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## DIRECTIONS

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# NATIONAL HEALTH SERVICE, ENGLAND

## The Health and Social Care Information Centre (Establishment of Information Systems for NHS Services: Data Services for Commissioners) Directions 2013

The National Health Service Commissioning Board gives the following Directions to the Health and Social Care Information Centre in exercise of the powers conferred by sections 254(1), (3) (6) and (7), 260(2)(d), 261(3), 262(3)(a) and (b), 262(7) and 304(9), (10) and (13) of the Health and Social Care Act 2012.

In accordance with section 254(5) of the Health and Social Care Act 2012, the National Health Service Commissioning Board has consulted the Health and Social Care Information Centre before giving these Directions.

### **Citation, commencement and interpretation**

1. These Directions may be cited as The Health and Social Care Information Centre (Establishment of Information Systems for NHS Services: Data Services for Commissioners) Directions 2013 and shall come into force on [insert date].
2. In these Directions–

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| “The 2012 Act”         | means the Health and Social Care Act 2012;  |
| “The 2012 Regulations” | means The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 <sup>1</sup> ; |
| “Area Team”            | means a division of the Board which holds budgetary and commissioning responsibilities on behalf of the Board;  |
| “The Board”            | means the National Health Service Commissioning Board <sup>2</sup> ;  |

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<sup>1</sup> S.I. 2012/2996.

<sup>2</sup> The National Health Service Commissioning Board was established by section 1H of the National Health Service Act 2006 (2006 c 41.), and operates as NHS England.

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| "Care Item"                                     | means an identifiable instance of a Treatment provided to a Patient, to which a cost or charge is or may be attributable or referenced, including but not limited to inpatient stays, outpatient care, referral activity, prescription of medicines or devices and performance of surgical procedures;                   |
| "CCG"   | means clinical commissioning group;  |
| "Clinical Registry Data"                        | means data held on national or local databases or registries relating to individual patients' disease, condition, injury and activity data relating to their treatment;  |
| "Commissioning Contract"                        | means an NHS standard contract, other than a primary care contract, entered into by a Relevant Body with a Health Service Provider in the exercise of its Commissioning Functions;   |
| "Commissioning Functions"                       | means the functions of a Relevant Body in arranging for the provision of services as part of the health service, but it does not include, in relation to the Board, its functions in relation to services provided under a primary care contract;  |
| "Data Services for Commissioners"               | means a service delivered by the HSCIC to collect, cleanse, link, de-identify and analyse Local Commissioning Data and Historic PCT Data and provide Required Commissioning Contract Data at the request of a Relevant Body in order to facilitate that Relevant Body's Commissioning Functions;                         |
| "GP Practice"                                   | means either a provider of primary medical services who is an individual who is the sole provider party to a contract for provision of primary medical services as referred to in section 14A(4) of the NHS Act 2006 or a provider of primary medical services as defined in sections 14A(6) or (7) of the NHS Act 2006; |
| "The Health and Social Care Information Centre" | means the body corporate established by section 252 of the 2012 Act;   |
| "Health Care Service"                           | means a service consisting of the provision of Treatment for the purposes of the health service;   |
| "Health Service Provider"                       | means a person, other than a Relevant Body who has entered into a Commissioning Contract;  |
| "Historic PCT Data"                             | means local commissioning data that the Board has identified to the HSCIC as having been collected by  |

PCTs from Health Service Providers and analysed by PCTs (including through linking such local data with National Commissioning Data) prior to 1 April 2013 for purposes connected to the PCT's commissioning functions and which is still required by a Relevant Body in relation to Commissioning Contracts to enable Local Commissioning Data to be referenced against historical reference points;

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| “HSCIC”                                    | means the Health and Social Care Information Centre;  |
| "Identifiable Data"                        | means information which is in a form which identifies any individual to whom the information relates or enables the identity of such an individual to be ascertained;   |
| “Local Commissioning Data”                 | means data relating to the provision of Health Care Services pursuant to a particular Commissioning Contract, other than National Commissioning Data, which are either data identified in Schedule 6 of that Commissioning Contract under the sections “National Requirements Reported Locally” or “Local Requirements Reported Locally”; or data relating to Care Items delivered under that Commissioning Contract which are identified in the Prescribed Specialised Services Guidance; or data relating to Care Items delivered under a non-contract agreement; |
| “National Commissioning Data”              | means data collected from Health Service Providers by the HSCIC pursuant to directions of the Secretary of State and article 9 of the Health and Social Care Act (Commencement No. 4, Transitional, Savings and Transitory Provisions) Order 2013;  |
| “NHS Number”                               | means National Health Service Number;   |
| “NHS Services”                             | has the meaning given in section 254(4) of the 2012 Act;  |
| “Patient”                                  | means any person who is receiving Treatment provided as part of the health service;   |
| “PCTs”                                     | means Primary Care Trusts;  |
| “Prescribed Specialised Services Guidance” | means the “Manual for prescribed specialised services” published by the Board in November 2012 attached at Annex 1 of these Directions, “Identification rules for prescribed specialised services” published by the Board to accompany the Manual, attached at Annex 2 of these   |

Directions and other guidance published by the Board on the identification of prescribed specialised services from time to time;

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| “Pseudonymised”                        | means the process of distinguishing individuals in a dataset by using a unique identifier that does not reveal their ‘real world’ identity;  |
| "Re-Identification"                    | means the process of analysing data or combining them with other data with the result that individuals become identifiable. Sometimes termed ‘de-anonymisation’ as a synonym;  |
| “Relevant Body”                        | means a CCG or the Board. For the purposes of any reference in these Directions to a request for Data Services for Commissioners, Relevant Body means a CCG or an Area Team of the Board;  |
| “Required Commissioning Contract Data” | means in relation to a particular request made for Data Services for Commissioners as provided for in these Directions, the data, analysis records, reports or other outputs requested by the Relevant Body;   |
| “Responsible Commissioner”             | means a Relevant Body with responsibility for commissioning a Health Care Service as determined by the 2012 Regulations and The Who Pays Guidance, who consequently holds responsibility for funding Care Items delivered as part of this Health Care Service;   |
| “Section 251 Regulations”              | means the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438 and any other regulations which may be made in exercise of the power in section 251(1) of the National Health Service Act 2006;   |
| “Treatment”                            | means an intervention that is intended to manage a person’s disease, condition or injury and includes prevention, examination and diagnosis; and   |
| “The Who Pays Guidance”                | means “Who Pays? Determining responsibility for payments to providers – Rules and guidance for clinical commissioning groups”, published by the Board in August 2013, attached at Annex 3 of these Directions. This gives guidance on the implementation of Part 2 (persons for whom a CCG has responsibility) and Part 3 (services to be commissioned by the Board) of the 2012 |

Regulations, and includes provisions under section 14Z7 to of the NHS Act 2006 as modified by the 2012 Act to set out the circumstances in which a CCG is liable to make a payment to a Health Service Provider in respect of services commissioned by another CCG.

### **Establishment of information systems: Data Services for Commissioners**

3. Pursuant to its powers under sections 254(1) and 254(6) of the 2012 Act, the Board directs the HSCIC to establish and operate systems for the collection and analysis of Local Commissioning Data and Historic PCT Data to deliver Data Services for Commissioners, as further described and specified below:
  - (1) the HSCIC is directed to establish and operate systems for the collection of Local Commissioning Data from a Health Service Provider where Data Services for Commissioners are requested by a Relevant Body which is party to a Commissioning Contract with that Health Service Provider and to analyse such Local Commissioning Data collected from that Health Service Provider pursuant to paragraph 4 below to produce Required Commissioning Contract Data for that Relevant Body;
  - (2) the HSCIC is directed to establish and operate systems for the collection of Historic PCT Data and to retain and carry out analysis of that data pursuant to paragraph 4 to produce the Required Commissioning Contract Data for a Relevant Body which has requested Data Services for Commissioners; and
  - (3) the HSCIC is directed to put in place a system for managing and responding to requests from Relevant Bodies for Data Services for Commissioners as provided for in sub-paragraphs 3(1) and (2) above.

### **Analysis of Data**

4. As part of the systems to be established and operated pursuant to paragraph 3 above, HSCIC is directed to:-
  - (1) analyse Local Commissioning Data in such manner as HSCIC reasonably determines is appropriate to produce Required Commissioning Contract Data for the Relevant Body which validates the delivery of Care Items and identifies the Responsible Commissioner for Care Items in accordance with The Who Pays Guidance and the Prescribed Specialised Services Guidance, including analysis through linking Local Commissioning Data to Clinical Registry Data and to National Commissioning Data and other data held by HSCIC;

- (2) carry out such other analysis of Local Commissioning Data and/or Historic PCT Data as HSCIC considers appropriate in order to produce Required Commissioning Contract Data which is requested by the Relevant Body for the purposes of performing any of the functions specified in paragraph 6 below, including analysis through linking of Local Commissioning Data to Historic PCT Data and linking Local Commissioning Date and/or Historic PCT Data to other data held by the HSCIC, provided that the HSIC is only directed to carry out such analysis in relation to Local Commissioning Data in response to a request made by the Relevant Body which is a party to the Commissioning Contract to which the Local Commissioning Data relates;
- (3) produce Required Commissioning Contract Data in a form required for dissemination in accordance with paragraph 8 below, including the carrying out of Pseudonymisation, anonymisation and other de-identification processes or analysis as HSCIC reasonably determines is required;
- (4) establish and maintain a register of all Commissioning Contracts in relation to which Data Services for Commissioners pursuant to these Directions is provided, which captures in each case:
  - (a) the relevant Health Service Provider and Relevant Body; and
  - (b) the Data Services for Commissioners requested by the Relevant Body.

**S254(3) - Requirement for these Directions**

5. In accordance with section 254(3) of the 2012 Act, the Board confirms that it is necessary or expedient for it to have the information which will be obtained through the HSCIC complying with these Directions in relation to the exercise of the Board's functions in connection with the provision of NHS Services, and in particular to enable Relevant Bodies to perform Commissioning Functions including the functions set out in paragraph 6 below.
6. The functions referred to in sub-paragraph 4(2) and paragraph 6 above are:-
  - (1) monitoring and audit of health care provision and outcomes where such provision has been made;
  - (2) analysis of health care provision to ensure effective pathways, use of resources and capacity;
  - (3) establishing population health needs for strategic delivery planning;

- (4) planning and administration of the provision made for health and health related care;
- (5) identifying individuals with a high risk of suffering adverse consequences from infection, or whose immunisations are not up to date, with the aim of contacting them to offer an immunisation appointment; and
- (6) analysing demographic and health profiles for pandemic emergency planning.

### **Publication**

7. Pursuant to its powers under section 260(2)(d) the HSCIC is directed by the Board not to publish Historic PCT Data , Local Commissioning Data, or reports produced as part of the Required Commissioning Contract Data that it obtains through compliance with sub-paragraph 4(1) of these Directions.

### **Dissemination**

8. Pursuant to sections 261(3), 262 (3)(a), 262(3)(b) and 262(7) of the 2012 Act, the HSCIC is directed by the Board to disseminate Required Commissioning Contract Data to the Relevant Body which requested it or any person acting on behalf of that Relevant Body and to the Health Service Provider from which the relevant Local Commissioning Data was collected, but only where one of the conditions specified in paragraph 9 below applies.
9. The conditions referred to in paragraph 8 are:
  - (1) the HSCIC can exercise its power under section 261(4) of the 2012 Act as the information was collected by the HSCIC pursuant to these Directions and the recipient of the information is a person to whom the information could have been lawfully disclosed by the person from whom the HSCIC collected the information, including but not limited to:-
    - (a) where the information is Pseudonymised data and the HSCIC is appropriately assured that the recipient would not be able to Re-Identify individuals from the information provided when linked to other information held by or likely to come into the possession of the recipient; or
    - (b) any person authorised to receive the information under Regulation 3 or 5 of the Section 251 Regulations,but only to the extent that the information does not include Identifiable Data relating to any Patients who have lodged objections to the onward disclosure of their Identifiable Data by HSCIC subject to the functionality being available to record and implement such Patient objections pursuant to paragraph 10 below; or

- (2) the information has been obtained by HSCIC complying with these Directions and the recipient is a person to whom the HSCIC has the power to disseminate the information to under or by virtue of any provisions of the 2012 Act (other than sections 261(1) or (5)) or any other Act, including but not limited to:-
- (a) where the information is Pseudonymised data and the HSCIC is appropriately assured that the recipient would not be able to Re-Identify individuals from the information provided when linked to other information held by or likely to come into the possession of the recipient; or
  - (b) any person to whom the HSCIC can lawfully disseminate the information as a result of an authorisation under Regulation 5 of the Section 251 Regulations, but only to the extent that the information does not include Identifiable Data relating to any Patients who have lodged objections to the onward disclosure of their Identifiable Data by HSCIC subject to the functionality being available to record and implement such Patient objections pursuant to paragraph 10 below.

### **Managing Patient objections**

10. The HSCIC is directed by the Board pursuant to paragraph 3 of these Directions to put measures in place as part of the establishment and operation of the information systems for Data Services for Commissioners to ensure that as the functionality becomes available to record and implement Patient objections, to the extent that the HSCIC is acting in pursuance of these Directions where a record is held by HSCIC of a Patient's objection to the onward disclosure of their Identifiable Data by the HSCIC, when disseminating information pursuant to these Directions, HSCIC will only disseminate Pseudonymised data in respect of that Patient.

### **Fees**

11. Pursuant to sub-section 254(7) of the 2012 Act, HSCIC is entitled to charge the Board a reasonable fee in respect of the cost of HSCIC complying with these Directions and the Board acknowledges such right and agrees to meet such reasonable fee charged by HSCIC.

### **Review of these Directions**

12. These directions will be reviewed and updated as required by 30th September 2014. This review will include consultation with the HSCIC as required by sub-section 254(5) of the 2012 Act (powers to direction Information Centre to establish information systems).

**Signed by authority of the NHS Commissioning Board**

**Sir Bruce Keogh  
Caldicott Guardian**

**[INSERT DATE]**

**Annex 1**

Manual for prescribed specialised services



pss-manual.pdf

**Annex 2**

Identification rules for prescribed specialised services



pss-ir.pdf

**Annex 3**

Who Pays? Determining responsibility for payments to providers – Rules and guidance for clinical commissioning groups



who-pays-aug13.pdf

EXPLANATORY NOTE  
(*This note is not part of the Directions*)

These Directions are published by the NHS Commissioning Board (which operates as NHS England) in exercise of its powers under section 254 of the Health and Social Care Act 2012 to direct the Health and Social Care Information Centre (HSCIC) to establish information systems.

The rationale for the Directions is to establish Data Services for Commissioners: a service to cleanse, link, and de-identify commissioning data, as appropriate; and disseminate the resultant data and reports to commissioners who require it to perform their functions, having current contracts with respective providers or legitimate interest in historic data.

This service will enable NHS England and Clinical Commissioning Groups to perform their commissioning functions, as defined in the *National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012* (the 2102 Regulations), and in support of these: validation of provider invoices, provider performance management, strategic delivery planning, immunisation monitoring, and pandemic emergency planning.

Data Services for Commissioners will be delivered by the HSCIC largely through its Regional Offices (DSCROs). These will collect data specified in contracts between the commissioner and the provider, when requested to do so by commissioning organisations who are party to these contracts.

The key components of the Directions are:

**Citation, commencement and interpretation**

Statement of title, commencement date and definitions.

**Establishment of Information Systems: collection and analysis of commissioning data**

The HSCIC is directed to:

- establish and operate systems to collect and analyse Local Commissioning Data and Historical PCT data to deliver Data Services for Commissioners (paragraph 3);

“Local Commissioning Data” includes datasets defined locally by commissioners, and nationally defined datasets that are submitted locally, i.e. other than via the Secondary Uses Service or other national submission. Datasets in both categories must be specified in a provider contract: a “Commissioning Contract” based on the standard NHS model. They also include data representing Prescribed Specialised Services activity commissioned by NHS

England. Non-contract activity data will conform to information standards and collections unless a non-contract agreement (or contract) is put in place

Wherever possible the health service provider should have regard to approved Information Standards and/or Collections for the provision of data. It is recognised, however, that much innovatory or locally specified activity within the commissioner–provider relationship do not currently conform to Information Standards or National Collections. The data necessary to support such locally specified activity should utilise approved Information Standards and Collections in so far as this is feasible. Also, the additional data items and linkage to the approved Information Standard data set (or sub-set) must be specified in the contract schedule between the commissioner and the health service provider. [It should be noted that commissioners and providers must conform to the approved meaning of terms and seek to collect an additional data item rather than seek to change the approved meaning of terms].

“Historic PCT” data includes the same general categories of data, identified by NHS England but for years prior to 1<sup>st</sup> April 2013. The HSCIC will determine whether it is appropriate to disseminate any particular historic PCT data to a particular commissioner.

- establish and operate these systems to produce Required Commissioning Contract Data, as further specified in paragraph 4, when requested to do so by a commissioner who has a contract with the provider from whom the data are collected (sub-paragraph 3(1)).

“Required Commissioning Data” are defined as the data, analysis records, and reports or other outputs requested by the commissioner.

- establish and operate these systems to collect, retain and analyse Historic PCT Data to produce the Required Commissioning Contract Data as further specified in paragraph 4 (sub-paragraph 3(2));
- put in place a system for managing the requests from commissioners for data services as specified above (sub-paragraph 3(3)).

## **Analysis of data**

The HSCIC is directed to:

- analyse Local Commissioning Data to validate the identity of the commissioner responsible for paying for the activity represented, using the rules defined in guidance issued by NHS England on Who Pays, and Prescribed Specialised Services (sub-paragraph 4(1));
- carry out other analyses to support the purposes defined in paragraph 6, where necessary linking/merging Local Commissioning Data, Historic PCT Data and other data held by the HSCIC, in response to requests from commissioners holding a contract that relates to the data (sub-paragraph 4(2));

- produce Required Commissioning Contract Data in pseudonymised, anonymised or otherwise de-identified form for dissemination (sub-paragraph 4(3));
- establish a register of Commissioning Contracts including providers, commissioners and the specific services requested by commissioners (sub-paragraph 4(4)).

### **S254(3) - Requirement for these Directions**

NHS England confirms that it requires the information in support of its commissioning functions and in particular to enable “Relevant Bodies”, i.e. CCGs and NHS England, to perform their statutory functions (paragraph 5), further supported by functions specified in paragraph 6:

- monitoring and audit of health care provision and outcomes where such provision has been made;
- analysis of health care provision to ensure effective pathways, use of resources and capacity
- establishing population health needs for strategic delivery planning;
- planning and administration of the provision made for health and health related care
- identifying individuals with a high risk of suffering adverse consequences from infection, or whose immunisations are not up to date, with the aim of contacting them to offer an immunisation appointment; and
- analysing demographic and health profiles for pandemic emergency planning.

### **Publication and dissemination**

The HSCIC is directed not to publish data submitted in support of provider invoices, resultant reports or analyses produced in accordance with sub-paragraph 4(1) (paragraph 7).

### **Dissemination**

The HSCIC is directed to disseminate the Required Commissioning Contract Data to commissioners or their support services where specified conditions apply:

- the data could be lawfully disclosed to the recipient by the organisation that the HSCIC collected it from, or the HSCIC otherwise has the power to disseminate the data, and either
- the data are pseudonymised and the HSCIC is assured that they cannot be re-identified, or
- the recipient is authorised to receive the information under regulations 3 or 5 of the Health Service (Control of patient information) regulations 2002, enacted under section 251 of the NHS Act 2006 – i.e. recommendation by the Confidentiality

Advisory Group to the Secretary of State to approve an application under this regulation. [Regulation 3 supports particular public health functions]

Disseminated information must not include identifiable data where patients have lodged objections to onward disclosure of such data. This is subject to the functionality becoming available to record and implement such objections.

### **Managing patient objections**

The HSCIC is directed to disseminate only pseudonymised data where it holds a record of a patient's objection to onward disclosure, as the functionality to do this becomes available.

Patients may inform the HSCIC directly that they object to the onward disclosure of identifiable data that it holds.

Patients may also record an objection either to the collection of identifiable data from their GP records by the HSCIC, or to onward disclosure of any identifiable data held by the HSCIC by telling their GP. S/he will record the objection(s) in the practice information system using pre-determined codes. The systems directed by *The Health and Social Care Information Centre (Establishment of Information Systems for NHS Services: Collection and Analysis of Primary Care Data) Directions* will enable the HSCIC to collect these codes.

### **Fees**

NHS England acknowledges the right of the HSCIC to charge fees for complying with the Directions (paragraph 11).

### **Review of these Directions**

These directions will be reviewed and updated as required by 30<sup>th</sup> September 2014, following consultation with the HSCIC (paragraph 12).