


AC Nursing and Health Services Inc. Policies and Procedures	
Agency	
Policy: Privacy	
	Policy Number: 4.00
	Effective Date: January 2022
	Revision Date:
	Approved by: Board of Directors – Management

Purpose and Scope

The purpose of this policy is to acknowledge the importance of maintaining privacy while supporting our partnership facilities. It is to protect personal health information (PHI) from unauthorized collection, access, use, loss, theft, or disclosure.

This policy addresses the appropriate collection, use and disclosure of PHI, the client’s right to limit access to his/her medical records and the secure disposal of PHI when it is no longer required.

The employees of AC Nursing and Health Services while supporting facilities partners recognizes it obligation to respect privacy and is committed to maintaining the confidentiality of PHI, whether written, verbal, electronic, photographic, or stored on any other medium.

The employees of AC Nursing and Health Services while supporting facilities partners recognizes its obligation to ensure and facilitate timely access to information as required by authorized individuals for direct client care, administrative use, or where required to do so by law.


To assist with meeting privacy obligation, the agency and facility partners designates a contact person who shall be accountable for the facility and agency compliance with its policies and procedures applicable to privacy legislation.

It is the legal and ethical responsibility of all persons affiliated with the agency and partner facilities to keep private the information they receive from and about clients. This duty arises from the recognition that capable clients have the right to control the collection, use and disclosure of the PHI, including the right to determine the time and manner I which the disclosure of such information may occur to third parties, including care providers, family member and friends.

It is the obligation of all employees and facility partners who collect, receive and share confidential information about clients to exercise the utmost vigilance in the protection of client privacy.

Definitions

Collect means to gather, acquire, receive or obtain the information by any means from any source

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Disclosing: means to make the information available or to release it to another person or organization.

Use: means to handle or deal with the information and includes accessing PHI for viewing purposes only.

Personal Health Information (PHI) is identifying information about an individual in oral or recorded form, if the information:

- Relates to the physical or mental health of the individual, including the individual’s medical history and the individual’s family history.
- Relates to the providing of health care to the individual, the identification of a person as a health care provider of the individual.
- Relates to payment or eligibility for health care.
- The individual’ health number
- Identifies an individuals substitute decision-maker or
- Donation of body parts and substances, including information derived from testing or examination of such parts or substances.


POLICY

1) Capacity to Consent to the Collection, Use and Disclosure of PHI. An individual is incapable of consenting when the individual is not able to do either of the following:

- Understand the information needed to decide on whether he/she should consent to the collection, use or disclosure of PHI; and
- Appreciate the consequences of giving, withholding, or withdrawing consent.

2) There is no age of capacity to consent. The test for capacity to consent is the same regardless of a patient’s age, although age may impact upon a patient’s ability to understand or appreciate.

3) Capacity may vary with time. For example, a patient may be incapable of deciding how his/her PHI should be used at the time of admission but regain capacity with treatment.

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4) Capacity may vary depending on the PHI decision at issue. For example, a patient may be capable of deciding to disclose certain aspects of his/her PHI to certain persons but lack the ability to appreciate the consequences of withholding consent to disclose his/her PHI to other persons.

5) It is the responsibility of the individual proposing to collect, use or disclose PHI to review a patient's capacity, and obtain consent as required.

6) You may presume an individual is capable of consenting unless you have reason to believe otherwise.

7) If you determine that a patient lacks the capacity to consent, you must:

- notify the patient of your finding.
- advise the patient that they have a right to challenge your finding by requesting a Consent and Capacity Board hearing; and
- document your capacity assessment and the notice provided to the patient in the patient's health record. If the patient is a psychiatric patient under the Mental Health Act, additional requirements apply in respect of notice and rights advice.

8) Where a patient is incapable of deciding about the collection, use or disclosure of his/her PHI, you must obtain the consent of the patient's substitute decision-maker's ("SDM").

9) Where a patient is incapable with respect to a treatment, the patient's SDM for treatment purposes is deemed to be the SDM in respect of PHI to the extent that it is necessary or ancillary to the treatment decision(s) for which the patient is incapable.


A. Consent to Collect, Use or Disclose PHI

1) The knowledgeable consent of the patient is required for the collection, use or disclosure of their PHI.

An individual's consent is knowledgeable if he/she:

a) understands the purpose of the requested collection, use or disclosure, and b) understands that he/she may give or withhold consent.

2) Consent may be withdrawn at any time, but the withdrawal does not have a retroactive effect.

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(3) The patient may attach conditions to their consent to collect, use or disclose his/her PHI, but not to the extent that it interferes with a health care provider’s legal and professional documentation requirement.

4) Consent does not always need to be in written form; it can be obtained verbally and that fact recorded in the individual’s health record by noting the date and time; to what the consent relates (e.g. collecting, using or disclosing what specific PHI); the purpose of the collection, use or disclosure; and any other relevant details.

5) When you elect to obtain a signed consent, have the patient complete and sign the “Consent for Disclosure of Personal Health Information”.


6) Consent can sometimes be implicit rather than explicit. If you receive PHI for the purpose of providing or assisting in the provision of care, you are entitled to assume you have the patient’s consent to collect, use or disclose the PHI for the purpose of providing care, unless you are aware that the consent to do so has been withdrawn or withheld by the patient.

7) If a patient instructs you not to disclose all relevant PHI to another healthcare provider that you would have considered necessary to disclose in the circumstances, then you must notify the recipient of the fact that you do not have the patient’s consent to disclose all relevant PHI.

8) Consent must be explicit (i.e. verbal and documented in health record by staff, or consent form signed by the patient) where a disclosure is being made to someone who is not a health care provider (e.g. to a patient’s family member).

9) There are some exceptions to the general rule that a patient’s consent must be obtained prior to collecting, using, or disclosing PHI. These exceptions are reviewed below in sections (C), (D) and (E). Except where the use, collection, or disclosure of PHI without consent is permitted, consent should be sought and documented prior to the collection, use or disclosure of PHI.

10) In deciding whether to obtain an individual’s explicit or implicit, written, or verbal consent, you should exercise professional judgment, discuss the decision with your peers and supervisor.


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B. Authority to Collect PHI Without Consent

- 1) PHI should always be collected directly from the patient whenever possible, with their consent. It is permissible to obtain PHI directly from a patient without their consent if the information is required to provide care and time is of the essence.
- 2) If you have a concern about the accuracy, completeness or timeliness of the PHI provided directly from the client to whom the PHI pertains, you may obtain the information from another source, such as a knowledgeable person, health care practitioner or institution, without the patient’s consent.
- 3) You should only collect as much PHI as is necessary to accomplish the purpose for which you are collecting it. Do not collect more PHI than you need.

C. Authority to Use PHI Without Consent

- 1) As part of your association with the Hospital, you have the authority to access and use certain PHI. This access must be limited, and strictly confined, to information required to assist in providing patient care.
- 2) In so far as your hospital duties require, you are specifically authorized to use a patient’s PHI as required to:
 - a) provide health care to the individual, except to the extent that the individual has restricted access to their PHI (see section (H) below);
 - b) assist the Hospital with obtaining payment for the treatment and care (e.g. from OHIP, WSIB, or a private insurer) provided to the individual;
 - c) plan, administer and manage the facility and its programs.
 - d) conduct risk management activities.
 - e) conduct quality improvement activities.
 - f) educate medical trainees to provide care.
 - g) comply with legal and regulatory requirements.
 To access or use PHI to for risk management, quality improvement or education functions, the use must fall within your official duties, be described in a contract with the facility or be specifically authorized by your supervisor.

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Secure Disposal of PHI

Safe destruction of PHI stored digitally or electronically on a medium that cannot be destroyed, utilities must be used that can remove all data from the medium rendering its reconstruction impossible.

PHI must never be stored on a personal computer or mobile device, even temporarily, because even when the information appears to be deleted, utility programs can be used to reconstruct the deleted information.

All documents containing PHI must be discarded into the designated Shred-it containers. PHI cannot be discarded with regular garbage or in a recycling bin.

The Privacy Act provides all individuals with the right to access their personal information held by the government and protection of that information against unauthorized use and disclosure.


Ontario's health privacy law allows or requires us to use your health information without your consent in some situations, including: to educate those acting on our behalf in providing health care. to contact you to get your consent, or the consent of someone who may consent on your behalf.

People outside the health care system who receive your health information from us can only use it or share it because they lawfully received it or if it is allowed or required by law.

Using your health information without your consent

Ontario's health privacy law allows or requires us to use your health information without your consent in some situations, including:

- to educate those acting on our behalf in providing health care
- to contact you to get your consent, or the consent of someone who may consent on your behalf.

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- to do research with the approval of a research ethics board, who must abide by research regulations and requirements.
- to receive payment for our services
- to plan or deliver our programs or services.
- for risk management purposes
- in a legal proceeding (i.e. a court case) where we or someone acting on our behalf is a party or a witness
- as permitted or required by law.

Sharing your health information without your consent

The law allows or requires us to share your health information with others without your consent in some situations, including:

- if sharing the information is necessary to provide you with health care and we cannot get your consent in a timely manner
- to obtain payment for providing health care through government programs, like the Ontario Health Insurance Plan (OHIP)
- to contact a relative, friend or someone who may consent on your behalf, if you are injured, incapacitated or ill and unable to give consent.
- to report certain diseases to public health authorities
- when we suspect certain types of abuse
- to reduce or eliminate a risk of serious bodily harm.
- to assist with a law enforcement investigation or to comply with a warrant.
- in a legal proceeding where we or someone acting on our behalf is a party or witness
- as permitted or required by law

The law also allows us to share your health information with certain organizations that help improve health care delivery and/or plan and manage the health care system. These

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organizations are designated by law and have their practices and procedures reviewed and approved by the Information and Privacy Commissioner of Ontario. We share information with:

- [Ontario Health](#)
- [Ontario’s Ministry of Health or Ministry of Long Term Care:](#)
- [Canadian Institute for Health Information](#) (CIHI)
- Canadian arm of the [InterRAI](#) research consortium