

UAE: Health Data Law – Permitted Transfers of Health Data

In brief

The UAE's Ministry of Health and Prevention (**MoHAP**) has issued a long awaited resolution setting out exceptions to Article 13 of Federal Law No. 2 of 2019 ("**Health Data Law**"), which by default prohibits the transfer, storage, generation or processing of health data that relates to health services provided in the UAE ("**UAE Health Data**") outside of the UAE.

Ministerial Resolution 51/2021 ("**Resolution**") relaxes the data transfer restriction for certain types of processing operation, and will be welcomed by industry players many of whom have adopted a 'risk-based' approach to cross-border data transfers since the restriction was introduced.

This alert summarises the exceptions to the Article 13 restriction and identifies certain of the practical challenges that remain to be considered. An interactive reference guide setting out the conditions applicable to each exception is also linked to this alert and can be accessed [here](#).

Key takeaways

- The Resolution sets out a list of permitted exceptions to Article 13 of the Health Data Law to permit cross-border transfers and overseas processing of UAE Health Data in 10 separate circumstances, including to support pharmacovigilance reporting, scientific research, the administration of insurance claims and UAE Health Data processing in the context of wearables and healthcare monitoring devices.
- The Resolution provides much-needed clarity to companies operating within the healthcare and lifesciences sector as well as to companies who provide technology services for the benefit of UAE patients and/or healthcare providers.
- Ensuring that a processing operation fits within the scope of an exception is only the first step required under the Resolution. Companies wishing to benefit from an exception must go on to ensure that they are able to comply with any associated conditions. The majority of the exceptions are subject to various conditions, some of which will be more challenging than others to implement in practice.
- Businesses wishing to rely on an exception under the Resolution are advised to work with their IT and product teams to consider the practical as well as the legal implications associated with relying on a particular exception.
- If none of the scenario specific exceptions are applicable, the Resolution offers companies the option of relying on the formal consent of the concerned person (i.e., data subject) or their representative to permit the export or overseas processing of UAE Health Data. There is currently no guidance on what form this formal request should take.
- The Resolution has also reconfirmed that the requirements of the Health Data Law only apply to health data that originates from UAE patients and that relates to healthcare services provided in the UAE. Accordingly, the Article 13 restriction will not apply to services provided in the UAE to the extent they involve the processing of data derived from healthcare services provided overseas.
- MoHAP has set out its expectations when it comes to export and overseas processing of UAE Health Data and so non-compliant processing activities are unlikely to be tolerated any longer. To avoid fines, companies which

process UAE Health Data are advised to review their data flows and assess whether the arrangements are compliant or whether changes or additions need to be made.

In more detail

- When it was first introduced in February 2019, Article 13 of the Health Data Law gave rise to widespread concern amongst participants in the UAE's healthcare and lifesciences, technology and medical insurance sectors. You can read more about the original legislative development in our article [here](#). You can also read about the introduction of the Health Data Law's implementing regulations [here](#).
- Article 13 provides that it is not permitted to store, process, generate or transform health data related to health services provided inside the UAE, except where permitted under a resolution issued by an Emirate-level health authority in coordination with MoHAP. The Resolution is the first and only resolution to be issued in this respect.
- The Resolution supplements the Health Data Law's localisation requirements for health data, whilst also ensuring the exceptions do not detract from MoHAP's ultimate objective: to maintain the security and integrity of UAE Health Data at all times.
- The Resolution provides a set of exceptions to the restriction on cross-border transfer and processing of UAE Health Data under Article 13 of the Health Data Law. The exceptions are set out in Article 2 of the Resolution. UAE Health Data can be exported from the UAE in the following circumstances:
 - i. **Overseas treatment:** where required to allow the treatment of patients overseas
 - ii. **Medical testing:** data related to samples sent to laboratories outside of the UAE
 - iii. **Scientific research:** data used in scientific research, subject to compliance with all UAE laws and associated standards, conditions and procedures concerning health research and the approval of the competent health authority
 - iv. **Insurance claims and coverage:** data used by insurance and claims management companies to provide health insurance coverage or to process consent in accordance with their regulatory permissions, but only after obtaining consent from the relevant health service recipient / insured person
 - v. **Organisations cooperating with the UAE Government or its institutions:** data required by competent organisations cooperating with the UAE Government, subject to any purpose limitations that apply to the relevant request
 - vi. **Wearables and healthcare monitoring devices:** data processed by simple medical devices and tools used by members of the public to record and monitor health and vital signs (e.g. blood pressure, blood sugar and oxygen saturation) or other simple health data
 - vii. **Pharmacovigilance reporting:** data related to disease prevention, treatment or diagnosis of patients which may cause side effects, adverse effects or negative effects, subject to the terms of accepted good practice
 - viii. **Data approved by a health authority:** any other data that an Emirate-level health authority approves for export or overseas processing provided that such data is not confidential for reasons of public safety, public interest or public health and that the disclosure of the data will not result in the disclosure of medical secrets, unless the patient provides their written consent
 - ix. **Telemedicine:** data used to provide remote health services provided that the relevant physician has access to the system for a limited period and can only access the required information, the sharing of any associated medical images and reports is only sent to the competent physician and written consent is obtained from the patient

- x. **Formal request:** where the concerned person or their representative issues a formal request to the entity in question asking for their data to be transferred and processed abroad
- With the exception of exceptions vi. and ix. above, each of the exceptions are subject to various conditions, as set out in Articles 3, 4 and 5 of the Resolution. These requirements include, for example, that the associated data must be securely encrypted prior to transfer and that copies of the data must be stored within the UAE, regardless of the fact that it is being transferred elsewhere. An interactive reference guide setting out the conditions applicable to each exception is linked to this alert and can be accessed [here](#).
 - A company that exports data but fails to meet the relevant conditions will be in breach of Article 13 of the Health Data Law, which carries a penalty of between AED 500,000 and AED 700,000 (equivalent to approximately USD 136,000 and USD 190,000) pursuant to the law's Article 24. However, the more significant risk comes in the form of the business impact and costs that are likely to flow from the need to re-architect cross-border data flows and to localise the underlying IT infrastructure used to provide a service that does not fall within one of the Resolution's exceptions.
 - The Resolution provides definitive guidance to healthcare providers, medical device manufacturers and other participants in the UAE healthcare and lifesciences sector on the practical impact of Article 13. The exceptions it has introduced are narrower in scope than some in the industry would have liked to see and may dictate a rethink of certain common practices.

To speak to us in relation to the Healthcare Data Law, any data and technology related matters, or issues generally, please feel free to contact [Kellie Blyth](#).

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