

 <p>Winnipeg Regional Health Authority Office régional de la santé de Winnipeg Caring for Health À l'écoute de notre santé</p> <p style="text-align: center;">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: Consent to Use or Disclose Personal Health Information	Policy Number: 10.40.105	Page 1 of 4
	Approval Signature: <i>Original signed by M. Nader.</i>	Section: Governance & General Administration	
	Date: January 1, 2022	Supercedes: July 2018	

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 detail the conditions and restrictions on the Trustee to obtain Consent.
- 1.2 To ensure Consent is obtained in accordance with The Personal Health Information Act ("PHIA").

2.0 DEFINITIONS:

- 2.1 **Consent:** means express or implied consent by an Individual for the Use and Disclosure of Personal Health Information. Consent must:
 - 2.1.1 be related to the purpose for which the information is used or disclosed;
 - 2.1.2 be knowledgeable;
 - 2.1.3 be voluntary; and
 - 2.1.4 not be obtained through misrepresentation.
- 2.2 **Demographic Information:** means an Individual's name, address, telephone number, and email address.
- 2.3 **Disclosure:** means revealing Personal Health Information outside the Trustee.
- 2.4 **Health Care:** means 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.
- 2.5 **Individual:** means 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.

DISCLAIMER: Please be advised that printed versions of any policy, or policies posted on external web pages, shall 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.

- 2.6 Personal Health Information: means recorded information about an identifiable Individual that relates to:
- 2.6.1 the Individual's health, or Health Care history, including genetic information about the Individual;
 - 2.6.2 the provision of Health Care to the Individual;
 - 2.6.3 payment for Health Care provided to the Individual;
 - 2.6.4 the PHIN and any other identifying number, symbol or particular assigned to an Individual;
 - 2.6.5 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
 - 2.6.6 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
 - 2.6.7 for the purpose of the Confidentiality of Personal Health Information Policy 10.40.020 <http://home.wrha.mb.ca/corp/policy/files/10.40.020.pdf>, any Personal Health Information exchanged verbally about the Individual.
- 2.7 Persons Permitted to Exercise the Rights of an Individual: means
- 2.7.1 (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.
- 2.7.2 If it is reasonable to believe that no person listed in any clause of 2.14.1 exists or is available, the adult person listed first in the following that 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 2.7.2 is to be preferred to another of those relatives.

- 2.8 **Privacy Officer:** means an employee designated by the WRHA or the Health Care Facility whose responsibilities include dealing with requests from Individuals who wish to examine and copy or to correct Personal Health Information collected and 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.
- 2.9 **Site:** means a Health Care Facility, community health centre, community office within the WRHA
- 2.10 **Trustee:** means a Health Professional, Health Care Facility, public body, or health services agency that collects or maintains Personal Health Information. For clarity, the WRHA as a public body is the Trustee of the Personal Health Information collected and Maintained within Health Care Facilities and Sites 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.
- 2.11 **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 Where Consent is necessary to Use or Disclose Personal Health Information, the Trustee shall determine whether Consent must be implied or express and if express, Consent shall be sought from the Individual.
- 3.2 When a Trustee determines that the Personal Health Information can be used or Disclosed in accordance with implied Consent, the Personal Health Information Used or Disclosed and the reason for Use or Disclosure shall be documented in the Individual's health record.
- 3.3 A Trustee shall obtain an Individual's Consent, for the Use or Disclosure of Personal Health Information including Demographic Information, when required under The Personal Health Information Act.
- 3.4 When PHIA requires an Individual's Consent to Use or Disclose Personal Health Information, the Consent must:
- 3.4.1 relate to the purpose for which the information is used or disclosed;
 - 3.4.2 be knowledgeable and understood by the Individual;
 - 3.4.3 be voluntary; and

- 3.4.4 shall not be obtained through misrepresentation.
- 3.5 Consent shall be express or implied and need not be in writing.
- 3.6 Consent must be express, and not implied, if :
- 3.6.1 A Trustee makes a Disclosure to a person who is not a Trustee;
- 3.6.2 A Trustee makes a Disclosure to another Trustee, but the Disclosure is not for the purpose of providing Health Care or assisting in providing Health Care; or
- 3.6.3 A Trustee requires consent under subsection 21(2) for employee's or prospective employee's information.
- 3.7 The Trustee shall act in accordance with a written express Consent having been given and obtained by another Trustee, without verifying that the Consent meets the requirements stated in section 3.4, unless the Trustee has reason to believe that the requirements have not been met.
- 3.8 An Individual shall give Consent subject to conditions as long as the conditions do not restrict or prohibit the Trustee from recording Personal Health Information that is required by law, or by established standards, or by professional or institutional practice.
- 3.9 An Individual who has given Consent, whether express or implied, to the Use or Disclosure of Personal Health Information shall request to withdraw it by notifying the Trustee. A withdrawal does not have a retroactive effect.

4.0 PROCEDURE:

- 4.1 When a Trustee determines that express Consent is required for Use or Disclosure of the Personal Health Information, the Trustee must obtain Consent from the Individual the information is about by:
- 4.1.1 completing the Consent to Use Personal Health Information Form <http://home.wrha.mb.ca/privacy/files/W-00329.pdf>, or
complete the Consent to Disclose Personal Health Information Form <http://home.wrha.mb.ca/privacy/files/W-00332.pdf>.
- 4.1.2 documenting in the Individuals health record that verbal Consent was obtained and the reason for the Use or Disclosure.
- 4.2 The Site Privacy Officer shall be consulted to determine whether implied or express Consent should be obtained, on a case-by-case basis.
- 4.3 Consent for ongoing disclosure shall be renewed upon any change to the nature of disclosure Consented to, and at minimum annually.

5.0 REFERENCES:

- 5.1 The Personal Health Information Act (Manitoba)
- 5.2 The Personal Health Information Act Regulations
- 5.3 Confidentiality of Personal Health Information Policy 10.40.020
- 5.4 Consent to Use Personal Health Information Form #W-00329
- 5.5 Consent to Disclose Personal Health Information Form #W-00332

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