**Canberra Health Services**

**Policy**

**Consumer Privacy**

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| Policy Statement |

Canberra Health Services (CHS) is committed to ensuring that people who access care at CHS have their privacy safeguarded. CHS will achieve this by ensuring that all personal health information that CHS holds is secure and protected from unauthorised access or misuse.

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| Background |

The *Health Records (Privacy and Access) Act 1997* (HRPA Act) regulates privacy and access to personal health information in the ACT. All consumer information, including identifying information such as name, date of birth and address, is considered personal health information and is covered by theHRPA Act. The Act has 12 privacy principles (PP) or rules for the management of personal health information. See Attachment 1 for a summary of the privacy principles.

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| Alerts |

CHS staff, except for the CHS media team, are not to release any information about a consumer to a media agency. All media requests, including those about any consumer at CHS, are to be directed to the CHS media team at [CHSmedia@act.gov.au](mailto:CHSmedia@act.gov.au).

It is an offense under HRPA Act for staff to intentionally disclose or use any personal health information for a purpose other than what it was collected for.

Under the HRPA Act, Privacy Principle 10: Limits on disclosure of personal health information, the treating team can disclose personal health information to the consumer’s carer or an immediate family member if the consumer provides their consent. This consent should be documented in the consumer’s clinical record.

If the consumer cannot give or withhold consent due to:

* being a child or young person who does not have enough maturity and development capacity to understand the nature of the health information, or
* does not have decision-making capacity under the *Mental Health Act 2015,* or
* is determined not to have capacity to consent,

Disclosure to the consumer’s carer or immediate family member is permitted when it is:

* necessary to enable the carer to safely and effectively provide appropriate care for the consumer, and/or
* made for compassionate reasons to an immediate family member. The treating team need to believe that the disclosure would be, or would have been, expected by the consumer and the disclosure is not contrary to any wishes previously expressed by the consumer.

If this occurs, the disclosure of the information, who it was made to and under what circumstance should be documented in the consumer’s clinical record.

For more information about decision-making capacity refer to the definitions and *Assessment of Decision-making Capacity and Supported Decision-making for people being treated under the Mental Health Act 2015 Procedure*, *Informed Consent (Clinical) Policy*, or *Advance Agreements, Advance Consent Directions and Nominated Persons under the Mental Health Act 2015 Procedure.*

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| Purpose |

The purpose of this document is to outline how CHS ensures that consumer privacy and personal health information is protected in compliance with the HRPA Act. In this document people accessing care at CHS are referred to as consumers.

This document provides a broad overview to the legislative obligations imposed by the HRPA Act*.* The document outlines the procedures to support staff to comply with the Act.

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| Scope |

This policy applies to all people who work (paid and unpaid) at CHS within the inpatient, community and outpatient settings. This includes, but is not limited to, team members, contractors, students, volunteers, support services staff and other health care workers who, during their work, have access to a consumer’s personal health information.

This policy applies to the use and disclosure of consumers’ personal health information held by CHS.

To identify a consumer when care, medicine, therapy and other services are provided please refer to the *Patient Identification and Procedure Matching Procedure*.

This policy does not cover the management of clinical health records. Please see *Clinical Records Management Policy, Clinical Records Management Procedure, Records Disposal Schedule for Canberra Health Services Clinical Records Procedure* and *Confidentiality, Privacy and Access to Mental Health, Justice Health and Alcohol and Drug Services Clinical Records Procedure*.

This policy does not cover the management of personal information such as information about employees, volunteers, students, contractors, or information collected during the consultation process. Please see *Personal Information Privacy Policy.*

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| What consumers have a right to expect |

Consumers of CHS should be informed that:

* Their personal health information will be protected in accordance with the HRPA Act.
* Their personal health information may be shared with another person only if this is important for their healthcare or is in accordance with the HRPA Act.
* They can, with some exceptions, apply to access their own health records and have those records amended to correct inaccuracies by including additional information (information cannot be deleted from a health record). See *Clinical Records Management Procedure* for more information.
* To protect their identity when they are at risk of harm, they can access services using an alias or, where legal and practicable, they can access services anonymously. Refer to section below for more information.
* Comprehensive clinical information will be available to their health service providers to enable CHS to provide safe, quality care to them.
* If they have an Advance Agreement, Advance Consent Direction or Nominated Person and do not have decision-making capacity CHS staff will follow the Advance Agreement, Advance Consent Direction or consult with the Nominated Person as per *Advance Agreements, Advance Consent Directions and Nominated Persons under the Mental Health Act 2015 Procedure*.
* If they have an Advance Care Plan and/or an Enduring Power of Attorney and do not have decision making capacity CHS will follow the Advance Care Plan and/or consult with the Enduring Power of Attorney as per *Advance Care Planning (Adults) Guideline*.
* They have the right to change their decisions about privacy and information sharing. If they want to change their decision, they need to inform the staff caring for them.

Refer to *Your Privacy at Canberra Health Services* consumer handout available on CHS Policy and Guidance Documents Register.

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| Consumer Personal Health Information at CHS |

CHS is committed to ensuring consumers’ privacy is respected by applying the following principles:

* Personal health information at CHS will not be collected by unlawful or unfair means or unnecessarily.
* Consumers will be informed before personal health information is collected, or as soon as practicable after collection, about:
* why the information is being collected
* if the collection of information is authorised or required by or under legislation.
* Reasonable steps will be taken to ensure the personal health information collected is accurate, up to date and complete.
* Reasonable steps will be taken to ensure the personal health information is securely stored by CHS and not misused.
* Reasonable steps will be taken to ensure that the information is appropriate for the purpose for which it is being used and is accurate, complete and up to date.
* Personal health information will not be used or disclosed for a purpose that is not the purpose of collection or for a purpose that is incidental or not connected with the purpose of collection unless:
* the consumer has consented to the use or disclosure.
* the consumer would reasonably expect CHS to use or disclose the information for the secondary purpose.
* the secondary purpose is related to the primary purpose.
* the use or disclosure was necessary to prevent or lessen a serious threat to the life, health or safety of the consumer or another person.
* the use or disclosure is required by, or authorised under, legislation.

Health professionals have a duty to maintain the confidentiality of all information that is directly or indirectly gained, created or disclosed to them while providing treatment or care to consumers. This duty extends to other CHS team members who access consumer information as part of the delivery of health care to that consumer.

Maintaining consumer confidentiality includes:

* CHS staff not discussing information about a consumer in a public space (for example public café, stairwell or corridors) where the identity of the consumer, or issues relating to the consumer may result in the consumer’s personal information becoming common knowledge.
* CHS staff not discussing consumers who are also CHS staff members or a person with a public profile/of public interest with staff members not involved in their care/treatment (for example discussing these consumers in the team room or staff cafeteria)
* Ensuring written information about consumers is not easily viewed when transferring between clinical areas. For example, covering the name of the consumer on the spine of their clinical record when escorting a consumer through public spaces.
* Ensuring when consumer information is used for staff education purposes- individuals are de-identified and only relevant information used.

When a consumer is admitted to an inpatient facility identifying information may be displayed on devices including, but not limited to, identification arm bands, smart boards/white boards at the consumers bedside, patient folders and bed/cot cards.

**Patients requiring anonymity**

In cases where consumer information is required to be anonymous for personal safety reasons, the admitting staff member must notify the ward clerk. The ward clerk can remove the display of the consumer’s name from display on the Patient Digital Journey Board and identify the consumer as anonymous in the ACT Patient Administration System (ACTPAS) or Emergency Department Information System (EDIS). This informs the digital bed management and Patient Digital Journey Board systems at CHS to only display the consumer’s medical record number. All other digital health systems will display all the consumer’s details, with the appropriate annotation as an anonymous consumer.

Digital Solutions Division Help Sheets and User Guides for Patient Digital Journey Boards can be accessed at <https://actgovernment.sharepoint.com/sites/intranet-ACTHealth/SitePages/Journey-Board.aspx>

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| Roles & Responsibilities |

CHS staff who are first point of contact for enquiries about a consumer (this includes Ward Clerks, Switch board operators, health centre staff, patient enquiries) are responsible for:

* Not providing information about a consumer to enquirers who are attempting to gain information about the consumer and do not demonstrate they know the consumer is at the facility. For example, if someone calls asking “can you tell me if xx is at the hospital/clinic/service” no information should be given.
* For consumers who are an inpatient:
* Where the enquirer provides information that confirms they are aware the consumer is at the hospital and:
* the consumer is not marked as anonymous in ACTPAS or EDIS, and
* the consumer is recorded in ACTPAS or EDIS as consenting to visitors
* staff may transfer the call/direct the enquirer to the ward/clinical area the consumer is located. Details about the consumers bed number should not be provided. For example, if an enquirer presents to the Patient Enquiries desk and states “My grandmother xx (Full Name) had surgery yesterday can you please tell me which ward she is on” the team member can direct the enquirer to the ward the consumer was admitted to.
* Where the enquirer provides information that confirms they are aware the consumer is at the hospital and:
* the consumer is marked anonymous in ACTPAS or EDIS; or
* is recorded in ACTPAS or EDIS as not consenting to visitors’ staff are to inform the enquirer that “I can’t see any information about that person on the system”. Staff must not state they cannot release any information or confirm that the consumer is at the hospital.
* For community or outpatient services where the enquirer provides information that confirms that they know the consumer is at the service if:
* the consumer is not marked as anonymous in ACTPAS, and
* the consumer is recorded in ACTPAS as consented to visitors a message from the enquirer can be taken and delivered to the consumer.

CHS clinical team members receiving enquiries about consumers are responsible for protecting the privacy of consumers in their care by:

* If a consumer is being treated anonymously for personal safety reasons, staff must not confirm that the consumer is present at the facility.
* For consumers admitted to Canberra Hospital or University of Canberra Hospital:
* Confirming that the consumer consents to receiving visitors or passing information about them to the enquirer. This may be confirmed by asking the consumer, checking the General Conditions of Admission form (15200) or by checking on ACTPAS or EDIS for documentation of consent if the consumer is unable to communicate with staff. This should be confirmed on admission to CHS.
* If the team member is in doubt about providing information about the consumer’s location in the hospital, or where there are concerns the consumer may be at risk, the consumer should be consulted prior to any detail being given to the enquirer.
* If the enquirer is requesting information about the consumer, the team member should make reasonable attempts to contact the consumer and check whether to transfer the telephone call to the consumer, or to request that the consumer returns the call.
* Where a consumer requests that no information be released, or that information only be released in certain circumstances this request must be complied with.
* For community or outpatient services where the enquirer provides information that confirms that they know the consumer is at the service a message from the caller can be taken and delivered to the consumer.

Admitting team members are responsible for:

* Notifying the ward clerk if the consumer is required to be anonymous.

Ward Clerks are responsible for:

* Marking the consumer as anonymous in ACTPAS/EDIS when directed by a clinical staff member.
* Notifying the receiving clinical area of the consumer’s requirement to be anonymous if the consumer is transferred to another clinical area.

Treating team are responsible for:

* Only sharing a consumer’s relevant personal health information with other members of the treating team including health service providers external to CHS.
* Only sharing personal health information with other persons or organisations as consented to by the consumer, unless the disclosure is necessary to prevent or lessen a serious imminent risk to the life or physical, mental or emotional health of the person or someone else. If the sharing of information occurs via telephone, then the treating team must confirm the identity of the caller before disclosing any information.
* Regularly re-visiting with consumers their consent for the treating team to share information with carers, to ensure carers can be included in the formation of treatment plans.
* Only communicating personal health information with other persons or organisations through approved technologies including mobile communications, see *Mobile Communication Devices Management and Use Procedure* for more information.

All CHS team members are responsible for:

* Adhering to the 12 Privacy Principles of the *HRPA Act.*
* Completing Privacy and Confidentiality eLearning via Capabiliti.
* Only accessing information that they need to perform their duties. Access to patient personal health information when not required in the course of their normal duties is unauthorised access and a privacy breach. This includes accessing your own, family or friend’s personal health information.
* Protecting the privacy and confidentiality of all personal health information.

This includes not:

* having conversations that may identify a consumer in public areas like stairwells, corridors and cafes
* discussing consumers who are also CHS staff members with CHS staff not involved in their care/treatment
* disclosing the identity of a consumer who is being treated as anonymous.
* Not disclosing personal health information without legal authority.
* Ensuring that a consumer’s wishes, as expressed in an Advance Agreement about who information can be shared with and what information can be shared, are followed.
* Not disclosing their computer passwords, or sharing their computer access, as required by *Clinical Records Management Procedure*.
* Accepting responsibility for all activities undertaken using their login.
* Not removing confidential information from the workplace unless authorised.
* Disposing of any documents with consumer details, that are not required to be filed in the consumer’s clinical record, into a secure waste bin, for example handover sheets, as required by *Clinical Records Management Procedure.*
* Only communicating personal health information with other persons or organisations through approved technologies including mobile communications.
* Reporting any complaints or witnessed privacy breaches to their manager or supervisor.

Managers and Supervisors are responsible for:

* Ensuring all team members are aware of their obligation to ensure the privacy and confidentiality of consumers’ personal health information.
* Ensuring team members have completed Privacy and Confidentiality eLearning via Capabiliti.
* Ensuring team members are orientated to this policy and their associated responsibilities.
* Reporting any complaints or witnessed privacy breaches to Divisional Executive. For more information about managing a potential privacy breach contact workforce relations at [CHS.WR@act.gov.au](mailto:CHS.WR@act.gov.au) or call on 5124 9610.

Executive Directors, Executive Group Managers, Executive Branch Managers are responsible for:

* Ensuring staff in their division/group are aware of their responsibilities in protecting the privacy and confidentiality of consumers’ personal health information.
* Ensuring complaints received about a privacy breach in their Division/Group are investigated and action is taken to address the issues identified by the investigation. For more information contact workforce relations at [CHS.WR@act.gov.au](mailto:CHS.WR@act.gov.au) or call on 5124 9610.

The Chief Executive Officer is responsible for:

* Ensuring the organisation complies with this policy
* Ensuring the organisation meets the legislative requirements of HRPA Act.

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| Evaluation |

**Outcome**

Consumer personal health information is kept private and confidential.

**Measures**

These will be completed by the Policy team and reported to the Senior Executive Responsible for Business Integrity and Risk (SERBIR):

* Annual review of clinical incidents related to breach of consumer confidentiality and privacy
* Annual review of consumer feedback for feedback related to consumer confidentiality and privacy.

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| Related Policies, Procedures, Guidelines and Legislation |

**Policies**

* ACT Public Service (ACTPS) Integrity
* Nursing and Midwifery Continuing Competence
* Informed Consent (Clinical)
* Clinical Records Management
* ACT Public Service (ACTPS) Media Communications and Engagement
* Personal Information Privacy
* ACTPS – Use of Social Media
* Use of Recording Devices
* Access and use of the national My Health Records system
* Fraud and Corruption

**Procedures**

* Clinical Handover
* Clinical Records Management
* Confidentiality, Privacy and Access to Mental Health, Justice Health and Alcohol and Drug Services Clinical Records
* Records Disposal Schedule for Canberra Health Services Clinical Records
* Admission to Discharge
* Mobile Communication Devices Management and Use
* Discharge Summary Completion
* National My Health Record System
* Patient Mobile and Recording Devices Management and Use
* Advance Agreements, Advance Consent Directions and Nominated Persons under the Mental Health Act 2015
* Sharing Information with Carers – MHJHADS Adult Inpatient Units
* Fraud and Corruption Plan
* Managing a Conflict of Interest
* Advance Care Planning (Adults)

**Legislation**

* *Health Records (Privacy and Access) Act* 1997
* *Human Rights Act* 2004
* *Work Health and Safety Act* 2011
* *Mental Health Act* 2015

**Other**

* Australian Charter of Healthcare Rights second edition (2019)

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| Definition of Terms |

**Advanced Agreement**

An Advance Agreement is a written document stating a person’s preferences and consents for future mental health treatment, care, or support. It is used if a person’s ability to participate in decision about their treatment and support is significantly impaired. It includes:

* the person’s expressed preferences for treatment,
* the person’s preferences for practical arrangements for looking after their property/pets when they need treatment, care, or support
* contact details for important people such as carers, guardians, legal representatives, or a nominated person.

A person may make an Advance Agreement when they have decision-making capacity.

**Advance Care Plan**

Documents an individual’s preferences, values, and wishes for future care and medical treatment options. It is not a legal document but is recognised in common law. The Statement of Choices document is designed to initiate discussion and allow formal documentation of these preferences. This information will guide the individual’s decision makers (attorney/s) and doctors in making decisions that are in accord with their expressed wishes and choices.

**Advanced Consent Direction**

An Advance Consent Direction can be made by a person, while they have decision-making capacity to do so, to record their consents or non-consents to receiving treatment, care or support, or specific medications and procedures if they do not have decision-making capacity. An Advance Consent Direction sets out:

* the treatment, care or support the person is willing to receive if the mental illness or mental disorder results in the person not having decision-making capacity in relation to their treatment, care or support
* particular medications or procedures the person consents and does not consent to receive, and
* the people who may, or must not, be given information about the person's treatment, care or support.

**Consumer**

Refers to any person who is accessing a service provided by CHS.

**Decision Making Capacity**

A person has capacity to make a decision about themselves and their own treatment if they can, with provision of supports and assistance if needed, demonstrate all of the following elements:

* understand when a decision about treatment, care or support needs to be made
* understand the facts related to that decision
* understand the main choices available in relation to the decision
* weigh up the consequences of the main choices
* understand how the consequences of the main choices affect them
* on the basis of the above elements, make the decision, and
* communicate the decision they make in whatever way they can.

Note that:

* capacity refers to a particular decision at a particular time and should not be generalised (i.e. a person’s capacity can change over time)
* capacity is proportionate to the nature and consequences, or importance, of the particular decision
* capacity is assessed having regard to any and all reasonable assistance or support that may be required.

**Decision making capacity in mental health setting**

A person has capacity to make a decision about themselves and their own treatment, care or support for a mental disorder or mental illness if they can, with provision of supports and assistance if needed:

(a) understand when a decision about treatment, care or support for the person needs to be made, and

(b) understand the facts that relate to the decision, and

(c) understand the main choices available to the person in relation to the decision, and

(d) weigh up the consequences of the main choices, and

(e) understand how the consequences affect the person, and

(f) on the basis of paragraphs (a) to (e), make the decision, and

(g) communicate the decision in whatever way the person can (s. 7 *Mental Health Act 2016*).

**Identifying information**

Personal health information that identifies the person. At CHS this information is the person’s full name, date of birth and medical record number.

**Nominated person**

A second person appointed by a first person (patient/consumer) with a mental disorder or mental illness, when they have decision‑making capacity. The second person will help the first person make decisions when they are not able to make decisions for themselves, to ensure their interests are respected if they require treatment, care or support for a mental illness or mental disorder. Examples of people who can be a nominated person are a close relative, close friend, a carer, or the person’s neighbour.

**Personal health information**

Personal information that is identifying information, or which could reasonably link to identifying information, collected from or about individual people in order to provide them with health services.

**Privacy**

For the purpose of this policy ‘privacy’ refers to the right of an individual to have their personal health information safeguarded from loss, misuse and unauthorised disclosure in order to keep private an individual’s personal health information.

**Privacy breach**

Unauthorised access to, use or disclosure of a patient’s personal health information constitutes a privacy breach. Depending on the gravity of the privacy breach there may be an investigation and disciplinary action in accordance with the relevant Enterprise Agreement.

Privacy breaches include (but are not limited to):

* accessing your own, family or friend’s personal health information
* disclosing personal health information about a patient to the public – this includes discussing identifying information about a patient in a public space such as hallway, café or stairwell
* discussing consumers who are also CHS staff members or have a public profile/of public interest with CHS staff not involved in their care/treatment
* disclosing the identity of a consumer who is being treated as anonymous

**Staff**

Refers to any person providing services to, or on behalf of CHS, including employees, contractors, volunteers, and students (unless otherwise specified in the procedure).

**Substitute Decision Maker**

If a consumer does not have decision making capacity, they may have appointed one of the following substitute decision makers:

* Guardian
* Health Attorney
* Attorney under Enduring Power of Attorney
* Nominated person

**Treating team**

In relation to a consumer, means health service providers involved in diagnosis, care or treatment for the purpose of improving or maintaining the consumer’s health for a particular episode of care, and includes-

(a) If the person named another health service provider as his or her current treating practitioner-that other health service provider; and

(b) If another health service provider referred the person to the treating team for that episode of care-that other health service provider.

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| Search Terms |

Privacy, PHI, Personal, health, information, consumer, person, individual, confidentiality, responsibility, legislation, law, legal, PDJB, anonymous, records, access, Act

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| Attachments |

Attachment 1: Privacy principles of *Health Records (Privacy and Access) Act* 1997

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**Disclaimer**: *This document has been developed by Canberra Health Services specifically for its own use. Use of this document and any reliance on the information contained therein by any third party is at his or her own risk and Canberra Health Services assumes no responsibility whatsoever.*

*Policy Team ONLY to complete the following:*

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| --- | --- | --- | --- |
| *Date Amended* | *Section Amended* | *Divisional Approval* | *Final Approval* |
| *20 October 2021* | *Complete Review* | *Josephine Smith, EBM – Strategy and Governance* | *CHS Policy Committee* |
|  |  |  |  |

*This document supersedes the following:*

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| --- | --- |
| *Document Number* | *Document Name* |
| *CHS20/274* | *Consumer Privacy* |
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## Attachment 1: Privacy principles of *Health Records (Privacy and Access) Act* 1997.

*Health Records (Privacy and Access) Act* 1997 is referred to as HRPA Act below.

Privacy principles

**PP1:** Manner and purpose of collection of personal health information. The information must be collected by lawful means and for a lawful purpose. The purpose must be directly related to, and reasonably necessary for CHS’s functions or activities.

**PP2:** Purpose of collection of personal health information to be made known to the person it is being collected from.

**PP3:** Solicitation of personal health information. The collector of the personal health information must ensure the information is relevant, up to date and accurate and the collection of the information is not unreasonably intrusive.

**PP4:** Storage, security and destruction of personal health information. Organisations that possess or control a health record containing personal health information must ensure the health record is securely housed and protected against loss or misuse, information must be kept only as long as necessary for the purpose (as stated in the HRPA Act) and must be disposed of securely.

**PP5:** Information relating to records kept by record keeper. Organisations that hold personal health information must allow individuals to find out if they hold information about that individual, and if so, what kind of information they hold, what it is used for, and whether and how the individual can access it.

**PP6:** Access to health records by people other than the consumer. The HRPA Act states who can access an individual’s personal health information.

**PP7:** Alteration of health records. Individuals may request that their personal health information be amended to ensure that it is accurate, relevant, up to date, complete and not misleading. No entries in a health record can be deleted, additional information or documentation can be added to clarify or correct health records. Organisations must either make the requested amendments or, attach to the information a statement by the individual of the amendment they sought.

**PP8:** Record keeper to check accuracy etc of personal health information before use. Before using personal health information, organisations must take reasonable steps to ensure that the personal health information they hold is relevant, up to date, complete and not misleading.

**PP9:** Limits on personal health information. Personal health information can be used for the purpose for which it was collected, or for purposes recognised by the HRPA Act. These include a directly related purpose, for management, funding, quality of the health service received by the consumer or where there are serious threats to the individual or the public.

**PP10:** Limits on disclosure of personal health information. The provisions for the disclosure of personal health information include between members of the treating team, the consumer has consented to the disclosure, or the disclosure is within the purpose for which the information was collected.

**PP11:** Relocation and closure of health service practice. The health service must take practicable steps to inform the consumers of the health service of the relocation or closure and give the consumer opportunity to transfer their personal health information.

**PP12:** Consumer or health service provider moves to another health service practice. The consumer must consent to the sharing of their personal health information.