 <p><b>BAY OF PLENTY</b> DISTRICT HEALTH BOARD HAUORA A TOI</p> <p><b>HEALTH INFORMATION PRIVACY PROTOCOL</b></p>	<p><b>HEALTH INFORMATION PRIVACY AND INFORMATION SHARING - MENTAL HEALTH &amp; ADDICTION SERVICES</b></p>	<p><b>Policy 2.5.1 Protocol 2</b></p>
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## PURPOSE

It is the Bay of Plenty District Health Board (BOPDHB) Mental Health & Addiction Service's (MH&AS) policy intent that the optimal recovery of a service user's mental health and well-being is best facilitated by working in conjunction with their family / whanāu, support network, General Practitioner (GP) and other community services both statutory and non-governmental.

This will be carried out in a manner that complies with current legislation, Ministry of Health directives and organisational policy.

## OBJECTIVE

- To ensure that the recovery approach will be the guiding principle behind considerations of a service user's privacy and information about the services provided to them, information that is gathered from them, as well as information about them that is shared and released by MH&AS.
- To ensure that MH&AS staff have clear guidance and support in fulfilling ~~privacy and~~ information giving / ~~gathering~~ / sharing / release obligations and responsibilities at defined stages in the service user's clinical pathway.
- To provide assurances to service users and their family / whanāu that their health and health information is being managed safely.
- To meet the New Zealand Health & Disability Services Standards.
- To enable the service to respond promptly to requests for information

## STANDARDS TO BE MET

### 1. Informing Service Users

2.1 MH&AS will provide accessible information to service users, their families and whanāu, and other agencies of its policy and procedures relating to privacy and the collection and sharing / release of health information.

For Example: *Privacy: An Easy Guide*. BOPDHB Booklet

2.2 During first contact with MH&AS, all staff will abide by Rule 3 of the Health Information Privacy Code (HIPC) and ensure that service users are made aware:

- a) That information is being collected from them.
- b) The purpose of collection.
- c) Who the likely recipients of the information will be.
- d) MH&AS details.
- e) Whether the obligation to supply information is mandatory or voluntary.
- f) The consequences of not supplying information.
- g) Rights to access and correction of their health information.


2.3 Wherever possible information will be given to service users and their family / whanāu in a way that they can understand and addresses cultural and spiritual needs.

### 2. Sharing Information

3.1 Service users will be encouraged to nominate a contact person(s) who staff will be able to share appropriate information with regarding the service user's assessment and ongoing management. This person(s) may be but are not limited to a:

- a) family / whanāu member;

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- b) spouse / partner or intimate;
  - c) flatmate or friend;
  - d) principal caregiver (a carer may also be a non-family member);
  - e) minister or priest.
- 2.2 MH&AS staff will, in the first instance, attempt to obtain consent for the sharing / disclosure of service user's health information regardless of whether consent is required for disclosure or not.
- 2.3 All MH&AS staff will provide information to the service user and their family / whanāu regarding the confidentiality and privacy of their health information and under what circumstances or conditions it can be disclosed either to themselves, their representative(s) or to third parties. Rule 11 of the Health Information Privacy Code states that consent is generally required from services users concerning disclosure of their health information, except in limited circumstances specified in the rule. See sections 3.1 and 3.2.

2.4 Disclosure of Information Required by Law

- a) MH&AS staff will inform service users (and their family / whanāu where appropriate) that information ***is required to be disclosed*** to other agencies / persons if the law requires it. For example, under the relevant legislation as follows:

**A Medical Practitioner or Responsible Clinician**

Under the Mental Health (CAT) Act 1992, s7(A) and Amendments

- must consult the family or whanau of a proposed patient or patient when providing assessment of, or treatment to, a patient.
- *Except: "where the practitioner has "reasonable grounds" for deciding that consultation is not reasonably practicable: or is not in the proposed patient or patients best interests*
- *However in deciding on those "best interests" the practitioner MUST consult the patient or proposed patient"*

Under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017,

**s30, 2.(b)**

- Must take into account the wishes and preferences of the patient and the views of the following persons:
  - the patient's principal caregiver:
  - the patient's welfare guardian (if the court has appointed one):
  - the patient's nominated person (if the patient has nominated one).

**S51 (1)**


The responsible clinician must take all reasonably practicable steps to notify the following persons :

- (a) the patient's principal caregiver:
- (b) the patient's welfare guardian (if the court has appointed one):
- (c) the patient's nominated person (if the patient has nominated one):
- (d) any person who is a guardian of a child of the patient:
- (e) any agency involved in providing relevant services to the patient.

(2) In the event of —

- (a) the patient is absent from the treatment centre without leave or fails to return after a period of leave ends:
- (b) the patient is transferred to another treatment centre:
- (c) the patient is released from compulsory status:

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(d) an application is made under section 46(1) to extend the duration of the patient's compulsory treatment order.

#### **A Registered Medical Practitioner**

Under the Land Transport Act 1998, ss18 & 19

- must notify the Director Of Land Transport Safety Authority if they consider that a patient is likely to drive and whose mental or physical condition is such that in the interests of public safety, the patient should not be permitted to drive or should only be allowed to drive subject to some limitations.

#### **A Registered Medical Practitioner**

Under the Tuberculosis Act 1948, s3

- must notify the Medical Officer of Health if they believe a patient may have tuberculosis

#### **Health Professionals**

Under the Health Act 1956, s22F

- are required to disclose / share health Information on request to:
  - The individual about whom the information is held; or
  - The individuals representative; or
  - Any other person providing health or disability services to the individual, including the service user's principal caregiver.
- *Except: "a request may be refused if there are reasonable grounds to believe that the patient does not want the information to be disclosed"*

#### **A Health or Disability Service**


- The Health & Disability Commissioner can require the Mental Health service to make information available for an investigation conducted by the Commissioner

### **2.5 Disclosures of Information Permitted by Law**

a) MH&AS staff will inform service users and their family / whanāu that information **may be disclosed** to other agencies / persons if certain conditions or circumstances apply. For example, under the following conditions health information may be disclosed if;

- a service user authorises it and he / she has attained the age of 16 years; or
- if disclosure is authorised by a representative nominated by the service user; or
- the information is sourced from a publicly available publication (i.e. a public register, a phone book or newspapers)
- the disclosure of information is one of the purposes in connection with which the information was obtained (i.e. to treatment teams such as nurses or occupational therapists or when referring the patient to other health agencies.
- The information is about a patient in hospital and is in general terms about their presence, location, condition and progress. (This is subject to a veto by the patient or representative)
- It is necessary to prevent or lessen a serious and imminent threat to public health or safety, or the life or health of any individual, including the patient (rule 11(d)) e.g. AWOL.
- The information is disclosed to an individual's principal care giver of the individuals release or imminent release from compulsory status under the Mental Health (CAT) Act 1992
- The agency believes that the individual is (or is likely to become) dependent on controlled drugs, prescription medicines or restricted medicines. This applies only to disclosures made by a registered health professional to the


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Medical Officer of Health for specific purposes set out in the Misuse of Drugs Act 1975 and the Medicines Act 12981 (rule 11(2)(j))

- ix. The information is required for a professionally recognised quality assurance programme or for risk management assessment and the information is not published in a form that would identify individuals.
- b) Child Abuse & Neglect Reporting
  - i. MH&AS staff making a notification to the Ministry for Vulnerable Children, Oranga Tamariki (ex CYFS) under section 15 & 16 of the Children Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 must take reasonable steps to ensure the accuracy of the information disclosed if the disclosure is made without the consumer's consent.
  - ii. Persons making notifications to Ministry for Vulnerable Children, Oranga Tamariki (ex-CYFS) under section 15 & 16 of the Children Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 are protected from civil, criminal and disciplinary proceedings. Health Professionals, however, are expected to abide by a range of other governing legislation that determines the professional standards of health care delivery as well as Health Information Privacy. (i.e. Consumers Code of Rights, Health Information Privacy Code). This means that while Health Professionals may receive protection under the section 15 & 16 of the Children Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 they and/or their employer may be found in breach of the range of other governing legislation if the steps to ascertain the accuracy of the information disclosed fails to meet the standards and legislation governing health care delivery and information privacy.
- c) If requested in writing, MH&AS may disclose a service users health information to other agencies as per Section 22 C Health Act 1956 under the relevant legislation for their agency as follows:
  - i. Medical Officer - within the meaning of the Penal Institutions Act 1954
  - ii. Probation Officer - within the meaning of the Criminal Justice Act 1985
  - iii. Social Worker or a Care and Protection Co-ordinator - within the meaning of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017
  - iv. Employee of the Department of Social Welfare - for the purposes of administering Section 75 of the Social Security Act 1964
  - v. Member of the New Zealand Defence force - for the purposes of administering the Armed Forces Discipline Act 1971 or the Defence Act 1990
  - vi. Member of the Police - for the purposes of exercising or performing any of that persons powers, duties or functions
  - vii. Employee of the Ministry of Health - for purposes of administering the Health Act or Hospitals Act 1957 or compiling statistics for health purposes
  - viii. Employee of the Ministry of Agriculture and Fisheries - authorised by the Chief Executive of that Ministry to receive information for the purposes of administering the Meat Act 1981
  - ix. Employee of the Ministry of Transport - for statistical or research purposes in relation to road safety or the environment
  - x. Employee of a Health Services Provider - for the purposes of exercising or performing any of that providers powers, duties, or functions under the Health and Disability Services Act 1993

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- d) All requests for a service user's health information will be documented by the service. This will include who made the request, date it was received, and action taken.
- e) Where a service user's information is disclosed without their prior consent, (as in the above examples) they will be informed in writing within seven (7) days that the disclosure has taken place. Minimum information concerning the disclosure should detail:
  - i. that a disclosure has taken place.
  - ii. the recipient of the information.
  - iii. the statute or provision under the Privacy Act or HIPC permitting the disclosure.
  - iv. the reason for the disclosure.
  - v. the process for resolving any issues regarding the disclosure.
- f) MH&AS will have a transparent process to resolve issues where a person's right to privacy may be breached. This process may include the following people / representatives in the resolution process:
  - i. The person receiving the service;
  - ii. Privacy Officer;
  - iii. Ethics committee;
  - iv. Professional bodies;
  - v. A representative of the person receiving the service;
  - vi. Advocates;
  - vii. Family representative.
  - viii. Manager, Quality & Risk, MH&AS – refer [1.3.1. Complaints Management Policy](#)


### 3. Referral Information to NGO's

- 4.1 MH&AS staff will share sufficient health information with NGO service providers to ensure that service users have access to appropriate, timely and quality care that meets their needs and furthers their recovery. This information will be forwarded within seven (7) days and should include but not be limited to:
  - a) Service User Details (name, age, address, contact details, next of kin)
  - b) Mental health history.
  - c) Diagnosis and presenting issues.
  - d) Risk assessment, treatment and discharge plans.
  - e) The results of specialist assessment (A&D or needs assessment).
  - f) Any other information as negotiated in a Memorandum Of Understanding with that provider.

### 4. Support for Staff

- 5.1 Individual MH&AS staff will not be held liable for breaches of the Privacy Act 1993 in the execution of BOPDHB policies. Staff will still be accountable to their own professional bodies and codes of ethics and conduct.
- 5.2 [Best Practice guidelines](#) / protocols will be available to all staff to assist them in responding to requests for information regarding service users. These guidelines will assist staff to ensure they comply with the principles of the Privacy Act 2020 and the Health Information Privacy Code 1994.
- 5.3 MH&AS staff will be able to identify and contact the Privacy Officer in any circumstances relating to privacy and information sharing / disclosure issues.

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5.4 The BOPDHB and MH&AS will provide a range of resources and training for staff on the subjects of Privacy and the Release of Clinical Information.

## REFERENCES

- [Privacy Act 2020](#)
- Official Information Act 1982
- [Health Information Privacy Code 1994](#)
- The Health Act 1956
- [Children, Young Persons, and Their Families \(Oranga Tamariki\) Legislation Act 2017](#)
- [Vulnerable Children Act 2014](#)
- The Mental Health (Compulsory Assessment and Treatment) Act 1992
- Penal Institutions Act 1954
- Criminal Justice Act 1985
- Social Security Act 1964
- Armed Forces Discipline Act 1971
- Defence Act 1990
- Health and Disability Services Act 1993
- Ministry of Health. 2012. *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health.
- Health and Disability Services Standard NZS 8134:2008
- [On the Record: A practical guide to health information privacy](#),

## ASSOCIATED DOCUMENTS

- [Bay of Plenty District Health Board policy 1.1.1 Informed Consent](#)
- [Bay of Plenty District Health Board policy 1.6.3 P1 Child Abuse and Neglect – Standards](#)
- [Bay of Plenty District Health Board policy 1.3.1 Complaints Management](#)
- [Bay of Plenty District Health Board policy 2.5.1 Health Information Privacy](#)
- [Bay of Plenty District Health Board policy 2.5.2 P3 Health Record - Access to Personal Health Information](#)
- [Bay of Plenty District Health Board policy 2.5.2 P4 Health Record - Transportation by BOPDHB Staff](#)
- [Bay of Plenty District Health Board policy 2.5.2 Health Records Management](#)
- [Bay of Plenty District Health Board policy 2.5.2 P2 Health Record – Content & Structure](#)
- [Bay of Plenty District Health Board Clinical Practice Manual protocol CPM.M5.20 Family and Whanāu Participation](#)
- [Bay of Plenty District Health Board Guide to Privacy booklet](#) – *viewable only. Order through Design & Print Centre*
- [Privacy Guideline Appendix 1](#)
- [Privacy Guideline - Information Sharing Appendix 2](#)

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