
Alberta's
Health
INFORMATION
Act

Online Training

**Disclosing Health Information Without
Consent**

Department of Medicine
University of Alberta

Disclosing *Without Consent*

Disclosures without the consent of the patient can be made in the following situations:

1. To other custodians for authorized uses.
2. To another government for payment of health services (e.g.: to another province if the patient is a resident there).
3. To a person responsible for providing continuing treatment and care to the patient.

1. To other custodians for authorized use.

- Some examples of authorized uses of health information include:
 - ❑ Providing health services.
 - ❑ Determining eligibility to receive a health service.
 - ❑ Providing health service provider education.
 - ❑ Conducting research.

2. To another government for payment of health services.

- If the patient is a resident of another province or territory or if the government of Canada is responsible to payments of the health services received, disclosure can be made without consent.
- This helps in resource and policy planning to improve health system management in both governments involved.

3. To a person responsible for providing continuing treatment and care to the patient.

- Example: You could provide health information to a family member who will be caring for the patient at home, or a home care nurse. (It is ideal to obtain consent of the patient first, if possible.)
- You could also disclose without consent to a physiotherapist that the patient will be seeing as part of their ongoing treatment.

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4. General information to family members or those believed to have a close personal relationship with the patient (more detail to follow).
 5. To notify family members if the patient is ill, injured, or deceased, so long as it's not against the expressed wishes of the patient.
 6. To disclose the circumstances surrounding the death of a patient to family members, so long as it's not against the expressed wishes of the patient.

4. *General* information to family members or to those believed to have a close relationship with the patient.

- Only *general* information can be given to family members or those believed to have a close personal relationship with the patient.
- Only the location, presence, condition, diagnosis, prognosis, and the progress of the individual *on the day on which the disclosure is made* can be disclosed, as long as it is not against the *expressed wishes* of the individual.

The Expressed Wishes of the Patient

- Patients may not want health information, particularly in the case of divorce or health conditions of a sensitive nature, disclosed to family members or those with a close relationship to them. Try to clarify with the patient before disclosing.

Confirming the Identify of Family or Friends

- You should make a reasonable effort to verify the identity of those requesting information on family members, and a reasonable effort to verify their relationship with the patient.
- One way is to ask for ID, or ask them questions about the patient that only family members or those close to the patient, would know. Make a notation of steps taken to verify identity/relationship.
- Check with the patient first if possible.
- Be especially careful with patients who are well known in the community.

Mature Minors

- Someone who is under 18, but understands the nature of their own rights or powers and the consequences of exercising that right or power, is considered a *mature minor* under the Act.
- It is up to the custodian's discretion whether or not the person is a mature minor.
- Factors that need to be taken into account are maturity, economic status (self-supporting?), living arrangements, mental state, risk assessment, and the complexity and intrusiveness of the treatment.

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- If a patient is a mature minor, and you have any reason to believe they do not want their health information disclosed to their family, or it is of a particularly sensitive nature, ask them.
 - Make a notation in the chart if this is the case, and make sure all staff are aware of the patient's wishes.

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7. To an official of a penal institution if the patient is in jail, but only to allow health services or treatment.
 8. To a person authorized to do an audit.
 9. To a quality assurance committee.
 10. To the legal representative of the custodian for use in a court proceeding.
 11. To comply with a subpoena, warrant, or court order.

8. To a person doing an audit.

- Audits can be financial or clinical.
- The person doing the audit must agree in writing:
 - To destroy the information as soon as the audit is finished; and
 - Not to disclose the information to any other person except as required to complete the audit or to report improper conduct by the custodian.

9. To a quality assurance committee.

- These are committees that study, assess, and evaluate health services to help improve health care or the level of skill, knowledge, and competence of health care providers.

11. To comply with a subpoena, warrant, or court order

- It must refer to information that is actually in the custody of the custodian.
- It must have been granted by someone with the proper authority.
- The subpoena, warrant, or court order must have been properly served.

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12. To another custodian to detect or prevent fraud or abuse of health services (ex.: a pharmacist can notify other pharmacists when a person is trying to fill a suspicious prescription).
 13. To an officer of the legislature when it's necessary to perform their duties (ex.: to the Information and Privacy Commissioner if they need to review a complaint).
 14. To any person to avert or minimize imminent danger to the health or safety of any person.
 15. If the disclosure is in the best interests of an individual who lacks the mental capacity to provide consent.
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14. To any person to avert or minimize imminent danger to the health or safety of any person

- Three criteria must exist:
 1. The victim(s) must be ascertainable or sufficiently identifiable;
 2. The danger to the victim must be serious bodily harm or death; and
 3. The danger must be imminent, i.e. there must be a sense of urgency.
- Ex.: If a crime victim is in the hospital and the perpetrator of the crime is making further threats, the custodian may want to disclose some information about the victim to police.

15. If the disclosure is in the best interests of an individual who lacks the mental capacity to provide consent.

- This is based on the custodian's judgment.
- The custodian must judge whether the person lacks the mental capacity to provide voluntary and informed consent, and whether the disclosure is in their best interests.

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16. To the descendant of a deceased individual, the deceased's authorized representative, or a person providing health services to a descendant.
 17. To comply with another enactment of Alberta or Canada (ex.: Criminal Code of Canada, Public Health Act, etc.)
 18. To the successor of a custodian.
 19. To a third party insurer (ex.: dental or drug benefits.)
 20. To administer the Triplicate Prescription Program (monitors prescription of certain drugs).

16. To the descendant of a deceased individual, the deceased's authorized representative, or a person providing health services to a descendant.

- Before the disclosure is made, the custodian must make a judgment that:
 - The disclosure is necessary to provide health services to the descendant; and
 - The disclosure is restricted sufficiently to protect the privacy of the deceased individual.

17. To comply with another enactment of Alberta or Canada.

- Example: If you suspect child abuse or neglect, legislation such as the Child Protection Act prevails, and you are still obligated under this legislation (not HIA) to notify the authorities.
- The Public Health Act requires disclosure regarding people with notifiable infectious diseases.
- The HIA ***allows*** for such disclosures.

18. To the successor of a custodian.

- The successor must be a custodian.
- This is done when the custodian is no longer a custodian (i.e. retires) or is moving his/her practice elsewhere.

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21. To a health professional body (ex.: College of Physicians and Surgeons) when conducting an investigation or discipline proceeding of a custodian).
 22. To protect public health and safety.
 23. To an archive.
 24. To the Minister or Regional Health Authority.
 25. For authorized health system purposes, such as planning and resource allocation, health system management, public health surveillance, and health policy development.

22. To protect public health and safety.

- The custodian must reasonably believe that:
 - The information relates to a possible offense under the law; and
 - The disclosure will protect the health and safety of Albertans.
- Ex.: Somebody robs a bank and police asks for the public's assistance for identifying the person through surveillance footage. If a nurse recognizes the person as a patient, the nurse can inform the police without consent.

23. To an archive.

- Archives can include the Provincial Archives of Alberta or any other archive subject to HIA or FOIP, if the custodian believes the information has historic value.
- Can also include the custodian's own archives or an archiving company. In both of these cases the custodian retains control over the records.

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26. Carrying out any purpose authorized by an enactment of Alberta or Canada.
 27. For internal management purposes, including quality improvement, billing, etc.
 28. Conducting investigations, discipline proceedings relating to the members of a health profession or health discipline.

Making Notations of Disclosure

- The Health Information Act requires that custodians must keep notations of disclosures that were made without consent.
- This does not apply when custodians permit other custodians electronic access when their electronic system automatically keeps a log of the information.

Notations must include:

1. To whom the information was disclosed;
 2. The date and purpose of the disclosure; and
 3. A description of the information disclosed.
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- The notation or electronic log of a disclosure must be kept for 10 years.
 - The patient (or an authorized representative of the patient), may request to see the record of disclosures at any time.

Notice to Recipient Without Patient Consent

- If the custodian discloses without patient consent, the custodian must inform the recipient *in writing* of the purpose of the disclosure and the authority under which disclosure is made.
- Does not apply if disclosing to the patient themselves, another custodian providing a health service, or to the police.
- Sending a Notice to Recipient shows due diligence on the part of the custodian.

Does Disclosing to Family Members Require the Notice to Recipients?

- If you are providing *records* to family members without the consent of the patient, you must give the written Notice to Recipient. (Does not apply if disclosing general information verbally).
- If the family member is accessing the documents as an authorized representative of the patient, as in the case of a Power of Attorney, this falls under “Right of Access”, and the Notice to Recipient is not required. It is equivalent to providing the information to the patient him or herself.

Last Slide in this Set

Congratulations! You can now move on to the next set of slides - ***Right to Access – Part 1.***