



**Subject: Interim Guidance on Data Sharing for Referrals under GDPR and the National Consent Policy**

**September 2024 - Version 2**

**Dear Colleagues,**

The matter of whether a person's consent is needed for the purposes of referral from one clinician/service to another has been queried by healthcare workers, particularly as services move to delivering care across multiple settings. It has sometimes been the practice to formally seek such consent. With this in mind, we have worked with our colleagues in the HSE Data Protection Office, HSE National Access and Integration, members of the HSE National Consent Policy Steering Group and a range of senior clinicians to provide this guidance.

**The purpose of this interim guidance is to support HCWs in making referrals and outline the legal basis and requirements for the making of referrals only.**

**Key message: a patient's consent is not required to share necessary and appropriate data with other clinical services for the purposes of referrals. It is, however, good clinical practice to discuss with and inform patients that a referral is being made and that their clinical information will be shared for that purpose.**

**Context**

The purpose of this memo is to provide guidance for healthcare workers when:

- a. Making and receiving a healthcare referral,
- b. Designing referral processes and forms.

This guidance is provided in the context of requirements under:

- The General Data Protection Regulations (GDPR, 2016),
- The Data Protection Act, 2018,
- The HSE National Consent Policy 2022 v1.2, and
- Good clinical practice.

**The National Consent Policy and GDPR**

The National Consent Policy (in relation to clinical consent in its broad sense) states; *'Consent is the giving of permission or agreement for a treatment, investigation, receipt or use of a service or participation in research or teaching'*.

All data processing conducted by the HSE must have an appropriate lawful basis as required by the GDPR and Data Protection Act 2018. The HSE relies on the following lawful basis for the processing of clinical referrals within the healthcare system

The following lawful bases underpin the issuing of clinical referrals within the healthcare system:

- Article 9(2)(h) GDPR: *The processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems* and services on the basis of Union or Member State law or pursuant to contract with a health professional.



Oifig an Cheannaire Náisiúnta um  
Chúram Comhtháite,  
Dearadh Cliniciúil agus Nuálaíocht,  
Oifig an CCO

Ospidéal Dr Steevens,  
Baile Átha Cliath 8. D08 W2A8

Office of National Clinical Director  
for Integrated Care,  
Clinical Design and Innovation,  
Office of the CCO

Dr Steevens' Hospital,  
Steevens' Lane, Dublin 8. D08 W2A8

[www.hse.ie](http://www.hse.ie)  
[@hse\\_CDI](http://www.hse.ie/eng/about/Who/Clinical)

e-mail / r-phost:  
[Lead.IntegratedCare@hse.ie](mailto:Lead.IntegratedCare@hse.ie)

- Article 6(1)(e): The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; for the HSE this official authority is vested in us through the Health Act 2004 (as amended).

Consent should not be relied on as a lawful basis for processing of patient data by the HSE for the purposes of referrals within the HSE, with Section 38 or Section 39 organisations or with other private healthcare providers. In particular Recital 43 of the GDPR states '*...consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority*'.

**This means that clinical referrals can be made between healthcare practitioners in compliance with GDPR, *without the need for consent*. This includes referrals between all departments in the HSE and referrals to and from HSE services to Section 38 and 39 services and private healthcare providers. It is however good clinical practice to discuss with and inform patients that a referral is being made and that their medical information will be shared for that purpose.**

**Note** that explicit, informed and revocable consent is required for other purposes such as the use of patient identifiable data for research, for the investigation of a Your Service Your Say investigation etc.

### Summary of Advice

- Healthcare staff should not seek to rely on consent as a lawful basis to issue a referral within the HSE or to a separate data controller organisation e.g. a S38 organisation, private healthcare provider etc. The HSE relies on Article 6.1 (E) and Article 9.2 (H) of the GDPR to process personal and special category data to issue medical referrals within the healthcare system.
- Data subjects should be informed of how their data is processed, but it is not appropriate to seek (or imply a need for) consent for data processing where it is not required. Data Subjects can be referred to the [HSE's Privacy Notice – Patients and Service Users](#) for more information on how the HSE processes personal information etc. It is reasonable for the service to which a referral has been made to ask if the person is aware of the referral.
- Referral forms which may currently be in operation which request consent for information sharing should be reviewed and where necessary redesigned to exclude the requirement for consent to data processing to ensure that they are compliant with GDPR. Further information and guidance can be provided by the [HSE DPO Office](#) or from your [local Deputy Data Protection Officer](#). GPs and other non-statutory healthcare organisations should consult their own DPO for advice.

Yours sincerely,

**Dr. Siobhán Ní Bhriain, MSc, FRCPI, MRCP, MRCPsych., MCRN: 15579.**

**HSE National Clinical Director, Integrated Care, Clinical Design and Innovation, Office of the CCO**