

CATEGORY:	ORGANIZATIONAL: INFORMATION MANAGEMENT
SUB-CATEGORY:	DISCLOSURE OF INFORMATION
GROUP:	
DISTRIBUTION:	ALL STAFF/PHYSICIANS
TITLE:	CIRCLE OF CARE

PURPOSE

To provide employees/physicians participating in the provision of health care with a common and consistent definition of “circle of care”.

To outline the circumstances where employees/physicians may rely on implied consent for the collection, use and disclosure of clients’/patients’/residents’ personal health information.

POLICY

The consent of the client/patient/resident or his/her authorized representative (see definition of consent) is required for the collection, use and disclosure of his/her personal health information by employees/physicians participating in his/her care as well as activities related to the provision of care to that individual.

Consent for the collection, use and disclosure of personal health information is not the same as consent requirements related to the provision of health care treatment or services.

Implied consent is valid where it is reasonable to believe that the client/patient/resident or his/her authorized representative is aware of the purpose of the collection, use or disclosure and knows that they can either give or withhold consent.

It is reasonable to believe that a client/patient/resident knows the purpose of the collection, use or disclosure of his/her personal health information by way of Western Health’s *Protecting Your Privacy* poster and brochure which describe these purposes in general terms.

The *Personal Health Information Act (PHIA)* permits a client/patient/resident or his/her authorized representative (see definition) to expressly withhold or withdraw consent to the collection, use or disclosure of personal health information, **unless** the collection, use or disclosure is permitted or required by law. Except where the client/patient/resident or his/her authorized representative has withdrawn consent, implied consent may be relied upon for the

collection, use or disclosure of personal health information for the purpose of providing health care or assisting in the provision of health care as part of the circle of care. For more information, please also refer to policy [Limited Consent for Collection, Use and Disclosure of Personal Health Information \(9-02-55.\)](#)

Employees/physicians of Western Health who are providing health care services within the “circle of care” **must** assume implied consent for the collection, use, or disclosure of personal health information only in those cases where **all** the following six conditions are satisfied. Please also refer to *Appendix A- Circle of Care: Personal Health Information for Health Care Purposes*):

1. The employee/physician within the circle of care must fall within **one of the three** categories authorized to rely upon implied consent:
 - a regulated health care professional;
 - a health care provider, or
 - a person who operates a health care facility; a licensed pharmacy; ambulance service; or a center, program or service for community health or mental health, the primary purpose of which is the provision of health care by a health care professional or provider.
2. The personal health information must have been received from the client/patient/resident or his/her authorized representative or another health information custodian (e.g. another Regional Health Authority.)
3. The personal health information must have been received for the original purpose of providing or assisting in the provision of health care to the client/patient/resident.
4. The purpose of the collection, use and disclosure of personal health information must be for the **current** provision of health care or assisting in the provision of health care to the client/patient/resident.
5. Disclosure of personal health information must be for the sole purpose of providing health care to the client/patient/resident.
6. The implied consent of the client/patient/resident or his/her authorized representative must be valid and the client/patient/resident must **not** have expressly withheld or withdrawn their consent to the collection, use or disclosure of his/her personal health information.

As stated in item #4 above, in order to assume implied consent within the circle of care, the provision of health care must be current. A **previous** or **prospective** care provider or other individual **not currently** providing health care to the client/patient/resident is considered **outside** the circle of care and as such must obtain the client’s/patient’s/resident’s express consent to access/obtain that individual’s personal health information.

Where personal health information must be collected, used or disclosed, it must be limited to the information that is reasonably necessary for the intended and authorized purpose. Where other information will serve the purpose (e.g. de-identified information), personal health information must not be collected, used or disclosed.

DEFINITIONS

Circle of Care: The persons participating in and activities related to the provision of health care to the individual who is the subject of the personal health information and includes those custodians and individuals whom an objective and reasonable person would consider as needing to know the personal health information at the time of its collection.

Persons within an individual's circle of care will include health care professionals such as doctors and nurses, but will also include necessarily incidental functions such as laboratory and diagnostic services as well as a range of professional consultation services.

Persons authorized to receive information within the circle of care will also include any person or entity that is providing health care to the individual who is the subject of the information. This could include a family member or a home care worker.

Collect: To gather, acquire, receive, or obtain the information by any means from any source and "collection" has a corresponding meaning.

Consent: Where the *Personal Health Information Act (PHIA)* requires the consent of an individual for the collection, use or disclosure of personal health information by a custodian, the consent

- (a) shall be a consent of the individual;
- (b) shall be knowledgeable; and
- (c) shall not be obtained through deception or coercion.

Consent to the collection, use or disclosure of personal health information about an individual shall be considered to be knowledgeable if it is reasonable in the circumstances to believe that the individual knows

- (a) the purpose of the collection, use or disclosure as provided for in subsection 20(2);
- (b) that he or she may give or withhold consent; and
- (c) that the information may be only collected, used or disclosed without his or her consent in accordance with legislation.

Custodian: A person described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with the performance of the person's powers or duties or the work described in that paragraph:

- an authority;

- a board, council, committee, commission, corporation or agency established by an authority;
- a department created under the Executive Council Act , or a branch of the executive government of the province, when engaged in a function related to the delivery or administration of health care in the province;
- the minister, where the context so requires;
- a health care professional, when providing health care to an individual or performing a function necessarily related to the provision of health care to an individual;
- a health care provider;
- a person who operates
 - (i) a health care facility,
 - (ii) a licensed pharmacy as defined in the Pharmacy Act ,
 - (iii) an ambulance service, or
 - (iv) a centre, program or service for community health or mental health, the primary purpose of which is the provision of health care by a health care professional or health care provider;
- the Provincial Public Health Laboratory;
- the Centre for Health Information;
- with respect to Memorial University of Newfoundland, the Faculty of Medicine, the School of Nursing, the School of Pharmacy and the School of Human Kinetics and Recreation;
- the Centre for Nursing Studies;
- the Western Regional School of Nursing;
- a person who, as a result of the bankruptcy or insolvency of a custodian, obtains complete custody or control of a record of personal health information, held by the custodian;
- a rights advisor under the Mental Health Care and Treatment Act ;
- the Workplace Health, Safety and Compensation Commission; and
- a person designated as a custodian in the regulations.

Disclose: To make the information available or to release it but does not include a use of the information and “disclosure” has a corresponding meaning.

Express Consent: Consent that is obtained as a result of the individual positively indicating, either verbally or in writing that they agree to a stated purpose.

Health Care Professional: A person, including a corporation, that is licensed or registered to provide health care by a body authorized to regulate a health care professional under one of the following enumerated Acts but does not include an employee of a health care professional when acting in the course of his or her employment:

Chiropractors Act

Dental Act

Denturists Act, 2005

Dieticians Act

Dispensing Opticians Act, 2005

Hearing Aid Practitioners Act,

Licensed Practical Nurses Act, 2005

Message Therapy Act, 2005

Medical Act, 2005

Occupational Therapists Act, 2005

Optometry Act, 2004

Pharmacy Act

Physiotherapy Act, 2006

Psychologists Act, 2005

Registered Nurses Act,

Social Workers Association Act

Health Care Provider: A person, other than a health care professional, who is paid by MCP, another insurer or person, whether directly or indirectly or in whole or in part, to provide health care services to an individual.

Implied Consent: Consent that may be reasonably inferred from signs, or facts, or inaction or silence of the individual and applies to situations where the intended use or disclosure is obvious from the context and the organization can assume that the individual is aware of and consents to the intended use or disclosure.

Personal Health Information: Identifying information in oral or recorded form about an individual that relates to:

- information concerning the physical or mental health of the individual, including information respecting the individual's health care status and history and the health history of the individual's family;
- the provision of health care to the individual, including information respecting the person providing the health care;
- the donation by an individual of a body part or any bodily substance, including information derived from the testing or examination of a body part or bodily substance;
- registration information;
- payments or eligibility for a health care program or service in respect of the individual, including eligibility for coverage under an insurance or payment arrangement with respect to health care;
- an individual's entitlement to benefits under or participation in a health care program or service;
- information about the individual that is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service;
- a drug as defined in the *Pharmacy Act*, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care professional; or
- the identity of a person's representative as defined in Section 7 of the *Personal Health Information Act*.

Representative: A right or power of an individual under this Act or the regulations may be exercised:

- by a person with written authorization from the individual to act on the individual's behalf;
- where the individual lacks the competency to exercise the right or power or is unable to communicate, and where the collection, use or disclosure of his or her personal health information is necessary for or ancillary to a "health care decision", as defined in the Advance Health Care Directives Act , by a substitute decision maker appointed by the individual in accordance with that Act or, where a substitute decision maker has not been appointed, a substitute decision maker determined in accordance with section 10 of that Act;
- by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian;
- by the parent or guardian of a minor where, in the opinion of the custodian, the minor does not understand the nature of the right or power and the consequences of exercising the right or power;
- where the individual is deceased, by the individual's personal representative or, where there is no personal representative, by the deceased's nearest relative, and for this purpose, the identity of the nearest relative may be determined by reference to section 10 of the Advance Health Care Directives Act ;
- where the individual is a neglected adult within the meaning of the Neglected Adults Welfare Act , by the Director of Neglected Adults appointed under that Act; or
- where an individual has been certified as an involuntary patient under the Mental Health Care and Treatment Act , by a representative as defined in that Act, except as otherwise provided in this Act.

Use: To handle or deal with personal health information or to apply the information for a purpose and includes reproducing the information, but does not include disclosing the information.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act (2004). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/a01-1.htm>

Personal Health Information Act (2008). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>

REFERENCES

Newfoundland and Labrador Personal Health Information Act, Provincial Policy Manual
Version 1.2, February 2011

Province of Newfoundland and Labrador: *Personal Health Information Act*, SNL2008,
c.P-7.01, s. 24.

Western Health Policy: Limited Consent for Collection, Use and Disclosure of Personal Health Information, Policy Manual, Corner Brook, NL: Western Regional Integrated Health Authority.

Western Health poster and brochure: Protecting Your Privacy, Corner Brook, NL: Western Regional Integrated Health Authority.

APPENDICES

Appendix A - Circle of Care: Personal Health Information for Health Care Purposes

KEYWORDS

Circle of care
 Personal Health Information Act
 PHIA

TO BE COMPLETED BY QUALITY MANAGEMENT & RESEARCH STAFF ONLY

Approved By: Chief Executive Officer	Maintained By: Regional Manager, Information Access & Privacy
Effective Date: 03/December/2012	<input type="checkbox"/> Reviewed: <input type="checkbox"/> Revised: <i>(Date of most recent changes to the policy)</i>
Review Date: 03/December/2015	<input type="checkbox"/> Replaces: <i>(Indicates name and number of policy being replaced)</i> OR <input checked="" type="checkbox"/> New

Appendix A

Circle of Care: Personal Health Information for Health Care Purposes

The *Personal Health Information Act* (PHIA) defines the circle of care as follows:

... *The expression “circle of care” means the persons participating in and activities related to the provision of health care to the individual who is the subject of the personal health information.*

An employee/physician of Western Health who is providing care within the circle of care may assume implied consent to collect, use or disclose personal health information of a client/patient/resident where **all** the following six conditions are met:

- 1. The custodian intending to act within the circle of care must fall within one of the categories of custodians that are authorized to rely upon implied consent.***

PHIA identifies **only** three categories of custodians that may rely on implied consent and **can be considered to be within the circle of care**:

- A regulated health care professional, such as a physician or a nurse, where that professional is in the course of providing health care to an individual or performing a function necessarily related to the provision of health care to an individual;
- A health care provider (*i.e.*, a person, other than a health care professional, who is paid by MCP, or another person or entity to provide health care services to an individual); or,
- A person who operates one of the following:
 - a health care facility (as defined under the *Personal Health Information Act* (PHIA),
 - a licensed pharmacy as defined in the *Pharmacy Act*
 - an ambulance service, or;
 - a centre, program or service for community health or mental health, the primary purpose of which is the provision of health care by a health care professional or health care provider.

- 2. The personal health information to be collected, used or disclosed within the circle of care must have been received from the client/patient/resident, his or her substitute decision-maker or another health information custodian.***

Personal health information is defined in PHIA as being identifying information relating to the physical or mental health of an individual, the provision of health care to an individual, the identification of the substitute decision maker for the individual and the payments or eligibility of an individual for health care or coverage for healthcare, including the individual's health number.

A substitute decision maker is a person authorized under PHIA to consent on behalf of an individual to the collection, use or disclosure of personal health information.

If the personal health information to be collected, used or disclosed was received from a third party (other than the substitute decision maker for the individual or another authorized health information custodian) the necessary consent **cannot** be assumed to be implied.

3. The personal health information must have been received for the original purpose of providing or assisting in the provision of health care to the client/patient/resident.

A health information custodian (and its employees) may **not** rely on implied consent if the personal health information was received for other purposes, such as research, fundraising, marketing or providing health care or assisting in providing health care to another individual or group of individuals.

4. The purpose of the collection, use or disclosure of personal health information must be for the provision of health care or assisting in the provision of health care to the client/patient/resident.

The collection, use or disclosure **must** be for the purposes of providing health care or assisting in the provision of health care to the client/patient/resident to whom the personal health information relates.

A previous care provider or other person who is **not** currently providing health care to the client/patient/resident is **not** part of the current circle of care. A previous care provider cannot access/obtain a client/patient/resident's personal health information without the the express consent of that client/patient/resident, or where applicable, his/her substitute decision maker.

5. Disclosure of personal health information within the circle of care must be for the sole purpose of providing health care to the client/patient/resident.

Where, for the purpose of providing health care or assisting in the provision of health care to the client/patient/resident as part of a circle of care, a custodian either:

1. collects personal health information from and with the consent of the individual who is the subject of the information; or
2. receives personal health information about an individual from another custodian,

the custodian (and its employees) is entitled to assume that it has the client's/patient's/resident's continuing implied consent to use or disclose the information to another custodian or person, but ***only*** for the purpose of providing health care to that client/patient/resident, **unless the client/patient/resident has withdrawn his/her consent.**

6. The implied consent of the client/patient/resident must be valid and the client/patient/resident must not have expressly withheld or withdrawn his/her consent to the collection, use or disclosure.

The concept of circle of care operates on the basis of ***implied consent***. Implied consent can only be presumed to exist where a client/patient/resident can be said to have *implicitly* provided knowledgeable consent.

In order for implied consent to arise and to be considered valid, it must be reasonable to believe that the client/patient/resident is ***aware of*** the purpose of the collection, use or disclosure and knows that he/she can either give or withhold consent.

PHIA permits an individual to expressly withhold or withdraw consent to the collection, use or disclosure of his or her personal health information, unless the collection, use or disclosure is permitted or required by PHIA to be made without his/her consent.

An individual may withdraw his/her consent for collections, uses or disclosures that occur within the circle of care; however, custodians may continue to act on the basis of implied consent until and unless an individual expressly withdraws his/her consent.

In most circumstances, if an individual decides to withhold or withdraw consent, PHIA requires the receiving custodian to be notified if the disclosing health information custodian is prevented from disclosing all of the information that is considered to be reasonably necessary for the provision of health care. For more information about this, please refer to Western Health's *Limited Consent for the Collection, Use and Disclosure of Personal Health Information* policy.

REFERENCES

Newfoundland and Labrador *Personal Health Information Act*, Provincial Policy Manual Version 1.2, February 2011

Province of Newfoundland and Labrador: *Personal Health Information Act*, SNL2008, c. P-7.01, s. 24