

	Name of Manual: HEALTH INFORMATION MANAGEMENT AND PRIVACY	Number: 4-c-20
	Section: PRIVACY AND CONFIDENTIALITY: CONSENT	
	Name: CIRCLE OF CARE	Page: 1 of 6

PURPOSE

To provide individuals participating in the provision of health care with a common and consistent definition of “circle of care” and the circumstances when they **may** rely on implied consent for the collection, use and disclosure of personal health information

POLICY

Consent of the client or authorized representative is required for the collection, use and disclosure of personal health information by individuals participating in and activities related to the provision of health care to the client who is the subject of the personal health information.

Consent for the collection, use and disclosure of personal health information is separate and different from consent requirements related to the provision of health care treatment or services.

Implied consent can only be presumed to exist where a client or authorized representative has implicitly provided knowledgeable consent. Implied consent is valid where it is reasonable to believe that the client or authorized representative is aware of the purpose of the collection, use or disclosure and knows that they can either give or withhold consent.

It will be reasonable to believe that an individual knows the purpose of the collection, use or disclosure as a result of Central Health’s public written statement generally describing these purposes.

The *Personal Health Information Act* permits a client or authorized representative to expressly withhold or withdraw consent to the collection, use or disclosure of personal health information, **unless** the collection, use or disclosure is permitted or required by legislation to be made without their consent. Except where the client or authorized representative has withdrawn their consent, implied consent may be relied upon for the collection, use or disclosure of personal health information for the purpose of providing health care or assisting in the provision of health care as part of the circle of care. Refer to policy 4-c-30 (Limited Consent for Collection, Use and Disclosure of Personal Health Information).

Individuals providing health care within the “circle of care” **may only** assume implied consent for the collection, use, or disclosure of personal health information where **all** the following six conditions are satisfied:

1. The individual within the circle of care must fall within one of the three categories authorized to rely upon implied consent:
 - a. regulated health care professional,
 - b. health care provider,
 - c. person who operates a health care facility; a licensed pharmacy,
 - d. ambulance service; or a center, program or service for community health or mental health, the primary purpose of which is the provision of health care by a health care professional or provider;
2. The personal health information must have been received from the client or authorized representative or another health information custodian;
3. The personal health information must have been received for the original purpose of providing or assisting in the provision of health care to the client;
4. The purpose of the collection, use and disclosure of personal health information must be for the **current** provision of health care or assisting in the provision of health care to the client;
5. Disclosure of personal health information must be for the sole purpose of providing health care to the client;
6. The implied consent of the client must be valid and the client must **not** have expressly withheld or withdrawn their consent to the collection, use or disclosure.

In order to assume implied consent within the circle of care, the provision of health care must be current. A **previous** or **perspective** care provider or other individual **not currently** providing health care to the client is considered **outside** the circle of care and as such must obtain client’s express consent.

Where other information will serve the purpose, personal health information must **not** be collected, used or disclosed. Where personal health information must be collected, used or disclosed, it must be limited to the information that is reasonably necessary for the intended and authorized purpose.

DEFINITIONS

Authorized Representative	A right or power of an individual under PHIA or the regulations may be exercised: <ul style="list-style-type: none">• by a person with written authorization from the individual to act on the individual’s behalf;• where the individual lacks the competency to exercise the right or power or is unable to communicate, and where the collection, use or disclosure of his or her personal health information is necessary for or ancillary
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	<p>to a "health care decision", as defined in the <i>Advance Health Care Directives Act</i> , by a substitute decision maker appointed by the individual in accordance with that Act or, where a substitute decision maker has not been appointed, a substitute decision maker determined in accordance with section 10 of that Act;</p> <ul style="list-style-type: none"> • by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian; • by the parent or guardian of a minor where, in the opinion of the custodian, the minor does not understand the nature of the right or power and the consequences of exercising the right or power; • where the individual is deceased, by the individual's personal representative or, where there is no personal representative, by the deceased's nearest relative, and for this purpose, the identity of the nearest relative may be determined by reference to section 10 of the <i>Advance Health Care Directives Act</i>; • where the individual is a neglected adult within the meaning of the <i>Neglected Adults Welfare Act</i> , by the Director of Neglected Adults appointed under that Act; or • where an individual has been certified as an involuntary patient under the <i>Mental Health Care and Treatment Act</i>, by a representative as defined in that Act, except as otherwise provided in this Act.
<p>Circle of Care</p>	<p>The persons participating in and activities related to the provision of health care to the individual who is the subject of the personal health information and includes those custodians and individuals whom an objective and reasonable person would consider as needing to know the personal health information at the time of its collection.</p> <p>Persons within an individual's circle of care will include health care professionals such as physicians and nurses, but will also include necessarily incidental functions such as laboratory and diagnostic services as well as a range of professional consultation services.</p> <p>Persons authorized to receive information within the circle of care will also include any person or entity that is providing health care to the individual who is the subject of the information. This could include a family member or a home care worker.</p>

Collect	To gather, acquire, receive, or obtain the information by any means from any source and “collection” has a corresponding meaning.
Consent	<p>Where this Act requires the consent of an individual for the collection, use or disclosure of personal health information by a custodian, the consent:</p> <ul style="list-style-type: none"> a. shall be a consent of the individual; b. shall be knowledgeable; and c. shall not be obtained through deception or coercion. <p>A consent to the collection, use or disclosure of personal health information about an individual shall be considered to be knowledgeable if it is reasonable in the circumstances to believe that the individual knows:</p> <ul style="list-style-type: none"> a. the purpose of the collection, use or disclosure as provided for in subsection 20(2); b. that he or she may give or withhold consent; and c. that the information may be only collected, used or disclosed without his or her consent in accordance with legislation.
Disclose	To make the information available or to release it but does not include a use of the information and “disclosure” has a corresponding meaning.
Health Care Professional	<p>A person, including a corporation, that is licensed or registered to provide health care by a body authorized to regulate a health care professional under one of the following enumerated Acts but does not include an employee of a health care professional when acting in the course of his or her employment:</p> <p><i>Chiropractors Act,</i> <i>Dental Act,</i> <i>Denturists Act, 2005,</i> <i>Dieticians Act,</i> <i>Dispensing Opticians Act, 2005,</i> <i>Hearing Aid Practitioners Act,</i> <i>Licensed Practical Nurses Act, 2005,</i> <i>Massage Therapy Act, 2005,</i> <i>Medical Act, 2005,</i> <i>Occupational Therapists Act, 2005,</i> <i>Optometry Act, 2004,</i> <i>Pharmacy Act,</i> <i>Physiotherapy Act, 2006,</i> <i>Psychologists Act, 2005,</i> <i>Registered Nurses Act, and</i> <i>Social Workers Association Act.</i></p>

Health Care Provider	A person, other than a health care professional, who is paid by MCP, another insurer or person, whether directly or indirectly or in whole or in part, to provide health care services to an individual.
Implied Consent	Consent that may be reasonably inferred from signs, or facts, or inaction or silence of the individual and applies to situations where the intended use or disclosure is obvious from the context and the organization can assume that the individual is aware of any consent to the intended use or disclosure.
Personal Health Information	Identifying information in oral or recorded form about an individual that relates to: <ul style="list-style-type: none">• information concerning the physical or mental health of the individual, including information respecting the individual's health care status and history and the health history of the individual's family;• the provision of health care to the individual, including information respecting the person providing the health care;• the donation by an individual of a body part or any bodily substance, including information derived from the testing or examination of a body part or bodily substance;• registration information;• payments or eligibility for a health care program or service in respect of the individual, including eligibility for coverage under an insurance or payment arrangement with respect to health care;• an individual's entitlement to benefits under or participation in a health care program or service;• information about the individual that is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service;• a drug as defined in the <i>Pharmacy Act</i>, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care professional; or• the identity of a person's representative as defined in Section 7 of the <i>Personal Health Information Act</i>.
Substitute Decision Maker	The person appointed by the maker of an advance health care directive to make health care decisions on his or her behalf.

Use	To handle or deal with personal health information or to apply the information for a purpose and includes reproducing the information, but does not include disclosing the information.
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REFERENCES

Province of Newfoundland and Labrador: *Personal Health Information Act*, SNL2008, c.P-7.01, s. 24.

Province of Newfoundland and Labrador: *Advance Health Care Directives Act*, SNL1995, c.A-4.1, s. 10.

Newfoundland and Labrador Personal Health Information Act, Provincial Policy Manual Version 1.2, February 2011

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