CancerCare Manitoba
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GOVERNING DOCUMENTS

Policy and Procedure

TITLE:	Disclosure of Personal Health Information Due to Risk of Serious Harm	
Policy Number:	06.032	Section: Information Management
Effective Date:	September 21, 2020	
Revised Date:		
Approving Body:	President and CEO	
Authority:	CancerCare Manitoba Act	
Responsible Officer:	Chief Medical Officer	
Delegate:	Manager, Psychosocial Oncology	
Contact:	Manager, Psychosocial Oncology	
Applicable to:	CCMB Staff and Physicians	

1.0	**BACKGROUND:**	
	1.1	In compliance with provincial legislation and Manitoba Health Seniors and Active Living's (MHSAL) *Personal Health Information Disclosure Due to Risk of Serious Harm* Policy all trustees/health professionals follow the processes outlined for the determination, disclosure and documentation of an individual's personal health information related to the risk for serious harm to an individual and/or public safety. Clinical documentation of risk assessment and disclosure shall capture the care provided (including discussions), the plan of care, and discharge safety needs of the individual and/or others. In 2019, amendments made to The Mental Health Act (MHA) and The Personal Health Information Act (PHIA) revised the threshold for disclosure of personal health information (PHI) without consent to protect patient or public safety from "serious and immediate threat to health or safety" to "risk of serious harm." These amendments do not alter or revise any other legislation related to required disclosure (indicated in alternate legislation) or disclosure related to minors. This disclosure is permissive and discretionary, not obligatory. It provides the opportunity for trustees/health professionals to disclose PHI in situations where in the past; they would have been *unable* to do so. The legislative changes require change in practice, policies and guidance are required to reflect this and assist trustees/health professionals in recognizing the impact on their practice.

2.0	**PURPOSE:**	
	2.1	That individuals seeking health related services are encouraged and supported to provide consent to disclose PHI when there is an assessed risk of serious harm to the individual and/or public safety.
	2.2	To provide trustees/health professionals guidance in situations where a risk of

		serious harm has been identified through assessment and the individual does not consent to the disclosure of relevant PHI to mitigate this risk.
	2.3	To support and enable appropriate and timely disclosure of PHI without consent when necessary to lessen the risk of serious harm to an individual and/or public safety.
	2.4	To reinforce the importance and necessity of trustees/health professionals to document all discussions, assessments and actions undertaken related to an individual's risk of serious harm.

3.0	**DEFINITIONS:**	
	3.1	**Clinical Determination**: A conclusion reached by a trustee/health professional regarding an individual result of a clinical assessment, used as the basis for a clinical decision to disclose PHI.
	3.2	**Disclosure:** For the purpose of this policy refers to the release of Personal Health Information (PHI) to any person based on a clinical determination that the release is necessary to prevent or lessen a risk of serious harm to an adult person or to prevent or lessen a risk of harm to the health and safety of a minor, and to lessen or prevent risk of serious harm to the public.
	3.3	**Documentation of Disclosure:** Written information prepared by trustees/health professionals maintained on an individual's permanent record regarding any release of information which occurred in response to a reasonable belief of a risk of serious harm to an adult person, to the public or a risk of harm to a minor.
	3.4	**Documentation of Risk Assessment:** Written information prepared by trustees/health professionals maintained on an individual's permanent health record regarding assessment completed to inform the decision to release PHI.
	3.5	**Care Team:** Comprised of more than one interdisciplinary care provider which may include health professionals who participate in or are engaged in the care of the individual and determine collectively decisions related to disclosure.
	3.6	**Health Professional:** A person licensed or registered to provide health care under an Act of the Legislature.
	3.7	**Individual:** For the purpose of this policy an individual includes any patient/resident/client receiving health care services.
	3.8	**Natural Support:** For the purpose of this policy natural supports refers to a person (family member, friend, significant other etc.) who plays a significant role in offering support to an individual. A natural support is not necessarily a part of the formal support system and is not remunerated for offering support. This may

		include persons from a broad network of social support, (e.g. friends, clergy etc.) and is defined by the individual (MB Health 2007). Natural supports may or may not be the same as the individual's identified Next of Kin.
	3.9	**Personal Health Information (PHI):** As defined in PHIA, means recorded information about an identifiable individual that relates to: (a) the individual's health, or health care history, including genetic information about the individual, (b) the provision of health care to the individual, or (c) payment for health care provided to the individual, and includes (d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and (e) 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.
	3.10	**Risk Assessment:** The process undertaken to determine the need for disclosure of PHI to inform clinical action and treatment in response to a reasonable belief of a risk of serious harm, which may result in a further disclosure of PHI to mitigate risk of serious harm post discharge from care.
	3.11	**Risk Formulation:** A meaningful statement about the nature of the risk as it relates to a particular individual at a particular time. In formulating, the trustee/health professional endeavors to make a statement identifying the type of risk, the situations in which the risk might occur, and the role of protective factors as well as risk factors that may impact both positively and negatively on the nature of the risk. (Allnutt et al., 2010).
	3.12	**Serious Harm:** Any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of a person(s), as determined based on the clinical judgement of the trustee/health professional.
	3.13	**Trustee:** A Health Professional, Health Care Facility, public body or Health Services Agency that collects or maintains Personal Health Information.

4.0	**<u>GUIDING PRINCIPLES</u>:**	
	4.1	An individual's consent to disclose PHI remains best practice. PHI belongs to the individual and trustees are entrusted to use it appropriately.
	4.2	Determination of risk must not remove an individual's basic rights and dignity to determine their own lifestyle choices and acceptable personal risks.
	4.3	Self-determination and personal autonomy are integral principles of personal recovery.

	4.4	Discussions to build natural supports and preferred contacts into the individual's profile should be asked for and be part of every episode of care.
	4.5	Trustees/health professionals do not disclose PHI without consent where consent could reasonably have been obtained; unless there is specific care or safety related reasons not to do so. Attempts must be made to contact the individual prior to disclosure without consent.
	4.6	The individual has a right to know if a disclosure of PHI has been made without their consent. Disclosure to the individual regarding what information was shared, to whom and the why occurs at the earliest opportunity.
	4.7	Collaborative decision: When risk is not immediate, the determination to disclose PHI without consent in order to lessen risk of serious harm is reviewed by at least two trustees/health professionals within the interdisciplinary care team.
	4.8	Consultation is an expectation for trustees/health professionals in the provision of person-centered care.
	4.9	The decision to disclose PHI is clearly determined based on the individual's needs and best interests. Disclosure is never considered solely or principally from the perspective of risk mitigation to the health professional.
	4.10	Trustees/health professionals need to consider accountability to the person to whom the PHI was disclosed. The person disclosed to may reasonably experience impacts of their own based on the information of risk to the individual. Trustees/health professionals must carefully balance their authority to disclose PHI against other factors such as potential risks to the person receiving the information.
	4.11	If disclosing PHI, the trustee/health professional ensures it is meaningful information disclosed to the person receiving it. Avoid the use of technical wording or acronyms, use plain language. Confirm that the person understands the information and has the resources and capacity to mitigate the risk of harm. The trustee/health professional disclosing the information must be someone who can answer questions and facilitate follow-up as necessary.
	4.12	PHIA requires disclosure to be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed. Trustees/health professionals must balance the minimum amount to be disclosed with the desire engaged natural supports may have for more information.
	4.13	Once the risk has passed, the disclosure of further PHI without consent is no longer authorized.

5.0	**PROCEDURE:**	
	5.1	Trustees/health professionals complete assessments of individuals receiving services. These assessments are ongoing and dynamic in nature and part of regular service provision. If during this assessment process, a trustee/health professional identifies a 'risk of serious harm' to an individual and/or public safety the Personal Health Information (PHI) Disclosure Due to Risk of Serious Harm Algorithm (Appendix A) may be utilized which outlines the steps below to be taken.
	5.2	Complete an assessment identifying potential risks for serious harm. From this risk assessment, formulate a meaningful statement about the nature of the risk as it relates to this particular individual at this particular time. Document the assessment.
	5.3	Obtain information regarding natural supports from the individual. They are the best source to identify their support system and who should be involved as part of their care team.
	5.4	Request and document consent from the individual to disclose information with the natural supports or other agencies as determined or required by assessment.
	5.5	Identify the requested information to be disclosed. Discuss with the individual what information would be disclosed and the benefits, purpose and risks of disclosure.
	5.6	If consent is provided, ensure subsequent planning/risk mitigation involves the individual, their natural supports and other care team members, as required.
	5.7	If consent is not obtainable, consider the need to disclose PHI without consent. Any disclosure without consent must be person-centered and identify the rationale for the disclosure. If an individual's capacity is a concern follow RHA/SDO policies/procedures on determining capacity.
	5.8	Prior to disclosure, wherever possible; the trustee/health professional who has completed the assessment discusses and confirms necessity of disclosure against the individual's consent with another care team member.
	5.9	If consultation did not occur document rationale in individual's health record.
	5.10	Disclosure of PHI (with or without consent) must be limited to the minimum amount required/needed to know, to lessen the risk of serious harm.
	5.11	Prior to disclosure of PHI, determine through discussion if the natural support is in agreement to accept the disclosure of PHI and is able to assist in the care/management of the individual's risk.
	5.12	The individual is advised that their PHI has been disclosed as soon as it safe to do so and includes what information was shared, to whom and why. If it is not

		safe to inform the individual of the disclosure, document the reason(s).
	5.13	The plan to mitigate risk of serious harm is further developed collaboratively with the individual and the natural supports (whenever possible).
	5.14	It is necessary to ensure that resources/information have been provided to those involved to support the risk mitigation plan (natural supports, care providers) including the importance of reassessment for the ongoing risk.

6.0	**REFERENCES:**	
	6.1	**Shared Health Policy 310.140.117 -** Personal Health Information Disclosure Due to Risk of Serious Harm
	6.2	Allnutt, Stephen & Justice Health (N.S.W.) & Monash University. Centre for Forensic Behavioral Science & New South Wales. Department of Health (2010). Clinical risk assessment & management : a practical manual for mental health clinicians. Justice Health, Malabar, NSW)
	6.3	Personal Health Information Act: http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php**1T**
	6.4	Personal Health Information Regulation: http://web2.gov.mb.ca/laws/regs/current/_pdf- regs.php?reg=245/97
	6.5	Mental Health Act: http://web2.gov.mb.ca/laws/statutes/ccsm/m110e.php
	6.6	2017 Review of the Personal Health Information Act: Comments from Manitoba Ombudsman https://www.ombudsman.mb.ca/data/files/mb-omb-phia-review-2017.pdf

7.0	**RESOURCES:**	
	7.1	Appendix A: Documentation
	7.2	Appendix B: Algorithm
	7.3	CCMB Guidance Document - Suicide Prevention – CCMB Patients and Natural Supports/Family who are suicidal in the workplace
	7.4	CCMB Guidance Document - Suicide Prevention – Staff Members who are suicidal in the workplace

Contact(s):
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Appendix A: Documentation

5.1 The disclosure of PHI is documented in the individual's electronic health record (ARIA) by the trustee/health professional who made the disclosure.

5.2 Documentation includes the following:

a. A description of the identified risk of serious harm and how the risk was identified from the clinical assessment.

b. A statement concerning the rationale for disclosure.

c. Discussion with the individual regarding the benefits of disclosure of PHI.

d. Agreement or not pertaining to consent i.e. whether the individual provided consent or not for the PHI disclosure.

e. Consultation that occurred in order to make the determination to disclose without consent and with whom this occurred.

f. If consultation did not occur, the reason for not consulting.

g. Who received the PHI, and when and how they received the PHI.

h. A description of the PHI disclosed.

i. The plan created to mitigate the identified risk for serious harm

j. Who is involved in implementing the risk mitigation plan

k. Any additional interventions or plans for follow-up with the individual and natural supports.

Appendix B: Algorithm

Telephone contact – assess potential risk of self-harm/harm to public when patient's behavior alerts staff attention	**Personal contact** – assess risk of self- harm/harm to public when patient's behavior alerts staff attention

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Situation appears to warrant review of PHI disclosure: Health Professional requests individual patient's consent to disclose PHI to a contact/natural support person

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YES: Consent Granted Document consent granted in ARIA	**NO: Consent Declined** Document consent declined in ARIA

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1. Review contacts/natural supports in ARIA;
2. Consult with a colleague/manager/patient representative to assess if criteria met to disclose PHI without consent;
3. Ensure that natural support is not contributing to the risk of harm;
4. Discuss if natural support is able to act on this information and be helpful to the patient
5. Attempt to convince patient to consent to disclosure of PHI by reemphasizing the importance of the patient's safety prior to disclosing (not applicable if the patient has given consent)

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If there is no Natural Supports or family identified in discussion with the patient, the staff should go directly to developing a plan to lessen the risk of serious harm

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Develop a plan to lessen the risk of serious harm

- Establish whether patient has a plan for ending his/her life
- If patient remains suicidal or ambivalent about suicide offer to walk patient over to Crisis Response Centre or offer to have the Mobile Crisis Service intervene to come talk to the patient
- If patient is not wanting CRC or MCS, offer to complete a WRHA safety plan with the patient giving the patient a copy of the plan.

SAFE PLAN suicide ideation 2019.pdf

- If appropriate, ensure Mobile Crisis Service is engaged to check on individual
- If patient is seen to be at a high risk of harming themselves and is refusing to attend the Crisis Response Centre or Mobile Crisis Service staff should phone the Psychosocial Oncology Office at 787-2109 to see if a clinician can assist to further deescalate patient
- Contact natural support person if warranted (including if patient does not consent to this contact) if deemed necessary on overall safety assessment of situation
- As a last resort, 911 should be phoned if situation deemed urgent and unmanageable

Document disclosure of pertinent information in ARIA, how the individual's identified natural supports were engaged, and the involvement of other pertinent service providers (including managers, as applicable) to lessen the risk of serious harm. Identify the clinical risk and rationale for disclosing PHI if consent has not been provided by patient.
Individual consent to disclose PHI remains best practice

DOCUMENTATION	
Document Location:	
1.	The original signed and approved document is on file in the Executive Office, CCMB.
2.	The e-copy is on file in the CCMB Governing Documents Library, CCMB SharePoint.
3.	

Revision History:				
Date	**Version**	**Status**	**Author**	**Summary of Changes**
dd/mm/yyyy	#	Initial, Draft Final Minor/Major revision		
13/May/2020	1	Initial draft	H. Purvis/A. Wiens	To team for feedback.
15/July/2020	2	Minor Revisions	CPMT	

Approvals Record: This document requires approval by:		
Approval		
Date	**Name / Title**	**Signature**
15/Jul/2020	Clinical Programs Management Team (CPMT)	Signature not required.

FINAL APPROVAL:		
Date	**Name / Title**	**Signature**
21/Sep/2020	Dr. Piotr Czaykowski Chief Medical Officer, CancerCare Manitoba	*Original signed by Dr. P. Czaykowski.*