

Circumstances in which health information may be disclosed to carers and family even when consent of the person is not available

PURPOSE	To provide guidance to health service providers on the circumstances in which disclosure of personal health information to a person’s carer and/or family can occur even though consent of the person is not available.
SCOPE	<p>This advisory note applies to any employee of a health service provider who is releasing personal health information about a person to a carer or family member.</p> <ul style="list-style-type: none">• For disclosure of information to a substitute decision maker or in accordance with an advance consent direction see AN23 - 016• For the disclosure of information between members of a treating team see AN23 - 015
DEFINITIONS	<p>Carer means a person who provides personal care, support or assistance to a consumer.</p> <p>A person is not a carer only because they are a domestic partner, parent, child or other relative, or guardian of the consumer, or lives with the consumer. Also, a person is not carer if they provide care to the consumer under a commercial or substantially commercial arrangement; as a volunteer for a charitable, welfare or community organisation; or as part of a course of education or training.</p> <p>Personal health information means any personal information that relates to the health, an illness or a disability of the consumer.</p> <p>Personal information means any information about a consumer where the identity of the consumer is apparent, whether the information is fact or opinion, or true or false.</p> <p>Record keeper means an entity that has possession or control of a health record.</p>

ADVICE	<p>Every person has a right to privacy (<i>Human Rights Act 2004</i>, section 12). However, there are exceptions to this right in limited circumstances.</p> <p>The <i>Health Records (Privacy & Access) Act 1997</i> (HRA) governs the privacy of personal health information.</p> <p>In accordance with Privacy Principle 10(2)(d) of the HRA, the disclosure of a consumer’s personal health information to a carer or family member is permitted if a member of the consumer’s treating team, who is a record keeper or agent of a record keeper, believes on reasonable grounds that <u>the disclosure is necessary to prevent or lessen a serious and imminent risk to the life or physical, mental or emotional health of the consumer or someone else.</u></p> <ul style="list-style-type: none"> • The type of personal health information disclosed to carers or family is a decision for the treating team. However, the disclosure must take into account any confidentiality concerns, including whether the information was given in confidence by the consumer or another person. • Only information that is necessary to prevent or lessen a <i>serious and imminent</i> risk can be provided. • Carers and family in receipt of personal health information must be advised that the information is provided in confidence. The consumer’s consent to the sharing of their personal health information should be sought first before any personal health information is provided. • Staff must check the person’s health record to determine whether an Advance Consent Direction has been made that expresses the person’s wishes about the sharing of their information about treatment care or support required for their mental disorder or mental illness.
RELATED LEGISLATION	<p><i>Health Records (Privacy & Access) Act 1997</i></p> <p><u>Mental Health Act 2015</u></p>
RELATED DOCUMENTS	<p>AN23 – 016 Disclosure of personal health information to a substitute decision maker</p> <p>AN23 – 015 Disclosure of personal health information between members of a treating team</p>