



ACT
Government
Health

Health Records (Privacy & Access) Act 1997



**Information for consumers of
health services in the ACT**

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Health Records (Privacy & Access) Act 1997

Information for consumers of health services in the ACT

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 keep health records secure. A record keeper must not destroy a health record unless:
 - required or allowed by law; or
 - an electronic copy remains available after destruction of the record.

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 for seven years after the day the record is made.
- 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.
- 6** 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 be, aware of.

- 7** 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.
- 8** 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.

9 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.

A “treating team” includes the current and referring health service providers for a particular episode of care. For example if a consumer when admitted to hospital nominates a particular GP, the GP is to be considered as a member of the treating team. If it is not obvious from the circumstances, the consumer must be informed about who is included in the treating team.

10 Generally, information in a health record can only be disclosed to a person other than the consumer with the written consent of the consumer. However, there are exceptions such as where:

- 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 disclosure is to 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, where that disclosure 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** The treating team includes health service providers involved in the diagnosis, care or treatment of the consumer for the purpose of improving or maintaining the consumer's health for a particular episode of care.

When a health service provider's practice is sold or closed, the health service provider (or legal representative) must publish a notice in a local newspaper 30 days prior, giving details of the sale or closure and where the health records are being held. The provider must take practicable steps to give consumers an opportunity to nominate a place they want their records sent, advise of applicable transfer fees and make arrangements for the safe storage of the remaining records. A record may be destroyed in accordance with Principle 4.1.

- 12** If a transfer request is made by a consumer, the record keeper must transfer the health records requested on payment of any relevant fee, or otherwise within 30 days after the day the transfer request is received.

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 the health service provider requested by the consumer on payment of any relevant fee (see fees for access), otherwise within 30 days after the day the transfer request is received.

Further information on accessing health records and health practice closure and relocation is available at:
www.health.act.gov.au/healthrecords

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 or 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 to your health record.

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 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 7 days of payment, or within 30 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.

Urgent Requests

Urgent requests should be actioned as soon as possible.

There may be occasions when a medical opinion may be required to verify the urgency of the request but this would not usually be required.

Urgent requests must be completed by the record keeper within 7 days after the day the transfer request is received.

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 2008* 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.





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**ACT HUMAN RIGHTS
COMMISSION**

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

Legislation can be viewed on the internet at:
www.legislation.act.gov.au.

More information about accessing your health records can be found on the ACT Government Health Directorate website at:
www.health.act.gov.au/healthrecords