



Health and Social Services Withdrawing Consent Policy

Policy Statement

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

Scope

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

Definitions

The following terms apply to this Policy:

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

“Established standards of professional practice” 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, 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 who is 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 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.

"Withdrawal of consent" means express or implied consent to the collection, use or disclosure of personal health information is removed either partially or fully by the individual or a

substitute decision maker who originally provided consent or substitute decision maker, by giving notice to the health information custodian.

Provisions

- 1) After an individual consents (express or implied consent) to the collection, use or disclosure of their personal health information, the individual may withdraw their consent by providing written notice to the Department/HSSA.
- 2) The withdrawal of consent may be made by the individual the information is about, or an individual's substitute decision maker.
- 3) The withdrawal of consent can be full or partial.
- 4) The withdrawal of consent is valid until such time as the individual or substitute decision maker indicates otherwise by providing written notice to the Department/HSSA.
- 5) The withdrawal of consent does not have a retroactive effect in that a consent withdrawal does not apply to information previously collected, used or shared when implied or express consent was in effect. Information previously shared cannot be retracted.
- 6) The Department/HSSA that receives notice of a consent withdrawal must:
 - a. inform the individual how their consent withdrawal may impact their health care, including risks to the provision of the best possible care;
 - b. comply fully with the individual's consent withdrawal, unless subject to exception (see provision 8 and 9);
 - c. put in place the needed procedures to implement the withdrawal;
 - d. record the withdrawal notice to the individual's applicable record; and,
 - e. communicate about the withdrawal to other HSSAs/Department /health service providers/researchers/other third parties to whom within the previous year, the Department/HSSAs disclosed the information about which the individual has withdrawn consent.
- 7) The Department/HSSA that implements a consent withdrawal must ensure that when health service providers disclose limited information about an individual to another health service provider for the purposes of providing/assisting in provision of a health service and the provider believes non-disclosed information is necessary, they must inform the health service provider that:
 - a. the shared information is limited due to the consent withdrawal; and
 - b. undisclosed information is necessary to provide best care to the individual.
- 8) The withdrawal of consent does not apply to **collection, use and/or disclosure** of information **required by law**, for example:
 - a. under the *Vital Statistics Act*
 - b. under the *Mental Health Act*
 - c. under the *Maintenance Orders Enforcement Act*
 - d. under the *Elections and Plebiscites Act*
 - e. under the *Public Health Act*
 - f. required by the NWT Supreme Court
 - g. required disclosure to an electronic health information system(s) designated under *Health Information Act* and Regulations

- h. required by the Information and Privacy Commissioner for investigations
 - i. required by a subpoena, order or warrant.
- 9) The withdrawal of consent is not effective when **recording of information** is:
- a. required by law, for example *Controlled Drugs and Substances Act* (Canada), *Food and Drugs Act* (Canada), *Vital Statistics Act*.
 - b. required by the established standards of professional practice, or established standards of institutional practice.

Authority and References

Health Information Act

Ministerial Directive 2023-04: Privacy Standards, Policies and Procedures
Consent Conditions Policy

<original signed by>

Deputy Minister

April 24, 2023

Date