



Team Name: Health Information Services Team Lead: Privacy & Access Specialist Approved by: Regional Lead – Corporate Services & Chief Financial Officer	Reference Number: ORG.1411.PL.101 Program Area: Health Information services Policy Section: Privacy & Access
Issue Date: April 8 2015 Review Date: Revision Date: October 3, 2022	Subject: Access to Personal Health Information

Use of pre-printed documents: Users are to refer to the electronic version of this document located on the Southern Health-Santé Sud Health Provider Site to ensure the most current document is consulted.

*Words beginning with a capital letter may be found in the definitions.

POLICY SUBJECT:

Access to Personal Health Information

PURPOSE:

- To manage Individuals requests to examine (view) and receive a copy of their Personal Health Information.
- To Maintain and protect the interests of the Trustee of Personal Health Information including its property right to the Record, regardless of media (electronic, paper or digital image).

BOARD POLICY REFERENCE:

Executive Limitation (EL-2) Treatment of Clients

POLICY:

Disclosure of Recorded Information in a designated Psychiatric Facility is pursuant to *The Mental Health Act* and shall be processed in accordance with ORG.1411.PL.102 Access, Disclosure and Correction to the Clinical Record under *The Mental Health Act*.

An Individual has the right to access Personal Health Information within their health Record that was collected by another Trustee. For example, a copy of a discharge summary from another Trustee.

The Trustee shall make every reasonable effort to assist an Individual making a request and to respond without delay, openly, accurately and completely. **A Trustee shall respond as promptly as required, but not later than:**

- **24 hours** after receiving a request to Access Personal Health Information About Care Currently Being Provided to a Hospital Inpatient. This is usually performed by a member of the Health Care team or designate.
- **72 hours** after receiving a request to Access Personal Health Information About Care Currently Being Provided to an Individual who is Not A Hospital Inpatient. This is usually performed by a member of the Health Care team or designate,
- **30 days** after receiving it in any other case. This is usually performed by a Privacy Officer or Advisor.

On request, a trustee shall provide an explanation of terms, codes or abbreviations used in the personal health information as soon as reasonably practical.

The Trustee shall ensure that an inability to make a request in writing does not limit Access to Personal Health Information. Another person designated by the Individual or the Trustee may assist the Individual with the written request.

The Trustee has the right to charge a fee for examination and/or providing a copy of Personal Health Information requested by the Individual. The Individual must be informed of any charges associated with the request as set out in the ORG.1411.PL.502.SD.02 Access/Disclosure/Release of Personal Health Information Fee Schedule. **A request made by the Trustee that requires an Individual to indicate if they accept the estimate of the amount of the fee that may be charged must be made in writing**, except in circumstances where the Individual making the request is a Hospital Inpatient.

The Trustee may require an individual to provide additional information in relation to their access request, including additional information that is necessary to respond to the request. This would apply, for example where an individual submits an incomprehensible request. A request made by the Trustee must be given in writing, except in circumstances where the Individual making the request is a Hospital Inpatient.

A Trustee may consider a request for access to Personal Health Information to be abandoned if the Individual fails to respond within thirty (30) days when the Trustee provides a written fee estimate or requests additional information in relation to an access request.

A Trustee may disregard certain requests from an Individual for Access to their Personal Health Information that the Trustee reasonably believes is an abuse of the right to make a request if the request is unduly repetitive or systematic, or otherwise made in bad faith, or if the request is for information already provided to the individual. The Trustee must notify the Individual in writing of the decision and the reasons for it, and of the Individual's right to make a complaint to the Manitoba Ombudsman.

The Trustee may refuse Access to all or portions of Recorded Personal Health Information in accordance with PHIA if:

- The Individual fails to provide sufficient proof that they are the person the Personal Health Information is about or a Person Permitted to Exercise the Rights of an Individual.
- Knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the Individual or another person, s. 11(1)(a).
 - **Note:** Any information received from a designated Psychiatric Facility or other health care facility falls under PHIA and access is permitted unless a reason for refusal can be determined.
- Disclosure of the information would reveal Personal Health Information about another person who has not consented to the Disclosure, s. 11(1)(b).
- Disclosure of the information could reasonably be expected to identify a third party, other than the Trustee, who supplied the information in confidence under circumstances in which Confidentiality was reasonably expected, s. 11(1)(c).
- The information was compiled and is used solely for:
 - The purpose of peer review by Health Professionals, s. 11(1)(d)(i).
 - 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, s. 11(1)(d)(ii).
 - 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, s. 11(1)(d)(iii).
 - The purpose of risk management assessment, s. 11(1)(d)(iv).
- The information was compiled principally in anticipation of, or for use in a civil, criminal or quasi-judicial proceeding, s. 11(1)(e).

A Trustee is not required to provide a copy of information related to psychological tests or data if both of the following conditions are met:

- The information concerns:
 - Procedures or techniques relating to psychological tests or assessments,
 - Details of psychological tests or assessments, or
 - Raw data from psychological test or assessment;
- The provision of a copy of the information could reasonably be expected to prejudice the use or results of particular psychological tests or assessments.

DEFINITIONS:

Hospital Inpatient: means an Individual who has been admitted and not yet discharged from hospital.

Not a Hospital Inpatient: means

- An Individual who is currently visiting an emergency, outpatient, outreach, day surgery or facility based clinic for care and treatment.
- An Individual who is currently receiving health care from family medicine/primary care, midwifery, home care, population & public health and/or mental health services.
- A resident in a personal care home.

Information About Care Currently Being Provided: means

- Personal Health Information collected, documented and Maintained in the Hospital Inpatient chart during the current hospital stay for a Hospital Inpatient.
- Personal Health Information about an Individual who is a resident in a personal care home that includes the most current information such as applicable quarterly reports and any other information in the health Record that would describe or explain an incident, injury or a new health issue.
- Personal Health Information collected, documented and maintained in a facility's health Record that is Readily Available during a visit to emergency, an outpatient setting or day surgery. This may also include information about the last visit to that setting that is related to the reason for the current visit.
- Personal Health Information collected, documented and Maintained maintained in a health Record that is Readily Available during a visit pertaining to community health services such as family medicine/primary care, midwifery, home care, public health and mental health. This may also include information about the last visit to that setting that is related to the reason for the current visit.

Persons Permitted to Exercise the Rights of an Individual includes:

- any person with written authorization from the Individual to act on the Individual's behalf;
- a proxy appointed by the Individual under *The Health Care Directives Act*;
- 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;
- a substitute decision maker for personal care appointed for the 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;
- by an attorney acting under a power of attorney granted by the individual, if the exercise of the right of power relates to the powers and duties conferred by the power of attorney
- the parent or guardian of an Individual who is a minor, if the minor does not have the capacity to make Health Care decisions,
- if the Individual is deceased, his or her Personal Representative.

If it is reasonable to believe that no person listed above exists or is available, the adult person listed first below, who is readily available and willing to act, may exercise the rights of an Individual who lacks the capacity to do so:

- The Individual's spouse, or common-law partner, with whom the Individual is cohabiting;
- a son or daughter;
- a parent, if the Individual is an adult;
- a brother or sister;
- a person with whom the Individual is known to have a close personal relationship;
- a grandparent;
- a grandchild;
- an aunt or uncle
- a nephew or niece.

(The older or oldest of two or more relatives described above is to be preferred to another of those relatives).

Personal Representative includes:

- an executor/executrix or joint executor/executrix named in a deceased Individual's will; or
- a court appointed administrator or join administrator of a person's estate.

Readily Available: For the purpose of this policy, means to be able to respond willingly, quickly and without complications.

Sever: means to remove from the body of a Record only the information that meets the conditions for an exception (to access).

Trustee: means a health professional, health care facility, public body, or health service agency that collects or maintains Personal Health Information.

PROCEDURE

When responding to an Individual's request to examine and/or receive a copy of Personal Health Information the Privacy Officer/Advisor or delegate shall:

1. Obtain the request in writing or where necessary, assist the Individual with completing ORG.1411.PL.101.FOM.01 Request to Access Personal Health Information form. The Trustee may accept a verbal request from an Individual if the request is to examine information about Care Currently Being Provided.
2. Ensure the person who is requesting an Individual's Personal Health Information as a Person Permitted to Exercise the Rights of the Individual can provide verification of their identify and authority (i.e. a proxy appointed under *The Health Care Directives Act*).

3. Advise the person who fails to provide sufficient proof, that they are a Person Permitted to Exercise the Rights of an Individual, that their request will be reconsidered upon provision of the appropriate identification or authorization.
4. Date stamp the request and determine the [due date](#) as outlined above:
 - write or stamp the receipt date on the form or written request, and/or
 - enter the receipt date in a release of information software system or electronic medical Record; and/or
 - document the date a verbal request is received in the integrated progress notes for a patient or resident currently receiving care.
5. Where an Individual submits an incomprehensible access request, the Individual must be notified that additional information is necessary in order to respond to their request. The Request for Additional Information Template, ORG.1411.PL.101.FORM.06 may be used for this purpose.
 - Pursuant to s. 10.1 of PHIA, the letter to the applicant must include notification that the request may be abandoned if additional information is not provided within thirty (30) days from the date of the request. (see Notification of Abandoned Request, ORG.1411.PL.101.FORM.07).
6. Determine what Personal Health Information the Individual would like to examine or receive a copy of. If the request is for a large amount of information (i.e. the entire health history or all Records pertaining to an inpatient admission or resident in a personal care home), verify exactly what information is required by the requesting party and assist the Individual in determining what documents can best serve the purpose (for access).
 - **Note:** The Privacy Officer/Advisor may disregard certain requests for Access after consultation with the Privacy and Access Specialist. A decision to disregard a request for access must be carefully considered on a case-by-case basis and in accordance with PHIA.
7. Any costs associated with the request must be in accordance with ORG.1411.PL.502.SD.02 Access/Disclosure/Release of Personal Health Information Fee Schedule.
 - The trustee may require an individual to indicate if they accept the estimate of the amount of the fee charged, or, if they want to modify the request in order to have the amount of the fee changed.
 - A request must be given in writing, except in circumstances where the individual is a hospital in-patient. The Estimate of Fees for Access to Personal Health Information Template, ORG.1411.PL.101.FORM.05 may be used for this purpose. Retain in the client's health Record.
 - Pursuant to s. 10.1 of PHIA, the letter to the applicant must include notification that the request may be abandoned if the estimate of fees is not accepted within thirty (30) days from the date of the request. (see Notification of Abandoned Request Template, ORG.1411.PL.101.FORM.07)

- **Note:** The Privacy Officer/Advisor or delegate has the authority to waive or reduce a fee or charge if there is a compelling reasons to do so (i.e. the request is related to a Critical incident or critical occurrence) Any waiver or reduction in fee or charge shall be documented on the health Record and/or the ORG.1411.PL.101.FORM.01 Request to Access Personal Health Information Form.
8. Review the Record carefully to determine if there is any reason to refuse Access to the Personal Health Information as described above in this [policy](#). Consult with the Privacy and Access Specialist if required.
9. **If Access is refused in whole or part:**
- Inform the Individual in writing as promptly as possible, but not later than the applicable timeline set out above in this policy, that the request for Access to Personal Health Information is being refused in whole or in part.
 - In the case of partial refusal, sever the identified portion of the Personal Health Information that cannot be examined and cite the applicable section of PHIA that applies in a notation:
 - Copy those parts of the Record to be Severed (the original Record must not be altered).
 - Seek technical expertis if considering severing information in a format other than paper (i.e. scanned copy).
 - Sever the information from the copied page(s) by concealing the information with severing tape, whitening fluid or black marker.
 - Note the specific provision (section) under PHIA as closely as possible to the Severed portion. For example, s. 11(1)(a).
 - Where a whole page of or series of pages is excepted (withheld), the specific sections of PHIA could be noted on each blank page or on a single page with reference to the series of pages withheld.
 - After severing, copy the pages again. The Severed information should not be visible on the copy made available to the requester.
 - Retain a copy of the Severed versions of the requested Records with the Record of release to answer any questions and to meet administrative retention requirements.
 - Inform the Individual in writing if the requested Personal Health Information does not exist or cannot be found and advise the Individual of their right to make a complaint about the response to the Manitoba Ombudsman. Record Does Not Exist or Cannot be Located Template ORG.1411.PL.101.FORM.04 may be used for this purpose.
 - Inform the Individual in writing that the request is refused , in whole or in part, for the reasons specified and advise the Individual of their right to make a complaint about the refusal to the Manitoba Ombudsman. ORG.1411.PL.101.FORM.03 Refusing a Request for Access Form may be used for this purpose.
 - Permit the Individual to examine or receive a copy of the remainder of the information.

9. Arrange a time to be present with the Individual to examine their Personal Health Information and/or to provide a copy within the applicable timeline.
10. When making Personal Health Information related to a psychological test or data available for examination, a trustee may require a health professional to be present to provide an explanation of the information to the Individual the Personal Health Information is about.
11. On request, provide an explanation about any term, code or abbreviation used in the Personal Health Information as soon as reasonably practicable .
12. Maintain a Record of the request for Access to Personal Health Information and create a Record of release listing the information the Individual has examined, and/or has been provided a copy of, by
 - entering the information the client was provided access to into an electronic release of information system or electronic medical Record; and
 - filing or scanning the written request to examine and/or copy Personal Health Information and the Record of release into the health Record of the Individual; or
 - documenting a verbal request to examine and/or copy Personal Health Information about a Hospital Inpatient and the response to the request on the Integrated Progress Notes (IPN) in the health Record of the Individual the Personal Health Information is about.

SUPPORTING DOCUMENTS:

- [ORG.1411.PL.101.FORM.01](#) Request to Access Personal Health Information Form
- [ORG.1411.PL.101.FORM.01.F](#) Request to Access Personal Health Information Form–French
- [ORG.1411.PL.101.FORM.02](#) Granting a Request for Access Form
- [ORG.1411.PL.101.FORM.03](#) Refusing a Request for Access Form
- [ORG.1411.PL.101.FORM.03.F](#) Refusing a Request for Access Form - French
- [ORG.1411.PL.101.FORM.04](#) Record Does Not Exist or Cannot be Located Template
- [ORG.1411.PL.101.FORM.05](#) Estimate of Fees for Access to Personal Health Information Template
- [ORG.1411.PL.101.FORM.05.F](#) Estimate of Fees for Access to Personal Health Information Template - French
- [ORG.1411.PL.101.FORM.06](#) Request for Additional Information Template
- [ORG.1411.PL.101.FORM.06.F](#) Request for Additional Information Template - French
- [ORG.1411.PL.101.FORM.07](#) Notification of Abandoned Request Template
- [ORG.1411.PL.101.FORM.07.F](#) Notification of Abandoned Request Template - French

REFERENCES:

- The Personal Health Information Act (PHIA).*
- WRHA Policy Access to Personal Health Information Policy #10.40.040.
- [ORG.1411.PL.502.SD.02](#) Access/Disclosure/Release of Personal Health Information Fee Schedule [Resources and Links - Personal Health Information Act \(PHIA\) | Health and Seniors Care | Province of Manitoba \(gov.mb.ca\)](#)