

## Disclosure of personal health information to a substitute decision maker or in accordance with an advance consent direction

PURPOSE	To provide guidance to health service providers on the disclosure of personal health information to a person’s substitute decision maker (SDM) or in accordance with an advance consent direction.
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 SDM or in accordance with a nominated person or advance consent direction.</p> <ul style="list-style-type: none"><li>• For disclosure of personal health information to a person’s carer or family see AN23 - 014.</li><li>• For the disclosure of information between members of a treating team see AN23 - 015.</li></ul>
DEFINITIONS	<p><b>Advance Consent Direction</b> is a document that contains major decisions about treatment that a person consents to receiving or not receiving, and who may be provided information about that treatment, if the person’s mental illness or mental disorder means they don’t have decision-making capacity.</p> <p><b>Enduring Power of Attorney</b> is a document which gives a person (the attorney) the legal authority to act for, and to make legally binding decisions on behalf of, another person in the event that person loses decision making capacity.</p> <p><b>Guardian</b> is person who is given the power to make decisions on behalf of another person who is unable to make decisions for themselves. All guardians are appointed by the ACT Civil and Administrative Tribunal (ACAT) under the <i>Guardianship and Management of Property Act 1991</i> .</p> <p><b>Health Attorney</b> is someone who is closely connected to a person, who can consent to medical treatment on the person’s behalf at the request of a doctor (<i>Guardianship and Management of Property Act 1991</i>). This is for immediate or short-term treatment. A health attorney may be a domestic partner, carer for the person, or close</p>

	<p>relative or friend.</p> <p><b>Personal health information</b> means any personal information that relates to the health, an illness or a disability of the consumer.</p> <p><b>Personal information</b> 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><b>Substitute decision maker (SDM)</b> can be a guardian, an attorney under an Enduring Power of Attorney, or a health attorney.</p>
ADVICE	<p><u>Disclosure of information to the SDM</u></p> <p>The <i>Health Records (Privacy &amp; Access) Act 1997</i> (HRA) provides that where a person does not have decision making capacity (legally incompetent person) a right or power conferred on the person by the HRA (ie. to access to personal health information about themselves) is exercisable on behalf of the person by a substitute decision maker (SDM).</p> <p>The flow chart below outlines the most appropriate mechanism for the disclosure of personal health information to the SDM.</p> <p>Before disclosing personal health information to a SDM, consideration must be given to the following:</p> <ul style="list-style-type: none"> <li>• Ensure that the authorising document (i.e. guardianship order or Enduring Power of Attorney) authorises the SDM to make a decision about the matter for which they require information. For example, an Enduring Power of Attorney may only provide authority for the attorney to make financial decisions on behalf of the person and not health decisions, and therefore disclosure of financial but not health information can occur.</li> <li>• The disclosure of personal health information must take into account any confidentiality concerns, including whether the information was given in confidence by the subject person or another person, and whether it is clinically appropriate for disclosure.</li> <li>• Only health information about a person that is necessary and relevant to the decision that a SDM is making on behalf of the person is disclosed.</li> <li>• SDMs in receipt of personal health information must be advised that the information is provided in confidence.</li> </ul> <p><u>Advance Consent Direction</u></p> <p>Under section 27(1)(d) of the <i>Mental Health Act 2015</i> a person making an <u>advance consent direction</u> can nominate the people who <b>may</b> or <b>may not</b> be provided with information about the treatment, care or support the person requires for a mental disorder or mental illness.</p>

RELATED LEGISLATION	<a href="#">Health Records (Privacy &amp; Access) Act 1997</a> <a href="#">Mental Health Act 2015</a>
RELATED DOCUMENTS	<ul style="list-style-type: none"> <li>AN23-014 - Circumstances in which health information may be disclosed to carers and family even when consent of the person is not available</li> <li>AN23 - 015 - disclosure of information between members of a treatment team.</li> </ul>

