

INFORMATION SHEET 5 – USE AND DISCLOSURE

Quick Reference

This information is primarily intended for Administrative Staff and Health Practitioners

Health information may be used or disclosed without consent for the specific purpose for which it was collected

If any other purpose is proposed consent should normally be sought

As it is often difficult to assess whether a particular disclosure is both directly related and reasonably expected, the safest course of action is to seek consumer consent

INTRODUCTION

Health Privacy Principle 2 relates to use and disclosure of health information and places limits on when and how an organisation can share information.

Disclosure of information will be common in a Primary Care Partnership (PCP) context as a primary aim of the strategy is to improve service coordination and deliver improved health and care outcomes for consumers. The **Initial Needs Identification (INI)** tool template and **Service Coordination Plan** provide a framework to facilitate the process of information sharing to assist in achieving appropriate health outcomes for the consumer.

WHAT IS MEANT BY THE TERMS 'USE' AND 'DISCLOSURE'?

The term **'use'** includes sharing information within a particular organisation, that is between individual practitioners or healthcare provider groups that operate under the same legal entity. For example, a Community Health Service may provide a range of discrete yet inter - related healthcare services within their organisation.

The term **'disclosure'** means sharing or communicating health information to organisations or individuals outside a particular organisation. For example, information collected through the INI tool template may be used to make a referral to another organisation (eg General Practitioner making a referral to a Home and Community Care (HACC) provider for home based care services).

WHAT IS THE PURPOSE OF THE USE OR DISCLOSURE?

The essential principle is that personal health information should only be used or disclosed for the **primary** purpose for which it was collected, and that the use or disclosure is consistent with the consumer's expectations. The consumer should be notified about this purpose at the time of collection. For example, a consumer may be advised that the information will be used to assist the practitioner to determine suitable health care options and / or treatments directly addressing the specific health issue/s identified in the consultation.

If information were to be used for a different purpose (eg a referral to another service) this would normally constitute a **secondary** purpose.

When information is used for a secondary purpose then **consent** should usually be obtained.

EXCEPTIONS TO THE RULE

There are some exceptions to this 'rule'. Some secondary purposes are clearly **directly related** to the primary one and would be reasonably expected by the consumer. For example, contact details collected in providing a specific health service may be used to invoice for that service without seeking consent, because this is directly related and would be reasonably expected.

Some referrals will also fall within this exception. For example use of the INI tool template could lead to two potential avenues:

- Where a consumer presents to a health practitioner with a specific need (eg dental services) and no other need is identified then information collected in the INI would only be used for a primary purpose or
- Where the INI identifies other needs that have to be addressed that are clearly related (eg dental investigation reveals that there are poor nutritional issues that require a referral to a local government provider) then this would be a secondary purpose and generally require consent.

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Part 1, Section 3 defines 'consent' to mean express or implied consent

Section 85(6) defines those categories of persons that may act as authorised representatives

Information Sheet 6 – Capacity and Consent provides further guidance on obtaining consent

HPP 2.2 (h) to (l) specifies the instances in which information may be disclosed without the consent of the individual

Part 1, Section 3 defines those agencies that are determined to be law enforcement agencies for the purposes of the HRA

WHAT IS CONSENT?

The term consent refers to the informed and voluntary agreement of the person or the person's **authorised representative** to a specific proposed action. Consumers must be informed about their options, including the ability to withdraw or vary consent, and given the opportunity to refuse consent.

CAPACITY TO CONSENT

The consumer must have the capacity to understand the nature of what they are consenting to and the main implications of providing or withholding consent. Where a health practitioner is satisfied that the consumer does **not** have the capacity to make a decision about disclosure of their information, consent should be sought from the consumer's **'authorised representative'**. (Refer to Information Sheet 6 on Capacity and Consent for further guidance).

WHEN CAN INFORMATION BE DISCLOSED WITHOUT THE CONSUMER'S CONSENT?

There are very few instances when information may be used or shared without the consumer's consent. Examples of instances where it may be appropriate to disclose information to a third party without the express consent of the consumer are:

- In an emergency situation where release of information is necessary to aid medical treatment [HPP 2.2(h)(i)]
- Reporting of notifiable diseases to the Department of Human Services [HPP 2.2(h)(ii)]
- Providing records to a law enforcement agency in response to a search warrant [HPP 2.2(j)]
- Providing health records to a court when subpoenaed in relation to court proceedings [HPP 2.2(k)]
- Where disclosure is required, authorised or permitted under a prevailing Act eg limited disclosures of psychiatric information are permitted under Section 120A of the Mental Health Act 1986 [HPP 2.2(l)]

SOME STRATEGIES FOR COMPLIANCE WITH THE USE AND DISCLOSURE PRINCIPLE

- Privacy protocols should specify agreed practices for use and disclosure of health information
- Endeavour to gain consent for proposed uses/ disclosures that are for secondary purposes where possible and practicable
- Ensure that the consumer has capacity and has been provided with sufficient information to enable them to give informed consent
- Develop a standard consent form (refer to **Consumer Consent Form** attached which has been extracted from the INI tool template) that clearly specifies which information is to be disclosed, to whom information will be disclosed and the reason for disclosure
- Provide consumers with a copy of their written consent

LEGAL ADVICE: DISCLAIMER

Information contained within this information sheet is not intended to substitute for legal advice. Primary Care Partnerships and / or member agencies should take advice from their legal advisers in determining whether their policies and practices comply with all relevant legislation.

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Practitioner to complete Section (1), discuss the recommended course of action with the consumer and explain that no personal health information will be released to referral services without the consumer's consent. Consumers to be advised that even if they refuse to consent to the disclosure of information the referral can still go ahead.

SECTION (1): PROPOSED INFORMATION USES AND DISCLOSURES

Name of Agency & Type of Service for which referred (in brief)	What information is proposed for disclosure?	Note any limits consumer places on this consent

Consumer to complete Section (2A).

SECTION (2A): WRITTEN CONSUMER CONSENT TO SPECIFIED USE / DISCLOSURE OF PERSONAL INFORMATION

(A) My practitioner has discussed with me the specific services listed above, which s/he recommends become involved in my health and related care. My practitioner has explained to me that s/he may wish to share the specified information detailed above with these services and has requested my consent to do this.

(B) I have been provided with the brochure 'What happens to information about me' and have discussed with my practitioner my rights in relation to use and disclosure of my information.

(C) I understand that I can change or cancel this consent at any time by notifying my practitioner.

I consent to the uses and disclosures of my information as specified in the above table.

Signed: **(Consumer OR * Authorised Representative)** _____

Witnessed: **(Practitioner)** _____ **Print Name & Role:** _____

Date: _____

** Note: In the case of consent by Authorised Representative, practitioner to sign the Representative's Order or Power or other Proof of Authority and place a copy of this on the consumer's file.*

OR:

Practitioner to complete Section (2B) only if it is not practicable to obtain written consent.

SECTION (2B): RECORD OF CONSUMER'S VERBAL CONSENT

(a) I have discussed the proposed referrals with the consumer, and in particular points (A), (B) and (C) from the consumer consent section above. I am satisfied that the consumer understands the proposed uses and disclosures, and has provided their informed consent to these.

YES

(b) I will provide a copy of this form and a copy of the brochure 'What happens to information about me' to the consumer.

YES or NO because _____

Date copy of form and brochure provided: _____ Signed: _____

A COPY OF THIS PAGE SHOULD BE PROVIDED TO THE CONSUMER FOR HIS/HER RECORDS