

# Health Privacy it's my business



Health Records Act

Health Privacy Principles

Right of Access

Information Sheet No. 3

## Transfer/closure of a Practice or Business of a Health Service Provider

### Key Message

The intent of Health Privacy Principle (HPP) 10 is to encourage individuals to apply for their health information while it is still readily available so they can provide their new or current treating practitioner with their existing health information. HPP 10 only applies to health service providers.

### Purpose

This information sheet provides guidance on HPP 10 for health service providers who will no longer be providing a health service and intend to sell, close or transfer their practice. They must decide what to do with the health information they hold, as it is their property. They can elect to sell, transfer, retain or hand the information directly to the individual.

**Information relating to the Commonwealth legislation is included in italics.**

### What is a health service provider required to do?

Health service providers should refer to HPP 10 and the Statutory Guidelines issued by the Health Services Commissioner (HSC) on this topic. These are available from the HSC's website or office.

### Publish a notice in a newspaper circulating in the local area

A health service provider must publish a notice in a newspaper circulating in the locality of the practice or business if their business is about to be sold, transferred or closed, and they will no longer be providing a health service from that practice. For metropolitan health service providers, publication in a metropolitan daily in addition to a local newspaper is recommended.

### What must the notice say?

It must set out details of the proposed sale, transfer or closure and state whether the health information is to be kept by the health service provider, made available to the patient or transferred to another health service provider.

Where a significant proportion of patients or customers of a practice or business have, as their first language, a language other than English, a health service provider must publish a notice in the appropriate non-English language newspapers.

### Place a notice in the business or practice

Health service providers must place a written notice in clear view in the practice or business for a period of time not less than two months prior to the date of the sale, transfer or closure. A lesser period is allowed if it is not possible to comply with the two-month requirement.

### Notify in writing

Each patient or customer currently receiving a program of care, a course of treatment, or whose condition is scheduled to be monitored or reviewed by the health service provider, must be sent notification in writing about the changes to the practice, where it is practicable to do so.

*There is no National Privacy Principle (NPP) that specifically deals with the transfer or closure of a health service provider's practice. The overall framework of obligations set out in the NPPs requires appropriate information handling in these circumstances, which is respectful of privacy. The principles of particular note relate to collection, use & disclosure and data security.*

## Obligations for particular health service providers

### Pathology, radiology or diagnostic imaging services

Health service providers of pathology, radiology or diagnostic imaging services are only required to place notices in local newspapers and in professional publications read by health service providers who request services from the respective practice disciplines. They are not required to write to each individual patient or place a notice in their practice.

### Pharmacists

Pharmacists are only required to advise patients in writing that their business is closing where they are issuing repeat prescriptions for prescribed medication or courses of treatment, for example providing Methadone.

## Handling, retention and storage of medical records

Health service providers who elect to retain health information must continue to hold it or transfer it to a competent organisation for safe storage in Victoria, until the time when the health information is destroyed in accordance with HPP 4. A competent organisation for storage of records refers to a facility in which legitimate, 'reasonable steps' have been taken to ensure safe and secure storage of personal health information.

Health information must not be deleted until at least 7 years after the last occasion on which the individual received a health service from the provider. In the case of a child, information may only be deleted after the individual attains the age of 25.

Providers may have obligations under other laws or to their medical indemnity funds to retain records longer than the specified periods. Care should always be taken before destroying any records.

Where information is transferred to another health service provider or organisation, and a copy is not kept, a written note must be made of the name and address of where the information was transferred.

*Although there is no NPP applying specifically to the transfer of health information, the Federal Privacy Commissioner's Guidelines on Privacy in the Private Health Sector advise health service providers to consider the range of obligations they may have in managing medical records when a practice closes. The guidelines also suggest that patients be informed of the closure.*

*Upon closure, patients' health information may be transferred to another health service provider, particularly if the services of the new health service provider are the same as those of the previous health service provider. Where this is not the case, an individual patient's consent may be needed prior to transfer. Where patients cannot be contacted, suitable storage arrangements will be needed.*

## For health service providers retaining medical records

If the health service provider decides to retain the information, individual requests for the health information to be transferred to them must be treated as an application for access under the *Health Records Act 2001* (HRA). That is, the individual is entitled to receive a copy, summary, inspection or explanation of the information as appropriate.

If the individual requests the information be transferred to their nominated health service provider then this **must** be done as soon as practicable (HPP 11).

## Transfer of 'original' health records

In the case of the sale of a business or practice, the transfer of health information in an **original record** to the buyer of the business does not contravene other HPPs and patient consent is not required. The new owner will take over the assets of the practice and patient database materials and must comply with the requirements of the HRA.

*Under the Commonwealth legislation, however, a health service provider or other organisation that acquires a health service will usually need consent before collecting individuals' health information. The individuals whose health information is being transferred from the selling to the acquiring organisation need to be advised. The respective organisations or health service providers may decide between them how to handle these obligations.*

## Estate planning

Ultimately the health service provider will end their involvement in the practice or business through retirement, sale, transfer or death. In the event of death the obligations of the HRA are the responsibility of the health service provider's 'legal representative'. The health service provider should consider and plan what they want to happen to the health information they hold, subject to the HRA, as they would with any other property.

## About information sheets

Information sheets are advisory only and do not constitute legal advice nor are they law.

They are intended to help organisations apply the HPPs in everyday or practical circumstances. Organisations may need to seek separate legal advice on the application of the *Health Records Act* to a particular situation.

Nothing in an information sheet limits the Health Services Commissioner's powers to investigate complaints under the Act or to apply the HPPs in the way that seems most appropriate to the facts of any case being dealt with.

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## MORE INFORMATION:

Office of the Health Services Commissioner

Website: [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc) Tel: 8601 5222 Email: [hra@dhs.vic.gov.au](mailto:hra@dhs.vic.gov.au)

