

 <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>	REGIONAL		Level:
	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.		1
	Policy Name: Disclosure of Personal Health Information Without Consent	Policy Number: 10.40.141	Page: 1 of 8
	Approval Signature: <i>Original signed by M. Nader.</i>	Section: General Administration	
Date: January 1, 2022	Supercedes: May 2019		

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 that the Individual's right to Privacy of their Personal Health Information including Demographic Information is protected during Disclosure without consent as set out under *The Personal Health Information Act* ("PHIA").
- 1.2 To detail the conditions and restrictions on the Trustee to Disclose Personal Health Information without consent.

2.0 DEFINITIONS:

- 2.1 Access: means 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 Demographic Information: means an Individual's name, address, telephone number, and email address.
- 2.3 Disclosure or Disclosed: 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 Health Care Facility: means 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.

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- 2.6 Health Professional: means 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.
- 2.7 Health Services Agency: means an organization that provides Health Care such as community or home-based Health Care pursuant to an agreement with the Trustee.
- 2.8 Individual: means a patient, client or resident receiving Health Care services within a 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.
- 2.9 Information About Care Currently Being Provided means:
- (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 on the health Record that would describe or explain an incident, injury or a 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.
- 2.10 Maintain: means in relation to Personal Health Information, to have custody or control of the information.
- 2.11 Medical Director: means the Medical Director of a facility that has responsibility for the provision and direction of medical services for that facility. For the purpose of this policy may delegate to any suitably qualified person any of the Medical Director's powers, duties or functions under *The Mental Health Act 115(2)(d)*.
- 2.12 Personal Health Information: means 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

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- 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 or Personal Health Information Policy #10.40.020:

- any Personal Health Information exchanged verbally about the Individual.

2.13 Personal Representative means:

- an Executor/Executrix or joint Executor/Executrix named in a deceased Individual's will; or
- a court appointed Administrator or joint Administrator of an Individual's estate.

2.14 Persons Permitted to Exercise the Rights of an Individual means:

- 2.14.1 (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.

2.14.2 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 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;

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- (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 2.14.2 is to be preferred to the other(s) of those relatives.

- 2.15 **PHIA:** means *The Personal Health Information Act* (Manitoba).
- 2.16 **PHIN:** means the personal health identification number assigned to an Individual by the minister to uniquely identify the Individual for Health Care purposes.
- 2.17 **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, 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.
- 2.18 **Psychiatric Facility:** means 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.
- 2.19 **Record of Disclosure:** means a record of personal health information that has been disclosed outside the Trustee and is also stored/recorded on the Individual's health record.
- 2.20 **Record or Recorded Information:** means 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.
- 2.21 **Site:** means 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 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.
- 2.23 **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.

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3.0 **POLICY:**

- 3.1 An employee or agent of a Trustee shall only disclose Personal Health Information in accordance with PHIA and only provide the minimum amount necessary to those that are authorized to have it.
- 3.2 Disclosure of Personal Health Information without consent of the Individual, shall only occur to the extent the recipient needs to know the information, and is permitted in the following circumstances:
- 3.2.1 to a person who is or will be providing, or has provided Health Care to the Individual, to the extent necessary to provide Health Care to the Individual, unless the Individual has instructed the Trustee not to make the Disclosure;
- 3.2.2 to any person if the Trustee reasonably believes that the Disclosure is necessary to prevent or lessen:
- a risk of harm to the health and safety of a minor, or
 - a risk of serious harm to the health or safety of the individual the information is about or another individual, or to public health or public safety.
- 3.2.3 for the purpose of:
- contacting a relative or friend of an Individual who is injured, incapacitated or ill;
 - assisting in identifying a deceased Individual; or
 - informing the representative or a relative of a deceased Individual, or any other person it is reasonable to inform in the circumstances, of the Individual's death;
- 3.2.4 to a relative of a deceased Individual if the Trustee reasonably believes that Disclosure is not an unreasonable invasion of the deceased's Privacy;
- 3.2.5 required 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;
- 3.2.6 for the purpose of:
- delivering, evaluating or monitoring a program of the Trustee that relates to the provision of Health Care or payment for Health Care, or
 - for research and planning that relates to the provision of Health Care or payment for Health Care by the Trustee;

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- 3.2.7 to another Trustee who requires the information to evaluate or monitor the programs, services or benefits the other Trustee provides;
- 3.2.8 for the purpose of determining or verifying the Individual's eligibility for a program, service or benefit, if the information Disclosed is limited to the Individual's Demographic Information;
- 3.2.9 to another Trustee for the purpose of de-identifying the Personal Health Information;
- 3.2.10 to a computerized health information network established by a:
- the government or a government agency;
 - the Government of Canada or of another province or territory or an agency of such a government;
 - an organization representing one or more governments; or
 - a Trustee that is a public body specified in the regulation;
- in which Personal Health Information is Recorded for the purpose of:
- providing Health Care;
 - facilitating the evaluation or monitoring of a program that relates to the provision of Health Care or payment for Health Care; or
 - facilitating research and planning that relates to the provision of Health Care or payment for Health Care;
- 3.2.11 to the government, another public body, or the government of another jurisdiction or an agency of such a government, to the extent necessary to obtain payment for Health Care provided to the Individual the Personal Health Information is about;
- 3.2.12 for the purpose of collecting a debt owed by the Individual to the Trustee if the information Disclosed is limited to Demographic Information;
- 3.2.13 to a person who requires the Personal Health Information to carry out an audit for or provide legal services to a Trustee, if the Trustee reasonably believes that the person will not Use or Disclose the Personal Health Information for any other purpose and will take appropriate steps to protect it;
- 3.2.14 required in anticipation of or for Use in a civil or quasi-judicial proceeding to which the Trustee is a party;
- 3.2.15 required in anticipation of or for Use in the prosecution of an offence;
- 3.2.16 required to comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the Personal Health Information, or with a rule of court concerning the production of the Personal Health Information;
- 3.2.17 for the purpose of:
- an investigation under or enforcement of an enactment of Manitoba with respect to payment for Health Care; or

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- an investigation or enforcement with respect to a fraud relating to payment for Health Care;

3.2.18 for the purpose of complying with an arrangement or agreement entered into under an enactment of Manitoba or Canada; or

3.2.19 authorized or required by an enactment of Manitoba or Canada.

3.3 Before Disclosure of Personal Health Information, reasonable steps shall be taken to ensure the information is accurate, up to date, complete and not misleading.

3.4 A Record of Disclosure shall be retained including what Personal Health Information was Disclosed and to whom.

3.5 Timely Disclosure to Family

If an Individual is receiving Health Care in a Health Care Facility or in their home and an immediate family member, or someone whom the Individual is known to have a close personal relationship, asks the Trustee to Disclose Information About Care Currently Being Provided to the Individual, the Trustee must Disclose the information as soon as reasonably possible, but not later than:

3.5.1 24 hours after receiving the request if the information is about a hospital in-patient;

3.5.2 72 hours after receiving the request, in any other case as defined in 2.9 (b), (c) and (d) above.

3.6 Information shall only be Disclosed if:

3.6.1 the information is about Health Care currently being provided;

3.6.2 the Disclosure is made in accordance with good medical or other professional practice;

3.6.3 the Trustee reasonably believes the Disclosure to be acceptable to the Individual;

3.6.4 the Disclosure is not contrary to the express request of the Individual.

3.7 A request for Recorded Information in a designated Psychiatric Facility or unit shall be approved by the Medical Director of the Psychiatric Facility or unit. The 24 and 72 hour timeframes would not apply.

3.8 The Record of Disclosure in a designated Psychiatric Facility or unit pursuant to *The Mental Health Act* shall be processed in accordance with the WRHA Policy 10.40.050: Access to, Disclosure of and Corrections to the Clinical Record under *The Mental Health Act*. The Medical Director shall disclose information Maintained in a clinical record without the patient's consent or consent on the patient's behalf only if the Disclosure is restricted to circumstances listed in 3.3.2 of the Access to Disclosure of and Corrections to the Clinical Record under *The Mental Health Act* Policy #10.40.050.

3.9 Disclosure About an Individual's Condition

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As long as Disclosure is not contrary to the express request of the Individual, the Trustee may Disclose to any person the following information about an Individual who is a patient or a resident of a Health Care Facility:

- the Individual's name;
- the Individual's general health status, described as critical, poor, fair, stable or satisfactory, or in terms indicating similar conditions;
- the Individual's location unless Disclosure of the location would reveal specific information about the physical or mental condition of the Individual.

3.10 No Disclosure if Possible Harm

The Trustee shall not Disclose Personal Health Information if the Trustee has reason to believe that the Disclosure might lead to harm to the Individual the Personal Health Information is about.

3.11 *The Protecting Children (Information Sharing) Act* shall prevail in instances where service providers request Personal Health Information for a "Supported Child", where there is a risk of harm to the health and safety of a minor. *The Protecting Children (Information Sharing) Act* Information Request Form shall be completed and submitted to the Site Privacy Officer.

4.0 PROCEDURE:

4.1 Requests for Disclosure of Personal Health Information may be coordinated with a respective Manager or designate and/or the Site Privacy Officer.

4.2 The Record of Disclosure, wherever practical, shall be in an electronic or paper form and/or documented on the Individual's health record. The Record of Disclosure shall also include how the Disclosure was made (i.e. verbal, fax, courier, electronic, Canada Post etc).

4.3 The Consent to Disclose Personal Health Information Form #W-00334 04/10 shall be completed. Consent is required from the Individual or a Person Permitted to Exercise the Rights of an Individual.

4.4 For timely disclosure of PHI without consent when necessary to lessen the risk of serious harm to an individual and/or public safety please refer to WRHA Policy [Personal Health Information Disclosure Due to Risk of Serious Harm](#).

5.0 REFERENCES:

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* (Manitoba).

5.3 *The Personal Health Information Act* Regulations.

5.4 Consent to Disclose Personal Health Information Form #W-00334 04/10

5.5 *The Protecting Children (Information Sharing) Act*.

5.6 *The Protecting Children (Information Sharing) Act* Information Request Form

5.7 Confidentiality of Personal Health Information Policy #10.40.020

5.8 WRHA Policy Personal Health Information Disclosure Due to Risk of Serious Harm

Policy Contact: Christina Von Schindler, WRHA Chief Privacy Officer