



Health and Social Services Consent Conditions Policy

Policy Statement

A consistent process is necessary across the health and social services system to respect, acknowledge, follow, and appropriately document consent conditions requested by individuals or substitute decision makers.

Scope

This Policy applies to all consent conditions received by employees of the Department of Health and Social Services (Department) and Health and Social Services Authorities (HSSAs).

Conditions placed on consent do not apply when the information is required by law or by established institutional or professional practice standards.

Definitions

The following terms apply to this Policy:

“Consent Condition” includes an express instruction and refers to a limit, set by an individual or substitute decision maker, on how the Department/HSSAs may collect, use or disclose personal health information about the individual.

“Employee” for the purpose of this Policy means all individuals employed by the Department or HSSA including salaried, contracted or locum health practitioners and individuals whose positions are federally funded.

“Express instructions” are specific directions provided by an individual or substitute decision maker about how the individual’s personal health information may or may not be, collected, used or disclosed that must be clearly documented on the individual’s record so that anyone who accesses the record will be aware of them.

“Established institutional practice standards” means a practice which guides the Department/HSSA’s behavior, i.e. Accreditation Canada Guidelines, Ministerial Directives, any policies, procedures, guidelines, and standards adopted/established by the Department/HSSAs.

“Established professional practice standards” means a practice that sets out the professional basis for practice and standards of practice, i.e. code of ethics that is recognized, adopted, or established by professional licensing bodies or Canadian professional associations.

“Health and Social Services Authorities” means

the Territorial Health and Social Services Authority established under section 5(1), a Board of Management established under section 10(1) or referred to in subsection 10.2 or 10.3 of the *Hospital Insurance and Health and Social Services Administration Act*, or an organization, agency or firm contracted by the Minister pursuant to section 17 of the *Hospital Insurance and Health and Social Service Administration Act*.

“Personal health information” means information in any form that identifies an individual, or in respect of which it is reasonably foreseeable in the circumstances that the information could be used, either alone or with other information, to identify an individual:

- (a) information about the health and health care history of an individual,
- (b) information respecting health services provided to an individual,
- (c) information about eligibility or registration of an individual for a health service or related product or benefit,
- (d) information about the payment for a health service for an individual,
- (e) information collected in the course of providing a health service to an individual or information that is collected incidentally to the provision of a health service to an individual, including the individual’s name and contact information,
- (f) a personal health number, other identifying number, symbol, or other particular assigned to an individual in respect of health services or health information,
- (g) prescribed information about a health service provider that provides a health service to an individual,
- (h) information respecting the donation by an individual of a body part or bodily substance,
- (i) information prescribed as personal health information in the Health Information Regulations.

“Substitute decision maker” means a person, recognized under the *Health Information Act* who is:

- (a) the individual’s guardian or parent or person with lawful custody, if the individual is under 19 and is not a mature minor,
- (b) the individual’s guardian, trustee, or legal representative,

- (c) a person who holds the individual's power of attorney or the person named in a personal directive,
- (d) anyone authorized in writing by the individual when the individual was mentally competent,
- (e) a deceased individual's personal representative, estate executor, or spouse,
- (f) a deceased individual's relative or an adult who had a close personal relationship with the individual,
- (g) a deceased individual's substitute decision-maker identified by the *Human Tissue Donation Act*,
- (h) a prescribed person in prescribed circumstances and who:
 - i. makes decisions on behalf of an individual about their personal health information, **while**
 - ii. considering the individual's wishes and beliefs, **and**
 - iii. assessing the benefits against the risks before making a decision.

Provisions

- 1) The Department/HSSAs must:
 - a. take reasonable steps to fully comply with valid consent conditions, as specified in the provisions below;
 - b. track and document consent conditions that are in place; and,
 - c. identify and authorize employees to process consent condition requests.
- 2) Consent conditions may only apply to the future collection, use, or disclosure of an individual's personal health information.
- 3) Consent conditions must only be requested by the individual the information is about or the individual's substitute decision maker.
- 4) Consent condition requests may be received:
 - a. in written form; or,
 - b. in verbal form when it is impractical for an individual/substitute decision maker to write them.
- 5) Employees authorized to process consent conditions must:
 - a. acknowledge receipt of the consent conditions and express instructions in writing;
 - b. review the consent conditions and express instructions with the individual;
 - c. respond to the individual's consent conditions request;
 - d. document and record any received consent conditions;
 - i. if consent conditions are received in verbal form, a record must contain an explanation from the individual of why it was impractical to provide

- consent conditions in writing, along with the date and signature of the authorized employee.
 - e. inform the individual of the implications of making such a condition, if there are any, and how their consent conditions may impact their health care;
 - f. clarify with the individual the parameters of their consent conditions and express instructions;
 - g. advise the individual if the Department/HSSAs are unable to meet part or all of their conditions;
 - h. discuss with the individual options available of how the Department/HSSAs can accommodate their consent conditions;
 - i. review the consent conditions and express instructions with the individual;
 - j. create a final version of the consent conditions in agreement;
 - k. provide a copy of the signed final version of the consent conditions to the individual;
 - l. keep a record of the individual's final consent conditions including express instructions; and,
 - m. work with necessary persons to implement consent conditions.
- 6) Once a new consent condition has been implemented, the Department/HSSAs must:
- a. take reasonable steps to give notice of the condition to any person or organization to which the Department/HSSA discloses information; and
 - b. check for any existing consent condition(s) when clients are transferred between health services.
- 7) If the Department, HSSA or a health service provider discloses limited personal health information to a health service provider based on a consent condition, and he/she feels that the information not disclosed may affect the care of the patient, they must give notice to the health care provider that
- a. the shared information is limited because of a consent condition; and,
 - b. they consider the undisclosed information to be necessary to provide best care to the individual.
- 8) Consent conditions remain in effect in many circumstances, including but not limited to:
- a. after the individual's death;
 - b. when providing further health services to the individual, verifying eligibility of that individual for a health service, and when disclosing information for continued care;
 - c. when disclosing information about the individual who is injured, ill or incapacitated to contact a person who has a close personal relationship with the individual or a potential substitute decision maker;
 - d. when disclosing person health information about the individual when a patient in a health facility or resident to another person who has a close personal relationship with the individual; or,

- e. until an individual or substitute decision maker:
 - i. makes changes to the current consent conditions; or,
 - ii. revokes the current consent conditions.
- 9) Consent conditions do not apply in some circumstances, including but not limited to:
 - a. statistical, non-identifiable and de-identified information;
 - b. situations where the Department/HSSAs are allowed to collect, use or share information about an individual without their consent, including but not limited to:
 - i. disclosure to law enforcement;
 - ii. disclosure to a correctional facility;
 - iii. disclosure to another facility in which an individual is lawfully detained;
 - iv. disclosure to identify a deceased individual;
 - v. disclosure for the prevention of harm to an individual or the public; or, disclosure for audit, legal services, or risk management.

Authority and References

Health Information Act

Ministerial Directive 2023-04: Privacy Standards, Policies and Standards

De-identification Policy

Masking Policy

Withdrawing Consent Policy

<original signed by>

Deputy Minister

May 2025

Date