Dear Practice Manager

My apologies for sending out this message to you all but the IG Team at eMBED are concerned that there may be some misunderstandings around this subject which could potentially lead to a patient safety issue.

I know that you will be aware of the implementation of the new Data Protection regime on 25th May which includes GDPR and a new Data Protection Act.  One of the more talked about aspect of this has become the requirement or otherwise to send out messages via text and email to get users to renew their consent or opt out from receiving such messages.

Short message.

It is the considered view of the eMBED IG Team that GP Practices do not need to send messages via text or email to patients asking them to opt in or consent to the practice continuing to use this method of communications to them.  GP Practices are processing patient data under the legal basis of a Public Task and the provision of Heathcare services and therefore the requirements around consent do not apply where the patient has already feely given this data.

Long version.

The eMBED IG Team consists of 12 IG specialist who have been working across Primary Care for many years and most have undergone formal training in recent weeks to update their existing Data Protection qualifications to GDPR standard.  We are contracted by NHS England to provide an advice and assistance service to GPs across most of Yorkshire & Humber.

Within GDPR a significant change has been made to the way in which consent is treated and there are now some rights which only apply when the legal basis for processing data is consent.  In addition there is a greater emphasis on organisations understanding which legal basis they are using for processing personal data.  Within the GP Practice setting it is clear that the correct legal basis should be Public Task and the provision of Heathcare services.

Where a patient has provided data items about themselves such as postal address, email address or mobile phone number these are held (processed) by the practices under their legal basis of the provision of healthcare.  This same provision of course then covers their use by the practice in relation to the provision of that healthcare, such as appointment reminders.  However as an example the use of such data items by the practice to advertise additional services not directly related to the provision of Healthcare to the patient would not fall into this legal basis.

We are aware that some GDPR consultants and others have been offering the advice that organisations who hold mobile numbers and email addresses should be seeking to regain consent from individuals, and many of you may have seen such emails.  There is however also a clear view from many professions in this are that this is simply not the case:

<https://www.theguardian.com/technology/2018/may/21/gdpr-emails-mostly-unnecessary-and-in-some-cases-illegal-say-experts>

Most of these relate to business and other services where the legal basis may well be consent.  However where there is a clear legal basis for processing the data, as with GP Practices, then the sending out of such text and emails is just not necessary.

It is not wrong in itself to send such reminders, and it is considered good practice to have measures in place to ensure the data you hold is accurate and up to date.  However sending out blanket text and email messages, particularly at this time with so many others doing the same, means there may well be a real risk that many patients do not respond for a variety of reasons.  The impact of this could be a significant loss of useful patient data and if the practice go further and actually delete or no longer use the data they hold on patients it could have an impact on attendance at appointments and in some cases even have a clinical risk to the patients.

In conclusion the patient data that is held in a GP Practice is processes by the practice under the legal basis of Public Task and the provision of healthcare and not consent.  You do not need to contact all patients to get them to opt in or re consent and indeed to do so may have unintended consequences.

Further ICO guidance for GPs is here

<https://ico.org.uk/for-organisations/health/health-gdpr-faqs/>

Please do not hesitate to contact me if you have any questions on this either directly or through our generic IG Helpdesk which is embed.infogov@nhs.net