

Policy and Procedure

| | |
|----------------------|--|
| Title: | Disclosure of Personal Health Information Without Consent |
| Policy Number: | 06.027 (previously 02.011) |
| Effective Date: | February 10, 2012 |
| Revised Date: | March 14, 2019 |
| Approving Body: | President and CEO |
| Authority: | CancerCare Manitoba Act |
| Responsible Officer: | President and CEO |
| Delegate: | Director, Cancer Clinical Information Management |
| Contact: | Cancer Clinical Information Management and CCMB Privacy Officer |
| Applicable to: | CCMB Staff and Physicians |

1.0 **BACKGROUND:**

Not Applicable

2.0 **PURPOSE:**

- 2.1 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").
- 2.2 To detail the conditions and restrictions on the Trustee to Disclose Personal Health Information without consent.

3.0 **DEFINITIONS:**

- 3.1 **Access:** The right of an Individual, or a Person Permitted to Exercise the rights of that Individual, to examine (view) and receive a copy of the Individual's Personal Health Information Maintained by the Trustee.
- 3.2 **Demographic Information:** An Individual's name, address, telephone number, and email address.
- 3.3 **Disclosure:** Revealing the Personal Health Information outside the Trustee, ie. to other Trustees, to family and friends of the Individual, or to other persons legally entitled to have Personal Health Information released to them.
- 3.4 **Health Care:** Any care, service or procedure provided to diagnose, treat or maintain an Individual's health; provided to prevent disease or injury or promote Health Care; or that affects the structure or a function of the body and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.
- 3.5 **Health Care Facility:** A hospital, personal care home, Psychiatric Facility, medical clinic, laboratory, CancerCare Manitoba and community health centre or other facility in which Health Care is provided and that is designated in the PHIA regulations.
- 3.6 **Health Professional:** A person who is licensed or registered to provide health

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 2 of 9 |

care under an Act of the Legislature or who is a member of a class of persons designated as Health Professionals in the PHIA regulations.

- 3.7 **Health Services Agency:** An organization that provides Health Care such as community or home-based Health Care pursuant to an agreement with the Trustee.
- 3.8 **Individual:** A patient, client or resident receiving Health Care services within CancerCare Manitoba. For the purpose of Access, Correction, Use and Disclosure of Personal Health Information includes Persons Permitted to Exercise the Rights of an Individual.
- 3.9 **Information About Care Currently Being Provided:**
- 3.9.1 **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.
- 3.9.2 **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.
- 3.9.3 **Health Care Facility visits such as emergency, outpatient, outreach, day surgery and facility based clinics including CancerCare Manitoba:** 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.
- 3.9.4 **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.
- 3.10 **Maintain:** In relation to Personal Health Information, to have custody or control of the information.
- 3.11 **Personal Health Information:** Recorded Information about an identifiable Individual that relates to:
- The Individual's health, or Health Care history, including genetic information about the Individual;
 - The provision of Health Care to the Individual; or
 - Payment for Health Care provided to the Individual;

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 3 of 9 |

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 this policy:

- Any Personal Health Information exchanged verbally about the Individual.

3.12 **Personal Representative:**

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

3.13 **Persons Permitted to Exercise the Rights of an Individual:**

- 3.13.1 (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 othe 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.
- 3.13.2 If it is reasonable to believe that no person listed in any clause of 3.14.1 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:

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 4 of 9 |

- (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 3.14.2 is to be preferred to another of those relatives.

3.14 **PHIA:** *The Personal Health Information Act (Manitoba).*

3.15 **PHIN:** The personal health identification number assigned to an Individual by the minister to uniquely identify the Individual for Health Care purposes.

3.16 **Privacy:** The fundamental right of an individual to control the collection, Use and Disclosure of their Personal Health Information.

3.17 **Privacy Officer:** An employee designated by CancerCare Manitoba 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. At CancerCare Manitoba, the Medicolegal Correspondent assists in this capacity.

3.18 **Record or Recorded Information:** A Record of information in any form, and includes information that is written, photographed, Recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces Records.

3.19 **Trustee:** A Health Professional, Health Care Facility, public body or Health Services Agency that collects or Maintains Personal Health Information.

3.20 **Use:** Involves revealing Personal Health Information to someone within the Trustee's own organization who needs to know the information to do their job. Use includes processing, reproduction, transmission and transportation of Personal Health Information.

4.0 **POLICY:**

4.1 Personal Health Information may be Disclosed without consent of the Individual, and only to the extent the recipient needs to know the information, in the following

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 5 of 9 |

circumstances:

- 4.1.1 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;
- 4.1.2 To any person if the Trustee reasonably believes that the Disclosure is necessary to prevent or lessen a serious and immediate threat to:
- The health or the safety of the Individual the information is about or another Individual, or public health or public safety;
- 4.1.3 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;
- 4.1.4 To a relative of a deceased Individual if the Trustee reasonably believes that Disclosure is not an unreasonable invasion of the deceased's Privacy;
- 4.1.5 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;
- 4.1.6 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;
- 4.1.7 To another Trustee who requires the information to evaluate or monitor the quality of services the other Trustee provides;
- 4.1.8 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;

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 6 of 9 |

4.1.9 To another Trustee for the purpose of de-identifying the Personal Health Information;

4.1.10 To a computerized health information network established by:

- 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;

4.1.11 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;

4.1.12 For the purpose of collecting a debt owed by the Individual to the Trustee if the information Disclosed is limited to Demographic Information;

4.1.13 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;

4.1.14 Required in anticipation of or for Use in a civil or quasi-judicial proceeding to which the Trustee is a party;

4.1.15 Required in anticipation of or for Use in the prosecution of an offence;

4.1.16 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;

4.1.17 For the purpose of:

- An investigation under or enforcement of an enactment of Manitoba with respect to payment for Health Care; or
- An investigation or enforcement with respect to a fraud relating to

| |
|---|
| CANCERCARE MANITOBA GOVERNING DOCUMENTS Policy and Procedure |
| Title: Disclosure of Personal Health Information Without Consent |
| Page: 7 of 9 |

payment for Health Care;

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

4.1.19 Authorized or required by an enactment of Manitoba or Canada.

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

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

4.4 **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:

4.4.1 24 hours after receiving the request if the information is about a hospital in-patient;

4.4.2 72 hours after receiving the request, in any other case as defined in 3.9.2, 3.9.3, and 3.9.4 above, applicable at CancerCare Manitoba.

4.4.3 Information may only be Disclosed if:

- The information is about Health Care currently being provided;
- The Disclosure is made in accordance with good medical or other professional practice; and
- The Trustee reasonably believes the Disclosure to be acceptable to the Individual;
- The Disclosure is not contrary to the express request of the Individual.

4.5 Disclosure of Recorded Information in a designated Psychiatric Facility or unit pursuant to *The Mental Health Act* shall be processed in accordance with the WRHA Policy: Access to, Disclosure of and Corrections to the Clinical Record under *The Mental Health Act*.

4.6 **Disclosure About an Individual's Condition**

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

CANCERCARE MANITOBA GOVERNING DOCUMENTS
Policy and Procedure

Title: **Disclosure of Personal Health Information Without Consent**

Page: 8 of 9

specific information about the physical or mental condition of the Individual.

4.7 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.

5.0 PROCEDURE:

5.1 Requests for Disclosure of Personal Health Information may be coordinated with a relevant Manager or designate and/or the CCMB Privacy Officer. At CancerCare Manitoba, Medico-Legal Correspondent assists in this designate capacity.

5.2 The Disclosure Record may be in an electronic or paper form and documented on the health Record. The Record shall also include how the Disclosure was made (i.e. verbal, fax, courier, electronic, etc.).

6.0 REFERENCES:

6.1 WRHA Disclosure of Personal Health Information Without Consent, Policy No. 10.40.141.

6.2 WRHA Access to, Disclosure of and Corrections to the Clinical Record under *The Mental Health Act*, Policy No. 10.40.050.

6.3 *The Personal Health Information Act* (Manitoba).

6.4 *The Personal Health Information Act* Regulations.

Policy Contact:

All enquiries relating to this policy should be directed to:

| | |
|----------------------------|--|
| Name: | |
| Title/Position: | Director, Cancer Clinical Information Management and Privacy Officer |
| Phone: | 204-792-2535 |
| E-mail: | |
| Address: (if required): | |

CANCERCARE MANITOBA GOVERNING DOCUMENTS
Policy and Procedure

Title: **Disclosure of Personal Health Information Without Consent**

Page: 9 of 9

DOCUMENTATION

Policy Location:

This policy is located (hard and e-copy formats):

- | | |
|----|--|
| 1. | The original signed and approved policy is on file in the Executive Office, CCMB |
| 2. | The e-copy is on file in the CCMB Governing Documents Library, SharePoint |
| 3. | |

Revision History:

| Date | Version | Status | Author | Summary of Changes |
|------------|---------|---|------------------------|---|
| dd/mm/yyyy | # | Initial, Draft Final Minor/Major revision | | |
| 10/02/2012 | 1 | Initial | L Costa | Adapted from WRHA policy. |
| 30/09/2015 | 2 | Minor revision | L Costa Policy Team | Very minor formatting changes. No major revisions made upon review. |
| 29/03/2018 | 2 | Minor revision | S.Friedenberger | Reformatted to new template |
| 14/03/2019 | 3 | Minor revision | C. Slusky | Updated Director and Department Name |

Approvals Record:

This Policy requires approval by:

| Approval | | |
|----------|---------------|-----------|
| Date | Name / Title | Signature |
| | Not required. | |

FINAL APPROVAL:

| Date | Name / Title | Signature |
|------------|--|---|
| 14/03/2019 | Dr. S. Navaratnam President and CEO, CCMB | <i>Original signed by Dr. S. Navaratnam</i> |