

## Information Sheet for Accredited Chaplains

### Compliance with the *Health Records and Information Privacy Act 2002*

A regulation has been made under the *Health Records and Information Privacy (HRIP) Act 2002* to allow for the disclosure of patient information to accredited chaplains working in the NSW public health system. The regulation is entitled *Health Records and Information Privacy Amendment (Accredited Chaplains) Regulation 2008*.

The NSW Health Information Bulletin 'Chaplaincy Services and Privacy Law' IB2008\_044 provides guidance on how the regulation operates.

The regulation means that accredited chaplains will need to comply with the Health Privacy Principles (HPPs) set out in the HRIP Act in relation to the information they obtain from hospitals and hospital chaplaincy services.

Disclosure of information under the regulation is limited to accredited chaplains, that is chaplains who have been accredited by the Chief Executive of the public health organisation through PD2005\_123. Where no Chaplaincy Services or Pastoral Care Department exist in a public health organisation, a process of accreditation of local clergy or religious leaders should be established through the Human Resources Department or equivalent personnel office. Accredited chaplains are responsible for the management and confidentiality of all records created for chaplaincy purposes.

This Information Sheet sets out the areas of privacy compliance which are of particular importance for chaplaincy services.

#### **Use and disclosure of personal health information (HPPs 10 & 11)**

Staff working in public health facilities may only use or disclose a patient's personal information in certain circumstances.

The HRIP Act regulation allows for patient information to be released to an accredited chaplain provided that it is for the purposes of chaplaincy services and that it is within the reasonable expectation of the patient or other person to whom the information relates.

Accredited chaplains are routinely provided with the name and religious faith or denomination of patients. When necessary, accredited chaplains may also be provided with additional personal and health information to enable the chaplain to fulfil his or her duties in a manner which is within the patient's reasonable expectation or that of the patient's relatives.

Patient consent for release of personal information described above to accredited chaplains is not required under the regulation. Consequently it is not necessary to include a consent question in admission procedures or on admission forms. It is not anticipated that chaplains would require access to a patient's full medical

record for pastoral care duties. It would be appropriate that any such access would be with the consent of the patient, or their representative.

The hospital has a responsibility to make patients generally aware that their information may be provided to accredited chaplains on admission where possible, and via the Information Privacy Leaflet for Patients.

Accredited chaplains must keep all patient information confidential and information collected in the course of chaplaincy duties must only be used for the purposes of these duties. Care must be exercised when disclosing a patient's personal health information to relatives or friends. This should only occur if the accredited chaplain is aware that the patient has requested that certain people be informed.

If an accredited chaplain believes that a patient's personal health information should be used or disclosed for other reasons or in other circumstances, they should liaise with the patient's treating clinical staff to determine whether such a use or disclosure is permitted under the HRIP Act.

#### **Retention and Security (HPP 5)**

(Where an accredited chaplain is a health service employee, deletion and disposal of records must comply with the State Records Act 1998 and health service policies and procedures for records management, for example, authorisation for destruction of records.)

Where an accredited chaplain is not a health service employee, as in most cases, and information is retained about a patient, this information must be kept secure to safeguard it against unauthorised access, loss and all other misuse. Chaplaincy services must maintain secure record keeping procedures for all information provided to them.

Records must be retained by chaplaincy services for set periods of time. For adults this is seven years from the last occasion that the chaplain was in contact with the patient. For patients under 18 years of age, the information must be retained until the patient has turned 25 years of age, or would have turned 25 years of age.

When this information is deleted or disposed of the following must be recorded:

- the name of the patient
- the period it covered
- the date on which it was deleted or disposed

The record may be kept in electronic form but only if the information can be printed on paper.

#### **Patient access (HPPs 6 & 7)**

(Where an accredited chaplain is a health service employee, patient access must be provided in accordance with health service policies and procedures.)

Where an accredited chaplain is not a health service employee, as in most cases, chaplains must be aware that a patient can request a chaplain to provide access to the information held about them. The request must be:

- in writing
- state the name and address of the individual making the request
- sufficiently identify the health information to which access is sought
- specify the form in which the individual wishes the information to be provided

The patient may authorise / consent another person to have access to their health information in place of them. The consent must:

- be in writing
- name the person authorised to have access

A reasonable fee for collating material can also be requested.

Chaplaincy services must reply to such a request within 45 days, and if access is refused, will also need to provide a reason for the refusal. The HRIP Act allows access to be lawfully refused on a number of grounds, including where the access would have an unreasonable impact on the privacy of another person, where the provision would be unlawful or would pose a serious threat to the life or health of the patient or any other person. In the later case an alternative is to provide access to a medical practitioner nominated by the patient.

If access to the information is granted, the patient may either have a copy of the information or be able to inspect a file and take notes.

If the patient has requested access in a certain form and the access has been granted, then the information should be provided in the requested form. However a chaplain can refuse access in the requested form provided it:

- would provide unreasonable demands on the organisation's resources
- would be detrimental to the preservation of the information or would not be appropriate
- would involve an infringement of copyright

The information would need to be provided in another form.

#### Proof of identity

Before access is provided the chaplain must take reasonable steps to be satisfied about that the person's authority to have access to the records. The chaplain may require evidence of the person's identity and their authority, if acting for the patient.

#### Reasons for not granting access

Access does not need to be provided if it would pose a serious threat to the life or health of the patient or any other individual. If access is refused based on this exemption, the patient may request the chaplain to give access to a registered medical practitioner nominated by the patient. The request is to be made 21

calendar days after the notice of refusal was received. The notice of refusal must advise the patient that he or she may nominate a medical practitioner to be given access and must also advise that the nomination must be made within 21 calendar days after receiving the notice of refusal. The chaplain must provide access to the health information to the nominated medical practitioner within 21 calendar days after being advised by the patient of the nominated practitioner.

Other reasons for refusing access include:

- Providing access would have an unreasonable impact on the privacy of other individuals.
- The information relates to existing or anticipated legal proceedings between the chaplain and the patient and the information would not be accessible by the process of discovery in those proceedings or is subject to legal professional privilege.
- Providing access would reveal the intentions of the chaplain in relation to negotiations with the patient, which would then expose the chaplain unreasonably to a disadvantage.
- Providing access would be unlawful.
- Denying access is required or authorised by or under law.
- Providing access would be likely to prejudice an investigation of possible unlawful activity.
- Providing access would be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency.
- A law enforcement agency performing a lawful security function asks the chaplain not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.
- The request for access is of a kind that has been made unsuccessfully on at least one previous occasion and there are no reasonable grounds for making the request again.
- The individual has been provided with access to the health information in accordance with this Act and is making an unreasonable repeated request for access to the same information in the same manner.

**Request to amend information (HPP 8)**

(Where an accredited chaplain is a health service employee, amendment of information must be provided in accordance with health service policies and procedures.)

Where an accredited chaplain is not a health service employee, as in most cases, a patient may request a chaplain to amend health information relating to the patient held by the chaplain. The request must:

- be in writing
- state the name and address of the individual making the request

- identity the health information concerned
- specify where the patient claims the health information is inaccurate, out of date, irrelevant, incomplete or misleading
- if the request specifies that the patient claims the health information is incomplete or out of date then the request should be accompanied by information that brings the information held up to date

A chaplain must respond to a request for amendment within 45 calendar days after receiving the request. The chaplain can respond to the request for amendment by either making the amendment as requested or refusing it. The chaplain may refuse the amendment because he/she is satisfied that the information is not incomplete, incorrect, irrelevant out of date or misleading, or is satisfied that the request contains or is accompanied by a matter that is incorrect or misleading in a material respect. Written reasons for a refusal to amend information must be given. If the chaplain fails to respond to the request for amendment as required it is taken that the request has been refused.

#### Notation to records

If a chaplain has refused to amend health information, the patient can ask in writing for the chaplain to add a notation to the information specifying the respects in which the patient claims the information to be incomplete, incorrect, irrelevant, out of date or misleading. The chaplain must take reasonable steps to comply with the requirements given to add a notation and should notify the patient in writing as to what steps were taken.

If a chaplain discloses any health information where a notation has been made, then the chaplain:

- Must ensure that when disclosing the information a statement is included which states that the patient, to whom the information relates, claims that the information is incomplete, incorrect, irrelevant, out of date, or misleading
- Set out the particulars of the notation added
- May include the reasons for the refusal in the statement.

The chaplain must take reasonable steps to be satisfied about the authority of the person making the request to amend information. The chaplain can ask for proof of identity and authorisation if acting on behalf of the patient.

#### **Complaints against a chaplain**

The HRIP Act provides a mechanism for patients and others to make complaints about breaches of the Health Privacy Principles (HPPs).

(Where an accredited chaplain is a health service employee, privacy complaints against a chaplain should follow the NSW Health Privacy Internal Review Guidelines GL2006\_007, available at <http://www.health.nsw.gov.au/policies>)

Where an accredited chaplain is not a health service employee, as in most cases, a complaint may be made to the Privacy Commissioner about the alleged

contravention of a Health Privacy Principle or any of the above provisions. The complaint must be in writing, within six months of the patient becoming aware of the conduct. The patient can amend or withdraw the complaint.

The Privacy Commissioner may conduct a preliminary assessment of the complaint for the purpose of deciding whether to deal with the complaint. The complaint may not be dealt with if the Commissioner is satisfied that:

- The complaint is frivolous, vexatious or lacking in substance or is not in good faith
- The subject matter is trivial
- The subject matter relates to a matter permitted or required by or under any law
- The complainant has an alternative, satisfactory and readily available means of redress
- The matter should be referred to the Health Care Complaints Commission or other similar body
- The patient has made a complaint about the same subject matter to the Commonwealth Privacy Commissioner and the complaint has not been withdrawn
- The Commonwealth Privacy Commissioner has made a determination
- If the Commissioner decides not to deal with a complaint, the patient needs to be made aware of the reasons

If the Commissioner decides to deal with a complaint, the Commissioner:

- Is to carry out an assessment to determine whether initially there is a case that the chaplain has contravened a Health Privacy Principle, or a provision as mentioned above
- May make such inquiries and investigations into the complaint as the Commissioner thinks appropriate.
- If after the assessment has been carried out and there is no case to investigate the Commissioner can cease to deal with the complaint. The patient needs to be advised of the reasons for ceasing to deal with the complaint.

If the Commissioner has found that there was a contravention of Health Privacy Principles the Commissioner may:

- Endeavour to resolve the complaint by conciliation
- Further investigate the complaint and make a report
- Determine that the complaint has been resolved to his or her satisfaction

In deciding what course of action to take the Commissioner must consider:

- The nature of the complaint
- The views of the complainant and the respondent

- Any action taken by the respondent to address the complaint
- Whether the complainant raises a matter of public interest

If the Commissioner determines that the complaint has been resolved the complainant and respondent must be notified of the determination and no further action is taken.

If the complaint is to be resolved via conciliation, the Commissioner may by writing, request the complainant and the respondent to appear before the Privacy Commissioner in conciliation proceedings. The patient and the chaplain must not without reasonable excuse fail to comply with this request. The parties at the conciliation proceedings are not entitled to be represented. The procedures are to be determined by the Commissioner. The course of conciliation proceedings cannot be used as evidence in subsequent proceedings. The Commissioner is to take no further action after the conclusion of the conciliation proceedings, whether or not the parties reach any agreement as a result.

The Commissioner may make a written report of any findings or recommendations in relation to a complaint dealt with by the Commissioner. A copy of the report may be given to the complainant and the respondent. This report is admissible in subsequent proceedings

A patient who has made a complaint to the Privacy Commissioner may apply to the Administrative Decisions Tribunal for an inquiry into the complaint. An application can only be made within 28 calendar days after the complainant received the report. The patient cannot apply to the Tribunal if they have made a complaint about the same subject matter to the Commonwealth Privacy Commissioner and that complaint has not been withdrawn or the Commonwealth Commissioner has made a determination.

### **Further information**

Available on the NSW Health 'Patient privacy' website at:  
<http://www.health.nsw.gov.au/patients/privacy>

- Information Bulletin Chaplaincy Services and Privacy Law IB2008\_044
- NSW Health & Civil Chaplaincies Advisory Committee NSW MOU PD2011\_004
- NSW Health Privacy Manual PD2005\_593
- *Health Records and Information Privacy Act 2002*
- *Health Records and Information Privacy Amendment (Accredited Chaplains) Regulation 2008*
- NSW Health Privacy Leaflet for Patients
- Contact details for the Privacy Contact Officer for your health service