



**HEALTH AND SOCIAL SERVICES
CORPORATE POLICIES**

POLICY IM-006

TITLE: Disclosure of Personal Health Information Policy

CATEGORY: Information Management

EFFECTIVE: August 31, 2016

1. Scope

Definitions of key terms are set out in section 1.4 of this policy.

1.1. Authority

Yukon's *Health Information Privacy and Management Act (HIPMA, s.57-59)* governs the disclosure of personal health information (PHI) by Health and Social Services (HSS) employees and other agents, with limited exceptions.

1.2. Application

This policy and associated documents apply to all HSS employees and agents.

1.3. Purpose

This policy outlines the permitted disclosures of personal health information HSS may make in accordance with *HIPMA*.

1.4. Definitions

Disclosure means making information available or releasing it to another person, but does not include the use or transmission of PHI between HSS employees and agents.

Health information means identifying information of an individual, in a recorded or unrecorded form e.g. individual's health; provision of health

care; payments for health care; donation of body parts, tissue or substance of an individual, or testing (*HIPMA*, s.2(1)).

Personal health information (PHI) means health information of an individual and prescribed registration information and provider registry information in respect of an individual (*HIPMA*, s.2 (1)).

Implied Consent means it is reasonable for staff to presume from the circumstances that the individual consents to the collection, use or disclosure of PHI.

Express Consent is consent that is explicit and direct. It may be given verbally or in writing. All express consent received verbally must be documented.

Knowledgeable means the individual understands (1) the purpose of the collection, use or disclosure, (2) that they may give, withhold or withdraw consent, and (3) without their consent, PHI can only be collected, used and disclosed in accordance with *HIPMA* and its regulations.

Government Agent or Body is a program, branch, department, or other apparatus of the Yukon Territorial or Canadian Federal government.

2. Policy Statement

2.1. General

HSS may only disclose personal health information in accordance with *HIPMA* (s.13). There are limited exceptions where *ATIPP* rather than *HIPMA* applies to the disclosure of PHI by HSS.

This policy applies to the employees and agents of HSS.

HSS will limit the PHI disclosed to the minimum amount reasonably necessary to achieve the purpose of the disclosure (*HIPMA*, s. 16).

Disclosures of PHI will not be made if other information will serve the purpose of the disclosure (*HIPMA*, s.15).

Disclosures of PHI may occur with or without the consent of the individual, as outlined in this policy.

Consent must be:

- Knowledgeable;
- Related to the PHI, and

- Given voluntarily (*HIPMA*, s.38).

Consent must be given by the individual, unless the individual lacks capacity to give consent. Consent can be given by the individual's substitute decision maker (SDM). Refer to s. 46 of *HIPMA* for the hierarchy of who can act as an individual's SDM.

The sharing of information within HSS is governed under the Use Policy, unless otherwise stated.

2.2. Disclosures Requiring Express Consent

Express consent from the individual is required to disclose PHI:

- For fundraising activities;
- For use in research or marketing, or
- For use in the media, including radio, television, internet, and social media.
- To third parties who are not health care providers or custodians under *HIPMA* (e.g., insurance companies, employers, law enforcement, other government departments), unless this policy permits disclosure without consent or a legal exception applies.

2.3. Disclosures Not Requiring Consent

As outlined in *HIPMA*, HSS may disclose an individual's PHI without the consent of the individual in specific circumstances (s.58). Below is a list of common disclosures that do not require the consent of the individual, but this list is not exhaustive. For any other situations or requests for disclosures not addressed in this policy, contact your manager or the HSS' Manager, Information and Records.

Disclosures to a **Government and Government Agent or Body** may occur without individual consent in the following situations:

- For the purposes of collecting a debt owed, if the information is limited to contact information (*HIPMA*, s.58(aa));
- For the purposes of the Yukon Health Information Network (YHIN), a territory wide electronic health information network that will be made available to authorized health care professionals to improve access to PHI needed for health care delivery;
- To the Minister, the Department, and the Government of Yukon for purposes of planning and management of the health system;
- To a branch, operation, or program of a Yukon First Nation for the purposes of planning and management of that First Nation's health system;

- HSS may disclose the contact information of the parent/guardian of a child under six to the Department of Education, for the purposes of school enrollment planning (*HIPMA*, s.63(1));
- To the Canadian Institute of Health Information, or
- To an official of a custodial institution for the purpose of providing healthcare, or making decisions regarding placement into custody, detention, conditional release, discharge or conditional discharge of the individual.

Disclosures for **Fraud Investigations** may occur without individual consent in the following situations:

- To a custodian for the purposes of assisting in the prevention, detection or investigation of fraud in relation to healthcare, or
- To a non-custodian, in accordance with another Act, such as the *Workers' Compensation Act*.

Disclosures to a **Healthcare Service Provider** may occur without the consent of the individual in the following situations:

- Providing healthcare to an individual unless they have expressly refused or withdrawn their consent;
 - Ex: A patient is admitted into the ER and states that they do not want their family doctor to have access to the records held by the Hospital.
- Determining or assessing the individual's capacity;
- Determining or verifying eligibility to receive health care or other related services;
- Administering payment for health care or other related goods or services;
- Carrying out the individual's wishes in relation to organ and tissue donation, or
- Preventing fraud or abuse of the healthcare system.

Disclosures to **Family or Close Personal Relation** may occur without individual consent in the following situations:

- To contact a substitute decision-maker or a potential substitute decision-maker;
- Where the individual is deceased or believed to be deceased:
 - Identification of the deceased;
 - Circumstances surrounding the death or healthcare received by the individual prior to their death;

- Health planning for surviving relatives; or
- To the personal representatives for the administration of the deceased's estate or claims under insurance.

Disclosures at the request of **Law Enforcement** may occur without the individual's consent in the following situations:

- To comply with a federal or territorial warrant or subpoena;
- If the PHI relates to a possible offence under Yukon or Canadian law; or
- To assist in locating a person reasonably believed to be missing.

Prior to disclosure at the request of law enforcement, HSS staff must confer with the HSS Privacy Officer and Legal Services to ensure that legal documents are in order.

HSS may disclose to **Law Enforcement** if there is a reasonable belief that the disclosure will prevent or reduce a risk of serious harm, or will enable the assessment of whether there is a risk.

2.4. Disclosures to Researchers

Disclosures of PHI to researchers by HSS are governed by s. 38 of *ATIPP*.

2.5. Recording Requirements

If disclosing PHI without consent, HSS must keep a record of the following information:

- Name of person disclosed to
- Date and purpose for the disclosure
- Brief description of the PHI disclosed

VERSION: 1	DATE APPROVED: August 31/16
APPROVED BY:	
	Bruce McLennan, Deputy Minister
SPONSOR: Birgitte Hunter, Assistant Deputy Minister – Corporate Services	
CONTACT: HSS Privacy Officer	
KEYWORDS: Disclosures	
RELATED REFERENCES: <i>Health Information Privacy and Management Act</i>	
DATE TO BE REVIEWED: September 30, 2017	
DATE AMENDED:	