

## 15 Common privacy issues

Sometimes staff may seek further information about broader interaction with other government agencies, specific projects or matters that cut across the HPPs outlined in Sections 7-13. In recognition of this, Section 15 of the Manual is designed to provide a Quick Reference Guide on common privacy issues in NSW Health.

### 15.1 Third party health care providers

The HPPs recognise that health care providers should be able to access personal health information necessary for ongoing care and treatment purposes.

Outside these circumstances however, access must be sanctioned by one of the exceptions listed in Health Privacy Principle 11 (see Section 11 Using & disclosing personal health information (HPPs 10 & 11)).

The following guidelines are provided to assist health services to ensure privacy issues are addressed when disclosing personal health information to third party health care providers.

#### 15.1.1 Informing patients

Patients should be made generally aware that:

- access to a patient's health record will be available to the patient's treating health care providers and others who will be involved in their care within the health system
- it is normal practice to provide the patient's GP and other providers involved in ongoing care with a discharge referral.

The NSW Health Privacy Leaflet for Patients includes this information.



#### Further guidance

- Section 7 Collecting personal health information (HPPs 1-4)
- Appendix 5 Pro forma Privacy Leaflet for Patients

#### 15.1.2 Health practitioner obligations

Recognition that health care providers involved in ongoing care may access patient information is designed to enhance treatment provision by ensuring service providers have ready access to information relevant to care. In these circumstances however, health care providers also have both a legal and professional obligation to ensure they exercise this right appropriately.

#### 15.1.3 Addressing patient concerns

Sometimes, patients may have greater concerns about how and when some sort of information is made available. This is particularly likely to be the case in relation to personal health information collected for services such as sexual health, genetics, sexual assault, child protection. Health services should be aware of these concerns and endeavour to address them.



#### Further guidance

- Section 15.9 Information-specific laws and policies

### 15.1.4 Conclusion of care

When an episode of care concludes for whatever reason (including the death of a patient), the right of access by a health practitioner to the health record is normally terminated at the same time.

Access may still be authorised for purposes other than patient care, such as clinical audit or research, provided these fall within the HPPs.

### 15.1.5 Discharge referrals to GPs and others

It is standard practice to provide a patient's GP and other external health care providers involved in ongoing care, (for example, community health services, early childhood health services) with a discharge summary.

Admission processes are relied upon to check the accuracy of a patient's GP details on each admission. In circumstances where an error is found within a discharge summary, the revised summary should be re-issued to the correct GP.

Where GPs or other providers request access to the patient's personal health information more than 3 months after their discharge or conclusion of care, extra care must be taken to ensure that access is being sought for ongoing care purposes. Either the request must be made in writing stating the purpose for access and this request stored as part of the patient's health record, or the circumstances of the request must be fully documented on the patient's health record.



#### Further guidance

- Section 9.2.4.5 Transmission of electronic documents (discharge referrals/ summaries)

### 15.1.6 Records of a patient's family members

Requests by health care providers for access to the health records of members of a patient's family cannot be treated as exceptions to the rule and must be accompanied by the written consent of the person to whom the health record relates (or an authorised representative).



#### Further guidance

- Section 5.6 Authorised representative
- Section 11.2.3.4 Genetic information
- Section 11.2.9 Disclosure on compassionate grounds
- Section 12 Patient access and amendment (HPPs 6, 7 & 8)

## 15.2 Requests from state and federal police

### 15.2.1 Where disclosure to police is authorised by patient

All access requests to the health record should be referred to the Health Information Service.

Where a patient has authorised the police to have access to information from his/her health records, this may be supplied following provision of a written request by the police and consent by the patient. The health information should be assessed and the disclosure limited to fit the terms of the request and consent. Clinical staff should liaise with the Health Information Service, or facility equivalent, prior to release of information to police.

### 15.2.2 Where access is not authorised by patient

Section 11.2.7 provides detailed guidance on where the *HRIP Act* allows law enforcement agencies, including the police to access personal health information. These should be followed where the patient has not consented or has refused to release their information.

### 15.2.3 Search warrants

Compliance with a search warrant is required by law and record keepers are advised that they should inform their immediate supervisor of any official demand for access to information.



#### Further guidance

- Section 11.2.7 Law enforcement agencies, including police
- Section 11.3.6 Search warrants and subpoenas

### 15.2.4 Police interviews

#### 15.2.4.1 Interviews with patients

Except in the case of declarations from dying patients, permission to interview a patient should only be given where the patient agrees and where the treating health practitioner is of the opinion that the patient's medical condition permits the conduct of an interview.

Consideration should also be given to other factors such as the needs of other patients who may be in the same room, infection control issues and staff hand over times. The police visit should be documented in the health record.

#### 15.2.4.2 Interviews with patients under the age of 16

If a patient is under the age of 16, a parent or legal guardian should be present during police questioning. Alternatively, a parent or legal guardian can give permission for another person to be there.

If the patient is 16 or over, they can nominate an independent adult to be present during police questioning.

#### 15.2.4.3 Interviews with victims of sexual assault

Where police wish to interview the victim of a sexual assault, the relevant local Sexual Assault Service should be contacted.

#### 15.2.4.4 Interviews with staff

Where police wish to interview staff in relation to a matter that is unrelated to their work (for example, they may have witnessed a car accident or a crime), the health service will have no involvement in any interview, as it is purely a matter between the staff member and police.

Where police seek to conduct an interview about an incident related to the health service (for example, in relation to a coronial matter or an assault on hospital premises) the staff member should be advised to inform their supervisor and representative organisation, or a support person should be offered.



#### Further guidance

- Section 11.2.3 To prevent a serious and imminent threat to health or welfare
- Section 11.2.7 Law enforcement agencies, including police
- Section 11.3.4 Reporting "serious criminal offences"

## 15.3 Child protection records

### 15.3.1 Restrictions on access to Child Protection Counselling Records

NSW Health has special policies for Child Protection Counselling Service (CPCS) records. In accordance with these policies, the following applies:

- Child Protection Counselling Service records are generally maintained separately from the general health record
- Child protection health records can be linked to the general health record only via a notation that a "confidential health record exists"

- Access to the content of the record for care and treatment purposes is restricted. Access must be sought via a designated contact in the Child Protection Counselling Service, who in turn will seek patient consent.

### 15.3.2 Child Sexual Assault Services

Records relating to child sexual assault are generally held by Sexual Assault Services, and will also be subject to the above requirements. Counselling records relating to sexual assault may also be subject to sexual assault communications privilege.



#### Further guidance

- Section 11.3.2 Child protection
- Section 11.3.6 Search warrants and subpoenas
- PD2013\_007: Child Wellbeing and Child Protection Policies and Procedures for NSW Health
- PD2010\_065: Subpoenas
- Child Wellbeing and Child Protection – NSW Interagency Guidelines  
[www.community.nsw.gov.au/kts/guidelines/info\\_exchange/introduction.htm](http://www.community.nsw.gov.au/kts/guidelines/info_exchange/introduction.htm)

## 15.4 Health examinations of school children

Parental permission for health examinations of school children is usually recorded by the parent's signature on the school health card following a statement of consent to the examination.

The results of vision and hearing tests and other health findings cannot be communicated to teachers or recorded on the Education Department Pupil Record Card unless additional consent is obtained or this was provided for in the original consent advice.

## 15.5 Use of interpreters

Patients whose preferred language is a language other than English should be informed in their own language of their rights to access their health records.

Professional interpreters should be made available. This is particularly important where the information to be discussed is complex, likely to be considered sensitive by the patient or where the patient may be at risk of harm, for example, if they are victim to domestic violence or sexual assault. The gender of the interpreter should also be taken into consideration.

Health staff may need to request the services of an interpreter if they have difficulty understanding a patient or are unsure about whether the patient has understood information given to them.

When collecting information or seeking consent for the use of data, a professional interpreter should be used to ascertain the wishes of the patient and obtain informed consent if appropriate.

When adapting the pro forma Privacy Leaflet for Patients (see Section 7.4.5) for more specialised services, consideration should also be given to appropriate translations of the revised leaflet into languages other than English.

Interpreters are obliged to keep confidential any personal information they may access in the course of their duties.



#### Further guidance

- PD2006\_053: Interpreters – Standard Procedures for Working with Health Care Interpreters
- PD2006\_084: Domestic Violence – Identifying & Responding

## 15.6 Legal claims and insurance

### 15.6.1 Claims manager and Treasury Managed Fund

Cooperation is to be afforded where the health service has sought cover from the NSW Treasury Managed Fund (TMF) in response to an actual or anticipated legal claim. Access to personal health information which is relevant to the claim may be provided to the solicitor acting on behalf of a Local Health District or Specialty Network, in cases covered under the Treasury Managed Fund Statement of Cover.

Such access does not require authorisation from the patient. The LHD Risk Manager and Hospital Executive Managers should be informed of such requests.



#### Further guidance

- Section 12.5.4 Access by staff responding to a complaint, claim or investigation

### 15.6.2 Patient's legal representative

Where the patient's legal representative has been authorised to view the complete health record of a patient, the health care facility should make such access available within facility premises.

If requested, the facility should attempt to provide photocopies. Such photocopying is to be at the expense of the legal representative and charged at current rates, as set out in the relevant Information Bulletin.



#### Further guidance

- PD2006\_050: Health Records & Medical/ Clinical Reports – Charging Policy
- IB2013\_032: Health Records & Medical/ Clinical Reports – Rates

### 15.6.3 Patient's insurer

Where the request is made for information related to an insurance or compensation claim, a photocopy of the insurance application or compensation claim form, signed and dated by the patient, containing the patient's consent to disclosure, is sufficient authority for the release of relevant health records.

It will normally be sufficient for the health service to provide a medical report or summary of injuries for such claims to be processed. If further information is requested, only relevant sections of the patient's health record may be provided. Patient consent is required for disclosure of additional health records.



#### Further guidance

- Section 11.2.1 Directly related purpose
- Section 11.2.2.1 Where a third party seeks access
- Section 12.5.4 Access by staff responding to a complaint, claim or investigation

## 15.7 Enquiries about hospital patients, including media

### 15.7.1 Enquiries about patients

A health service may neither confirm nor deny the current or past presence of a person, unless the enquirer already knows that the patient is present.

Where staff are satisfied the enquirer knows the patient is present they may indicate ward details provided they believe that to do so would not be contrary to the interests of the patient. If in doubt, or where there is evidence the patient may be at risk, the patient should be consulted prior to details being provided to a third party.

If the enquirer is requesting information about the patient, the staff member should make reasonable attempts to contact the patient and transfer the telephone call to the patient, or to request that the patient returns the call.

Where a patient requests that no information be released, or that information be released only in certain circumstances, such as in an immediate post-operative period, this request should be complied with and any patient lists used by the enquiry section may be modified accordingly.

### **15.7.2 Other safeguards for enquiries sections**

Health services should ensure that patient lists used by enquiries sections do not include diagnosis and are kept out of view of the public. Where possible, wards should be identified by name, letter or number rather than by specialty (e.g. Ward A instead of psychiatric ward, colorectal unit etc.).

### **15.7.3 Media queries**

No personal health information about a patient should be released to a media agency without the consent of that patient. If the patient is conscious and can communicate, he/she should be asked whether information may be disclosed. If the patient is deceased, is unconscious or is otherwise lacking capacity, the “authorised representative” (see Section 5.6) must be asked before information is disclosed.

Any decision to disclose material held on a deceased patient should also have due regard to any view expressed by the patient to staff prior to death, either in writing, or as recorded in the patient’s health record.

#### ***15.7.3.1 Responsibility for media liaison***

All media enquiries should be directed to the health service’s Media Unit. A designated Media Liaison or Public Affairs Officer should always be the first point of contact for the media. A Media Officer from the Ministry of Health is available via the on-call 24 hour media pager. Health services also have an on-call Media Liaison Officer.

#### ***15.7.3.2 Accident victims***

Information released about accident victims should be limited to broad, de-identified information, such as the number of casualties, sex, approximate age and whether injuries are critical, serious or minor.

#### ***15.7.3.3 Information about health practitioners***

Information provided to a media agency regarding a patient should not refer to a health practitioner in private practice.

If information is released to a media agency, an assurance should be sought from the facility concerned that only information about health practitioners working for the health service may be released.

#### ***15.7.3.4 Recordings of patients, including photography, sound and video recordings for media purposes***

Recordings of a patient, including photography, sound and video recordings, should not occur outside clinical care requirements unless the patient requests this or agrees in writing.

The patient should be informed about the purpose of the photography, sound or video recordings, e.g. therapy, health promotion, publicity etc.



#### **Further guidance**

- Section 9.2.2 Images and photography

## **15.8 Fundraising**

Personal health information should not be used or disclosed for the purpose of fundraising or gaining public support unless there was a specific consent from the patient at the time of collection of that information, for example, as part of the admissions process, or unless the patient has subsequently been provided with information about the fundraising and they have signed and returned a consent form. The right to withhold consent should be made clear at the time such consent is sought also that their health care will not be affected in the event they choose not to participate.

Patients have a right to withdraw consent and to have their names and addresses removed from any lists held. To this end:

- direct mail should contain a statement of the addressee's right to have his/her name removed from mailing lists
- correspondence should clearly display the name and full address of the sender
- they should be advised that any action taken prior to the withdrawal of consent may still occur.

Committees involved in fundraising and/or public support campaigns should ensure that names and addresses are deleted from mailing lists promptly when requested.



#### Further guidance

- Section 5.4 Consent

### 15.8.1 Limits on what information may be used

The information which may be released with consent is limited to name and address. Information relating in any way to a patient's health status is not to be included in information made accessible for fundraising and public support campaigns.

### 15.8.2 Use of mailing lists

A mailing list should not be used for any purpose other than that for which it was compiled unless further consent is obtained from each person on that list. Mailing lists should be accurate, complete and up to date. When no longer current, lists should be properly disposed of (see Section 9.1 Retention and disposal of personal health information).

A mailing list should be securely stored and should remain at all times in the custody of the health service which originally compiled the list. A member of a fund raising committee may not have access to mailing lists held by that committee once they have ceased to be a member of the committee.

Committees are not to release to or exchange identifiable information with any third party.

### 15.8.3 Organisations with a commercial interest

Information regarding patients must not be provided to organisations which may have a commercial interest in such information, even though it may be sought ostensibly for the purpose of offering assistance or advice.

## 15.9 Information-specific laws and policies

All personal health information is generally considered to be sensitive personal information, dealing as it does with matters that are extremely personal and which a patient will generally expect to be shielded from public disclosure. The terms of the *HRIP Act* are based on adopting and reflecting these expectations.

As noted in Section 11.2.1, sometimes patients will have different expectations about how some of their personal health information will be used or disclosed. These expectations can be based on their own cultural or personal background, family situation, a feeling that certain information is particularly stigmatising, or additional legal restrictions imposed on use or disclosure. Some common examples include services provided to patients by specialist genetics services, drug and alcohol services or sexual health services and the special restrictions which apply by law to the release of adoption and organ donation information.

NSW Health has issued a number of statewide policies to guide staff on management of personal health information in some of these circumstances. These are summarised below, with information on the relevant laws and policies included. Staff are advised to access these policies for more detailed guidance on the particular areas.

### 15.9.1 Aboriginal health information

The NSW Ministry of Health and the *Aboriginal Health and Medical Research Council* (AHMRC), the peak body representing Aboriginal Community Controlled Medical Services in NSW, have developed the *NSW Aboriginal Health Information Guidelines* (AHIG). These guidelines provide a framework of ethical and culturally sensitive protocols for the collection and use of personal health information relating to Aboriginal and Torres Strait Islander peoples in New South Wales.

Requests for access to Aboriginal health information and the collection of information (including personal health information) from Aboriginal communities must demonstrate compliance with the terms of the AHIG, and information users must agree in writing to adhere to its terms. It is recommended that such requests should be referred to the Centre for Aboriginal Health for consideration and advice.



#### Further guidance

- NSW Aboriginal Health Information Guidelines (AHIG)  
[www.ahmrc.org.au](http://www.ahmrc.org.au)  
Contact: Centre for Aboriginal Health, NSW Ministry of Health

### 15.9.2 Adoption information

Any application by a person involved in an adoption for access to adoption-related information (including birth-related information) should be referred to the Adoption Information Unit of Family & Community Services (FACS).

Information from the health record may be released on receipt of an authorised request from FACS.

Care should be taken to withhold the identity of the biological parents (or information that may assist in identification), unless it is evident that this information is already known to the applicant.

Where a request is received from a person or organisation other than FACS, the facility should contact FACS to establish the bona fides of the inquirer before releasing the information.

To prevent matching of adopted persons or adoptive parents with biological parents in health records, copies of correspondence should be kept physically separate from the biological parents' health records.



#### Further guidance

- PD2010\_050: Adoption Act 2000 - Release of Information

### 15.9.3 Service-based policies

#### 15.9.3.1 Genetics services

Information collected by a NSW Genetics Service often includes an extensive family tree with information about the health status of other relatives without their knowledge or permission. Specialised genetics records should be stored securely and preferably separately. Genetic health records should be held indefinitely due to the potential value of family health tree information to other family members, particularly in following generations.

#### 15.9.3.2 Third party access - insurers and employers

The results of predictive or pre-symptomatic testing generally relate to healthy people but may indicate risk of developing a disorder in later life. If access to predictive test results is requested by third parties, such as insurers and employers, patient consent must be sought prior to disclosure. There is no obligation on a health practitioner to disclose information to such a third party.

#### 15.9.3.3 Third party access - genetic relatives

Where a health practitioner anticipates a situation where information will be obtained from a patient which may be of interest or potential benefit to other family members, he or she should discuss this with the patient



prior to treatment being commenced or as part of protocols for ordering tests. Through counselling, individuals should be encouraged to accept their own responsibilities with regard to the information needs and rights of others.

Since 2014, the HRIP Act has included provisions and processes for genetic information, which allows for the disclosure of genetic information to genetic relatives without patient consent, albeit in very limited circumstances, in accordance with guidelines issued by the NSW Information and Privacy Commission.



#### **Further guidance**

- Section 11.2.3.4 Genetic information
- NSW Health Ethical Code Governing the Provision of Genetics Services (1998)
- NHMRC Guidelines for Genetic Registers and Associated Genetic Material (1999)

### **15.9.3.2 Sexual assault services**

Health services have local policies for the management of information collected by NSW Sexual Assault Services.

In accordance with these policies:

- Health records are generally maintained separately.
- Health records can be linked to the general health record only via a notation that a 'confidential health record exists'.
- Access to the content of the health record for care and treatment purposes is restricted. Access must be sought via a designated contact in the Sexual Assault Service, who in turn will seek patient consent.

Health records subject to the Sexual Assault Communications Privilege should be marked confidential and transported in sealed envelopes.

### **15.9.4 Service-based practices**

Policies for dealing with the collection of personal health information by stand-alone drug and alcohol or sexual health services, are generally developed at the operational level. Staff should contact the local service for further details on how health records are managed both in hard copy and as electronic health records.

Patients attending these types of stand-alone services will often have expectations about how their information has been used. As a result, these Services tended, as a matter of practice, to develop specific practices in the management of the personal health information they collect.



#### **Further guidance**

- Section 16 Electronic health information management systems.

### **15.9.4.1 Sexual health services**

Some sexual health services are provided as stand-alone services, not integrated into a general hospital, and therefore patients may have the expectation that these records are held separately to any general health records relating to them, and that these records would not be shared with staff outside the health service without their consent. Most sexual health services have policies which rely on extensive patient consents to determine how and when information about the services received by a patient can be disclosed.

Where sexual health service records are part of the LHD's electronic health record (eHR) system, auditing which targets access to these records is an appropriate system support for protecting privacy of sensitive information.

Staff should refer to local policies with regards to the management of electronic health records.

In addition, the *HRIP Act* allows for disclosure for emergency purposes (see Section 11.2.3), and with lawful authorisation (see Section 11.3). Other exemptions listed in Section 11 also continue to apply.

Special statutory restrictions are also imposed on access to information about a person's HIV status under the *Public Health Act 2010*.



#### Further guidance

- Section 4.1.3 Public Health Act 2010
- Section 11.2.3.3 Public Health Act 2010 – Notification of public health risk
- Section 15.9.6 Managing public health risks
- Section 16 Electronic health information management systems

### 15.9.5 Organ and tissue donor information

In order to protect the privacy of grieving relatives of a recently deceased donor, it is not permissible to disclose any information which could enable the identification of the donor of a transplanted organ or tissue.

Issues relating to the disclosure of information in such cases are comprehensively dealt with under section 37 of the *Human Tissue Act 1983*. Under this provision the identity of the donor and recipient of transplanted tissue (whether living or deceased) must not be disclosed except in the following circumstances:

- with the consent of the person to whom the information relates, or in the case of a deceased person, the authorised representative for the deceased person (see Section 5.6)
- in connection with the administration or execution of the *Human Tissue Act*
- in connection with research which has Human Research Ethics Committee (HREC) approval
- for the purposes of any legal proceedings or reporting of such proceedings
- with other lawful excuse.



#### Further guidance

- PD2005\_341: Use and Retention of Human Tissue including Organ Donation, Post Mortem Examination and Coronial Matters

### 15.9.6 Managing public health risks

The *Public Health Act 2010* establishes a range of provisions which impact on the management of personal health information. These provisions ensure the Secretary, NSW Health, has appropriate powers to take action when a matter involving risk to public health arises (such as outbreaks of food poisoning or disease).

#### 15.9.6.1 Reporting of certain medical conditions and diseases

The *Public Health Act 2010* also establishes requirements for doctors, hospital Chief Executive Officers and laboratories to notify certain diseases to Public Health Units.



#### Further guidance

- IB2012\_011: Notification of Infectious Diseases under the *NSW Public Health Act*
- PD2012\_047: Notifiable Conditions Data Security and Confidentiality
- NSW Health Infectious disease control guidelines available at: [www.health.nsw.gov.au/infectious/pages/default.aspx](http://www.health.nsw.gov.au/infectious/pages/default.aspx)
- PD2009\_023: Management of People with HIV Infection Who Risk Infecting Others
- PD2005\_068: Tuberculosis Management of People Knowingly Placing Others at Risk of Infection
- PD2005\_162: Health Care Workers Infected
- *Public Health Act 2010*
- *Public Health Regulation 2012*

#### 15.9.6.2 Contact tracing

NSW Health has guidelines in place providing for contact tracing. Contact tracing involves informing a person that he or she may have been at risk of infection because he or she was in contact with a person with a

communicable disease. The guidelines are based on a number of factors, including consideration of the risk of exposure and the nature of the disease.

For those conditions followed up by public health units, contact tracing is undertaken confidentially and all efforts are made to protect the identity of the person with the communicable disease. This person is referred to as the 'index case'.

Under clause 39B of the Public Health Regulation 2012, the Secretary, NSW Health (or delegate) may notify a person who is believed to have been in contact with a person suffering from a specified medical condition of measures to be taken (e.g. diagnosis, treatment and prevention) to prevent further transmission of infection.

The identity of a contact may be obvious to the person being notified, however, the terms of the regulation still enable contact tracing to proceed. Whilst in such cases the health service involved would not be in breach of the patient privacy, the health service should make every effort to protect the identity of the index case where ever this is possible within the scope of contact tracing.

In situations where authorisation has been given for contact tracing without the consent of the index case, it is appropriate for the index case to be informed of this and given a final opportunity to provide consent.



#### Further guidance

- PD2005\_184: Contact tracing guidelines for the sexually transmissible diseases and blood borne viruses
- PD2009\_023: HIV – Management of people with HIV infection who risk infecting others
- *Contact*: Local Sexual Health Service or Public Health Unit.

#### 15.9.6.3 Undertaking public health inquiries

Section 106 of the *Public Health Act 2010* gives the Secretary, NSW Health (or delegate) broad powers to inquire into any matter relating to the health of the public. A person authorised by the Secretary (or delegate) for the purposes of such an inquiry is entitled to enter premises inspect and copy health records. These powers can only be exercised however where the person has been issued with a Certificate of Authority by the Secretary, NSW Health (or delegate) under section 106 of the Act.

### 15.10 Deceased patients

Privacy law continues to apply to the information of a deceased person for 30 years after their death.

When dealing with the information of deceased persons, a health service should have regard to:

- special provisions allowing disclosure of information for compassionate purposes (see Section 11.2.9)
- provisions allowing the authorised representative (normally the executor of the deceased person's will) to make a decision on behalf of a person (see Section 5.6)
- other grounds allowing use or disclosure provided for under HPPs 10 and 11
- provisions relating to access to information held by a health service provided for under the *Government Information (Public Access) Act*.

Any decision to disclose material held on a deceased patient should also have due regard to any view expressed by the patient prior to death, either in writing, or as recorded in the patient's health record. This would include any advanced directive, such as an Advanced Care Directive, made by the patient.

### 15.11 Telehealth

The primary objective of telehealth is to enhance access to and equity of health services for residents of both metropolitan and rural areas of New South Wales by enabling real time, remote clinical consultation and more efficient transmission, storage and sharing of patient information. The medico-legal and privacy issues for

telehealth consultations for both image transfer and clinical consultations follow the same rules as for face-to-face consultations, and therefore the principles contained in this Manual can be applied to telehealth consultations.

In addition, at the start of telehealth consultations, verbal consent must be provided and documented in the patient's health record. This provides an accurate record of the treatment plan the patient is receiving via telehealth as part of their overall care. Having this information correctly captured allows effective communication between clinicians regarding care, treatment and medication details which may assist in the event of future presentations to other NSW health services.

Video or sound recordings of telehealth consultations generally do not occur, in the same way that such recordings are generally not made for face-to-face consultations. Recordings which capture personal health information are subject to strict storage and retention rules as set out in the *State Records Act 1998* and the *Health Records and Information Privacy Act 2002* (see Section 9 Retention, security and protection (HPP 5)).



#### Further guidance

- *Contact:* the Telehealth Implementation Unit, NSW Agency for Clinical Innovation (ACI) on telephone (02) 9464 4666.

## 15.12 Community health records

### 15.12.1 Group houses/hostels

Comprehensive health records of patients residing in Ward-in-a-house, group houses or hostels should continue to be maintained and securely stored.

The non-institutional nature of group houses and hostels may pose particular difficulties to managing the privacy of personal health information and special precautions should be taken to ensure that patient privacy is maintained.

Health records should be stored in a secure place, inaccessible to patients and visitors. Health records maintained and kept at the home/hostel should be limited to:

- registration book: content may vary but should include identification data and referrals accepted and refused
- day book
- card index or mini-file: should include identification data, referral information and medication details.

### 15.12.2 Group sessions

Individual patient intake forms (or equivalent) should be placed behind a chart divider to separate them from the group form and protect the privacy of each patient.

### 15.12.3 Family consultations

In the case of family consultations, information on other family members may be recorded in the health record of the family member who is the patient. Extreme care should be taken to safeguard the privacy of other family members.

Information about family members, or other third parties, which the patient (or person seeking access to the health record) may be unaware of, must not be disclosed without consent from that individual.

Where multiple family members are patients of the health service, family records must be maintained as individual records.

Where release of information on an individual has been appropriately authorised, care should be taken to ensure that only information relating to the specific episode indicated by the individual patient is released.



#### Further guidance

- Section 11.2.3.4 Genetic information
- Section 15.9.3.1 Genetics services
- PD2007\_094: Client Registration Policy

## 15.13 Maintaining the health record

This section is designed to provide guidance on key obligations in managing the health record. It is the responsibility of the record keeper to ensure compliance with those provisions of the *HRIP Act* and this Manual which apply to health records. Also refer to Section 9, and Section 16 of this Manual.

Clearly visible privacy notices should be attached to health records or flagged in electronic systems. See **Appendix 4.3** for a sample privacy notice.

### 15.13.1 Quality of health records

The health record should comply with Section 9 and be sufficiently detailed and comprehensive to:

- provide effective communication to health care providers
- provide for a patient's effective, ongoing care
- enable evaluation of the patient's progress and health outcome
- retain its integrity over time.

As the primary purpose of keeping health records is to enable better patient care, it is important that the information in health records is current, clear, accurate, complete and readily available.

A number of documentation models exist and practices may vary according to local needs. Whatever model or method is used, the health record should be clear and comprehensible to others.

### 15.13.2 Accuracy and completeness

To ensure that the health record is accurate and complete:

- information should be recorded at the time of consultation or procedure or as soon as it becomes available
- entries should generally be made by those collecting the information or present when the information was collected
- each entry should be signed by the clinician, their designation, the date and time clearly legible electronic signatures must be managed with care to ensure equivalent accuracy is maintained
- alterations or deletions should not be made original incorrect entries should not be erased but lined through so the original entry remains readable, and such action should be explained and signed
- the senior treating health practitioner should periodically review the health record for correctness
- there should be an audit trail for electronic health records.

#### Further guidance

- Section 10 Accuracy
- Section 16.3.4 Auditing
- PD2012\_069: Health Care Records – Documentation and Management
- NSW Health Patient Matters Manual, Section 9  
[www.health.nsw.gov.au/policies/manuals/Pages/patient-matters-manual.aspx](http://www.health.nsw.gov.au/policies/manuals/Pages/patient-matters-manual.aspx)

### 15.13.3 Control of health records

Control over the movement of health records is of the utmost importance. An adequate health record tracking system, tailored to local needs, is essential to facilitate prompt record location and ensure that patient care does not suffer and that privacy is not breached.

Systems for transporting health records within a health service should be well supervised to ensure that health records are not accessible by unauthorised persons.

No health record should be removed from its home location without the following details being recorded in an appropriate system:

- health record number
- patient name
- destination/location of the health record
- person responsible for/in possession of the health record
- date health record was removed.

Records subject to the Sexual Assault Communications Privilege should be marked confidential and transported in sealed envelopes.

#### 15.13.4 Removal

Health records should be kept under adequate security as outlined in Section 9 and the original only removed from the control of the health service upon receipt of a court subpoena, statutory authority, search warrant, coronial summons (see Chapter 9 of the Patient Matters Manual) or by order of the Secretary, NSW Health.

Whenever the original health record leaves a health service, a copy of that record should, where possible, be made beforehand and kept.

#### 15.13.5 Transfer

If it is necessary to transfer a paper-based health record outside the health service it should be transferred under seal, marked 'confidential' and where possible sent by courier.

Where health records are transported by staff members, for example as part of a Community Health Service, care must be taken to ensure records are not in public view, and should be securely transported in a closed non-transparent container.

It is the responsibility of the staff member who receives the health record to ensure it is kept in a secure location to prevent loss and unauthorised access.

Electronic transfer of health records must also be secure.



#### Further guidance

- Section 9.2.4 Safeguards when delivering and transmitting information

#### 15.13.6 Storage, archiving and disposal

Disposal of health records should comply with Section 9.1 and the *State Records Act*, and take into account the type of information contained in a health record and possible future demand for it as well as the needs of individual health services. In particular the following should be considered:

- use of health records for patient care, medico-legal purposes and research and teaching
- archival value
- provisions of the *Evidence Act 1995* and the Statute of Limitations
- available storage space
- requirements under the provisions of the *State Records Act 1998*.

Similar standards for maintaining privacy and security should be maintained for health records in archival or secondary storage as for health records in current use.



#### Further guidance

- PD2012\_069: Health Care Records – Documentation and Management
- Patient Matters Manual Section 9
- General Disposal Authority (GDA 17) Public health services: Patient/Client Records (State Records NSW) [www.records.nsw.gov.au](http://www.records.nsw.gov.au)

### 15.13.7 Health facility closures

When a facility is closed and ceases to operate, each responsible unit should create a register that includes details of:

- Health records destroyed
- Health records retained
- Health records transferred to other locations
- Location(s) where the health records have been transferred to
- Officers who undertook closures
- The full name of the facility being closed and the facility receiving the records should be clear on the register, along with the date of closure, the date range of records destroyed and the date range of records transferred and the range of medical record numbers if possible.

Details of records that are to be destroyed should include as a minimum:

- the location where the health records were created
- the patient's surname and given name
- the patient's sex
- the patient's date of birth
- the last date of contact with the facility
- the general nature of the health records
- the date for destruction or the date destroyed.

### 15.13.8 Transfer of General Practice health records to public health services

NSW State Records provide a General Disposal Authority (GDA No 42) Public Health Services: general practice health records.

The authority applies to general practice health records in the custody and control of public health services and the transfer of these records to the patient (or their representative) on request or their destruction after suitable retention periods have been met.



#### Further guidance:

- General Disposal Authority (GDA No 42) Public Health Services: general practice medical records Available at: [www.records.nsw.gov.au](http://www.records.nsw.gov.au)

## 15.14 NSW data collections

### 15.14.1 NSW Health data

Statistical information and other data are submitted to the Ministry of Health for inclusion in a number of centrally maintained data collections. Collection of such data is required or authorised by a range of health legislation, such as the *Public Health Act 2010*, the *Health Administration Act 1982*, and the *Private Health Facilities Act 2007*, the *Home and Community Care Act 1985* (Commonwealth).

### 15.14.2 Health Information Resources Directory (HIRD)

Central data collections and the data elements they contain are documented in the Health Information Resources Directory (HIRD). The HIRD is the authoritative central registry for data collections and metadata. It is the responsibility of each data custodian, or other delegate of the data sponsor, to ensure that the data collection for which he or she is responsible, if in scope, is recorded in HIRD.

Health services that also own or administer data collections should also keep a register of those collections. Such a register should include (as a minimum):

- Data collection name
- Collection sponsor
- Collection custodian and contact details
- Statement of the collection's purpose
- Any Act or Regulation authorising the collection
- Statement of whether the collection includes personal health information.

### 15.14.3 Staff roles

All staff employed within the health system have a duty to maintain, within their roles, the privacy, integrity and security of data held and managed by their work unit.

*Data sponsor* : Each data collection has a nominated data sponsor who undertakes the duties of ownership on behalf of the relevant health service, including:

- Defining the purpose of the data collection
- Establishing the scope and coverage of the collection
- Defining access and custody arrangements

*Data custodian*: The data sponsor appoints a custodian for each data collection who is responsible for:

- Data storage and disposal
- Compliance of data with relevant legislation and policies
- Administration
- Quality assurance
- Data access and release

### 15.14.4 Access to data collections

Where data collections contain identifying or potentially identifying information, HPP 10 and 11 will apply to any requests for use and access. While access may be authorised under any of the exceptions listed in HPP 11(1) and 11(2), the most common are likely to be where:

- the access relates to the primary purpose for which the data was collected (for more detail, see Section 11.1)
- the access is for a directly related purpose, which would be “reasonably expected” by the individual (see Section 11.2.1)
- the access is required or authorised by law (see Section 11.3)
- use or disclosure is required for management or research purposes (see Section 11.2.4).

Where access is sought for management or research purposes, the NSW Privacy Commissioner's Statutory guidelines on research and the Statutory guidelines on management apply. These guidelines provide for requests for such access to be approved by a Human Research Ethics Committee (HREC). In relation to data collections held by the NSW Ministry of Health, applications should be made to the NSW Population and Health Services Research Ethics Committee (NSW PHSREC).

Based on the evaluation report of the HREC or the PHSREC, the appropriate data custodian will approve or reject the request and advise applicants in writing of the committee's recommendation, including reasons for denial of access and any conditions or restraints applying.



#### **15.14.4.1 Conditions of access**

If access is granted the principal applicant must sign an agreement to apply, as a minimum, the standards of privacy protection contained in the *HRIP Act*, and to abide by any other conditions or constraints (relating to charges, monitoring requirements etc.) on the use of the data set by the data custodian.

Although NSW Health will endeavour to facilitate access to data by bona fide applicants, access is not guaranteed. Each request will be judged, and access granted or denied, on its own merits. The information supplied will always be the minimum required to meet a project's objectives.

Access, when granted, will be subject to the terms and conditions set out in an agreement, to be drawn up by the data custodian and signed by the principal applicant. If access is refused, the reasons for refusal will be documented in a written response from the data custodian. The applicant may choose to amend the proposal in the light of this response and re-submit it, in which case the assessment process will need to be repeated.

#### **15.14.4.2 Record linkage**

Linkage of specific data is authorised under the *HRIP Act* provided the linkage is necessary for the purposes of management or research and the Statutory guidelines have been complied with.

Linkage of whole health records for the purposes of establishing an ongoing health record must, however, comply with HPP 15.

#### **15.14.4.3 NSW Population and Health Services Research Ethics Committee**

The NSW Population and Health Services Research Ethics Committee (NSW PHSREC) is constituted as a Human Research Ethics Committee (HREC) in accordance with NHMRC guidelines for the protection of privacy in the conduct of medical research. The committee undertakes assessment of requests for access to personal information held in data collections maintained at central administration. The PHSREC also considers:

- proposals for data use or issues requiring ethical advice referred by NSW Ministry of Health officers
- multi-centre research proposals
- proposals referred by HRECs
- proposals for data and health record linkage.



