Information for Consumers of Health Services in the ACT
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Information obtained by doctors, hospitals and other health service providers is kept in health records. These records are vital if treatment decisions are to be safe and well informed. The training of health professionals emphasises good record keeping practices, effective communication between health service providers and consumers, and the confidentiality of information about consumers.

The Health Records (Privacy and Access) Act 1997 (the Act) is the legislation that makes these concepts legally enforceable. The Act applies to all health records kept by health service providers in the ACT, and includes
both the public and the private sector. The Act also applies to records containing personal health information kept by any person or organisation, whether or not that person or organisation is a health service provider.

The Act requires that records are created and kept in a manner that ensures the privacy of health information. It also provides that consumers of health services can access records that contain personal health information about them.
The Twelve Privacy Principles

The Act contains twelve privacy principles that collectors and keepers of personal health information (record keepers) must follow.

A summary of the principles is set out below.

1. Personal health information must only be collected for a lawful purpose that is directly related to, and necessary for, the collector’s function or activity.

2. The collector must take reasonable steps to ensure that the consumer knows why the information is being collected, who will have access to it, and if relevant, that collection of the information is required or authorised by law.

3. The collector must take reasonable steps to ensure that the information collected is relevant, up to date and accurate. Requests for information should not be unreasonably intrusive.
4.1 A record keeper must protect health records by reasonable security safeguards. A record keeper must not destroy a health record unless required or allowed by law. For an adult consumer, destruction of a health record may occur seven years after the service was last provided. For a consumer aged under 18 years at the time the service was last provided, destruction of a health record may occur when the consumer turns 25 years of age.

4.2 The record keeper must keep a register of records that have been destroyed or transferred to another entity.

4.3 A health service provider may keep personal health information for longer than specified in Principle 4.1 if needed for the purpose for which it was collected or for another lawful purpose. A record keeper other than a health service provider must destroy health information if it is no longer needed for the purpose for which it was collected.

5 A record keeper must take reasonable steps to enable a consumer to know whether the record keeper holds health records or personal health information in relation to the consumer and how the consumer can access the records or the information.
A health service provider who is a member of a treating team for the consumer may have access to the consumer’s personal health information. A treating health service provider may disclose the consumer’s personal health information to immediate family members if:

• the disclosure is made for compassionate reasons;

• the disclosure would be expected by the consumer; and

• the disclosure is not contrary to any wishes previously expressed by the consumer that the provider is, or should reasonably to be, aware of.

Information must not be deleted from a health record, even where it is later found or claimed to be inaccurate. A record keeper should make appropriate corrections and amendments to a record to keep it up to date and relevant. A consumer can request that a record be amended. If the record keeper is not willing to amend the record in accordance with a request, the consumer can give the record keeper a written statement to be included in the record. If the record keeper is willing to amend the record in accordance with a request but holds a concern that the incorrect information could cause adverse consequences, the record keeper can place the incorrect information on a separate record that is not generally accessible.
The record keeper must not use personal health information without taking reasonable steps to ensure that the information in the record is up to date and accurate. If a person gives information in confidence to a health service provider about a consumer, the health service provider should encourage the person to waive the requirement of confidentiality. If the information remains confidential, the provider should only record the information if it is likely to assist in the treatment of the consumer, and take reasonable steps to ensure that the confidential information is accurate and not misleading.

Except where information in a health record is shared among members of a treating team for treatment purposes, a record keeper must not use the information for any other purpose unless:

- the consumer has consented to its use for another purpose; or
- the use is necessary to prevent or lessen a significant risk to life or health of a person; or
- the use is required or authorised by law; or
- the information is for the purpose of managing, funding or assessing the quality of the health service provided.
Information in a health record can only be disclosed to a person other than the consumer with the consent of the consumer. If consent is not or cannot be given (for example, if the consumer is deceased or incapacitated), information can be disclosed if:

- the information is being shared between members of a consumer’s treating team and is necessary for the treatment of the consumer;
- the consumer is aware that this type of information is usually disclosed to a particular person or organisation;
- the disclosure is necessary to prevent or lessen a serious and imminent risk to the life or health of a person;
- the disclosure is required or authorised by law;
- the disclosure is necessary for the purpose of managing, funding or assessing the quality of the health services provided;
- the information is necessary for research purposes in the public interest;
- the person being disclosed to is a carer and the information is necessary to enable the carer to safely and effectively provide appropriate care for the consumer;
• it is an emergency and an immediate family member needs to be consulted in order to provide a service; or
• the disclosure is to an immediate family member, is made for compassionate reasons, is a disclosure that would be expected by the consumer, and is not contrary to previously expressed wishes of the consumer.

11 When a health service provider’s practice is sold or closed, the health service provider (or legal representative) must publish details of the sale or closure in a local newspaper, must take practicable steps to give consumers an opportunity to nominate a place to which they want their records sent, and must make arrangements for the safe storage of the remaining records in the ACT. A record may be destroyed in accordance with Principle 4.1.

12 If a consumer transfers from one health service provider to another health service provider, or a health service provider transfers to another practice, then the record keeper must transfer health records or a copy to a new health service provider on request and on payment of any relevant fee.
Access

The Act also sets out a consumer’s entitlement to access his or her health records.

Consumers seeking access to the information in a health record, or to the record itself, should initially consult their health service provider. A health service provider may ask that a request for access be put in writing.

If the record keeper gives access to a health record, access must be given as follows:

- for a request to inspect the health record, at a time and place specified in writing;
- for a request to receive a copy of the health record, a copy of the health record or a summary; and
- for a request to view a health record and have its contents explained, at a time and place specified in writing.

Within two weeks after the day of receiving the request, the record keeper must:

- give access to the health record in accordance with the Act; or
- give notice if the health record, or part of the record, cannot be produced and provide the reasons;
- give notice if the health record, or part of the record, is exempt from access and state the ground for the exemption;
- if a fee is payable, give notice that access will be provided on payment of the fee.
Fees for access

There may be a cost associated with access.

The Minister determines the maximum fees that can be charged under the Act. A fee may be charged to view a record; to transfer a record, for a copy of a record; for a copy of an image of a hardcopy, such as an x-ray; for provision of a summary of a record; or for a consultation during which the record is explained. No other fees can be charged for access.

Once the required fee is paid, the record must be made available within seven days of payment, or within thirty days of receiving the request, whichever is later.

Since health records often contain information and language that might require explanation, the health service provider may offer the consumer an opportunity to discuss the health record or to provide a summary. Consumers are encouraged to consider these offers, but they are not obliged to accept them. If there is a discussion of the contents of the record, the discussion may qualify as a consultation and the usual consultation fee may be charged.
Exemptions

There are circumstances where a health record (or part of the record) will not be made available to the consumer to whom the record relates:

- if the health record relates to a report under the *Children and Young People Act 1999* or a notification under the *Children's Services Act 1986* and the person who made the report could be identified from information in the health record;
- if the record keeper believes that the provision of the information would risk the life or health of the consumer or another person; or
- if access would constitute a breach of confidence.

If an exemption is made on the ground of a significant risk to the life or health of the consumer, the record keeper can nominate another health service provider to review the record to obtain a second opinion. This person may discuss the contents with the consumer.

A consumer can request a review of any exemption by the Health Services Commissioner.
Requests by people who are not consumers

Sometimes a person other than the consumer requests access to the record. The only people, other than the consumer, who can request access are:

- someone authorised by the consumer to obtain a health record;
- immediate family members for compassionate reasons;
- carers in order to safely and effectively carry out the carer’s functions; and
- legal guardians, people appointed by the consumer under an enduring power of attorney that has been activated, legal representatives of a consumer who has died, and parents of a young person.

If a person under the age of 18 is considered to be mature enough to consent to treatment, then that person should be considered to be the consumer, not their parent.

Requests for access by representatives of consumers should be in writing and be accompanied by evidence that the person has the authority to act on the consumer’s behalf. If an approved consent form is notified under the Act, that form must be used.
Health status reports

A health status report is a report about the physical, mental or emotional health of a consumer. Such reports may be requested by employers, courts or insurance companies. A person must not obtain a health status report about a consumer from a health service provider without the consumer’s consent.

Complaints

People can complain to the Health Services Commissioner about breaches of the privacy principles or a refusal to give access to a health record in accordance with the Act.
More information

More information about the Health Records (Privacy and Access) Act 1997 can be obtained from:

Health Services Commissioner
ACT Human Rights Commission

Telephone (02) 6205 2222
TTY (02) 6205 1666
Facsimile (02) 6207 1034
Email human.rights@act.gov.au
Website www.hrc.act.gov.au
Location Level 4, 12 Moore St, Canberra City ACT
Postal Address GPO Box 158, Canberra ACT 2601

If you need interpreting help, telephone:

TRANSLATING AND INTERPRETER SERVICE 131 450
Canberra and District - 24 hours a day, 7 days a week
HEALTH CARE INTERPRETERS 6205 3333