

Information about how the Competition and Markets Authority processes Hospital Episode Statistics data

Background

1. The Data Protection Act 1998 sets out how personal data (personal information identifying someone) may lawfully be processed (collected, used and shared).
2. Anyone processing personal data should have a public statement (sometimes called a Privacy Notice) explaining who they are, what personal data they are processing and why. The Competition and Markets Authority (CMA) has set this information out in its [Personal Information Charter](#) which explains the standards that you can expect from the CMA when it collects, uses or shares personal data about you, how you can get access to your personal data, and what you can do if you think standards are not being met.
3. The CMA's Personal Information Charter links through to the CMA's [notification](#) to the Information Commissioner's Office. The notification sets out the types of personal data the CMA processes and for what purposes. It explains that the CMA processes personal data about healthcare users to enable it to carry out its regulatory duties. The Information Commissioner's Office is the body that ensures that the Data Protection Act 1998 is complied with by all those processing personal data.

Hospital Episode Statistics data

4. Hospital Episode Statistics (HES) data is provided to the CMA by [NHS Digital](#). It is data about admissions, outpatient appointments and Accident & Emergency attendances at NHS hospitals (and some independent sector treatment centres) in England. This data is collected during patients' time at hospital and is collated centrally to allow hospitals to be paid for the care they deliver. HES data is designed to enable other non-clinical uses, such as research into aspects of NHS care. More information is available on the [NHS Digital](#) website and below.

The data NHS Digital is providing to the CMA

5. The CMA is using data sets for a number of recent financial years covering all outpatient appointments, admitted care, and care delivered in Accident & Emergency paid for under the NHS standard tariff in England.
6. The data does not contain patients' names, addresses, phone numbers, NHS numbers, or records from primary care. The data contains only the characters before the space (eg N7, HP3 or CF99) for patient postcodes. It contains the month and year of patients' births, although not the date.
7. The data does not contain clinical notes, but instead summary information on diagnoses, operations and the class of care given. The data allows the CMA to identify the patient's GP practice and the organisation (eg hospital) which gave the relevant period of care.¹
8. The data is not considered by NHS Digital, the data provider, to contain information which would enable the CMA to identify anyone.²

How the CMA is using HES data

9. The CMA is using the HES data it receives from NHS Digital in order to fulfil its statutory duties in merger control, and to undertake research to help fulfil its merger control functions.
10. To explain this more fully, the CMA is required under the Enterprise Act 2002 to monitor, investigate and decide whether mergers may give rise to a substantial lessening of competition within any markets(s) in the UK for goods or services. If the CMA concludes that the merger will lead to an anti-competitive outcome, it must decide whether action should be taken to remedy this. The Health and Social Care Act 2012 confirms that this duty also applies with respect to the merger of NHS foundation trusts.
11. In order to carry out this work, the CMA undertakes large-scale analyses of HES data in areas where there is a merger involving a foundation trust which it is monitoring or investigating. The CMA does this in order to be able to understand the range of different alternatives being used by patients pre-merger and to understand how choice may change post-merger. This is one part of the CMA's assessment as to whether the merger is likely to give rise to a substantial lessening of competition.

¹ The CMA uses this information to understand geographical flows of patients at the aggregate level, and to match in characteristics of organisations, such as hospital quality statistics.

² [NHS Digital website: Information on type 2 opt-outs.](#)

12. In such assessments, the CMA uses HES data to understand issues such as the aggregate geographic distribution of patients attending particular trusts, the extent to which trusts provide the same services, the extent to which patients overall see different trusts as good alternatives for care and the extent to which individual trusts' incentives may change post-merger.
13. The CMA also undertakes research using HES data to test and improve its merger assessment methodologies. It uses the data to draw out overall patterns in how patients respond to changes in local health economies (such as mergers or quality issues), and the drivers of choices for different types of care at different stages in care pathways.
14. The CMA's analyses do not identify any individuals, but instead look at the overall patterns of a large set of anonymised records to identify patterns and trends.

How the CMA is protecting HES data

15. Although the analysis conducted by the CMA cannot identify any individual from the HES data provided to it by NHS Digital, it takes great care in protecting the HES data. The CMA is subject to strict contractual standards imposed by NHS Digital, as the data provider. These include storing the HES data on an encrypted drive connected to a separate and dedicated server, access to which is restricted.
16. As contractually required, HES data is not kept for longer than the CMA has a business need for it and is then securely destroyed.