

Health Privacy it's my business



Health Records Act

Health Privacy Principles

Right of Access

Information Sheet No. 1

Use and Disclosure of Health Information

Key Message

Holders of health information need to be aware of appropriate use and disclosure of health information in accordance with Health Privacy Principle (HPP) 2.

Purpose

This information sheet provides advice regarding use and disclosure of personal health information.

Information relating to the Commonwealth legislation is included in italics.

Organisations and consumers need to be aware that the Privacy Act 1988 (Cwth) which includes the 10 National Privacy Principles (NPPs), regulates the handling of personal information, including health information, in the Commonwealth public sector and in the private sector (including the private health sector) throughout Australia.

Definitions

Under the *Health Records Act 2001* (Vic) (HRA):

'Use' of health information is when the health information is communicated within the same legal entity, including multi-campus hospitals or charitable organisations with multiple programs and/or sites; and

'Disclosure' is the communication of health information to another legal entity, for example a hospital disclosing health information to a general practitioner.

Access is a statutory right individuals have to their health information under the HRA or the *Freedom of Information Act 1982* in both the public and private sectors, subject to prescribed exceptions.

Use and disclosure of health information

In general, organisations may only use or disclose health information about an individual for the **primary purpose** for which the information was collected.

In certain circumstances health information may be used or disclosed for a secondary purpose other than the primary purpose for which it was collected. These include:

- where the individual has consented;
- where the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose;
- where the use by a health service provider is reasonably necessary for provision of a further health service to the individual;
- where an individual is incapable of giving consent under s 85(3) of the HRA and it is not reasonable to obtain consent of an authorised representative;
- disclosure to immediate family members in certain limited circumstances;
- where it is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare;
- where a serious threat to public health, safety or welfare exists;
- research in the public interest, in accordance with the statutory guidelines;
- investigation of unlawful activity or reasonably necessary for a law enforcement function; or
- establishment of an equitable or legal claim.

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Health providers involved in care and treatment for primary and directly related secondary purposes would usually not need to seek further consent for necessary uses and disclosures. This will, however, depend on the circumstances of the case and the needs and wishes of the individual.

Using (sharing) health information within an organisation

Health service providers may share personal health information for the purpose of immediate and ongoing care of an individual's health. Health records are one method of communication between treatment team members. For example where a patient goes into hospital for an operation, information sharing may occur between the referring local general practitioner, treating specialist, diagnostic service technicians, pharmacists, pathologists and anaesthetists.

The use and disclosure of health information in the above scenario are reasonable under the criteria of *primary* or directly related *secondary* purpose, as the individual would reasonably expect the organisation to use or disclose the information for the *secondary* purpose.

When collecting information, it may be advisable to discuss with the individual how the team-based approach to treatment will affect the handling of personal information.

Emergency disclosure

Where requests for patient information must be dealt with immediately to provide emergency patient care information may be given without specific patient consent (HPP 2.2(d)). Situations in which police are dealing with extreme or immediate danger to a patient or another person could also qualify under this category (HPP 2.2(h)).

Making information available to another health service provider

An individual has the right to request their health information be made available to another health service provider. The holder of the information must provide a copy or written summary of that health information to the other health service provider as soon as practicable. They can ask for the payment of a fee in accordance with the Health Records Regulations 2002 (available from HSC website or office). The grounds to refuse access that apply under other sections of the HRA do not apply.

The transfer of health information can be achieved through the combined effect of NPPs 1,2,6 and 10.

About information sheets

Information sheets are advisory only and do not constitute legal advice nor are they law.

They are intended to help organisations apply the HPPs in everyday or practical circumstances. Organisations may need to seek separate legal advice on the application of the *Health Records Act* to a particular situation.

Nothing in an information sheet limits the Health Services Commissioner's powers to investigate complaints under the Act or to apply the HPPs in the way that seems most appropriate to the facts of any case being dealt with.

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MORE INFORMATION:

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