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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.

The Office of Fair Trading has responsibility for enforcing the competition provisions of the Competition Act 1998 and EU Treaty. Complaints about serious anti-competitive behaviour could be raised with the OFT. [Monitor](#) has been charged with the duty to ensure choice and competition in the Health Service operate in the best interests of patients, and it has concurrent powers with the OFT under the Competition Act and EU Treaty with respect to health care services in England. Monitor is also interested in hearing of issues adversely impacting on competition for health care services. If complaints about anti-competitive behaviours are made to the OFT that might be better dealt with by Monitor then they will be forwarded to Monitor by the OFT.

Pharmacy Contractors and LPCs who believe that an anti-competitive behaviour is likely to be of interest to those formulating policies in the NHS may send details to Monitor for information, but complaints should in the first instance be sent to the OFT.

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](#).