made it clear that patients must be offered the option of having no clinical data uploaded onto the spine. The BMA has received verbal confirmation that this option will exist and is currently awaiting written confirmation from the Department of Health. The Summary Care Record Advisory Group, which will be established as a result of the taskforce recommendations, will consider the practicalities of allowing patients to dissent from the upload of clinical information. The BMA will be represented on this group.

Allowing patients to prevent the upload of summary data would also mean that if a patient has dissented to sharing summary information on the spine, it could not be overruled in an emergency situation. Furthermore, the most recent sealed envelope proposals will allow patients to lock their sensitive data so that it cannot be accessed except by the workgroup which created it.

The taskforce report, mentioned above, also recommends that patients should be encouraged to look at their summary record and give explicit consent if they are happy for this information to be shared. After a 'reasonable' time, patients who have not expressed any opinion will be deemed to have given implied consent for sharing, which will only be drugs and allergies in the first instance. The BMA recognises this as a step in right direction and looks forward to this being explored further in the early adopter sites.

In light of the response from the Department of Health and recent developments, the BMA does not have any substantial reasons to believe that Connecting for Health proposals are unlawful and we will not be seeking an independent legal review. However, we will continue to monitor developments and raise any concerns with the Department of Health.

Yours sincerely



James Johnson
Chairman of BMA Working Party on NHS IT