

INFORMATION MANAGEMENT POLICY NO. P08/0703

Title: Sharing Information for Continuity of Health Care Policy

Policy Statement

For the purposes of client¹ continuity of health care, the Western Australian (WA) government health sector health service providers and organisations are required to share health information. Information sharing for continuity of health care shall be with authorised individuals and organisations on a need to know basis, and be directly relevant to the client's continuity of health care.

Health information shared within or externally to the WA government health sector must be subject to the following:

- confidentiality – health information should only be disclosed to authorised individuals and organisations, at authorised times in an approved manner;
- timely availability – health information should be available when and where it is required;
- integrity – health information should be received in a complete, accurate and valid form, irrespective of the delivery mechanism or the recipient.

Health information maintained in the WA government health sector should have designated custodians, who have responsibilities for ensuring appropriate sharing of health information and are accountable for those responsibilities. These responsibilities include compliance with this Policy, legislation and other related policy requirements.

A secure environment and infrastructure will be provided within the WA government health sector to support sharing of health information, using reasonable measures to protect health information from misuse, loss, unauthorised access, modification or disclosure by accidental or intentional means.

WA government health sector employees, including those involved in the provision of contracted services to the WA government health sector, should be informed of their responsibilities and accountability when sharing health information and, where appropriate, the establishment of security measures for the sharing, storage, access and disposal of health information under their control. When identifying the recipients of health information or receiving requests for health information, care must be taken to identify and authenticate the intended recipient. The authentication method must adequately verify the identity of the intended recipient using appropriate proofs and credentials.

WA government health sector employees have a duty of confidentiality to clients, which is supported by common law, various codes of conduct and professional ethics standards. Private health sector employees are required to comply with the Commonwealth's *Privacy Act 1988* in addition to the common law duty of confidentiality. Accountability for these responsibilities will be enforced with disciplinary action and other remedies available through legislative provision such as the Public Service Regulations and the Criminal Code where appropriate.

¹ For the purposes of this policy the term 'client' is synonymous with 'patient' or 'consumer'.

Health clients should be made aware of the norms of information sharing within the context of continuity of health care. Where clients request that information not be shared with those who may provide health services, it should be explained to the client that health service providers will need to evaluate the request with respect to practicality and duty of care to the client and others. It is acknowledged that this is a shared decision-making process between the clients and the health care providers.

Implementation

This Policy document does not prescribe specific technological solutions for the sharing of hardcopy or electronic health information. .

It is the responsibility of local management to implement this Policy, and where necessary, support the policy with site-specific standards and procedures.

Health organisations should develop and implement induction, training and education programs for employees on the provisions of this Policy, the tenets of privacy, and their duties and responsibilities for client confidentiality, including confidentiality statements.

Associated Policies

- Guidelines for Release/Access to Health Records, Health Department of Western Australia, Policy No. 24196: 1986
- Information Security Policy, Department of Health, Policy No. P06/0301: 2001
- Patient Confidentiality, Health Department of Western Australia, Operational Instruction No. 0974: 1997
- Policy Statement on Internal Transfer of Patient Identified Information, Health Department of Western Australia, Policy No. A7019: 1985

Further Information

A discussion paper titled Sharing Information for Continuity of Health Care - Discussion Paper follows this Policy. The discussion paper is a supplement to the Policy providing background and additional information.

Version Control

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Sharing Information for Continuity of Health Care Discussion Paper

1. INTRODUCTION

1.1 Background

The provision of quality health care requires the sharing of health information between various health service providers and organisations. Sharing involves the use or disclosure of health information to a third party, often a health service provider and/or organisation. Sharing may take many forms such as verbal, mail or hand delivery, and electronic transmission including facsimile, electronic file transfer over networks or on disk, internet email and videoconference communication.

The public health sector in Western Australia (WA) has traditionally enjoyed a high level of client trust and confidence. Advancements in information technology and electronic commerce are enabling the decentralised and remote delivery of health services through increased ability to share information rapidly and broadly. Contracted services between and within the public and private health care systems are also necessitating the sharing of health information. Maintaining client trust and confidence in an environment of increased communication of personal and sensitive information is essential.

Health care system reform is changing the delivery of health care to provide a more holistic and continuous approach. Continuity of health care refers to the ongoing health care of a client and is considered as the full range of health services provided to a client, ranging from a single episode to the most intensive and long term care. Health service providers, both internal and external to the WA government health sector, require timely access to accurate and sufficiently detailed health information to allow them to provide continuity of health care to the client. Even routine communications must be timely to support continuity of health care. To enable this, various forms of communication are available and the suitability of each needs to be assessed on an individual case basis.

Health clients expect these technological advancements and health system reforms to support quality health care, whilst providing individual privacy and confidentiality. Privacy and confidentiality are recognised as essential elements of the client and health service provider relationship. Privacy of health information relates to an individual's claim that information about themselves should not be automatically disclosed to other individuals and organisations. Confidentiality relates to the information being disclosed only to authorised individuals, organisations and processes at authorised times in an authorised manner. Security measures and procedures are required to preserve client privacy, confidentiality, and the integrity and availability of health information.

1.2 Purpose

Health service providers and organisations within the WA government health sector need to cooperate to deliver the best possible health care to clients. This necessitates that health service providers and organisations have access to health information when and where it is required, while providing for the secure and confidential sharing of that information.

The purpose of this Policy is to:

- support the timely availability of health information to authorised individuals or organisations who need the information to provide continuity of health care for clients.
- maintain the privacy and confidentiality of clients when sharing health information for continuity of health care.

This Policy provides guidance to the WA government health sector and is envisaged to be used in conjunction with established policies, protocols and procedures and form the basis for future developments in health information management in Western Australia.

1.3 Scope

This Policy applies to the employees of the WA government health sector, ultimately reporting through to the Minister for Health. This includes Department of Health (DoH) entities, public hospitals, public community health services, public pathology laboratories, public health and mental health clinics and services, public nursing homes, DoH contracted services and any other WA government health sector organisational entities.

Where health information is shared in accordance with specific legislation, the provisions of the legislation take precedence over this Policy to the extent of any inconsistency.

This Policy is intended to facilitate sharing of health information for the purposes of continuity of health care. Sharing of health information can take two forms – internal or external sharing of information. An internal transfer of health information is considered to be between any WA government health sector organisations (eg public hospital to public hospital) and/or health service providers (eg salaried nurse to salaried doctor) employed or contracted by the WA government health sector. An external transfer of health information is considered to be between any WA government health sector organisation (eg public hospital) and/or health service provider (eg salaried nurse) and a private organisation (eg private hospital) and/or health service provider (eg general practitioner).

1.3.1 Exclusions from Scope

The Policy does not apply where it is determined the health information is required for purposes other than continuity of health care. The Policy addresses the primary use of health information, and therefore, does not impose on the professional communication between health service providers and their clients and/or legal guardians.

The secondary uses of health information, such as research, quality improvement activities and clinical audits, are not addressed in the Policy. Where the Policy does not apply, State Government legislation, and WA DoH and Health Service policies are to be considered. Research requests may be referred to senior personnel or directly to an organisation's ethics committee. If the organisation does not have an ethics committee, the request should be referred to an ethics committee within the Western Australian public sector or to the appropriate DoH committee.

Whilst this Policy provides for the sharing of health information to support improved client continuity of health care, it does not specifically address the mechanisms for ensuring quality or integrity of the data or information that is shared between health organisations or health service providers. It is important that the implications of poor quality and integrity of data are recognised and considered when sharing health information.

2. LEGAL FRAMEWORK - PRIVACY AND CONFIDENTIALITY

Privacy protection in Australia is effected by various laws, codes of conduct and voluntary measures at both State and Commonwealth levels. In the private sector, privacy of health information is now protected by the Commonwealth's *Privacy Act 1988*. In the Western Australian public sector, the common law duty of confidentiality provides the legal basis for protection of health information. A constitutional right to privacy does not exist in Australia and the courts have not recognised a common law action for breach of privacy.

2.1 Public Sector Duty of Confidentiality

In the health context, it is accepted and well recognised that a duty of confidentiality will apply to information held or controlled by health professionals. The duty of confidentiality protects information created, disclosed or acquired in the context of the client and health service provider relationship. The general principle is that the duty of confidentiality prevents the disclosure of the information to others unless one of the exceptions to the duty of confidentiality applies. The exceptions include where there has been express or implied client consent, where disclosure is required by law (either under statute or by court order) or where disclosure is in the public interest.

In the case of sharing health information for the purposes of continuity of health care, reliance is usually placed on the client's implied consent to disclosure. In the hospital environment it is assumed that clients, by attending a hospital, impliedly consent to the exchange of health information between all health professionals involved in their continuing health care. It is important that to maintain client trust and confidence, health information is only shared with those that need to know and only information that is relevant is shared. There is a strong argument that consent may also be implied where the client knew of the intended use and scope of disclosure of the information. If clients are well informed about how their health information is going to be dealt with there is less likely to be complaint about perceived breaches of confidentiality.

2.2 Interaction Between the Public and Private Health Sectors

Since December 2001, the private health sector has been required to comply with the Commonwealth's *Privacy Act 1988*, in addition to the common law duty of confidentiality. This means the private health sector needs to abide by the provisions in the Act - the National Privacy Principles. These contain statements on collection, use and disclosure, openness, access, and other aspects of handling of personal information. When sharing health information, private health service providers or health organisations either must confirm that it is for a purpose that is directly related to the purpose for which it was collected, or implied or express consent of the client has been obtained.

Sharing information for continuity of health care is a purpose that is directly related to the reason for collection of the information. Many aspects of the *Privacy Act 1988* are consistent with duty of confidentiality practices, and Freedom of Information regulations within the public sector.

2.3 Contracted Services

Under Section 7B(5) of the *Privacy Act 1988*, the acts and practices of a private health organisation are exempt if they are carried out under the terms of the contract with the State.

This means that where a private health service provider or organisation is directly contracted to provide services to the public health sector, some of their acts and practices will not be covered by

the *Privacy Act 1988*. These external contractors should be made aware of the expectations of the WA government health sector regarding client privacy, confidentiality and security. These expectations should be detailed comprehensively within the contract for the provision of the health service.

Where external health service providers or organisations are not directly contracted to the public health sector, their acts and practices are covered by the *Privacy Act 1988* and they will be expected to treat WA government health sector information in accordance with the National Privacy Principles.

2.4 Legislation and Policies

The development of this Policy has been guided by various legislation and policies. Legislation that relates, either directly or indirectly, to this Policy includes the *Public Sector Management Act 1994*, *Criminal Code 1913 (Section S81)*, *Freedom of Information Act 1992 (WA)*, *Health Act 1911*, *Hospitals and Health Services Act 1927*, *Health Services (Conciliation and Review) Act 1995 (WA)*, and *Mental Health Act 1996 (WA)*.

Department of Health policies that relate, either directly or indirectly, to this Policy includes the *Policy Statement on Internal Transfer of Patient Identified Information Health Department of Western Australia Policy No. A7019: 1985*, *Guidelines for Release/Access to Health Records Health Department of Western Australia Policy No. 24196: 1986*, and *Patient Confidentiality Health Department of Western Australia Operational Instruction No. 0974: 1997*.

3. ISSUES FOR SHARING HEALTH INFORMATION

The main issues relating to sharing of information for continuity of health care are ownership and custodianship, authentication and verification, and security.

3.1 Ownership and Custodianship

In reviewing the holistic issues associated with information access, there is a distinction between information ownership and custodianship.

Ownership refers to the overall owner (individual/group/organisation or government) that provides the resources, services or infrastructure necessary to capture this information. The owner does not necessarily provide direct input into the day to day operations of how this information is managed on their behalf.

An information custodian is any individual or organisation responsible for the day to day management of information. Information custodians are, in general, responsible for the care, integrity, issue, retrieval, storage and security of data, and have been empowered to do so by the information owner. In the public health system, numerous organisations undertake this custodian, trustee, keeper, or guardian type role such as public hospitals, public community health services and public pathology laboratories.

Whilst custodians do not own the information they preside over, they may have lawful possession of it, by the nature on which this information is stored (ie hard copy medical record, microfilm, optical disk, electronic media). Custodianship encompasses the principles of trusteeship, the setting of standards, information maintenance, authority, accountability, information collection and access controls.

It is the responsibility of the health information custodian to authorise the sharing of information in accordance with this Policy and any relevant delegation schedule, and to ensure that the information is accessed or received only by authenticated, authorised individuals.

3.2 Authentication and Verification

When identifying the recipients of health information or receiving requests for health information, care must be taken to identify and authenticate the intended recipient. This involves also ensuring the intended recipient is authorised to receive the health information. An authorised individual is one who is directly involved in the care of the client, or is an individual authorised by that health service provider or by the client. The authentication method must adequately verify the identity of the intended recipient using appropriate proofs and credentials.

3.3 Security

The objective of this Policy is to support the authorised, authenticated health service provider in accessing information from anywhere at anytime to provide continuity of health care. A secure environment and infrastructure will be provided within the WA government health sector to support this objective while taking reasonable measures to protect health information from misuse, loss and unauthorised access, modification or disclosure by accidental and intentional means.

The Department of Health has a published framework of policies and standards governing the security of its information. The *Information Security Policy* governs all information access whether

manual or electronic. This framework includes the *Logon Standard* for electronic access and an *Acceptable Use Standard*, which provides the rules for the use of government computing and telecommunications assets. These are consistent with the Australian Standards for managing the security of information.

3.4 Client Awareness Raising

Health clients should be made aware of the norms of information sharing within the context of continuity of health care. Awareness raising information should be provided in a clear and concise manner and be readily available to all clients attending a health care provider and/or organisation.

Where clients request that information not be shared with those who may provide health services, it should be explained to the client that health service providers will need to evaluate the request with respect to practicality and duty of care to the client and others. It is acknowledged that this is a shared decision-making process between the clients and the health care providers.

4. AWARENESS AND EDUCATION

Health organisations will be required to develop and implement induction, training and education programs for employees on the provisions of this Policy, the tenets of privacy, and their duties and responsibilities for client confidentiality, including confidentiality agreements.

GLOSSARY OF TERMS

Authentication

The process of verifying the identity of an individual by proofs and credentials.

Authorised Individual

An authorised individual is an individual who is directly involved in the health care of the client, or is an individual authorised by the health service provider or by the client.

Client (Patient)

A client or patient is an individual, family, group or organisation that has received, is receiving or is scheduled to receive a health service or health services from the Western Australian government health sector and may be considered as a single identifiable unit in this context.

Note: for the purpose of this Policy the term client has been used in place of patient.

Confidentiality

The characteristic of health information being disclosed only to authorised individuals and organisations, at authorised times and in the authorised manner.

Continuity of Health Care

Continuity of health care is defined as the ongoing health care of a client. It can be considered as the full range of health services provided, ranging from a single episode to the most intensive and long term care.

Contracted Service

A service obtained through an arrangement or contract where one health service provider and/or organisation agrees to provide funds to another health service provider and/or organisation in accordance with an agreed set of specifications and conditions. The specified agreement conditions usually include an agreed set of outcomes at agreed quality standards.

Disclosure

In general terms, disclosure of health information involves release of information to others outside the organisation.

Employee

For the purpose of this Policy, employee is used to refer to salaried staff, staff working on an hourly, daily, sessional or fee-for-service basis under permanent or contracted arrangements with the organisation, staff contracted to the organisation through a third party and staff working on a voluntary basis.

Express Consent

Where consent is given explicitly, either orally or in writing.

Health Information Means:

- a) information or an opinion about:
 - (i) the physical, mental or psychological health (at any time) of an individual; or
 - (ii) a disability (at any time) of an individual; or
 - (iii) an individual's expressed wishes about the future provision of health services to him or her; or
 - (iv) a health service provided, or to be provided, to an individual – that is also personal information; or

- b) other personal information collected to provide, or in providing , a health service; or
- c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; or
- d) genetic information about an individual in a form which is or could be predictive (at any time) of the health of the individual or any of his or her descendants.

Health Service

Means:

- a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual service provider or the organisation performing it-
 - (i) to assess, maintain or improve the individual's health; or
 - (ii) to diagnose the individual's illness, injury or disability; or
 - (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability;or
- b) a disability service, palliative care service or aged care service; or
- c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

Health Service Provider

An individual or organisation that is qualified and provides health services to clients.

Illness

A physical, mental, or psychological illness, and includes a suspected illness.

Implied Consent

Where consent may reasonably be inferred in the circumstances from the conduct of the client and the organisation.

Individual

A natural person.

Information Privacy

The right of an individual to control the dissemination of health information and personal information about themselves.

Organisation

An entity that is established under law and allowed to exist as a business or some form of health service provider.

Personal Information

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Primary Purpose

Relates to the main reason a client attends a health service, and may include the assessment, diagnosis and treatment of a particular condition.

Privacy

Relates to an individual's claim that information, including health, about themselves should not be automatically disclosed to other individuals and organisations.

Further Information: Privacy may be thought of as the ability of individuals to decide on the amount and type of information, which will be made available to health care providers and organisations agreed to by the individual. Privacy is subjective, where each individual's perception of privacy may differ greatly, and in comparison to what a Government may decree to be privacy.

Secondary Purpose

Relates to use of client's health information for any other purposes other than the primary purpose.

Security

Preservation of confidentiality, integrity and availability of information.

Sharing

Any use or disclosure of health information to a third party, often a health service provider and/or organisation.

Support Staff

Those individual's providing clinical support services to health service providers or health organisations who may be employed in either an administrative, clinical or other support role.

Use

In general terms, use of health information refers to the handling of information within an organisation.