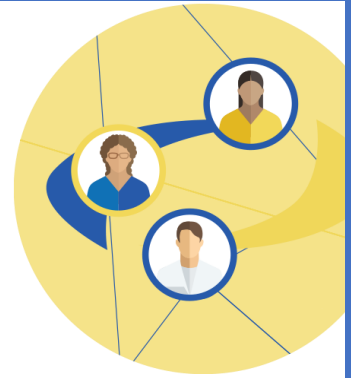


## Bedfordshire & Hertfordshire LMC Ltd: Update for Practices, Monday 09<sup>th</sup> October 2023



### In this edition:

1. **6% Pay Uplift for Salaried Staff**
2. **Access to Records**

#### 1. 6% Pay Uplift for Salaried Staff

Further to the LMC guidance on this issue sent out last Wednesday, we can update that at the end of last week, NHSE advised BMA/GPC that the October pay run would be **the uplifted amount for October only** and that due to 'technical errors', the payment of the arrears (April to September) would not be processed until the November pay run.

#### 2. Access to Records

We understand the following guidance was issued to BMA members over the weekend and now make it available to all practices, together with LMC comments.

'GPCE (GPs Committee England) continues to support the principle of online records access for patients – provided it is safe for patients, and safe for GPs and their teams. We remain concerned about certain aspects of the programme and have outlined these previously. ([Accelerated access to GP-held patient records 2022 guidance \(bma.org.uk\)](https://www.bma.org.uk/accelerated-access-to-gp-held-patient-records-2022-guidance))

Following the Government's decision to impose the GP contract in England this year, all practices are contractually obliged to provide patients with online prospective access to their full record. This will prospectively include the coded record; records of consultations; test results; all documents and associated free text, for all patients. Practices' contracts require them to abide by this, by 31 October 2023.<sup>1</sup>

GP contractors are data controllers of the GP-held medical record:

-GPs' duties under the DPA 2018 (Data Protection Act 2018) and UK GDPR are paramount and must be observed by GPs instituting any new form of data processing.

-GPs should not breach their duties as data controllers in order to comply with a contractual obligation to provide access. It cannot have been NHS England/the secretary of state's intention to require GPs to act in breach of their data protection duties.

-These new contractual requirements require changes to the way that GP contractors as data controllers of the GP-held medical record process their patients' personal data and, as such, a Data Protection Impact Assessment is required by law.

The Information Commissioner's Office defines a DPIA (Data Protection Impact Assessment) as a process designed to help systematically analyse, identify and minimise the data protection risks of a project or plan. It is a key part of a GP contractor's accountability obligations under the UK GDPR. Conducting a DPIA does not have to be complex or time-consuming in every case, but there must be a level of rigour in proportion to the nature of the processing and the risks identified. There is no definitive DPIA template that you must follow.

## Action you must take

The BMA has completed a general DPIA on behalf of the profession reflecting general risks which GPCE has identified. You will now need to complete your own DPIA as a practice taking into account your practice's particular factual circumstances. You can use the suggested BMA template which is based on the ICO's, or you may wish to develop your own bespoke template and process to suit your own particular needs. In addition to the sample DPIA, the BMA has prepared guidance, outlining actions that practices may need to take depending on where they are in the process.

The BMA DPIA has identified a number of risks which may be mitigated by operating an opt-in model, which is to say providing access only to patients who request access, as opposed to providing access to all patients who have not opted out. Practices who conduct their own DPIA and reach the same conclusion may want to operate an opt-in model. This can be done until 31<sup>st</sup> October which is the date by which GPs' contracts require access to be given to all patients who have not opted out.<sup>2</sup> This could be via batch-coding with the '104' code and then asking all patients if they wish to opt-in to access. The BMA has produced separate guidance on how to operate an opt-in model for those practices that decide this is the best way to mitigate the risks they identify in their own DPIA.<sup>3</sup>

## Your guidance

We have created an FAQ to help answer any questions you may have, including on producing a DPIA and specific guidance for TPP SystemOne practice and EMIS practices, and template materials.

Access the FAQ - [BMA general practitioners committee England](#)

We have been actively engaging with colleagues at NHS England around this issue for many months, and we shall continue to do so. Likewise we are aware of the volume of information which has already been produced to support the implementation of this programme. However, we appreciate how busy practices are – especially at the present time in the middle of the accelerated seasonal vaccination programme, with over 7.5 million patients waiting for specialist treatment leading to increased demands on practices' limited time.

We have a duty to respond to the many GPs who have contacted us with overarching concerns, and requested guidance. Please refer to the FAQs which we have produced, and continue to advise us of what you need to best support you with this process. Our contact email for queries is [info.gpc@bma.org.uk](mailto:info.gpc@bma.org.uk)

### **LMC Comment:**

1. The actual wording of the Regulations and the updated GMS contract actually says that the facility to access online information should be provided "on or after 31<sup>st</sup> October 2023".

The Regulations and the updated GMS contract also go on to say that "Where the contract has not, before 1<sup>st</sup> November 2023, **for whatever reason** [LMC emphasis], provided the patient with the facility to access the patient's online medical record, and the patient makes a request in writing to the practice on or after 31<sup>st</sup> October 2023 to be provided with that facility, the contractor must provide the patient with that facility by the end of the compliance period".

The "compliance period" is the same period as is required for Subject Access Requests, i.e it is usually one month but it can be extended to three months in certain circumstances, e.g. if the request is "complex".

2. We believe that this wording from GPC confuses what is actually required by the Regulations and the updated GMS contract. The written requirement is to “provide the patient with the facility to access online information”. BHLMC’s interpretation is that this wording would be met, e.g. the facility to access information would be provided, in a situation where a practice has an opt-in process where patients state that they want to have access and the practice then facilitates that access. We are seeking clarification of our interpretation with GPC. BHLMC’s interpretation would also accord with the Application form for online access to the practice online systems, which GPC has produced.

3. Practice Data Protection Officers (DPOs) should be involved in the drawing up of DPIAs.

Local DPOs are:

- Bedfordshire and Luton – Paul Couldrey
- Hertfordshire – Barry Moulton

4. The Flow Diagram on the following page was developed by Avon LMC and may be helpful in guiding practices through the recommended steps from GPC.

**News** - For the latest news, information and weekly updates for practices, please visit the [Hot Topics](#) section of our website.

**BHLMC Job Board** - Advertise your practice vacancies or search for jobs on our [Job Board](#). If you are interested in posting an advert please contact [lmadmin@bhlmc.co.uk](mailto:lmadmin@bhlmc.co.uk) for more information.

**Locums** - If you are a Locum and would like to receive LMC updates, please register via the [online form](#) to be added to our database and mailing list.

**Workforce Wellbeing & Support** - [Visit our webpage](#).

**Contact Us:**

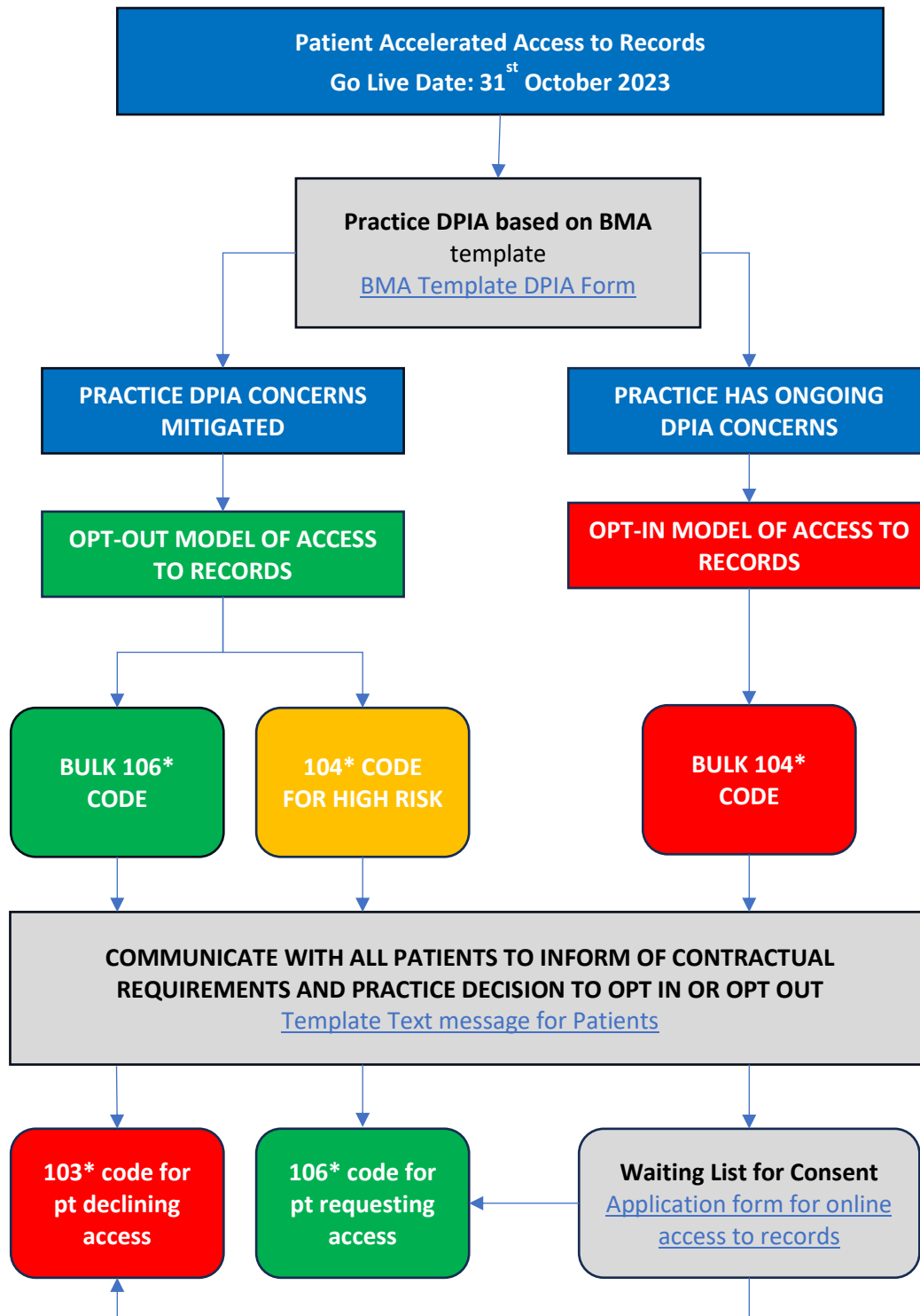
Beds & Herts LMC Ltd,

Tel: 01438 880010

Email: [lmadmin@bhlmc.co.uk](mailto:lmadmin@bhlmc.co.uk)

Website: [www.bedshertslmcs.org.uk/contact\\_us](http://www.bedshertslmcs.org.uk/contact_us)





**\*Code Guide**

The '103' code – used when a patient has declined access. (SCTID: 1290331000000103)  
Online access to own health record declined by patient (situation)

The '104' code – used to (temporarily) block access. (SCTID: 1364731000000104)  
Enhanced review indicated before granting access to own health record (situation)

The '106' code – used to negate a '104' code and allow. (SCTID: 1364751000000106)  
Enhanced review not indicated before granting access to own health record (situation)

Reference: [BMA general practitioners committee England](#)