

Confidentiality Procedure

This procedure implements the Information Governance Policy providing information on Confidentiality and outlining the processes needed to ensure compliance with all legislative, regulatory and best practice requirements. It seeks to ensure the ethical, secure and confidential processing of information and use of information systems to support the provision of high quality care.

BACKGROUND

It is essential that records are kept and maintained by Young Epilepsy on its students, staff and other service users, but it is equally as important that the right to confidentiality with regards to these records is both acknowledged and respected.

Students, parents, staff and other service users entrust us with, or allow us to gather, confidential information, including personal and special category personal data, in order that we may work together. They do so in the legitimate expectation that staff will respect their privacy and act appropriately. In some circumstances students may lack the competence to extend this trust, or may be unconscious, but this does not diminish the duty of confidence.

In drafting this Procedure, the following legal and regulatory obligations and best practice guidance have been considered:

- NHS Confidentiality Code of Practice
- Common law duty of confidentiality
- General Data Protection Regulation (GDPR)
- Data Protection Act 2018 (DPPA 2018)
- Human Rights Act 1998
- Health & Social Care Act 2001: Section 60
- Public Interest – common law
- Legal requirements to disclose
- National Minimum Standards for Residential Special Schools
- National Minimum Standards for Children's Homes
- Care Quality Commission Standards

Definitions

Anonymisation

Anonymised information is information that does not identify an individual directly, and cannot reasonably be used to determine identity. Once anonymised confidential information ceases to be confidential.

Disclosure

This is the divulging or provision of access to data.

Explicit or Express Consent

Consent is a clear and voluntary indication of preference or choice, which is freely given in circumstances where the available options and the consequences have been made clear.

Healthcare Purposes

These include all activities that directly contribute to the diagnosis, care and treatment of an individual and the audit/assurance of the quality of the healthcare provided. They do not include research, teaching, financial audit and other management activities.

Medical purposes

Medical purposes include but are wider than healthcare purposes. They include preventative medicine, medical research, financial audit and management of healthcare services. The Health and Social Care Act 2001 explicitly broadened the definition to include social care.

Public Interest

Exceptional circumstances that justify overruling the right of an individual to confidentiality in order to serve a broader societal interest. Decisions about the public interest are complex and must take account of both the potential harm that disclosure may cause and the interest of society in the continued provision of confidential health services.

Confidentiality & other Guides

Further detail on the issues contained in this Procedure can be found in the relevant Confidentiality Guides available to all staff on SharePoint.

As there is some overlap between many of the information-related procedures, additional information may also be found in the Data Protection, Information Governance and Information Risk Management procedures and guides available to all staff on SharePoint.

Any queries should be referred to the Information Governance Manager.

PROCEDURE format

- A. Confidentiality
- B. The Confidentiality Model
- C. The Caldicott Principles
- D. Disclosing and using confidential information

E. Young Epilepsy employment contract requirements

A. Confidentiality

A common law duty of confidence

A duty of confidence arises when one person discloses information to another (e.g. patient to clinician) in circumstances where it is reasonable to expect that the information will be held in confidence

A duty of confidence:

- Is a legal obligation that is derived from case law;
- Is a requirement established within professional codes of conduct; and
- Is included within employment contracts as a specific requirement linked to disciplinary procedures.

Information provided to members of the Health Services or Wellbeing staff teams is generally viewed as having been provided in confidence and must be treated as such for as long as it remains capable of identifying the individual it relates to. (Once information is effectively anonymised it is no longer confidential.)

The key principle of common law confidentiality is that information confided should not be used or disclosed further, except as originally understood by the confider, or with their subsequent permission.

Personal confidential information (PCI)

PCI is personal and usually sensitive information that is held about staff, students and other service users, who may be living or deceased. In health and care settings, personal information will also be confidential as it has been given in confidence so that people can receive health and care services. It can include names and addresses as well as a person's health and care information. It may be held in paper or digital records

B. The Confidentiality Model

Young Epilepsy has adopted the Confidentiality Model, to be applied by all staff.

The Confidentiality Model has four key requirements:

1. Protect confidential information

Young Epilepsy staff must protect confidential information by applying Young Epilepsy's procedures and related guides.

2. Inform

Young Epilepsy staff must inform students/parents or other service users about the use of confidential information

3. Provide choice

Young Epilepsy employees must recognise that service users have different value and needs and make every effort to facilitate these.

4. Improve

Staff should continually seek to improve the confidentiality provided to service users through awareness, training and reporting.

C. The Caldicott Principles

Young Epilepsy and its staff are committed to applying the Caldicott Principles. These Principles must be applied to assist with the maintenance of Confidentiality:

1. Justify the purpose (s) for using confidential information;
2. Only use it when absolutely necessary;
3. Use the minimum that is required;
4. Access should be on a strict need-to-know basis;
5. Everyone must understand his or her responsibilities;
6. Understand and comply with the law;
7. The duty to share information can be as important as the duty to protect confidentiality.

D. Disclosing and using confidential information

Legal basis for disclosing/using confidential information

Confidential information can only be disclosed or used if:

- a. Consent has been obtained; or
- b. It is for a healthcare purpose; or
- c. It can be justified as sufficiently in the public interest to warrant a breach of confidentiality; or
- d. It is supported by section 60 of the Health and Social Care Act 2001; or
- e. It is required by law or the courts

If staff use or disclose confidential information without consent then the GDPR, DPA 2018, NHS Code of Practice and other best practice standards must still be applied.

Consent to disclose confidential information

Consent to disclose confidential information should be sought as follows:

- a. From the individual concerned:
 - Where that individual is over 16 years of age and has capacity under the Mental Capacity Act;
 - Where that individual is under 16 years of age, but, as applicable, has Gillick competency/ meets the Fraser Guidelines.

- b. From Parents, where the individual is under 16 years of age and lacks Gillick/ Fraser competency;
- c. From a supporting best interests decision, where the individual is over 16 years of age and does not have capacity under the Mental Capacity Act 2005.
- d. From a Deputy or Attorney, where one has been appointed to make a decision in the area concerned.

Medical records

Student, staff and other service user medical records are held under legal and ethical obligations of confidentiality.

Young Epilepsy keeps such records in order to support the individual's healthcare. Consequently, such information that can identify individuals, must not be used or disclosed for purposes other than healthcare without meeting one of the other legal basis (see above) for doing so.

Whenever decisions are to be made about confidential health information, all staff should apply the "Medical confidentiality decisions in practice" guide, taken from the NHS Code of Practice.

Disclosing with appropriate care

Before disclosing any confidential information staff must:

- Follow any established information sharing protocols;
- Identify enquirers so information is only shared with the right people;
- Ensure appropriate standards are applied in respect of emails, faxes and mail;
- Share the minimum necessary to provide safe care or satisfy other purposes.

Recording information accurately and consistently

It is essential that all staff record information in an accurate and consistent manner.

Keeping information secure

In order to ensure the security of confidential information staff must employ an appropriate mixture of people, physical and electronic security measures

E. Young Epilepsy employment contract requirements

Breaches of confidentiality

Breaches of confidentiality by staff may amount to gross misconduct and are subject to disciplinary procedures.

Responsibilities

An employee's obligation of strict confidentiality applies both during employment and after leaving Young Epilepsy, without limitation of time.

It is the responsibility of all staff to maintain the confidentiality of information and not directly or indirectly:

- Reveal it to any person unless this disclosure is required and authorised as part of an employee's duties; and
- Use it for any purpose other than for the proper performance of staff duties of employment

The duty of confidentiality will not apply where the relevant information:

- Has entered the public domain, other than by unauthorised disclosure whether by the individual employee or someone else; or
- Is 'protected' under the Public Interest Disclosure Act 1998 and the employee has followed the Whistleblowing Procedure.

Regulatory standards

Staff must apply all regulatory standards that Young Epilepsy is subject to. These include, but are not limited to, those of the Care Quality Commission, Ofsted and National Minimum Standards.

Professional standards

All staff must apply the standards of their profession.

This procedure is agreed by the Director of Business Development and will be implemented by all departments.

Signed:

Date:

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**Tim Moore, Director of Business Development & Senior
Information Risk Owner**

Date of next review: 31
March 2020