

 <p>Winnipeg Regional Health Authority Office régional de la santé de Winnipeg Caring for Health À l'écoute de notre santé</p> <p>POLICY</p>	<p>REGIONAL</p> <p>Applicable to all WRHA governed sites and facilities (including hospitals and personal care homes), and all funded hospitals and personal care homes. All other funded entities are excluded unless set out within a particular Service Purchase Agreement.</p>		Level: 1
	Policy Name: Access to Personal Health Information	Policy Number: 10.40.040	Page 1 of 10
	Approval Signature: <i>Original signed by M. Nader.</i>	Section: General Administration	
	Date: January 1, 2022	Supersedes: May 2015	

Language used within this Policy, particularly discretionary language, is reflective of the terms used in *The Personal Health Information Act*.

1.0 **PURPOSE:**

- 1.1 To ensure Individuals are able to exercise their right to request Access to their Personal Health Information Maintained by the Trustee in accordance with the Trustee's established policies and procedures under *The Personal Health Information Act* ("PHIA").
- 1.2 To establish a consistent and controlled process for Individuals to request Access to their Personal Health Information Maintained by the Trustee and for the Trustee to permit or refuse such Access as set out under PHIA.
- 1.3 To ensure that requests for Access to Personal Health Information are responded to within the legislated timeframes.
- 1.4 To Maintain and protect the interests of the Trustee of Personal Health Information, including its property right to the Record, regardless of media (electronic, paper or digital image).

2.0 **DEFINITIONS:**

- 2.1 **Access:** The right of an Individual, or a Person Permitted to Exercise the Rights of an Individual, to examine (view) and receive a copy of the Individual's Personal Health Information Maintained by the Trustee in accordance with the Trustee's established policies and procedures.
- 2.2 **Complaint:** A Complaint made to a Trustee by an Individual and/or by the Provincial Ombudsman about collection, Access, correction, Use, Disclosure, protection and Privacy of Personal Health Information.
- 2.3 **Confidentiality:** The obligation of a Trustee to protect the Personal Health Information entrusted to it, to Maintain the secrecy of the information and not misuse or wrongfully disclose it.

DISCLAIMER: Please be advised that printed versions of any policy, or policies posted on external web pages, may not be the most current version of the policy. Although we make every effort to ensure that all information is accurate and complete, policies are regularly under review and in the process of being amended and we cannot guarantee the accuracy of printed policies or policies on external web pages. At any given time the most current version of any WRHA policy will be deemed to apply. Users should verify that any policy is the most current policy before acting on it. For the most up to date version of any policy please call 204-926-7000 and ask for the Regional Policy Chair's office.

- 2.4 Disclosure: Means revealing personal health information outside the Trustee. For example, to other Trustees, to family and friends of the Individual, or to other persons legally entitled to have the Personal Health Information released to them. As an employee or agent of a Trustee, when authorized to disclose, you are only permitted to disclose the minimum amount of information required as authorized by the Act.
- 2.5 Health Care: Any care, service or procedure provided to diagnose, treat or maintain an Individual's health; provided to prevent disease or injury or promote Health Care; or that affects the structure or a function of the body and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.
- 2.6 Health Care Facility: A hospital, personal care home, Psychiatric Facility, medical clinic, laboratory, CancerCare Manitoba and community health centre or other facility in which Health Care is provided and that is designated in the PHIA regulation.
- 2.7 Health Professional: A person who is licensed or registered to provide Health Care under an Act of the Legislature or who is a member of a class of persons designated as Health Professionals in the PHIA regulation.
- 2.8 Health Services Agency: An organization that provides Health Care such as community or home-based Health Care pursuant to an agreement with the Trustee.
- 2.9 Individual: A patient, client or resident receiving Health Care services within the WRHA/Health Care Facility. For the purpose of Access, correction, Use and Disclosure of Personal Health Information includes Persons Permitted to Exercise the Rights of an Individual.
- 2.10 Information About Care Currently Being Provided:
- (a) Hospital in-patient**
Personal Health Information collected, documented and Maintained in the hospital In-Patient Chart during the current hospital stay for an Individual who has been admitted and not yet discharged from hospital.
- (b) Personal care home residents**
Personal Health Information about a resident in a personal care home includes the most current quarterly Medication and Quarterly Team Review, Care Plan, Medication Administration Record and any other information that would describe or explain an incident, injury or new health issue.
- (c) Health Care Facility visits such as: emergency, outpatient, outreach, day surgery and facility based clinics**
Personal Health Information collected, documented and Maintained in a facility's health Record that is readily available during a visit to one of the above settings. This may also include information about the last visit to that setting.

(d) Community Health Services such as family medicine/primary care, midwifery, home care, population & public health, mental health

Personal Health Information collected, documented and Maintained in a health Record that is readily available during a visit pertaining to one of the above settings. This may also include information about the last visit in that setting.

- 2.11 In-Patient Chart: refers to the in-patient Record in WRHA hospitals only. It is used in the clinical area during the patient's hospitalization and is filed in a 3-ring binder. Upon discharge, the In-Patient Chart may be referred to as the "Health Record" for health information purposes.
- 2.12 Maintain: In relation to Personal Health Information, to have custody or control of the information.
- 2.13 Personal Health Information: Recorded Information about an identifiable Individual that relates to:
- the Individual's health, or Health Care history, including genetic information about the Individual;
 - the provision of Health Care to the Individual; or
 - payment for Health Care provided to the Individual;
- and includes:
- the PHIN (personal health identification number) and any other identification number, symbol or particular assigned to an Individual; and
 - any identifying information about the Individual that is collected in the course of, and is incidental to, the provision of Health Care or payment for Health Care;
- and for further clarity includes:
- personal information such as financial position, home conditions, domestic difficulties or any other private matters relating to the Individual which have been disclosed to the Trustee;
- and for the purpose of the Confidentiality Policy:
- any Personal Health Information exchanged verbally about an identifiable Individual.
- 2.14 PHIA: *The Personal Health Information Act* (Manitoba).
- 2.15 Personal Representative:
- an Executor/Executrix or joint Executor/Executrix named in a deceased Individual's will; or
 - a court appointed Administrator or joint Administrator of a person's estate.
- 2.16 Persons Permitted to Exercise the Rights of an Individual means:
- 2.16.1 (a) any person with written authorization from the Individual to act on the Individual's behalf;
- (b) a proxy appointed by the Individual under *The Health Care Directives Act*;

- (c) a committee appointed for the Individual under *The Mental Health Act* if the committee has the power to make Health Care decisions on the Individual's behalf;
- (d) a substitute decision maker for personal care appointed for the Individual under *The Vulnerable Persons Living with a Mental Disability Act* if the exercise of the right relates to the powers and duties of the substitute decision maker;
- (e) the parent or guardian of an Individual who is a minor, if the minor does not have the capacity to make Health Care decisions;
- (f) if the Individual is deceased, his or her Personal Representative.

2.16.2 If it is reasonable to believe that no person listed in any clause of 2.16.1 exists or is available, the adult person listed first in the following who is readily available and willing to act may exercise the rights of an Individual who lacks the capacity to do so:

- (a) the Individual's spouse, or common-law partner, with whom the Individual is cohabiting;
- (b) a son or daughter;
- (c) a parent, if the Individual is an adult;
- (d) a brother or sister;
- (e) a person with whom the Individual is known to have a close personal relationship;
- (f) a grandparent;
- (g) a grandchild;
- (h) an aunt or uncle;
- (i) a nephew or niece.

Ranking: The older or oldest of two or more relatives described in any clause of 2.16.2 is to be preferred to another of those relatives.

- 2.17 **Privacy:** The fundamental right of an Individual to control the collection, Use and Disclosure of their Personal Health Information.
- 2.18 **Privacy Officer:** An employee designated by the WRHA or the Health Care Facility whose responsibilities include dealing with requests from Individuals who wish to examine, receive a copy or make a correction to Personal Health Information Maintained by the Trustee and facilitating the Trustee's compliance with PHIA. The definition is intended to mean the Privacy Officer and/or their delegate.
- 2.19 **Psychiatric Facility:** A place designated in the regulation of *The Mental Health Act* as a facility for the observation, assessment, diagnosis and treatment of persons who suffer from mental disorders.
- 2.20 **Record or Recorded Information:** A Record of information in any form, and includes information that is written, photographed, Recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces Records.

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- 2.21 Site: A Health Care Facility, community health centre, community office within the WRHA.
- 2.22 Trustee: A Health Professional, Health Care Facility, public body or Health Services Agency that collects or Maintains Personal Health Information. For clarity, the WRHA is the Trustee of the Personal Health Information collected and Maintained within Health Care Facilities owned and/or operated by the WRHA and includes Community Health Services. The other hospitals and personal care homes within the region are Trustees of the Personal Health Information collected and Maintained at each Health Care Facility.
- 2.23 Use: Means any activity involving personal health information within the Trustee. Use includes accessing, looking at and sharing the information collected by the Trustee for the purpose of providing health care. Use also includes, but is not limited to, processing, reproduction, transmission and transportation of Personal Health Information. As an employee or agent of a Trustee, you should only be using the minimum amount of information required to do your job.

3.0 **POLICY**:

- 3.1 The Trustee shall take reasonable steps to inform Individuals of their right to make a request to examine (view) and receive a copy of their Personal Health Information and how they can exercise that right.
- 3.2 Employees and persons associated with the WRHA/Health Care Facility, shall not access their own personal health information, or the health information of family or friends, except in accordance with the Trustee's established policies and procedures, unless required as part of their job responsibilities and duties. Using employee access for personal reasons is a breach of this policy and may be a breach of the Conflict of Interest policy.
- 3.3 The Trustee shall make every reasonable effort to assist an Individual making a request and to respond without delay, openly, accurately and completely.
- 3.4 When responding to a request for Personal Health Information About Care Currently Being Provided:
- 3.4.1 Where a request to examine Personal Health Information is about a hospital in-patient, a member of the Health Care team or designate is required only to make the information available for examination, and need not provide a copy, within 24 hours after receiving the request.
- 3.4.2 Where a request is from an Individual who is not a hospital in-patient, a member of the Health Care team or designate shall make the Personal Health Information available for examination and if requested, a copy of the information must be provided to the requestor within 72 hours after receiving the request.
- 3.5 When a request is for information about care **not** currently being provided to an Individual, the written request must be made to the Privacy Officer and responded to as promptly as possible but no later than 30 days.

- 3.6 The Trustee shall ensure that an inability to make a request in writing does not limit Access to Personal Health Information. Another person designated by the Individual or the Trustee may assist the Individual with the written request.
- 3.7 The Trustee has the right to charge a fee for examination and/or providing a copy of Personal Health Information requested by the Individual. The Individual must be informed of any charges associated with the request as set out in the WRHA fee schedule. <http://home.wrha.mb.ca/hinfo/rhif/files/FeeSched.pdf>
- 3.8 The Trustee may refuse Access to all or portions of Recorded Personal Health Information in accordance with PHIA if:
- (a) Knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the Individual or another person.
 - (b) Disclosure of the information would reveal Personal Health Information about another person who has not consented to the Disclosure.
 - (c) Disclosure of the information could reasonably be expected to identify a third party, other than the Trustee, who supplied the information in confidence under circumstances in which Confidentiality was reasonably expected.
 - (d) The information was compiled and is used solely for:
 - the purpose of peer review by Health Professionals;
 - the purpose of review by a standards committee established to study or evaluate Health Care practice in a Health Care Facility or Health Services Agency;
 - the purpose of a body with statutory responsibility for the discipline of Health Professionals or for the quality or standards of professional services provided by Health Professionals; or
 - the purpose of risk management assessment.
 - (e) The information was compiled principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding.
 - (f) The Individual fails to provide sufficient proof that they are the person the Personal Health Information is about or a Person Permitted to Exercise the Rights of an Individual.

A Trustee may disregard a request if the Trustee reasonably believes that:

- (a) the request is for information already provided to the Individual who made the request; or
- (b) the request amounts to an abuse of the right to make a request because it is unduly repetitive or systematic, or otherwise made in bad faith.

Notice:

If the Trustee disregards a request under this section, the Trustee must notify the Individual in writing of the decision and the reasons for it, and of the Individual's right to make a complaint about the decision under Part 5. Refusals under this section should be approved by the Privacy Officer or Chief Privacy Officer.

- 3.9 The Trustee shall inform the Individual in writing when Access is refused, as promptly as possible but no later than 24 hours for hospital in-patients, 72 hours for care currently being provided to an Individual who is not a hospital in-patient or 30 days for all other requests.
- 3.10 The Trustee shall provide an explanation about any term, code or abbreviation used in the Personal Health Information, as soon as reasonably practicable, if requested. The explanation must be provided as promptly as possible but no later than 30 days of receiving the request.

4.0 **PROCEDURE:**

- 4.1 **Hospital In-Patient** – Refer to definition of Information About Care Currently Being Provided in section 2.10(a).

When responding to an Individual's verbal or written request to examine Information about Care Currently Being Provided, a member of the Health Care team or designate shall:

- 4.1.1 Determine what Personal Health Information the Individual would like to examine.
- 4.1.2 Ensure that the Person Permitted to Exercise the Rights of an Individual has the appropriate authority to do so and can provide verification of their identity.
- 4.1.3 Advise the person who fails to provide sufficient proof that they are a Person Permitted to Exercise the Rights of an Individual that their request will be reconsidered upon provision of the appropriate identification or authorization.
- 4.1.4 Review the Record to determine if there is any reason to refuse Access to the Personal Health Information. If Access is refused in whole or part:
- Inform the Individual in writing as promptly as possible but no later than 24 hours that the Personal Health Information is being refused and cite the specific reason for refusal as set out in policy statement 3.7.
 - In the case of partial refusal, remove (sever) the identified portion of the Personal Health Information that cannot be examined. Indicate by a separate written notation that Personal Health Information is missing and cite the specific reason for refusal as set out in policy statement 3.7.
 - Advise the Individual of their right to make a Complaint about the refusal to the Provincial Ombudsman.
 - Permit the Individual to examine the remainder of the information.

- 4.1.5 Review the In-Patient Chart to determine if it includes information Recorded in a designated Psychiatric Facility or unit, if so; refer to Policy # 10.40.050 Access to, Disclosure of and Corrections to the Clinical Record Under *The Mental Health Act*. The 24 hour timeframe would not apply.
- 4.1.6 Arrange a time within 24 hours to be present with the Individual to examine their Personal Health Information.
- 4.1.7 A verbal or written request is best practice, however, there is no legal obligation to provide an explanation about any term, code or abbreviation used in the Personal Health Information within the 24 hour time frame. Every effort should be made to provide an explanation as soon as reasonably practicable but no later than 30 days after receiving the request.
- 4.1.8 There is no legal obligation to provide a copy if requested, of the Personal Health Information within the 24 hour timeframe. Every effort should be made to provide a copy as soon as reasonably practicable but no later than 30 days after receiving the request.
- 4.1.9 Retain a copy of the request, if made in writing and the response to the request or document on the integrated progress notes in the hospital In-Patient Chart that the Personal Health Information was examined and/or a copy was provided to the Individual.
- 4.1.10 Inform the Individual of any cost that may be associated with the request to examine or receive a copy of the Personal Health Information. Any cost must be in accordance with the WRHA fee schedule.
- 4.2 **Not a Hospital In-patient** - Refer to definition of Information About Care Currently Being Provided in section 2.10 (b)(c) and (d).

When responding to an Individual's request to examine and/or receive a copy of Information About Care Currently Being Provided, a member of the Health Care team or designate shall:

- 4.2.1 Determine what Personal Health Information the Individual would like to examine or receive a copy of.
- 4.2.2 Accept a written or verbal request from Individuals receiving Health Care from a personal care home, Health Care Facility, or Community Health Agency as specified in 2.10 (c) (d) above.
- 4.2.3 Ensure that the Person Permitted to Exercise the Rights of an Individual has the appropriate authority to do so and can provide verification of their identity.
- 4.2.4 Advise the person who fails to provide sufficient proof that they are a Person Permitted to Exercise the Rights of an Individual that their request will be reconsidered upon provision of the appropriate identification or authorization.

4.2.5 Review the Record to determine if there is any reason to refuse Access to the Personal Health Information. If Access is refused in whole or part:

- Inform the Individual in writing as promptly as possible but no later than 72 hours that the request for Access to Personal Health Information is being refused and cite the specific reason for refusal as set out in policy statement 3.7.
- In the case of partial refusal, remove (sever) the identified portion of the Personal Health Information that cannot be examined or copied. Indicate by a separate written notation that Personal Health Information is missing and cite the specific reason for refusal as set out in policy statement 3.7.
- Advise the Individual of their right to make a Complaint about the refusal to the Provincial Ombudsman.
- Permit the Individual to examine or receive a copy of the remainder of the information.

4.2.6 Review the Record to determine if it includes information Recorded in a designated Psychiatric Facility or unit, if so; refer to Policy # 10.40.050 Access to, Disclosure of and Corrections to the Clinical Record Under *The Mental Health Act*. The 72 hour timeframe would not apply.

4.2.7 Arrange a time within 72 hours to be present with the Individual to examine their Personal Health Information and/or provide a copy, if requested.

4.2.8 There is no legal obligation to provide an explanation about any term, code or abbreviation used in the Personal Health Information within the 72 hour time frame. Every effort should be made to provide an explanation as soon as reasonably practicable but no later than 30 days.

4.2.9 Retain a copy of their written request and the response or document on the progress notes in the health Record that the Personal Health Information was examined and/or a copy was provided to the Individual.

4.2.10 Inform the Individual of any cost that may be associated with the request to examine and/or receive a copy of the Personal Health Information. Any cost must be in accordance with the WRHA fee schedule.

4.2.11 Confirm with the Individual how a copy of the Personal Health Information if requested, will be made available to them.

4.3 **All Other Access Requests** - When responding to an Individual's request to examine and/or receive a copy of Personal Health Information other than Information about Care Currently Being Provided, the Privacy Officer shall:

4.3.1 Determine what Personal Health Information the Individual would like to examine or receive a copy of.

- 4.3.2 Obtain the request verbally, or in writing where necessary, assist the Individual with completing the WRHA Request to Access Personal Health Information form.
- 4.3.3 Ensure the Person Permitted to Exercise the Rights of an Individual, has the appropriate authority to do so and can provide verification of their identity.
- 4.3.4. Advise the person who fails to provide sufficient proof that they are a Person Permitted to Exercise the Rights of an Individual that their request will be reconsidered upon provision of the appropriate identification or authorization.
- 4.3.5 Inform the Individual of any cost that may be associated with the request to examine and/or receive a copy of the Personal Health Information. Any costs must be in accordance with the WRHA fee schedule.
- 4.3.6 Review the Record to determine if there is any reason to refuse Access to the Personal Health Information. If Access is refused in whole or part:
- Inform the Individual in writing as promptly as possible but no later than 30 days that the request for Access to Personal Health Information is being refused and cite the specific reason for refusal as set out in policy statement 3.7.
 - In the case of partial refusal remove (sever) the identified portion of the Personal Health Information that can not be examined or copied and cite the specific reason for refusal as set out in policy statement 3.7.
 - Inform the Individual in writing if the requested Personal Health Information does not exist or can not be found.
 - Advise the Individual of their right to make a Complaint about the refusal to the Provincial Ombudsman.
 - Permit the Individual to examine or receive a copy of the remainder of the information.
- 4.3.7 Review the Record to determine if it includes information Recorded in a designated Psychiatric Facility or unit, if so; refer to Policy # 10.40.050 Access to, Disclosure of and Corrections to the Clinical Record Under *The Mental Health Act*.
- 4.3.8 Arrange a time to be present with the Individual to examine their Personal Health Information and/or provide a copy if requested, as promptly as possible but no later than 30 days.
- 4.3.9 Provide an explanation about any term, code or abbreviation used in the Personal Health Information if requested within 30 days.
- 4.3.10 Retain a copy of the written request and the response in the health Record that the Personal Health Information was examined and/or a copy was provided to the Individual.

4.3.11 Confirm with the Individual how a copy of the Personal Health Information if requested, will be made available to them.

4.4 Information related to psychological tests and data

4.4.1 A Trustee is not required to provide a copy of information related to psychological tests or data if both of the following conditions are met:

- The Information concerns:
 - Procedure or techniques relating to psychological tests or assessments
 - Details of psychological tests or assessments, or
 - Raw data from a psychological test or assessment;
- The provision of a copy of the information could reasonably be expected to prejudice the use or results of particular psychological tests or assessments.

4.4.2 When making personal health information related to a psychological test or data available for examination, a Trustee may require one of the following individuals to be present to provide an explanation of the information:

- The Trustee, if the Trustee is a Health Professional; or
- A Health Professional chosen by the Trustee.

5.0 **REFERENCE:**

5.1 Access to, Disclosure of and Corrections to the Clinical Record under *The Mental Health Act* Policy #10.40.050

5.2 *The Personal Health Information Act*

5.3 *The Personal Health Information Act* Regulations

5.4 Conflict of Interest Policy #20.10.010

Policy Contact: Christina Von Schindler, WRHA Chief Privacy Officer