

## Privacy at CMHA Peel Dufferin



These FAQs are not intended to replace dialogue that should occur either with your Manager, Privacy Ambassador or Privacy Officer.

### Consent

#### What are the types of consent when dealing with personal health information (PHI)?

There are three types of consent:

- 1) **Express** – the client or substitute decision maker (SDM) gives direct consent (oral or written).
- 2) **Implied** – knowledgeable consent is implied from circumstances, such as discussions with client about privacy, privacy policy, privacy brochures, notices, posters, etc.
- 3) **Assumed Implied** – consent is assumed for specific health information custodians (HICs) within the circle of care for purposes of health care, e.g. Crisis Services.

#### When is express consent required?

Express consent is required in two circumstances:

- 1) When sharing PHI with HICs, when not related to health care (e.g. research purposes).
- 2) When sharing PHI with non-health information custodians (e.g. police, school).

#### Can implied consent be used for health care purposes?

A HIC can use implied consent for health care, provided that the consent is a knowledgeable one.

#### What is CMHA Peel Dufferin's Consent Model?

CMHA Peel Dufferin has moved to an implied consent model for purposes of sharing of PHI among HICs for health care. This means that CMHA Peel Dufferin is relying on its discussions with clients, its information provided about PHI, etc. to imply that the client is knowledgeable about the privacy practices of CMHA Peel Dufferin.

However, express consent is still required when sharing PHI with non-HICs or when sharing PHI

with HICs for other than health care purposes. Use the NEW consent form available in PolicyTech or obtain verbal consent which is acceptable.

### **What is a Consent Directive/Lockbox?**

A consent directive refers to a client putting limits on with whom or which PHI may be shared. This is often referred to as a lockbox.

Examples include the client agreeing to share with some workers not others, agreeing to PHI being shared with some agencies, but not others, with some people (brother) but not others (parents).

### **Under the implied consent model, can clients have a consent directive?**

Yes. Implied consent is subject to a client's instructions on how their information may be used and shared.

### **What is a consent override?**

This refers to two situations:

- 1) The client has a consent directive and the directive is not followed by CMHA Peel Dufferin.
- 2) The circumstance is one in which express consent is required and the PHI is provided without express consent.

### **What are examples of a consent override?**

PHIPA allows for disclosure of PHI without consent in a number of particular circumstances. Examples include:

- Legislation requires disclosure (e.g. child in need of protection).
- A court requires disclosure through summons, subpoena or other court order.
- There is risk of significant harm to self or others.

An override requires Manager approval and confirmation from the Privacy Officer.

### **How long is consent valid *and* under what circumstances would consent expire?**

Consent is valid until:

- The client puts on a consent directive.
- The client changes their consent directive.
- The client leaves CMHA Peel Dufferin.

### **Will I need to obtain clients IAR written consent for OCAN's?**

No, however client will need to determine if they want their OCAN to be viewed or not, this is done by selecting the clients directive on the OCAN itself. If you are completing a discharge OCAN as a result of no contact, the directive is a NO to view the assessment.

### **What do I do when a client changes their OCAN directive?**

We can facilitate this request internally. Send a CRMS ticket indicating the client number and directive change. The CRMS administrator will make the change and upload again to IAR. If the client wants to change all of their OCAN directives that are in IAR, you can support the client to call the IAR Consent Call Centre at 1-855-585-5279.

## **Circle of Care**

### **What is Circle of Care?**

Circle of Care refers to the ability of certain HICs to share PHI with other certain HICs on the basis of assumed consent, for the purposes of health care (as long as there is no lockbox).

An excellent resource on Circle of Care is found at <https://www.ipc.on.ca/wp-content/uploads/Resources/circle-of-care.pdf>

### **Who is Included in the Circle of Care?**

CMHA Peel Dufferin and other mental health agencies are included in the circle of care. In addition, Circle of Care includes hospitals, psychiatric facilities, health care practitioners, long-term care homes, community care access centres, specimen collection centres, laboratories, independent health facilities, pharmacies, ambulance services and the Ontario Agency for Health Protection and Promotion. If you are unsure if an organization falls within the circle of care please speak to your Manager and or Privacy Officer.

### **Who is Excluded from the Circle of Care?**

Certain persons are not included in the circle of care, including non-health information custodians (e.g., police, schools, children's aid societies) and certain HICs including: evaluators under the *Health Care Consent Act, 1996*, assessors under the *Substitute Decisions Act, 1992*, the Minister and Ministry of Health and Long-Term Care, the Minister and Ministry of Health Promotion and Canadian Blood Services.

### **What do I do if a member of the Circle of Care requests written consent before sharing PHI?**

It is important to recognize that all organizations have different privacy practices. When requested, a CMHA Peel Dufferin consent form can be completed, signed and sent.

### **Can CMHA Peel Dufferin staff disclose PHI to a hospital requesting information on a client admitted under the *Mental Health Act*?**

Yes, under an implied consent model CMHA Peel Dufferin staff is allowed to share PHI. In addition, the Circle of Care permits this.

### **Does Circle of Care apply to out-of-province agencies?**

Yes, but it is prudent to note that each province is governed by different legislation and agencies have different privacy policies and practices.

### **Do we assume implied consent when a member of the care team who is not a HIC (e.g. police) requests PHI?**

No, implied consent cannot be assumed when dealing with non-HICs. Express consent is required unless an exemption from consent is found within PHIPA (e.g. significant risk of harm to self/others, court order).

### **Is verbal consent valid if left on voicemail, even several days ago?**

No, verbal consent is valid if you speak directly with the client or the SDM if it applies.

### **Can CMHA Peel Dufferin staff share PHI with a caller who states they have consent from the client to obtain their PHI?**

No, consent would need to be confirmed with client unless the caller is from within the Circle of Care.

## **IT & Administrative Controls (Safeguards)**

### **Is password protection that same as encryption?**

No, encryption is different from password protection. Encryption is the most effective way to achieve data security. To read an encrypted file, you must have access to a secret key or password that enables you to decrypt it. Password protection means that a person needs a password to open a document or computer program. Password protection offers another layer of protection but is not as secure.

If an encrypted file is lost or stolen, the Information and Privacy Commissioner/Ontario (IPC) will likely not consider this to be PHI, and therefore this is not a breach.

### **Can PHI be shared internally via email?**

Yes, best practice is to password protect the document when emailing. Send the password in a separate email, text or voice message.

### **Can PHI be shared externally via email?**

No. If PHI is required to be shared, best practice is to send to a dedicated fax, mail in an undisclosed envelop or for larger amounts of PHI information or if a client signature is required for receipt, a bonded courier is preferred.

### **How will I know when a lockbox/consent directive has been applied to a client's record?**

When searching a client in CRMS, you will be able see the client's name but not access their record any further and a "Yes" will be visible under the lockbox column.

### **Under what circumstances can a lockbox be unlocked?**

A lockbox can be unlocked when the client provides consent or in circumstances where consent override is permissible.

### **What happens if it a lockbox needs to be unlocked after-hours?**

Currently, locked file access would need to be requested through the CRMS administrator during business hours.

### **Can I take work home that has client identifiers on it?**

Yes. However, the preference when working remotely is to complete client work electronically in CRMS. It is expected that best practices are followed to ensure that the information is safeguarded.

Best practices are:

- Working in a private location, with closed doors
- Ensuring no one has access to your notes/computer if used for the PHI.
- For additional best practices can be referred to the Top 10

### **Should a client return to CMHA Peel Dufferin and seek services again, is staff allowed to view closed records?**

Yes, but discussion with client needs to happen to ensure client is aware of privacy and consent practices. If file is locked please discuss with your Manager and if required initiate a CRMS ticket.

## **Privacy Breach**

### **What constitutes a privacy breach?**

A privacy breach is the loss of, unauthorized access to, or unauthorized disclosure of, PHI. Some of the most common privacy breaches happen when PHI is stolen, lost or mistakenly shared.

### **What do I do if I suspect a breach has occurred?**

Report the incident to the Privacy Officer.

**Is it a breach if someone from other than my program at CMHA receives or views PHI via fax?**

No, all staff are agents of CMHA Peel Dufferin and we are governed by our privacy and confidentiality policies and practices. However, staff should only be looking at information that pertains to their clients.

**If there is concern about significant risk to clients/others, is it a breach if I share PHI outside the Circle of Care?**

PHIPA permits the sharing of PHI in this situation and therefore this is not a breach. It is best practice to advise the client that information has been shared, if appropriate.

The limiting principles of PHIPA always apply --- don't share PHI if non-identifying information is sufficient, and share as little PHI as is required for the purpose shared.

**Can I disclose PHI to a referral source where express consent does not exist?**

If a referral agent is within the Circle of Care we can share PHI.

If the referral agent is not within the Circle of Care, express consent would be required.

## General

**If I have a concern or a question about privacy, who should I contact?**

Privacy Officer at [privacy@cmhapeel.ca](mailto:privacy@cmhapeel.ca) or by dialing extension 495.