

Policy Manual

Subject: Disclosure of Health Information

Section: ADM – Legal Issues

Number: ADM-c-120

Approved: Chief Executive Officer

Date: 004.05.15, R04.12.14

DEFINITIONS

Client: includes resident, participant, patient

Substitute decision maker: includes agent, guardian or spokesperson

Ref CapitalCare policies ADM-b-10, ADM-b-20

POLICY

CapitalCare will disclose health information in accordance with the following procedure:

1. General Disclosure Rules
 - 1.1. All information obtained from a client or their health record must be treated as private and confidential.
 - 1.2. Staff will determine if a request for health information is a request for access or a request for disclosure. A request for health information access is made by the individual who the information is about, or by their authorized representative or substitute decision maker. A request for health information disclosure is made by a third party. Policy ADM-c-80 (Access to Health Information) is to be followed in responding to health information access requests. This policy is to be followed in responding to health information disclosure requests.
2. Disclosures that do not require the consent of the individual
 - 2.1. Staff may disclose health information without consent of the individual:
 - a. To another custodian if it is for specific health-related services such as providing care to the individual, determining their eligibility for health care services,

conducting investigations or research (See HIA 1(1)(v) for a definition of research), providing education to health service providers, complying with certain laws, or for internal management purposes.

- b. To persons, including non-custodians, who are responsible for providing continuing care to an individual.
- c. To family members and others believed to have a close personal relationship with the individual. Information should be given in general terms and should only concern the presence, location, condition, diagnosis, progress and prognosis of the individual on the day on which the information is disclosed. The disclosure should not be contrary to the express request of the individual.
- d. Where an individual is injured, ill or deceased, so that family members of the individual or another person with whom the individual is believed to have a close personal relationship or a friend of the individual can be contacted, if the disclosure is not contrary to the express request of the individual.
- e. Where an individual is deceased, to family members of the individual or to another person with whom the individual is believed to have had a close personal relationship, if the information relates to circumstances surrounding the death of the individual or to health services recently received by the individual and the disclosure is not contrary to the express request of the individual.
- f. To an official of a penal institution where an individual is detained, if disclosure is necessary to allow for health services to be provided.
- g. To persons who are authorized to conduct audits if the person agrees in writing to destroy the information at the earliest opportunity after the audit is concluded as well as to refrain from disclosing the information to any other person except as required to accomplish the audit or to report unlawful or improper conduct.
- h. To a committee that has as its primary purpose the carrying out of quality assurance activities within the meaning of section 9 of the Alberta Evidence Act.
- i. For the purpose of a court proceeding or a proceeding before a quasi-judicial body to which CapitalCare is a party.
- j. For the purpose of complying with a subpoena, warrant or order issued or made by the court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information.
- k. To other custodians when there is a reasonable suspicion of fraud or abuse in the use of health services or that the disclosure may prevent the commission of an offence.
- l. To a municipal or provincial police service investigating an offence involving a life-threatening personal injury. (See attached Capital Health policy 6.3.1.7 Disclosure to Police for more details.)
- m. To an officer of the legislature if the information is necessary for the performance of the officer's duties.
- n. To any person if there are reasonable grounds to believe that the disclosure will avert or minimize an imminent danger to the health or safety of any person.

- o. If the individual lacks mental capacity to provide consent and the disclosure is believed to be in the best interests of the individual.
 - p. To a descendant of a deceased individual or to the descendant's authorized representative or substitute decision-maker or health care provider if the disclosure is necessary to give health services to the descendant. The disclosure should be sufficiently restricted to protect the privacy of the deceased individual.
 - q. If the disclosure is authorized or required by an enactment of Alberta or Canada.
 - r. To a successor of CapitalCare if CapitalCare ceases to be a custodian and the successor is a custodian.
 - s. To a deceased individual's personal representative, e.g. executor, if the information relates to the administration of the individual's estate.
 - t. To Information Managers as defined in Section 66 of the Act where those Information Managers are bound by agreements with CapitalCare to uphold the Act.
 - u. Researchers, subject to the approval of a designated ethics committee and the written agreement between the researcher and CapitalCare.
- 2.2. Although not technically a disclosure, in matters of litigation against CapitalCare, copies of pertinent health records may be released to CapitalCare's legal counsel. Originals of health records and other related reports in litigation matters may be released only with a valid subpoena or court order. Staff members who receive a subpoena or court order will inform the Manager of Health Records immediately. The Manager of Health Records will consult with legal counsel as necessary to comply with the subpoena or court order.


3. Disclosures that do require the consent of the individual


- 3.1. Staff may disclose health information with the consent of the client [who is the subject of the information] or their substitute decision maker to a person or agency they have designated.
- 3.2. Fees for copying records may be charged in accordance with policy ADM-c-160 (Fees for Health Information Requests).
- 3.3. Staff is responsible to ensure that the information is disclosed to the correct individual and that the information is accurate and complete.
- 3.4. Researchers must obtain the approval of a designated ethics committee and enter into a written agreement with TCCG. Policy ADM-c-110 (Use of Health Information) provides the list of designated ethics committees.
- 3.5. Consent must be provided in writing or electronically and must include:
 - a. The authorization to disclose the information specified in the consent.
 - b. The date consent is effective and the date, if any, on which the consent expires.

- c. The purpose for which the health information may be disclosed.
 - d. The identity of the person to whom the information may be disclosed.
 - e. An acknowledgement that the client involved has been told about the reasons for the request and the risks and benefits of consenting or refusing to consent to disclose the information.
 - f. A statement that consent may be revoked at any time.
- 3.6. If the client does not have the mental capacity to consent to disclosure and there is no authorized representative or substitute decision maker to provide consent, refer to section 2 of this policy.








PROCEDURE:

1. Disclosures without the consent of the individual
 - 1.1. Any staff member receiving a request for disclosure of health information must refer the request to their manager.
 - 1.2. The manager or his/her designate will decide if disclosure is appropriate
 - 1.3. The manager or his/her designate will take appropriate action.
 - 1.4. When individually identifying diagnostic, treatment and care information is disclosed without the consent of the individual, the manager or designate must make a notation of the disclosure unless the disclosure is one of the approved exceptions [see attached]
 - 1.5. Staff will make a notation using one of the following methods:
 - a. Using the attached log form where the log form is kept in the legal section of the client's paper chart.
 - b. Using the attached facsimile cover sheet where the cover sheet is kept in the legal section of the client's paper chart.
 - c. Within the progress notes section of the client's paper or electronic chart.
 - d. For disclosures of electronic records made in batch form or in bulk on a routine basis, identify the elements of the electronic record that are disclosed for each client in the database. Retain a log of when such disclosures are made and the time period covered by each disclosure. Retain a description of the purpose of such disclosures and to whom the disclosures are made and provide a copy of this description to the Records Security Officer. Examples include CIHI data and funding data sent to Alberta Health & Wellness.
 - 1.6. A notation made with any of the methods in procedure 1.5 above must:

- a. Include the name of the person or agency to whom the information was disclosed.
 - b. Include the date of the disclosure.
 - c. Include the purpose of the disclosure, e.g. to provide health services.
 - d. Include a description of the information disclosed or a suitable reference to that record. Alternatively staff may keep a copy of the record that was disclosed, e.g. applications for: special programs (e.g. Chrysalis), services (e.g. DATS), benefits (e.g. AISH), or guardianship/trusteeship orders may be photocopied and kept with the client's chart or with the social worker's record as appropriate.
 - e. Be retained for a period of 11 years. Where CapitalCare destroys a record that itself has a retention period under ten years, staff must ensure that the notation is not destroyed. The client, or their authorized representative or substitute decision maker, has a period of ten years to request a copy of the notations.
- 1.7. When individually identifying diagnostic, treatment and care information is disclosed, notification of the purpose and authority for disclosure must be made to the recipient. (Unless the information is disclosed to another custodian; please consult HIA Section 42(2) for other exceptions.) The manager or designate will use the attached form "Notice to Recipient to Accompany the Disclosure of Health Information," submitting part B only because the disclosure was without consent.
2. Disclosures with the consent of the individual
- 2.1. Any staff member receiving a request for disclosure of health information must refer the request to their manager, together with a detailed description of the information requested.
 - 2.2. A basic fee of \$25.00 can be charged for the cost of producing a copy.
 - 2.3. The manager or his/her designate will notify the Privacy Champion (i.e. the on-site staff member who is the first contact for HIA issues) or designate, in a timely manner.
 - 2.4. Within 5 days of the applicant's request the staff member will ask for written consent for disclosure from the client (who is the subject of the information) or their substitute decision maker. Consent from the individual is obtained with the Consent to the Disclosure of Individually Identifying Health Information form (attached). If the applicant requesting the information is the client or their substitute decision maker then Policy  [ADM-c-80](#) (Access to Health Information) applies. Use the Release of Information Request Form when an individual or their substitute decision maker is requesting a personal copy.
 - 2.5. Within 7 days of the applicant's request, the Privacy Champion or designate will confirm if consent was granted and will complete his/her review and approval. If he/she thinks that the request should be denied based on a reason listed in this policy (above), the request is referred to the HIA Coordinator for a decision.

- 2.6. If the request is approved, the Privacy Champion or designate will duplicate the requested information and forward the copy in a confidential manner within 20 days of the applicant's request. However, if the material to be copied is large or complex the request will be referred to Health Records within 10 days of the applicant's request. Health Records will then respond to the request within 20 days and will also collect any additional fees in accordance with policy  [ADM-c-160](#) (Fees for Health Information Requests).
- 2.7. The original request and authorization will be filed as correspondence within the Health Record.
- 2.8. When individually identifying diagnostic, treatment and care information is disclosed, notification of the purpose and authority for disclosure must be made to the recipient. (Unless the information is disclosed to another custodian; please consult HIA Section 42(2) for other exceptions.) The manager or designate will use the attached form "Notice to Recipient to Accompany the Disclosure of Health Information", submitting part A only because the disclosure was with consent.
- 2.9. The health record accompanies the client when transferred within TCCG.
- 2.10. The original chart is continued in one comprehensive health record until discharge. If readmitted, another chart begins.
- 2.11. The relevant parts of the health record accompany the client on emergency transfers.
- 2.12. In non-urgent transfers or appointments such as to an acute care hospital or physician office pertinent sections of the health record can be copied or faxed in a confidential manner. Fees are not charged in this situation.

ATTACHMENTS:

-  1. [Capital Health Policy 6.3.1.7 Disclosure to Police](#)
-  2. [Disclosure of Health Information Log \(F549\)](#)
-  3. **Facsimile Cover Sheet for the Disclosure of Health Information - please use the standard coversheet distributed to business office staff**
-  4. [Disclosures that are Exceptions to the Requirement for Notation \(F551\)](#)
-  5. [Notice to Recipient to Accompany the Disclosure of Health Information \(F410\)](#)
-  6. [Consent to the Disclosure of Individually Identifying Health Information \(F242\)](#)
-  7. [Flowchart for Making a Notation of a Disclosure \(F552\)](#)