

Advice for Victorian medical practitioners from the Office of the Health Services Commissioner, Victoria, May 2002

Victorian medical practitioners are required to comply with Victorian laws on health information privacy, in the form of the *Health Records Act 2001* (HRA) as well as Commonwealth privacy law. The HRA, administered by the Victorian Health Services Commissioner, establishes eleven Health Privacy Principles (HPPs) which cover much the same ground as the National Privacy Principles but in greater detail and with a health focus. The HPPs operate as voluntary standards from 1 March 2002, and become binding when the Act becomes fully operational on 1 July 2002.

While the advice provided in this Handbook will assist Victorian medical practitioners to comply with the HRA, some additional matters must be understood and applied.

Chapter 2 The quality and quantity of medical records

HPP 4.2 sets out requirements for practising providers regarding the retention of records. Health information must not be destroyed or deleted until at least 7 years have elapsed since the individual's last attendance. In the case of information collected about a child, information must be kept at least until that individual has attained the age of 25 years. However, if he or she continues attending the health service provider after turning 25, all of his or her information (including the childhood records) must be retained for 7 years *from the last attendance*.

The HRA also acknowledges that at times health information will be collected in confidence from a third party, such as a relative of a patient. HPP 1.7 provides that if confidential information is collected from such a person (other than from a health service provider) this must be confirmed with the person concerned, and reasonable steps be taken to ensure that the information is accurate. When confirmed, the information must be noted as confidential on the file and kept securely.

Chapter 3 Patient consent

'Authorised representative' is defined by the HRA (section 85) and refers to a person who is legally able to act on behalf of another (such as a parent in relation to a child who is not legally competent).

Chapter 5 Patient access to medical records

Part 5 of the HRA sets out in detail how a request for access under that Act must be made and responded to. Victorian practitioners should become familiar with the requirements, which flesh out the broad principles in the Commonwealth Privacy Act.

The HRA provides protection for a health service provider against liability for defamation or breach of confidence, where an individual is given access to their health information under the HRA (section 86).

Denial of access: HRA prohibits providing access in two cases:

1. Where doing so would pose a serious threat to the life or health of the patient or anyone else; and
2. Where the information was given to the practitioner by a third party (eg a family member or friend; not another practitioner) with a request that the information not be communicated to the person it relates to.

There is no discretion here; access must not be given in these cases. Where access is denied on the grounds of serious threat to the life or health of the person making the request, then the person has a right to nominate another health service provider to review that decision (see Part 5, Division 3 of the HRA).

Under the Commonwealth Privacy Act access can be denied if it is 'frivolous or vexatious'. The HRA also addresses in more detail the situation where the same person repeatedly requests access. It does not allow access to be denied on 'frivolous or vexatious' grounds, but access may be denied where:

- the request is of a kind that has been made unsuccessfully on at least one previous occasion, and there are no reasonable grounds for making the request again; or
- the individual has been provided with access to the health information in accordance with the Act and is making an unreasonable repeated request for access to the *same information* in the *same way*.

Forms of access:

Access to information collected after 1 July 2002 may be given in the form of inspection of the record, a copy, a summary, or a viewing of the record accompanied by an explanation from a health service provider.

For information collected before 1 July 2002, access may be given in these forms at the discretion of the practitioner, but the patient has a right only to a summary of the information held.

Fees:

The maximum fees that may be charged for access under the HRA will be governed by regulation. Practitioners should obtain a copy of the list of fees when they become available in June 2002.

Time taken to respond to access request:

HRA requires that access requests be responded to within 45 days, or within 7 days of receiving payment of any fee which might be charged, whichever is the later.

Chapter 6: The use and disclosure of personal health information

The use and disclosure of health information for the purposes of the provision of health services, and for quality assurance, is allowed as outlined in relation to the Commonwealth Privacy Act. However, the HRA goes into additional detail about situations that commonly arise in relation to the handling of health information by health service providers. For example:

- if the individual is not capable of consenting and it is not reasonably practicable to obtain the consent of that person's authorised representative (or there is no authorised representative), where the use or disclosure is reasonably necessary for the provision of the health service (HPP 2.2(d));
- a health service provider may use (but not disclose) information to provide a further health service to the individual if its use is reasonably necessary to ensure that those services are provided safely and effectively, and the information is used in accordance with any guidelines of the Health Services Commissioner. (This would include the consideration of information contained on an organisation's file about the medical history of a patient.) (HPP 2.2(e));
- regulations will set out when family history information may be collected from a patient who is receiving health services.

Similarly, rather than rely *solely* on the ground to use and disclose information where it would be 'directly related and reasonably expected', the HRA explicitly addresses two other situations.

1. Quality assurance and training:

HPP 2.2(f) permits the use and disclosure of health information for the purposes of activities such as quality assurance, if:

- the organisation has taken reasonable steps to de-identify the information (but where, for instance, there may be a remote risk of identification that cannot reasonably be removed); or
- if the information is identifying, the purpose cannot be served by using de-identified information, and it is impracticable for the organisation to obtain the individual's consent.

In such cases the information can be used or disclosed, provided it is not published in an identifying form. Additional guidelines may be provided by the Health Services Commissioner.

2. Identification of dead or missing persons

HPP 2.5 sets out circumstances where health information can be disclosed to assist in the identification or location of a dead or missing person, or of a person involved in an accident or other misadventure who is incapable of consenting to the disclosure.

Chapter 7 Medical research

The Health Services Commissioner will issue guidelines on the collection, use and disclosure of health information for research purposes, where consent is not sought and identifying information is involved.

Health Privacy Principles 10 & 11

Victorian practitioners need to be aware of Health Privacy Principles 10 and 11:

- *HPP 10* requires practitioners whose practice is being either sold or transferred with the practitioner ceasing to practise, or closed down (including because of death), to advertise that fact and what the practitioner plans to do with the records. Guidelines to supplement the requirements under the Principle are available.

- *HPP 11* obliges practitioners to provide, at the request of a patient, a copy or summary of that patient's medical records to another health service provider. The term 'health service provider' includes not only other medical practitioners, but also other registered health providers, hospitals, allied and complementary health service providers, and disability and aged care service providers. Regulations will set out when a fee may be charged for doing this.