

Policy and Procedure

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| Title: | Consent To Use Or Disclose Personal Health Information | |
| Policy Number: | 06.029 | Section: Information Management |
| Effective Date: | February 10, 2012 | |
| Revised Date: | September 14, 2023 | |
| Approving Body: | President and Chief Executive Officer of CancerCare Manitoba (CCMB) | |
| Authority: | <i>The Health System Governance and Accountability Act (Manitoba)</i> | |
| Policy Contact: | CCMB Privacy Officer | |
| Applicable to: | All CCMB Corporate and Clinical Staff | |

1.0 BACKGROUND:

- 1.1** The Regulations to *The Personal Health Information Act* (Manitoba) (PHIA) requires trustees to establish and comply with written policies and procedures containing provisions for the security of personal health information during its collection, use, disclosure, storage, and destruction.

2.0 PURPOSE:

- 2.1** To detail the conditions and restrictions on CancerCare Manitoba (CCMB) to obtain Express or Implied Consent.
- 2.2** To ensure consent is obtained in accordance with PHIA.

3.0 DEFINITIONS:

- 3.1 Consent:** means express or implied consent by an Individual for the Use and Disclosure of Personal Health Information. Consent must:
- 3.1.1** be related to the purpose for which the information is used or disclosed;
 - 3.1.2** be knowledgeable;
 - 3.1.3** be voluntary; and
 - 3.1.4** not be obtained through misrepresentation.
- 3.2 Demographic Information:** An Individual's name, address, telephone number, and email address.
- 3.3 Disclosure of Personal Health Information:** Revealing the Personal Health Information outside of CCMB.
- 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.

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3.5 Individual: A patient or client receiving Health Care services within a CCMB Health Care Facility. For the purpose of Access, correction, Use and Disclosure of Personal Health Information includes Persons Permitted to Exercise the Rights of an Individual.

3.6 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;
- the PHIN (personal health identification number) and any other identification number, symbol or particular assigned to an Individual;
- 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

- personal information such as financial position, home conditions, domestic difficulties or any other private matters relating to the Individual which have been disclosed to CCMB; and

for the purpose of CCMB Policy 06.001 - Confidentiality of Personal Health Information:

- any Personal Health Information exchanged verbally about the Individual.

3.7 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.

3.8 Persons Permitted to Exercise the Rights of an Individual:

- 3.8.1**
- 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* (Manitoba);
 - c) A committee appointed for the Individual under *The Mental Health Act* if the committee has the power to make Health Care decisions on the Individual's behalf;
 - d) A substitute decision maker for personal care appointed for the Individual under *The Vulnerable Persons Living with a Mental Disability Act* (Manitoba) 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, their, his or her Personal

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Representative.

3.8.2 If it is reasonable to believe that no person listed in any clause of 314.1 of PHIA exists or is available, the adult person listed first in the following who is readily available and willing to act may exercise the rights of an Individual who lacks the capacity to do so:

- a) The Individual's spouse, or common-law partner, with whom the Individual is cohabiting;
- b) A son or daughter;
- c) A parent, if the Individual is an adult;
- d) A brother or sister;
- e) A person with whom the Individual is known to have a close personal relationship;
- f) A grandparent;
- g) A grandchild;
- h) An aunt or uncle;
- i) A nephew or niece

Ranking: The older or oldest of two or more relatives described in any clause of 2.14.2 of PHIA is to be preferred to another of those relatives.

3.9 Privacy Officer: An employee designated by CancerCare Manitoba whose responsibilities include dealing with requests from Individuals who wish to examine and copy or to correct Personal Health Information collected and Maintained by CCMB and facilitating CCMB's compliance with PHIA.

The definition is intended to mean the Privacy Officer and/or their delegate. At CCMB, the Medicolegal Correspondent assists in this designate capacity.

3.10 Trustee: A Health Professional, Health Care Facility, public body, or health services agency that collects or maintains Personal Health Information.

3.11 Use: Any activity involving personal health information within CCMB. Use includes accessing, looking at and sharing the information collected by CCMB for the purpose of providing health care. Use also includes, but is not limited to processing, reproduction, transmission and transportation of Personal Health Information.

As an employee or agent of a Trustee, you should only be using the minimal amount of information required to do your job.

4.0 POLICY:

4.1 Where consent is necessary , for the Use or Disclosure of Personal Health Information including Demographic Information, CCMB shall determine whether Consent must be implied or express and if express, Consent shall be sought from the Individual.

4.2 When a Trustee determines that the Personal Health Information can be used or

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Disclosed in accordance with implied Consent, the Personal Health Information Used or Disclosed and the reason for Use or Disclosure shall be documented in the Individual's health record.

4.3 A Trustee shall obtain an Individual's Consent, for the Use or Disclosure of Personal Health Information including Demographic Information, when required under PHIA.

4.4 When PHIA requires an Individual's consent to Use or Disclose Personal Health Information, the consent must:

- relate to the purpose for which the information is used or disclosed;
- be knowledgeable and understood by the Individual;
- be voluntary; and
- not be obtained through misrepresentation.

4.5 Consent may be express or implied and need not be in writing.

4.6 Consent must be express, and not implied, if CCMB:

- makes a Disclosure to a person who is not a Trustee; or
- makes a Disclosure to another Trustee, but the Disclosure is not for the purpose of providing Health Care or assisting in providing Health Care; or
- requires consent under subsection 21(2) of PHIA for employee's or prospective employee's information.

4.7 CCMB may act in accordance with an Express written consent having been given and obtained by another Trustee, without verifying that the consent meets the requirements stated in section 4.4 hereof, unless CCMB has reason to believe that the requirements have not been met.

4.8 An Individual may give consent subject to conditions as long as the conditions do not restrict or prohibit CCMB from recording Personal Health Information that is required by law, or by established standards, or by professional or institutional practice.

4.9 An Individual who has given consent, whether Express or Implied, to the Use or Disclosure of Personal Health Information may withdraw it by notifying CCMB. A withdrawal does not have a retroactive effect.

5.0 PROCEDURE:

5.1 When CCMB determines that express Consent is required for the Use or Disclosure of the Personal Health Information, CCMB must obtain consent from the Individual the information is about by:

- completing the Consent to Use or Disclose Personal Health Information Form; or
- document in the Individual's health record that verbal consent was

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obtained and the reason for the Use or Disclosure.

5.2 The Privacy Officer (or designate) may be consulted to determine whether Implied or Express Consent should be obtained, on a case-by-case basis. At CCMB, the Medicolegal Correspondent assists in this designate capacity.

5.3 Consent for ongoing disclosure shall be renewed upon any change to the nature of disclosure Consented to, and at minimum annually.

6.0 REFERENCES:

6.1 Shared Health Policy 340.100.102 - Consent to Use or Disclose Personal Health Information

[Consent to Use or Disclose Personal Health Information \(sharedhealthmb.ca\)](https://web2.gov.mb.ca/laws/statutes/ccsm/p033-5.php?lang=en)

6.2 The Personal Health Information Act (Manitoba:

<https://web2.gov.mb.ca/laws/statutes/ccsm/p033-5.php?lang=en>

6.3 Regulations to The Personal Health Information Manitoba

<https://web2.gov.mb.ca/laws/regs/current/pdf-regs.php?reg=245/97>

6.4 Consent to Use Personal Health Information

[CCMB PHIA Consents - All Documents \(manitoba-ehealth.ca\)](https://web2.gov.mb.ca/laws/regs/current/pdf-regs.php?reg=245/97)

6.5 Consent to Disclose Personal Health Information [CCMB PHIA Consents - All Documents \(manitoba-ehealth.ca\)](https://web2.gov.mb.ca/laws/regs/current/pdf-regs.php?reg=245/97)

Documentation:

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

Revision History:

| Date | Version | Status | Author | Summary of Changes |
|------------|---------|--------------------|------------------------|---|
| 10/02/2012 | 1 | Initial | | |
| 30/10/2015 | 2 | Minor revision | L Costa Policy Team | Minor revisions only. |
| 28/03/2018 | 2 | Minor revision | S.Friedenberger | Reformatted to new template |
| 10/02/2022 | 1 | Updating Policy | C. Slusky | Revisions to match Shared Health Policy |

Executive Sponsor: This Policy was approved/endorsed by:

| Date | Name / Title |
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| September 14, 2023 | Brent Gibson, Chief of Corporate Services and Finance |

Approved by:

| Date | Name / Title | Signature |
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| September 14, 2023 | Dr. Sri Navaratnam, President and Chief Executive Officer, CancerCare Manitoba | "Original signed by Dr. Sri Navaratnam" |