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DATA PROTECTION AND CONFIDENTIALITY

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DATA PROTECTION AND CONFIDENTIALITY POLICY

1. PURPOSE

- 1.1 To detail the rights of Service Users relating to confidentiality and data protection and issues that all staff including Agency Workers need to be aware of when processing confidential information within Nursing Direct.
- 1.2 This is one of a suite of policies that relates to Data Protection, Information Governance, Data Quality and Security and the Human Rights of Service Users and dovetails to form a framework that ensures full legal compliance and best practice.
- 1.3 To support Nursing Direct Healthcare Limited in meeting the Key Lines of Enquiry/Quality Statements as set out by the Care Quality Commission (CQC).
- 1.4 To meet the legal requirements of the regulated activities that {Nursing Direct Healthcare Limited} is registered to provide:
 - The Health and Social Care (Safety and Quality) Act 2015
 - The Care Act 2014
 - Freedom of Information Act 2000
 - Human Rights Act 1998
 - Data Protection Act 2018
 - UK GDPR

2. SCOPE

- 2.1 The following roles may be affected by this policy:
 - All staff including Agency Workers
- 2.2 The following Service Users may be affected by this policy:
 - Service Users
- 2.3 The following stakeholders may be affected by this policy:
 - Family
 - Advocates
 - Commissioners
 - External health professionals
 - Local Authority
 - NHS

3. OBJECTIVES

- 3.1 To outline the principles related to confidentiality and to support Nursing Direct staff including Agency Workers in applying these principles.
- 3.2 To establish the approach of Nursing Direct to ensuring the confidentiality of personally identifiable information.
- 3.3 To inform Service Users, their families, legal representatives, stakeholders and Nursing Direct staff including Agency Workers about the confidentiality obligations of Nursing Direct and how we intend to meet them.
- 3.4 To inform all staff including Agency Workers working for, or on behalf of Nursing Direct of their responsibilities with regards to confidentiality and personally identifiable information and how Nursing Direct will enable these to be met.

4. POLICY

- 4.1 Nursing Direct recognises that we have a duty of confidentiality to our Service Users and all staff including Agency Workers. We believe that respecting an individual's right to a private life, which includes confidentiality, is important in ensuring a trusting, caring and supportive environment where both Service Users, and all staff including Agency Workers are confident that information about them will be protected safely and not shared inappropriately or unnecessarily.

It is the policy of Nursing Direct that we will only share information that is in the best interest of the Service Users and with their consent. Sharing of information will be carried out in line with the UK General Data Protection Regulation (UK GDPR), Data Protection Act 2018, Mental Capacity Act and Best Interests policies and procedures at Nursing Direct Healthcare Limited.

We aim to comply with the relevant legislation and include the Caldicott Principles.

- 4.2 **Caldicott Guardian**
Nursing Direct understands its obligations to appoint a Caldicott Guardian in line with guidance from the National Data Guardian for Health and Social Care.

Further information is available in the Caldicott Guardian Policy and Procedure.

- 4.3 **Core Principles of Confidentiality**
All staff including Agency Workers
 - Will ensure that all Service User information remains confidential. Service Users have the right to expect that personal information held about them is not accessed, used, or disclosed improperly.
 - The same duty of confidentiality applies to personal information about all staff including Agency Workers with the exception of names and job titles. Information about Directors, which is published, and therefore is a matter of public record, is also excepted.
 - All staff including Agency Workers have the individual responsibility for ensuring that they conform to the Caldicott principles, UK GDPR, Data Protection Act (DPA) 2018 and Article 8 Human Rights Act (HRA) 1998.

- All staff including Agency Workers must not inappropriately access, misuse or share any information or allow others to do so. All staff including Agency Workers are personally liable for deliberate or reckless breaches of the UK GDPR, Data Protection Act and may be liable to disciplinary action and/or prosecution.
- Any personal information given or received in confidence for one purpose may not generally be used for a different purpose or passed to anyone else without the consent of the provider of the information.

4.4 **The Position of Nursing Direct on Confidentiality**

- Nursing Direct will share with Service Users, their families, and their carers, as far as the law allows, the information they want or need to know about their health, care, and ongoing treatment, sensitively and in a way that they can understand.
- Confidential information will not be used for a different purpose or passed on to anyone else without the consent of the information provider.
- There may be occasions when it could be detrimental to the Service User or to another individual if this principle is strictly adhered to.
- There is a recognition that breaches of confidence are often unintentional. However, the consequences could be equally serious for all concerned. Nursing Direct will ensure that personally identifiable information will always be held securely and, when used, treated with respect. This rule will apply regardless of where the information is held.
- Although the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act no longer applies to identifiable data that relate to a person once they have died, we respect that any duty of confidence established prior to death continues after a Service User has died.
- All information regarding the Service Users Nursing Direct support will be treated with respect and integrity.
- Nursing Direct will be transparent in our approach to ensure that anyone associated with Nursing Direct (whether Service User, staff including Agency Workers, or visitor) is fully aware of how, what, when, who and why we share any information about them and source their agreement before doing so.

4.5 All relevant staff including Agency Workers will be bound by their professional code of ethics issued by their relevant licensing body, such as The Nursing and Midwifery Council. All staff including Agency Workers will follow the Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England.

4.6 All staff including Agency Workers must sign a confidentiality agreement as part of their contract of employment. The confidentiality agreement is outlined within the staff including Agency Worker Handbook and the Application Pack Declaration Statement. All staff including Agency Worker must sign the declaration statement within the Application Pack, stating that they have read and understood all information provided which includes the staff including Agency Worker Handbook.

4.7 **Responsibilities - Management Team**

- Ensuring that systems and processes are in place for the security of records, and they are reviewed to ensure that they remain fit for purpose.
- Ensuring that all staff including Agency Workers have access to this this policy or can request for this policy to be shared with them.
- Ensuring that all staff including Agency Workers have received the appropriate training which is reviewed to ensure that all staff including Agency Workers remain knowledgeable.
- Acting on any breaches in confidentiality in a timely manner and notifying the appropriate bodies.
- Ensuring that confidentiality rules are never used as a barrier to share appropriate information and fulfilling Duty of Candour obligations.

4.8 **Responsibilities - All staff including Agency Workers will ensure the following:**

- That information received is effectively protected against improper disclosure when it is received, stored, transmitted, and disposed of.
- That confidential information is only accessed if it is appropriate to the job you undertake.
- That every effort is made to ensure that Service Users understand how information about them will be used before they supply any confidential information.
- That when Service Users give consent to the disclosure of information about them, they understand what will be disclosed, the reasons for disclosure and the likely consequence/s.
- That Service Users understand when information about them is likely to be disclosed to others, and that they have the opportunity to withhold their permission.
- If disclosing information outside the team that could have personal consequences for the Service User, that consent is obtained from the Service User.
- If the Service User withholds consent, or if consent cannot be obtained for whatever reason, disclosures may be made only where:
- They can be justified in the public interest (usually where disclosure is essential to protect the Service User or someone else from the risk of significant harm).
- They are required by law or by order of a court.
- If required to disclose confidential information, All staff including Agency Workers will only release as much information as is necessary for the purpose.
- That the person(s) to whom information is disclosed understands that it is given to them in confidence which they must respect.
- When disclosing confidential information, All staff including Agency Worker must be prepared to explain and justify the decision. Where there are doubts, they will discuss them with the Registered Manager.
- Queries concerning this policy will be brought to the attention of The Quality Assurance Team and the Registered Manager.

5. **PROCEDURE**

5.1 Nursing Direct will detail with transparency how confidentiality is managed with Service Users, all staff including Agency Worker and others at the earliest opportunity and seek their agreement, e.g., through existing systems such as the recruitment process and the Service User assessment process.

5.2 **Sharing Information With Other Health and Social Care Professionals**

Information sharing between partners directly involved in a Service User's Care, and for the purpose of providing that Care, is essential towards good practice.

Consent from the Service User for information sharing must be recorded following a discussion with the Service User or, in the absence of capacity to consent, their designated other.

The principles of sharing information are:

- Only information that needs to be shared
- Only with those who have a clear need to know, and
- There is a lawful basis for sharing information.

5.3 **General Principles of Confidentiality - All staff including Agency Workers will:**

- Understand and follow the Caldicott Principles.
- Be aware that the Data Protection Act 2018 (DPA 2018), and the UK General Data Protection Regulation (UK GDPR) are not barriers to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.

- Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared and will seek their agreement unless it is unsafe or inappropriate to do so.
- Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. All staff including Agency Workers may still share information without consent if, in their judgment, that lack of consent can be overridden in the public interest.
- Consider safety and wellbeing. All staff including Agency Workers must base information sharing decisions on considerations of the safety and wellbeing of the person and others who may be affected by their actions.
- **Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information shared is necessary for the purpose for which it is being shared, is shared only with those people who need to have it, is accurate and up to date, is shared in a timely fashion, and is shared securely.

5.4 **All staff including Agency Workers must keep a record of any instances where information has been shared, maintaining Confidentiality.**

- All information regarding the people we support will be treated with respect and integrity.
- In general, no information may be disclosed either verbally or in writing to other persons without the Service User's consent. This includes family, friends and private carers, and other professionals.
- Conversations relating to confidential matters affecting Service Users will not take place anywhere that they may be overheard by others, i.e., in public places - such as supermarkets, public transport, open plan areas of the office, during training or group supervision where other all staff including Agency Workers not involved in the Service User's Care are present.
- Written records and correspondence must be kept securely at all times when not being used by all staff including Agency Workers. For example, timesheets, rotas, etc. must not be left in unattended vehicles.
- All staff including Agency Workers must not disclose any information that is confidential or that, if it were made public, may lead to a breakdown in the trust and confidence that the Service User and their families have in Nursing Direct.
- All staff including Agency Workers must not pass on any information or make comments to the press or other media. Media enquiries should be referred to the person responsible for handling any media enquiries.

5.5 **Safeguarding, The Care Act and Confidentiality**

Where safeguarding issues arise and in order to fully understand what has gone wrong, Safeguarding Adult Boards may ask for information to be shared. Decisions about who needs to know and what needs to be known should be taken on a case-by-case basis, within locally agreed policies and the constraints of the legal framework. However:

- All staff including Agency Workers must verify the identity of the person requesting the information whilst establishing if it can be anonymised (refer to 5.8)
- Information will only be shared on a 'need to know' basis when it is in the best interests of the adult.
- Confidentiality must not be confused with secrecy.
- Informed consent should be obtained but, if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement.
- It is inappropriate for Nursing Direct to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk.

5.6 **Rights of all Service Users**

All Service Users may view personal information Nursing Direct hold about them. If a Service User believes their right to confidentiality is either being breached or undermined, they must have access to the complaint's procedure at Nursing Direct. All staff including Agency Workers should refer to the Subject Access Requests Policy and Procedure for further details.

5.7 **Rights of all staff including Agency Workers**

All staff including Agency Workers may view personal information held by Nursing Direct that relates to them, by applying in writing to the management team.

5.8 **Data Security and Quality**

- Any record that contains information about an individual must remain confidential unless it is in the public domain. All records must be factual and not include the personal opinions of the person writing the records, as per the Record Keeping Policy and Procedure.
- Confidential information to be posted must be marked 'Private & Confidential, for the attention of the addressee only', and sent by recorded/special delivery.

In line with best practice requirements for data security, as a minimum:

- Information held within Nursing Direct will not be shown to unauthorised individuals or be left where unauthorised personnel may access it. All records must be kept in a lockable cabinet in a lockable office, with restricted access.
- All written records must be kept securely and only disposed of by shredding, after appropriate timescales. All staff including Agency Workers must take care when recording personal identifiable information into personal notebooks or paper during shift handover and ensure the safekeeping and destruction of the information. Written information also relates to door codes, lockers, key safe numbers, and all staff including Agency Workers rotas. All staff including Agency Workers must be provided only with secure information if required to carry out specific tasks in secure areas and locations with restricted access. Secure information must not be recorded on Service User records for use outside the office or on rotas supplied to all staff including Agency Workers.
- Any staff including Agency Workers who breaches this policy may be subject to disciplinary action.

5.9 **Social Media**

All staff including Agency Workers are not permitted to discuss the people who use our services, other staff including Agency Workers past or present, or Nursing Direct on any social networking site as this may breach confidentiality and bring Nursing Direct into disrepute. All staff including Agency Workers must also be aware that this applies to taking and posting photographs or videos of Service Users.

5.10 **Mental Capacity and Confidentiality**

The Mental Capacity Act 2005 and associated "Best Interest" applies to adults without capacity, and further details about the disclosure of confidential information about a Service User lacking capacity can be found in the Mental Capacity Act Code of Practice.

5.11 **Anonymisation and Pseudonymisation Considerations Anonymisation**

Anonymised information (i.e., where personal information is removed, and both the giver and the receiver are unable to identify the Service User) is not confidential and may be used outside of data protection legislation. However, staff including Agency Workers should be aware that information which contains small numbers of person identifiable information may lead to identification. For this reason, all disclosure of anonymised information should be reviewed on a case-by-case basis. Nursing Direct will seek to anonymise collective data about individuals within Nursing Direct.

PSEUDONYMISATION

Pseudonymisation is the practice of removing and replacing actual data with a coded reference (a 'key'). Nursing Direct will consider this practice where the use of the data needs to relate to individual records, but also needs to retain security and privacy for that individual. There is a higher privacy risk and security risk of the key system as the data will not truly be anonymised. Personal data that has been pseudonymised can fall within the scope of data protection legislation depending on how difficult it is to assign it to a particular individual. Further information can be found within the ICO Anonymisation Code of Practice.

MEETINGS

Nursing Direct has a right to have confidential meetings where information is discussed and then held securely and confidentially. Information held will be in line with the Freedom of Information Act (FOIA) 2000 and UK GDPR, the Data Protection Act 2018.

COMPLAINTS AND INVESTIGATIONS

Complaints and investigations are treated confidentially and remain so unless there is a legal requirement to release information.

MEDIA

All staff including Agency Workers must not pass on any information, or make comments, to the press or other media. Media enquiries should be referred to the person responsible for handling any media enquiries.

5.12 Confidentiality Breach

Unauthorised access, use or disclosure may be in breach of the UK GDPR, DPA 2018, the Human Rights Act, and/or breach the policies of Nursing Direct and may lead to disciplinary action. Where there has been a breach in confidentiality, this will be recorded on an incident form at Nursing Direct and reported to the management team.

Significant breaches will be reported to Robert Stiff (CEO) and/or Marc Stiff (Group Managing Director) so that reporting to the relevant regulatory, professional bodies and the ICO is considered.

Breaches will be monitored through our Radar Healthcare system for Incidents, Complaints and Concerns Reporting, reflected on with lessons learned and will form part of the quality assurance programme for Nursing Direct.

6. DEFINITIONS

6.1 All staff including Agency Workers

6.1.1 Staff

Denotes the employees of Nursing Direct Healthcare Limited.

6.1.2 Agency Workers

Refers to individuals who are contracted with Nursdoc Limited or another employment business as an Agency Worker (temporary worker) provided to Nursing Direct Healthcare Limited to perform care services under the direction of Nursing Direct.

6.2 Nursing Direct

Nursing Direct, also known as Nursing Direct Healthcare Limited, is the entity regulated by the CQC (Care Quality Commission) and responsible for the care service provision, contracted to provide homecare services to service users in their homes, in placements, essential healthcare facilities and in the community.

6.3 Nursdoc Limited

As the sister company to Nursing Direct Healthcare Limited, Nursdoc Limited acts as an employment business, specialising in providing staffing solutions to the healthcare sector.

6.4 CQC (Care Quality Commission)

CQC throughout this policy, the term "CQC" refers to the Care Quality Commission (CQC) which is the independent regulator of health and social care in England.

6.5 Business Sensitive information

Information that, if disclosed, could harm, or damage the reputation or image of an organisation.

6.6 Confidentiality

Confidentiality means that professionals should not tell other people personal things about a Service User unless the Service User says they can, or if it is absolutely necessary.

6.7 Consistent Identifier

The NHS Number serves as the national, unique identifier enabling safe and efficient sharing of patient and Service User information across the NHS and social care. The Health and Social Care (Safety and Quality) Act 2015 mandates health and adult social care organisations to utilise the consistent identifier, the NHS Number, for all data sharing related to or supporting individual care.

6.8 Public Interest

Refer to the Public Interest Disclosure Act (Whistleblowing) for more details on this matter. Decision-making regarding the public interest involves considering the potential harm of disclosure and the societal interest in maintaining confidential services. Exceptional circumstances may warrant overriding an individual's right to confidentiality to serve broader societal interests.

6.9 Sensitive Personal Information

Sensitive personal information includes details about a person's health or physical condition, sexual life, ethnic origin, religious beliefs, political views, and criminal convictions.

6.10 Statutory Duty to Disclose

Certain Acts of Parliament, including the Prevention of Terrorism Acts, Road Traffic Act, Public Health Acts, Police and Criminal Evidence Act 1984, and Misuse of Drugs Act 1971, mandate the production of confidential information. Justification for disclosure under these acts is crucial. For instance, Public Health legislation necessitates reporting notifiable diseases.

6.11 Common Law Duty of Confidentiality

The duty regarding information disclosure is not absolute, allowing override only if the holder can justify it in the public interest, such as protecting vital interests or preventing serious crimes. Any disclosure must align with informed consent and specific purposes, free from statutory restrictions. The use and disclosure of confidential information are strictly prohibited unless mandated by statutory requirements or court orders, emphasising a careful balance between privacy and legal obligations.

6.12 Caldicott

Caldicott Guardian

A senior person responsible for protecting the confidentiality of peoples' health and care information and making sure it is used properly.

Caldicott Report


The Caldicott Report prompted the establishment of Caldicott Guardians in all NHS organisations (and adult social care records from 2000 onwards). Caldicott Principles offer guidance to the NHS and adult social care records on the usage and protection of personal, confidential data, emphasising the necessity of controls over information availability and access.

6.13 Data Protection Act 2018

- The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK.
- It sits alongside the UK General Data Protection Regulation and implements the EU's Law Enforcement Directive

6.14 Personal Information

- Personal information is information that can identify a person, in which the person is the focus of the information and which links that individual to details which would be regarded as private, for example, name and private address, name, and home telephone number, etc.

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| COMPLETED DATE: | |
| SIGN OFF DATE: | |
| REVIEW DATE: | |
| SIGNED: |  Marc Stiff – Group Managing Director |