CATEGORY:	**ORGANIZATIONAL: INFORMATION MANAGEMENT**
SUB-CATEGORY:	**DISCLOSURE OF INFORMATION**
GROUP:	
DISTRIBUTION:	**ALL EMPLOYEES / PHYSICIANS**
TITLE:	**LIMITED CONSENT FOR THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION**

PURPOSE

To ensure that the consent provisions in the *Personal Health Information Act* (PHIA) regarding withdrawal of the client's/patient's/resident's consent to the collection, use and disclosure of his/her personal health information, referred to as a *Limited Consent Directive*, are recognized, respected and supported.

To provide guidance with respect to the implementation of limited consent directives.

POLICY

Employees must respect the decisions of individuals who wish to withhold or withdraw their consent to the collection, use and disclosure of their personal health information for purposes of providing or assisting in the provision of care. This includes respecting a client's/patient's/resident's express instructions not to use or disclose their personal health information for health care purposes in circumstances where consent is required. Therefore, a client/patient/resident of Western Health, or an authorized representative acting on his/her behalf, (hereinafter referred to as the requester) may request a *Limited Consent Directive in writing* whereby consent to share his/her personal health information may be withheld or withdrawn in the following ways:

- limiting the collection, use and/or disclosure a particular item of personal health information (e.g. a diagnosis);
- limiting the collection, use and/or disclosure of personal health information to a particular health professional or class of health professionals;
- limiting the use and/or disclosure of his/her entire record of personal health information.

The requester may not limit his/her consent to the collection, use and disclosure of personal health information to the extent that it would contravene professional standards, requirements and institutional practice for documentation by health professionals. In addition, a *Limited Consent Directive* must not prohibit or restrict the recording of personal health information for any collection, use or disclosure purposes permitted by PHIA or other provincial/federal legislation.

When an employee is disclosing personal health information to another custodian under PHIA for the purpose of providing health care and where there is a *Limited Consent Directive* in place which prevents full disclosure of the information being requested, or information that is considered reasonably necessary to the provision of health care, the employee or designate must inform the receiving custodian that such a directive is in place. However, the nature and/or details of the restriction must not be shared with the receiving custodian.

A *Limited Consent Directive* is valid for as long as the information exists and will remain in effect should the record be transferred to another custodian, unless the requester revokes the limitation.

Making a Limited Consent Directive

1. Upon receipt of a request to implement a *Limited Consent Directive*, the requester must be referred to the Regional Manager Information Access and Privacy or designate. The Regional Manager Information Access and Privacy or designate must facilitate the completion of **Section A** of the form *Request to Access and/or Collection, Use and Disclosure of Personal Health Information* (12-482). This form will identify the level of restriction being requested and must be signed, witnessed and dated.

2. At the time **Section A** is completed, the requester must be provided with Western Health's *Protecting Your Privacy* brochure.

3. The Regional Manager Information Access and Privacy or designate will take a lead role in overseeing, coordinating and participating in all aspects of the *Limited Consent Directive* request and will determine the most appropriate service providers/employees to participate in the following subsequent steps:
   - Review the details with the requester in an effort to fully inform him/her with respect to how the consent directive may impact the provision of health care, as well as any limitations on the part of Western Health to adhere to the request. This includes the potential to access or share personal health information as permitted by PHIA, or as can be reasonably accommodated. Confirmation and details of this discussion must be recorded in **Section B** of the *Request to Access and/or Collection, Use and Disclosure of Personal Health Information* form (12-482).
   - Forward a letter to the requester confirming that the record has been restricted (Appendix A), or in cases where the request cannot be accommodated, to provide

notification as to the reason(s). A copy of this letter must be filed in the client's/patient's/resident's health record.

- In cases where a decision is being undertaken to override a *Limited Consent Directive* (i.e. disclosure is permissible or required under PHIA), the Regional Manager Information Access and Privacy or designate must be consulted.

Restriction of Paper Based Records

In collaboration with the Regional Manager Information Access and Privacy, the Regional Manager Health Information, his/her designate or other responsible manager must:

1. Retrieve any existing paper records that are subject to the *Limited Consent Directive* (Appendix A).

2. Ensure that the personal health information that is the subject of the request is removed from the record and placed in a file that will be stored separately in a designated secure location (e.g. Health Records Department). This location must be accessible for record retrieval, but limited to access by authorized employees only.

3. The completed *Request to Restrict Access and/or Collection, Use and Disclosure of Personal Health Information* form (12-482) must be prominently displayed <u>inside</u> the record, either on the inside cover or otherwise at the front of the client's/patient's/resident's most current paper record.

4. Ensure that the inside of the front cover of all records/volumes of a client's/patient's/resident's record where there is a *Limited Consent Directive (Appendix A)* in place contains a *Statement of Limited Consent* as follows:

The use and disclosure of: ☐ a PORTION of this record <u>or</u>
☐ the ENTIRE record

has been restricted and REMOVED at the express request of the client / patient / resident. Access to the restricted portion or entire record must be arranged through the Regional Manager Health Information, his/her designate or the Site Clinical Manager (when access is required in after hour emergencies.)

<u>Once service is complete, please ensure that the portion or entire record is returned directly to the Regional Manager Health Information or his/her designate.</u>

<u>ATTENTION: HEALTH RECORDS STAFF</u>

ANY ADDITIONS TO THIS RECORD <u>MUST NOT</u> BE FILED UNTIL APPROVED BY THE REGIONAL MANAGER HEALTH INFORMATION OR DESIGNATE.

This notification must be kept at the front of the health record at all times. Please move forward as filing is added.

5. When a complete health record has been removed as a result of a *Limited Consent Directive*, the record must be signed out to a secure file with limited/authorized access only. A file jacket must be placed where the record would otherwise be located (e.g. in Health Records Department, in service provider's office) with the client's name and other sufficient information to positively identify the client, (e.g. record number, MCP number). The *Statement of Limited Consent* must be placed in this file.

Restriction of Electronic Records

The Regional Manager Information Access and Privacy must ensure that all requests for restrictions to a client's/patient's/resident's personal health information that are recorded in an electronic format must be discussed with the Regional Director Information Management or designate, who will ensure that the following steps are taken:

1. Implement the requested restrictions in the applicable clinical information system (e.g. Meditech, CRMS) to the extent that the system's functionality permits.

2. Where system functionality permits, identify and record in the client/patient/resident electronic record the type of personal health information being restricted as well as the details of the restriction.

3. In the event that limitations in the clinical information system's functionality do not allow the restriction to be made, the Regional Manager Information Access and Privacy or designate must discuss these limitations with the requester and if necessary (and where possible), make arrangements to revert to a complete paper record. In this instance, the implications for access to timely health care must be reviewed with the requester.

'Unlocking' a Limited Consent Directive

When an employee involved in a client/patient/resident's circle of care believes that:

- disclosure of personal health information is necessary to prevent or reduce a risk of serious harm to the mental or physical health or safety of the client/patient/resident or another individual; or
- disclosure is required for public health or public safety; or that
- the life of the client/patient/resident is in immediate danger and any delay in administering treatment would add to that danger;

the health care professional may 'break the lock' and obtain access to the restricted information. The health care professional must notify the Regional Manager Health Information, his/her designate or the Site Clinical Manager (when access is required in after emergencies regular working hours) that restricted information is required for client safety reasons and arrangements must be made to access the paper record or electronic access (via Information Management/Technology staff). The health care professional must record in the client's record the date and time the lock was broken, i.e. the information was accessed, and the rationale for doing so. The health professional must notify the Regional Manager Information Access and

Privacy at the first reasonable opportunity, who will provide direction with respect to the re-securing of the file.

The requester may choose to revoke or 'unlock' their limited consent directive at any time by providing written notification to the Regional Manager Information Access and Privacy or designate. In this instance, immediate efforts must be made to remove any restriction(s), and/or evidence of the restriction(s), to ensure that the provision of future health care services is not impeded.

DEFINITIONS

Authorized Representative: Under section 7 of the *Personal Health Information Act, SNL 2008, c. P-7.01*, defined as one who can exercise a right or power of an individual under this Act or the regulations, as the following:

(a) a person with written authorization from the individual to act on the individuals' behalf;

(b) 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/her personal health information is necessary for ancillary to a "health care decision", as defined in the *Advance Health Care Directives Act*, 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 (must be at least 19 years of age):

- the incompetent person's spouse;
- the incompetent person's children;
- the incompetent person's parents;
- the incompetent person's siblings;
- the incompetent person's grandchildren;
- the incompetent person's grandparents;
- the incompetent person's uncles and aunts;
- the incompetent person's nephews or nieces;
- another relative of the incompetent person; and
- the incompetent person's health care professional who is responsible for the proposed health care.

(c) 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;

(d) 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;

(e) where the individual is deceased, the individual's personal representative, or, where there is no personal representative, 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 *Advanced Health Care Directives Act*;

(f) where the individual is a neglected adult within the meaning of the *Neglected Adults Welfare Act*, the Director of Neglected Adults appointed under that Act; or
(g) 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.

Collection: In relation to personal health information, collect means to gather, acquire, receive or obtain the information and the word *collection* has a corresponding meaning;

Custodian: In the context of the *Personal Health Information Act*, means a person 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 the *Act*. (Please refer to section 4 of the *Personal Health Information Act* for additional information.

Disclosure: In relation to personal health information in the custody or control of a custodian, disclose means to make the information available or to release it, but does not include a use of the information, and the word *disclosure* has a corresponding meaning;

Institutional standards: Clearly articulated statements that guide institutional behavior and identify expected levels of performance.

Limited consent directive: The ability to withhold or withdraw consent for the collection, use or disclosure of one's personal health information for a particular purpose, including the provision of health care.

Personal health information (PHI): Identifying information in oral or recorded form about an individual that relates to

(a) 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;
(b) the provision of health care to the individual, including information respecting the person providing the health care;
(c) the donation by an individual of a body part or bodily substance, including information derived from the testing or examination of a body part or bodily substance;
(d) registration information;
(e) 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;
(f) an individual's entitlement to benefits under or participation in a health care program or service;
(g) 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;

(h) a drug as defined in the *Pharmacy Act*, 2012 , 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
(i) the identity of a person's representative or guardian (*Personal Health Information Act, 2011*).

Professional standards: Authoritative statements that set out the legal and professional basis for practice. The primary purpose of professional standards is to identify for the profession, the public, government, and other stakeholders the desired and achievable level of performance expected of the professional in their practice, against which actual performance can be measured.

Use: In relation to personal health information in the custody or control of a custodian, use means to handle or deal with the information or to apply the information for a purpose and includes reproducing the information, but does not include a disclosure of the information.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act (2015). Available at: http://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm

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

REFERENCES

Central Health (2013). *Limited Consent for Collection, Use and Disclosure of Personal Health Information*.

Eastern Health Policy (2011). *Limited Consent for the Collection, Use and Disclosure of Personal Health Information.*

Government of Newfoundland and Labrador, Department of Health and Community Services. (September 2010). The *Personal Health Information Act* Policy Development Manual, *Appendix "G" Limited Consent under PHIA*. Available: http://www.health.gov.nl.ca/health/PHIA

Labrador-Grenfell Health (2014). *Limited Consent Directives* (Draft).

APPENDICES

Appendix A – Limited Consent Directive Letter to Client

FORMS

Request to Restrict Access and/or Collection, Use and Disclosure of Personal Health Information (12-482)

KEYWORDS

Limited consent directive, consent directive, limited consent, restriction on consent, withholding consent, withdrawing consent

TO BE COMPLETED BY STAFF IN QUALTIY DEPARTMENT

Approved By: Chief Executive Officer	Maintained By: Regional Manager, Information Access & Privacy
Effective Date: 27/April/2012	☑ Reviewed: 16/July/2018; 03/June 2020 ☑ Revised: 30/October/2015
Review Date: 16/July/2021	☐ Replaces: *(Indicates name and number of policy being replaced)* OR ☐ New

Appendix A
Sample Limited Consent Directive Letter to Client

_____, 20__

_____
_____
_____

Dear _____:

Please be advised that your request to restrict the collection, use and disclosure of your personal health information, as identified in your recent request to Western Health, has been implemented and the information has been secured as per your request. As we discussed, the following statement has been placed on your record:

The use and disclosure of: ☐ a PORTION of this record or
☐ the ENTIRE record

has been restricted and REMOVED at the express request of the client/patient/resident. Access to the restricted portion or entire record must be arranged through the Regional Manager Health Information, his/her designate, or the Site Clinical Manager (when access is required in after hour emergencies.)

Once service is complete, please ensure the secured portion of this record is returned directly to the Regional Manager Health Information or his/her designate.

Should you wish to remove this restriction in future, please notify the undersigned in writing. If you have questions or concerns, please feel free to contact me.

Sincerely,

_____
Regional Manger
Information Access & Privacy