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

Background

1. Data protection law is set out in the UK GDPR and in the Data Protection Act 2018. These set out how personal data (information relating to a living individual who is identifiable from it) may be processed lawfully, fairly and transparently. 'Processing' is anything that is done to personal data and includes its collection, receipt, storage and use. (The EU GDPR (EU) 2016/679 has been adopted into UK law by the EU Withdrawal Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as amended).

2. Data protection law requires anyone processing personal data to provide the individuals whose data they are processing (data subjects) with certain information. This is usually set out in a public document called a Privacy Notice. The Competition and Markets Authority (CMA) has set this information out in its Privacy Notice, which can be found under the heading Personal Information Charter which is on its Gov.UK public website.

3. The CMA's Privacy Notice describes the personal data that the CMA is processing as controller. It explains why it is allowed to do this under the law and the purposes of the processing. It also explains how long the personal data will be retained by the CMA. The Privacy Notice sets out the rights which data subjects have over that data and how to exercise them, including the right to gain access to their personal data and the right to complain where they believe that the standards that they can expect from the CMA when it collects, receives, uses or shares personal data about them are not being met.

4. The Information Commissioner's Office investigates complaints that personal data has not be processed properly under the law.

5. One of the types of processing that the CMA carries out, as set out in its Privacy Notice, is the processing of healthcare data (Hospital Episode Statistics data). This processing enables the CMA to carry out its statutory and other functions. More detailed information about this processing is set out below.

6. 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 and collected to facilitate 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

7. The CMA is processing 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.

8. When the CMA receives the data, it does **NOT** contain patients' names, addresses, phone numbers, NHS numbers, records from primary care, or any other identifying information. The data does contain the letters and numbers which appear before the space in a patient's post code (eg N7, HP3 or CF99), the patient's sex, and the month and year of a patient's date of birth. (eg October 1961).

9. The data does **NOT** contain clinical notes, but is merely a summary of information on diagnoses, operations and the class of care given. For example, a patient may be recorded as having OPCS code T591 which corresponds to "Excision of ganglion of wrist" and (for adult patients), "Minor Hand Procedures for Non-Trauma, 19 years and over".

10. The data also provides a 6 digit code which corresponds to the name and address of a patient's GP practice and the type of organisation (eg hospital) which provided the relevant care.[1]

11. An example containing the key fields in the CMA's dataset for one illustrative patient record is below (with the meanings of any codes in square brackets), although this is not comprehensive: the CMA also holds data on, for example, the order in which individual periods of care called episodes take place within that patient's stay in hospital alongside several other fields.

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[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.

Type of information	Information
Encrypted patient identifier	87S8GNMWE1WIOENC334D45021
Month and Year of Birth	11/1971
Partial Postcode	WC1B
Sex	0 [="Female"]
GP Practice	CZ7282 [="The Surgery, Holborn]
Operation Code 1	T591 [="Excision of ganglion of wrist"]
Operation Code 2	-
Operation Code 3	-
Diagnosis Code 1	M674 [="Ganglion"]
Healthcare Resource Group	HN45A [="Minor Hand Procedures for Non-Trauma, 19 years and over"]
Specialty	110 [="Trauma and Orthopaedics"]
Admission Date	01/11/2012
Operation Date 1	01/11/2012
Operation Date 2	-
Discharge Date	01/11/2012
Hospital	RNY [="Central London Hospital Trust"]

How the CMA is using HES data

12.   The CMA uses the HES data it receives from NHS Digital in order to fulfil its statutory functions in merger control, and to undertake research to help fulfil its merger control functions. Merger control in the NHS is where the CMA reviews plans to bring two or more NHS hospitals into the same umbrella organisation and management, to ensure that patients have sufficient alternatives and that restructuring would not lead to lower quality care.

13.   To explain this more fully, the CMA has functions 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. The CMA is under a statutory duty to investigate and report on mergers that are referred for an in-depth investigation. If the CMA concludes that the merger will lead to an anticompetitive 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.

14.   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 may be expected to result in a substantial lessening of competition.

15.   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.

16.   The CMA also has powers under the Enterprise Act 2002 to acquire information about matters relating to its statutory functions so that it can take informed decisions and carry out those functions effectively. In carrying out the function of acquiring information, the CMA may (among other things) carry out research. In respect of HES data, the CMA undertakes research using HES data to test and improve its merger assessment methodologies. The CMA is using the data to assess the extent to which changes in the structure of local health economies and the options available to patients influence provider quality. The CMA is also using the data to consider the drivers of choices for different types of care at different stages in care pathways, and the implications of this for merger assessment.

17.   The CMA's analyses do **NOT** identify any individuals, but instead look at the overall patterns of a large set of records to identify patterns and trends. There is more information about this below.

How the CMA is protecting HES data

18.   The CMA cannot identify any individual from the data which it receives from NHS Digital and the analyses conducted by the CMA do not identify any individual. This data in the CMA's hands is what is described as 'pseudonymised' data. It is data from which the provider (NHS Digital) can identify individuals, but from which the recipient (the CMA) cannot. Notwithstanding this, the CMA is subject to strict contractual standards imposed by NHS Digital, as the data provider, to protect the data. These include storing the HES data on an encrypted drive connected to a separate and dedicated server, access to which is restricted.

19.   As contractually required, HES data is not kept for longer than the CMA has a business need for it and is then securely destroyed.

20.   More details can be found on NHS Digital's website here, which contains information on approved data releases.