URGENT: PLEASE READ
All GP and Pharmacy Practices
South Yorkshire and Bassetlaw

Dear Colleague

Re: Direction of Prescriptions

Dear Colleague,

I have become aware of suggestions that there may be some inappropriate behaviour occurring regarding prescription direction. It seems that some practitioners may be positively suggesting particular outlets for patients to use when getting prescriptions dispensed. Some pharmacies may also have been overzealous in getting patients to sign up to their prescription collection scheme.

GPs and practices may not direct patients to a particular pharmacy and to do would be a potentially serious breach of professional standards. Allegations of directing patients to a particular pharmacy is a probity issue and would be investigated through the NHS England South Yorkshire and Bassetlaw Performance Screening Group and may require referral to the GMC or GPhC. This can easily be avoided if the attached guidance is understood and followed.

If you have any evidence of this behaviour taking place or if you require any clarification on the rules that apply please contact Dr David Brown, Assistant Medical Director at david.brown@nhs.net or Matt Auckland, Clinical Pharmacy Advisor at matt.auckland@nhs.net.

Yours sincerely

Dr DAVID BLACK, Medical Director
NHS England, South Yorkshire & Bassetlaw Area Team

Enc: PSNC Briefing 095/13: Direction of Prescriptions
     HSCIC guidance
PSNC Briefing 095/13: Direction of Prescriptions

Direction of prescriptions is the term used, often by pharmacy contractors, to describe the exercise of undue influence by a medical practice over the choice of where a patient takes or sends their prescription to be dispensed. The influence may be intentional, or may be because any positive comment by a GP is likely to be taken by a patient to be an endorsement. This PSNC Briefing includes summaries of the regulations and guidance relevant to this topic, as well as an update on PSNC’s work in the area, and may be of use to contractors and LPCs affected by the issue.

NHS Constitution

A patient is entitled to be involved in every decision taken about their healthcare, and this would include taking decisions about where they want their prescriptions to be dispensed.

The NHS Constitution contains a number of principles, including:

4. The NHS aspires to put patients at the heart of everything it does. It should support individuals to promote and manage their own health. NHS services must reflect, and should be coordinated around and tailored to, the needs and preferences of patients, their families and their carers. Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment. The NHS will actively encourage feedback from the public, patients and staff, welcome it and use it to improve its services.

This makes clear that the preferences of patients must be reflected in NHS services, and if a patient prefers to use a particular pharmacy, the NHS should ensure that this preference is respected.

The Constitution also sets out a number of rights, one of which is related to confidentiality:

You have the right to privacy and confidentiality and to expect the NHS to keep your confidential information safe and secure.

The information set out on a prescription is confidential information. Forwarding a prescription to a particular pharmacy without the patient’s consent will breach this confidentiality.

NHS England has the responsibility for managing all primary care contracts (GP and pharmacy), and should ensure that all contractors, both medical and pharmaceutical, adhere to the principles enshrined in the NHS Constitution.

The Data Protection Act

The information set out on a prescription is confidential, and because it is often possible to deduce the condition for which a patient is being treated, the information is sensitive personal information.
The first principle in the Data Protection Act requires those who ‘process’ personal data to process it lawfully. To assist data processors, the Act sets out in Schedule 2 the conditions that apply to processing personal data and in the case of sensitive personal data, additionally at least one of the conditions in Schedule 3 must be met for the processing to be lawful.

In respect of sensitive personal data, the conditions in Schedule 3 are as would be expected, drafted to provide maximum protection for the individual whose data is being processed. Sensitive personal information can be disclosed where the individual has given explicit consent to the processing. There are exceptions, for example where it is in the best interests of the patient but the patient’s consent cannot reasonably be obtained. There is also an exception where the process is for medical purposes and is undertaken by a health professional or by someone who is subject to an equivalent duty of confidentiality. This allows pharmacies to maintain patient medication records for use within the pharmacy without obtaining the consent of the patient. This exemption may also apply where a patient is referred within the NHS (for example referred by the GP to hospital for treatment). Whilst it might be expected that this could allow a GP to pass information to a community pharmacy without explicit consent, it should be noted that with repeat dispensing, the GP is required, as part of the setting up of repeatable prescriptions, to obtain consent from the patient to have the relevant exchanges between the GP and pharmacy. This suggests that GPs and pharmacists do not have a general authority to discuss a patient without their consent (hence the need for consent forms for MUR and NMS consultations).

Healthcare organisations are often the subject of enforcement action by the Information Commissioner’s Office (ICO), where sensitive personal information is disclosed inappropriately, especially if the processes of the organisation are inadequate to protect the data. The ICO now has the power to levy fines of up to £500,000.

Most GP practices operate collection arrangements where repeat prescriptions may be collected by the patient’s chosen pharmacy. Practices must have robust processes to ensure that prescriptions are forwarded to the correct pharmacy. If a patient’s prescription has been sent to a pharmacy without that patient’s explicit consent, then the matter may be one that could be referred (with the patient’s consent) to the ICO. If a prescription was sent to a particular pharmacy, thereby disclosing sensitive personal information, in circumstances where the patient had expressed a preference to use another pharmacy, then this is likely to be viewed extremely seriously by the Information Commissioner.

**Inducements**

The pharmacy Terms of Service (Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013) contain several provisions that apply to the transfer of prescriptions from a GP practice to a pharmacy.

28(4) *P (including P’s staff) must not give, promise or offer to any relevant person any gift reward (including by way of a share of, or dividend on, the profits of P’s business, or by way of discount or rebate) as an inducement to or in consideration of the relevant person recommending to any person that they—*

(a) *present to P an order for drugs or appliances on a prescription form or repeatable prescription;*

(b) *nominate P as their dispensing contractor (or one of them) in their entry in their PDS patient details; or*

(c) *ask P to provide them with any directed service.*
(5) For the purpose of sub-paragraph (4), “relevant person” means any person who performs provides NHS services, whether on their own behalf or on behalf of another, and includes—

(a) any NHS body or provider of primary medical services; and

(b) any person employed or engaged by any of the persons mentioned in paragraph (a).

It would be contrary to these terms of service for a pharmacy to make any payment (including the payment of a company dividend) to a GP practice, or any of the staff, in return for the practice recommending that a patient presents their prescription to the pharmacy. It is therefore clear that a pharmacy must not seek to encourage a GP practice to recommend their pharmacy, by way of offering any gift or reward. NHS England is responsible for ensuring compliance with the terms of service, and complaints about such financial arrangements or offers to engage in such arrangements should be referred to the Area Team.

General Medical Council, and GP interest in pharmacies

GPs may legitimately have financial interests in a pharmacy and other healthcare providers with whom they have professional links, such as care homes or clinics. The General Medical Council (GMC) recognises the importance of maintaining the integrity of medical practitioners, and has published detailed guidance in its Good Medical Practice 2013. This includes a number of relevant paragraphs:

77. You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

78. You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.

79. If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest formally, and you should be prepared to exclude yourself from decision making.

80. You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, treat or refer patients or commission services for patients. You must not offer these inducements.

These are supported by guidance:

Decisions about patient care

14. If you, or someone close to you, or your employer, has a financial or commercial interest in an organisation providing healthcare such as:

• a pharmacy or dispensary

you must not allow that interest to affect the way you prescribe for, advise, treat, refer or commission services for patients. You must be open and honest with your patients about any such interests that could be seen to affect the way you prescribe for, advise, treat, refer or commission services for them.

15. You must not try to influence patients’ choice of healthcare services to benefit you, someone close to you, or your employer. If your organisation dispenses medicines, you must not allow your financial or commercial interests to affect the way you prescribe.
16. You must not ask for or accept any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, advise, treat, refer or commission services for patients. You must not offer such inducements to colleagues.

17. If you plan to refer a patient for investigation, treatment or care at an organisation in which you have a financial or commercial interest, you must tell the patient about that interest and make a note of this in the patient’s medical record.

18. Where there is an unavoidable conflict of interest about the care of a particular patient, you should record this in the patient’s medical record.

It is well recognised that the GP – patient relationship is one in which undue influence can be presumed. For example, if a GP makes a positive statement about a provider, the patient could see this as a recommendation and may decide to go with this ‘recommendation’ in order to please their GP. GPs should therefore be alert to the potential for even casual comments to be given more weight by patients than is intended.

Paragraph 15 of the GMC guidance makes clear the GP should not try to influence the choice of pharmacy, and this would apply to the explicit recommendation of a particular pharmacy, but could also mean the GP takes care through their actions or comments, not to be seen as endorsing the services of a particular pharmacy.

Paragraph 16 provides a similar prohibition on inducements as mentioned above in the pharmacy terms of service.

**Other regulatory routes**

Patients are best served by having freedom of choice of pharmacy, where their choice is based on factors of importance to them, such as location, convenience, hours of opening, services provided and quality of service. Because there is no patient registration at pharmacies, patients can choose to change pharmacy at will, and this freedom to choose means that pharmacies face competition for their services, and will compete through opening hours, providing the services that are required, and providing high quality services. This competition acts in the best interests of patients and is one of the reasons why direction of prescriptions is a detriment to patients, since it can distort competition.

Monitor has been charged with the duty to protect competition within the Health Service, and could be asked to consider complaints that direction of prescription are adversely impacting on competition.

Promotional materials, for example letters from GPs recommending a particular pharmacy, may raise questions about the direction of prescriptions. In addition to the above principles that would apply to such written promotional materials, there are controls on advertising, such as requirements not to be misleading, which are regulated by the Advertising Standards Authority.

**PSNC’s action to further reduce the likelihood of Direction of Prescriptions**

PSNC receives many expressions of concern from pharmacy contractors and Local Pharmaceutical Committees and despite all the above regulatory matters, there is a perception that patients’ choices are being influenced inappropriately. There may of course be valid reasons why a GP will suggest a patient visits a particular pharmacy, including, for example, where a pharmacy has extended opening hours at a time when there are no other pharmacies open, or where the patient would benefit from an MUR and only one pharmacy in the area provides the service. However, apart from legitimate exceptions like these, patients’ choice must be protected, and competition between pharmacies must be allowed to thrive.
PSNC has referred examples of alleged direction of prescriptions to the Department of Health, and has requested that statutory provisions are considered (i.e. changes to the pharmacy terms of service and the General Medical Services Contracts Regulations). As there is usually an agreement between the directing GP and the receiving pharmacist, PSNC believes the regulations for both professions will need to be changed. LPCs that receive expressions of concern about local initiatives that involve direction of prescriptions are invited to bring these to the attention of PSNC. LPCs may also wish to discuss such matters with their local medical committees.

PSNC has also been working with Pharmacy Voice, which has also had examples referred to it, and the organisations have jointly presented this information to the Department of Health. As part of that joint work, an approach has been made to the General Practitioners Committee of the British Medical Association to explore whether there is any joint activity that can help protect patient choice, and reduce the likelihood of inappropriate direction of prescriptions.

The General Pharmaceutical Council has also been alerted to the concerns, and there is to be consideration given to whether this is a matter on which the GPhC has a role.

If you have queries on this PSNC Briefing or you require more information please contact Steve Lutener, Head of Regulation.
Nomination: what you need to know

This guidance has been developed for all users of the Electronic Prescription Service (EPS) and NHS organisations with EPS responsibilities. It includes background information, responsibilities and guidance that applies at a national level. This replaces all local documents and nomination polices prior to 31 March 2013.

NHS England has responsibility for implementation and management of EPS.

What is nomination?
To use EPS, patients choose where their prescriber will electronically send their prescriptions. This is called nomination. Patients can have up to three nominations:

1. one pharmacy (must be a specific community or internet pharmacy)
2. one dispensing appliance contractor (DAC)
3. one dispensing GP practice (if eligible/applicable).

Dispensers must:
- not offer inducements or incentives to encourage a patient to nominate them.
- explain EPS, and if they have Release 2, enter any nominated dispenser at the request of the patient.
- in the event of a change of pharmacy ownership, inform the patient that the ownership has changed and ask whether they wish to continue with the nomination.

Prescribers must:
- not persuade or influence a patient to nominate a certain pharmacy.
- check on each occasion that the patient wants to use EPS Release 2, check the nomination, and if there is more than one, ask which one they would like to use.
- if asked, provide a list of dispensers in the area who are live with EPS Release 2.

Key messages
- Develop nomination processes before going live.
- Ensure all staff have received training on nomination and how to set/change/remove a nomination.
- Gather nomination requests before going live with EPS.
- Patients should be fully informed about EPS before a nomination is set.
- Patients must ‘opt in’ to nomination - there should be no changes to a patients nomination unless they have requested it.
- Reconfirm nominations if collected more than six weeks before go live.
- Nominations can be set, changed or cancelled at any Release 2 enabled site.
The four principles of nomination: these are based on the legislation and are endorsed by professional bodies.

1. Patients must be provided with sufficient information about EPS before a nomination is captured.

1.1 Obtaining consent for nomination

In obtaining consent for the professional services they provide, health care professionals ensure that patients are provided with sufficient and timely information. EPS is no different.

Checking consent and reconfirming information is an ongoing process rather than a single act. Health care professionals must seek a patient’s consent on each occasion that is necessary, such as after a change in circumstances, not only at the beginning of the process. Obtaining patient consent for nomination is a local process, it is not mandated that patient consent has to be in writing.

Where there is a change in pharmacy ownership the pharmacy should seek to inform patients in advance of this change wherever possible. Where it is not feasible to notify patients of the change in advance then this should happen as soon as possible after the change, for example face to face when a patient first collects their medication following the change of owner (see section 1.4 for additional suggestions on how nomination could be communicated to patients).

In all cases patients must be notified within six months of the change taking place. This ensures there is a basis for implying the patient’s continued consent to this nomination. Throughout this period the nomination will automatically continue with the new pharmacy. A patient who informs the pharmacy that they no longer wish to have the pharmacy set as their nominated pharmacy, must be given appropriate assistance to remove the nomination.

1.2 Who should communicate nomination information to patients?

It is important that all staff can explain nomination to patients, for example:
- prescribers
- pharmacists
- dispensing technicians
- delivery drivers
- GP practice receptionists
- dispensing appliance contractor staff.

Ensure there is at least one person at each site who has detailed knowledge on setting, changing and removing nominations and make sure that staff know who to contact to help resolve issues quickly.

1.3 What should be communicated to patients about nomination?

Patients or patient representatives should be fully informed about what EPS is and how it works prior to a nomination being set. Patients need to fully understand the implications of setting a nomination and be aware that the way they collect their prescriptions may change.

As a minimum, the following information should be provided to the patient before setting their nomination on the system:
- nomination is not mandatory
- the prescription will be sent electronically to the nominated pharmacy (or DAC)
- there is no need to collect a paper prescription from the GP practice as it will be sent electronically
- the patient can choose who they wish to nominate and is not restricted to nominating a dispensing contractor located close to their GP practice
- patients can ask to set, change or remove their nomination at any time, at any Release 2 site
- patients do not need computer access to have a nomination or use EPS.

If the GP practice is not enabled with EPS Release 2, dispensing staff should inform patients that although they have requested to set their nomination, they won’t start using electronic prescriptions until their GP practice goes live.

Legislation

The following legislative provisions relate to nomination. NHS England ensures that these are upheld.

National Health Service (General Medical Services Contracts) Regulations 2004
http://www.opsi.gov.uk/si/si2004/20040291.htm

National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005
http://www.opsi.gov.uk/si/si2005/20050893.htm

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013


1.4 How should nomination be communicated to patients?

Information about EPS and nomination can be provided in a number of ways:

- **Face to face**— this could be when a patient is collecting their medication from the pharmacy or during a consultation with the prescriber.
- **Telephone**— this could be when the patient is calling to book an appointment, or the pharmacy is calling about a medication usage review.
- **Patient leaflets**— these could be attached to patient medication bags or given out as part of a consultation.
- **Staff can attach EPS information to prescriptions before medication is collected or delivered.**
- **Sites can place posters in waiting areas and EPS stickers in windows to help raise patient awareness.** Order stickers (ref 4124) from the DH publications order line [www.orderline.dh.gov.uk](http://www.orderline.dh.gov.uk).

2 Patients must not be influenced or persuaded to nominate a specific dispensing contractor and inducements cannot be offered.

Patients should be supported to make an informed choice about nomination and choose the dispensary that is most suitable for them. Patients should not be unduly influenced in their decision to nominate or in their choice of nomination.

Dispensing contractors must not offer any gift or reward to encourage a patient to nominate them; this also includes the offering of share dividends of profits or discounts.

Prescribers must not seek to persuade a patient to nominate a specific dispenser. If a patient asks who to nominate, they should provide the patient with a list of all the dispensers in the area who provide EPS.


3 Prescribers and dispensing contractors will need to capture, set, change, cancel and reconfirm a patient’s nomination in a timely manner.

This principle has two distinct aspects relating to timeliness:

- setting, changing and removing a patient’s nomination request
- re-confirming a nomination.

This will ensure that when the patient requests their next repeat prescription they can be confident that their prescription will be sent to their nominated dispensing contractor.

3.1 Setting, changing and removing

Nominations should only be changed or removed at the patient’s/representative’s request. Details including the person who set/changed/removed the nomination will be recorded via the user’s Smartcard.

The identity of the patient/patient’s representative should be checked in line with the National Pharmacy Association (NPA) Standard Operating Procedure entitled “Safe and Effective Supply of Medicinal Products”.

Patients can ask for their nomination to be set, changed or removed at any Release 2 site including any pharmacy, dispensing appliance contractor or at the GP practice that they are registered with.

Some sites enter all nominations at the end of each day or during quiet periods such as during lunchtime.

It is important to inform the patient that the best time to change their nomination is soon after they have collected their last repeat.

**If a patient’s nomination is changed part way through an electronic repeat dispensing cycle, all prescriptions that have not been downloaded will be transferred to the new nomination.**

**If a nomination is removed part way through an electronic repeat dispensing cycle the patient will need to go back to their GP to obtain a new prescription.**
3.2 Reconfirming nominations
Nominations should be reconfirmed with the patient in a timely way, when:

- collected more than six weeks before the dispensing site goes live, or
- there is a pharmacy change of ownership.

This is to stop patient confusion e.g. they may have forgotten that they have nominated. Also, patient’s circumstances often change, e.g. change of address.

Reconfirming nominations can be done in a variety of ways, contractors should always choose the appropriate method, see section 1.4.

### Prescribers and dispensing contractors must establish clear processes for nomination.

When going live with EPS Release 2 experience has shown that having clear processes will help with the uptake. Also having a high volume of nominations set prior to go live will allow for changes to be learnt quickly and reinforced by all staff.

**Set nominations prior to go-live to ensure support on go-live day is used to best effect. Continue to set more nominations after go-live.**

In addition to this, GP practices will need to:

- check that on each occasion the patient wishes to use EPS. A poster could be displayed advising the patient that their prescription will be sent to their nominated dispensary unless they specify otherwise.
- ensure that the right prescription goes to the right place (where a patient has more than one nomination for example a pharmacy and a DAC nomination).
- understand the process for producing a paper FP10 prescription for a patient as a “one off” without removing the nomination.

Health care professionals will need to consider how:

- An auditable nomination process will be introduced
- Patients and their representatives will sign up
- Nominations will be reconfirmed (if required)
- Complaints will be dealt with.

Pharmacy staff will need to consider how they will confirm a patient’s identity for when they are collecting a prescription (as now).

### Nomination complaints
It is important that any complaint about nomination is investigated and dealt with appropriately. By following this guidance complaints about nomination will be minimised.

Here are some examples of nomination complaints:

- Setting, changing or removing a nomination without a patient’s consent
- Pharmacy offering gifts to patients to nominate them
- GPs setting nominations for all patients to one pharmacy without patient consent
- Pharmacy nominating all their prescription collection service patients without their consent
- Pharmacy not reconfirming nominations
- GP practice refusing to set nominations.

If the patient wishes to register a formal complaint, they should make that complaint to the pharmacy, DAC or GP practice in the usual way.

Patients can also complain to NHS England or their local Clinical Commissioning Group (CCG) for example if their complaint cannot be resolved.

If a GP practice, pharmacy or DAC wishes to make a complaint about another contractor they should discuss with their Area Team the most appropriate method to raise the complaint.

NHS England has overall responsibility for monitoring nominations and ensuring that complaints are dealt with in a fair and equitable way.

http://www.england.nhs.uk/contact-us/complaint/

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