GUIDELINES ON THE USE AND DISCLOSURE OF
INMATE/PATIENT MEDICAL RECORDS AND OTHER
HEALTH INFORMATION

ESTABLISHED BY THE CHIEF EXECUTIVE OF JUSTICE
HEALTH & FORENSIC MENTAL HEALTH NETWORK

PURSUANT TO CLAUSE 297 OF THE CRIMES
(ADMINISTRATION OF SENTENCES) REGULATION 2008

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1. INTRODUCTION

1.1 The Commissioner of Corrective Services NSW (the Commissioner) is responsible for the care, control and management of inmates/patients required to serve sentences of imprisonment. The Commissioner’s functions are derived from the Crimes (Administration of Sentences) Act 1999 (the Act) and the Crimes (Administration of Sentences) Regulation 2008 (the Regulation).

1.2 Under the Act the Commissioner may engage a contractor (the Contractor) to manage a correctional centre under a management agreement.

1.3 Justice Health & Forensic Mental Health Network is a specialty network governed health corporation constituted under the Amendment of Health Services Act 2011 that is responsible for providing health care services to inmates/patients detained in correctional centres, including one managed correctional centre. It is also required to monitor the provision of health services in other managed correctional centres.

1.4 The Commissioner (or where applicable the Contractor) and Justice Health & Forensic Mental Health Network operate closely within the correctional environment, though they have differing functions and responsibilities in correctional centres.

1.5 The Commissioner’s (or where applicable the Contractor’s) key roles and responsibilities include reducing re-offending through secure, safe and humane management of offenders. Their Statement of Purpose is to deliver professional correctional services to reduce re-offending and enhance community safety.

1.6 Justice Health & Forensic Mental Health Network’s key roles and responsibilities include achieving measurable and sustained health care outcomes leading to international best practice for those within the NSW criminal justice system.

1.7 Whilst recognising these differing key roles and responsibilities, it is acknowledged that information sharing is important in enabling continuity of healthcare for inmates/patients as they move within the correctional system and across service boundaries, and to help ensure the health and wellbeing of inmates/patients in general, particularly where there is a serious and imminent threat to the life, health or
safety of another person or to public health or safety. It is acknowledged that communication and information sharing is necessary at all stages of an inmate's/patient's incarceration.

2. PURPOSE OF THE GUIDELINES

2.1 These Guidelines have been established by the Chief Executive of Justice Health & Forensic Mental Health Network in accordance with clause 297(2) of the Regulation (the Guidelines). The purpose of the Guidelines is to:

(a) Set out the principles governing the circumstances in which the contents of medical records of inmates/patients maintained by Justice Health & Forensic Mental Health Network at a correctional centre may be divulged to any person outside Justice Health & Forensic Mental Health Network (including the inmate/patient himself or herself).

(b) Set out the matters that the legislation requires Justice Health & Forensic Mental Health Network officers to report to officers of the Commissioner (or where applicable the Contractor).

(c) Address other circumstances in which health related information may be shared between Justice Health & Forensic Mental Health Network and the Commissioner (or where applicable the Contractor).

(d) Adopt an approach to the disclosure or sharing of all health related information that is broadly consistent with the principles of confidentiality of health related information, relevant privacy legislation (in particular the Health Privacy Principles under the Health Records and Information Privacy Act (2002)), professional codes of conduct, and the NSW Health Privacy Manual.

(e) Ensure that information sharing is effectively managed so that inmates/patients and staff of Justice Health & Forensic Mental Health Network, Corrective Services NSW (CSNSW) and (where applicable) Contractors are clear about the purposes and responsibilities of information sharing.
3. AREAS OF COMMON INTEREST

3.1 The Guidelines recognise there are a number of areas of common interest for cooperation and ongoing assistance, including but not limited to the following:

(a) Care, treatment and management of inmates/patients within correctional centres;
(b) Care, treatment and management of specific medical conditions;
(c) Care, treatment and management of inmates/patients with special needs/requirements;
(d) Management of inmates/patients who pose a threat to self, others and staff;
(e) Transportation requirements;
(f) Placement issues;
(g) Discharge planning;
(h) Deaths In Custody (DIC);
(i) Assaults;
(j) Management of WH&S issues within correctional facilities;
(k) Requests for health information from Police and other law enforcement agencies;
(l) Statutory obligations to disclose health information; and
(m) Research into inmate/patient management and care.

4. DEFINING HEALTH INFORMATION, MEDICAL RECORDS AND THEIR CONTENTS

4.1 Justice Health & Forensic Mental Health Network must maintain proper medical records in respect of each inmate/patient. The medical records must be kept at the Justice Health & Forensic Mental Health Network health centre in the custody of a prescribed Justice Health & Forensic Mental Health Network officer.\(^1\) In practice, the person responsible for records will be the Nursing Unit Manager or nurse in charge.

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\(^1\) Under the Regulation a prescribed Justice Health & Forensic Mental Health Network officer means either:
(a) the Chief Executive of Justice Health & Forensic Mental Health Network or
(b) a medical officer or other member of staff of Justice Health & Forensic Mental Health Network authorised by the Chief Executive to exercise the functions of a prescribed Justice Health & Forensic Mental Health Network officer for the purposes of the relevant provision of the Regulation.
4.2 The Regulation refers to “medical records” but the broader terminology of “health information” is used in these guidelines to reflect the legislative obligations applicable under the Health Records and Information Privacy Act 2002 (HRIP Act) and the NSW Health Privacy Manual.

4.3 “Health information” for the purposes Health Records and Information Privacy Act 2002 and these guidelines means:

(a) Personal information that is information or an opinion about:
   (i) the physical or mental health or a disability (at any time) of an individual, or
   (ii) an individual’s express wishes about the future provision of health services to him or her, or
   (iii) a health service provided, or to be provided, to an individual, or

(b) other personal information collected to provide, or in providing, a health service, or

(c) other personal information about an individual collected in connection with the donation, or intended donation, of an individual’s body parts, organs or bodily substances, or

(d) other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of any sibling, relative or descendant of the individual;

(e) but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of this Act generally or for the purposes of specified provisions of this Act.

5. STAFF PRIVACY OBLIGATIONS AND AUTHORITY TO RELEASE INFORMATION

In the course of their employment Justice Health & Forensic Mental Health Network staff may have access to confidential inmate/patient health information. Justice Health & Forensic Mental Health Network staff may only access inmate/patient health information where this is required in the course of their employment.
Health information (including medical records) for the purpose of the Health Records and Information Privacy Act 2002 is not to be disclosed to any person outside Justice Health & Forensic Mental Health Network and its staff (including to inmates/patients) except in accordance with the principles set out below (the Principles) in Part 6.²

5.1 A “delegated officer” is a person employed/contracted by Justice Health & Forensic Mental Health Network who is permitted to share and / or provide information to another party as detailed in these Guidelines. A delegated officer includes:

- Nursing Unit Manager or delegate (The delegate for a Nursing Unit Manager (NUM) is restricted to the Registered Nurse rostered In-Charge of a shift when the NUM is not present).
- After Hours Nurse Manager
- Employed/Contracted Medical Officer
- Medico-Legal Coordinator
- Health Information Manager
- Legal Officer
- Executive Director or delegate (The delegate for an Executive Director is restricted to a Service and / or Clinical Director when the relevant Executive Director is not available).
- Chief Executive

5.2 Additionally, relevant Justice Health & Forensic Mental Health Network policies will provide guidance on which staff members have the authority to share and/or provide information to another party as detailed in these Guidelines.

6. THE PRINCIPLES

6.1 Disclosure to inmate/patient

Inmates/patients shall have a right to access their own personal health information held by Justice Health & Forensic Mental Health Network unless:

- Justice Health & Forensic Mental Health Network is lawfully authorised or required not to provide access; or

² See Regulation, clause 297(2).
• non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law; or

• providing access to the inmate/patient would disclose personal information of any person other than the inmate/patient. In that event Justice Health & Forensic Mental Health Network may provide the inmate/patient with access to his or her health information only after removing all personal information relating to the other person; or

• providing access to the inmate/patient, in the opinion of an authorised officer of Justice Health & Forensic Mental Health Network, may have an adverse effect on the physical or mental health of the inmate/patient. In that event, Justice Health & Forensic Mental Health Network staff should refer the matter to a third party such as independent medical practitioner for assessment. The health record plus the assessment by the independent medical practitioner should then be referred to the senior health care provider for review and a decision on whether the inmate/patient should be granted access to all or part of his/her record. Where access is granted, but there remains a concern as to the impact the information may have on the inmate/patient, a written warning to this effect should be given to the inmate/patient, and a copy included on the record. Additionally, pursuant to section 73(3) of the Government Information (Public Access) Act 2009, a condition may be imposed that access to medical or psychiatric information will only be provided to a medical practitioner nominated by the inmate/patient and not to the inmate/patient personally.

When access to personal health information by an inmate/patient is sought, Justice Health & Forensic Mental Health Network staff should carefully review the inmate’s/patient’s records to ascertain if any of the above issues arise.

Applicable Justice Health & Forensic Mental Health Network policy: Justice Health & Forensic Mental Health Network Policy 4.030 Requesting and Disclosing Health Information

6.2 Disclosure to persons other than the inmate/patient with consent

The following principles apply to the disclosure of an inmate’s/patient’s health information to any other person by Justice Health & Forensic Mental Health Network officers:

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3 Personal information about another person includes information about a person whose identity is apparent or can reasonably be ascertained from the information.
**Principle:** Confidential health information relating to an inmate/patient should be disclosed by Justice Health & Forensic Mental Health Network staff to a person other than the inmate/patient only with the consent of the inmate/patient, except where disclosure is made under the principles outlined below or in section 5.4 of the NSW Health Privacy Manual.

An inmate/patient can consent to, or authorise disclosure by Justice Health & Forensic Mental Health Network of the inmate’s/patient’s health information to any third party, such as a relative, interpreter, medical practitioner (not involved in their ongoing care), legal representative, employer, insurer or officer.

**Elements of consent**
- Consent should be **informed**. That is, there must be reasonable efforts to ensure that the inmate/patient has the information he or she needs to understand what they are consenting to, why it is necessary or desirable, and what may be the results both of consenting and of not consenting.
- In order to be informed, consent should also be **reasonably specific**. Reliance on general or blanket consents can be problematic if the inmate/patient later indicates he or she was not informed of the particular usage proposed.
- Consent should be **freely given**. That is, the inmate/patient must not be coerced, pressured or intimidated. They should not feel they have no choice or that they do not have enough time to make up their mind.
- Consent should only be sought from a person who has **capacity** to consent.4
- A consent should be **timely**. The validity of the consent is dependent on the inmate/patient’s expectation. As a guide, consideration should be given to obtaining fresh consent to disclosure to a third party after a period of three months has passed from the time consent was initially provided by the inmate/patient.

**Form of consent**
- The inmate’s/patient’s consent should be in writing (not a photocopy). It should be signed by the inmate/patient and should contain:
  - full name of inmate/patient;
  - date of birth;

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4 See NSW Ministry of Health Privacy Manual, Version 2, section 5.5 for further discussion of capacity to consent.
present address and, if different, address at the time of the health treatment in question;
- date of written consent;
- details of the records/information in question;
- range of dates for health treatment in question;
- name of person being authorised and their relationship to the inmate/patient; and
- the purpose for which the information is requested (where relevant).

For examples of where implied consent of an inmate/patient may be relied upon, see NSW Ministry of Health Privacy Manual, Version 2, section 5.4.2.

6.3 Disclosure without consent

**Principle:** Health information may be disclosed without the consent of the inmate/patient under the following circumstances.

(i) Information **required** to be reported by Justice Health & Forensic Mental Health Network under the Regulation

**Principle:** A prescribed Justice Health officer is required to report certain matters to a prescribed CSNSW officer as soon as practicable after the Justice Health & Forensic Mental Health Network officer forms an opinion as to any of the circumstances set out below. (The relevant Justice Health & Forensic Mental Health Network policies will provide guidance on which staff members have the authority to make these notifications):

(a) That the mental or physical condition of an inmate/patient constitutes a risk to the life of the inmate/patient or to the life, health or welfare of any other person.

**Applicable Justice Health & Forensic Mental Health Network policies:**

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5 It is important that there is a focus on only providing the “relevant” information. For example, just because an inmate/patient has provided consent to the disclosure of certain health information to their solicitor does not mean that consent has been provided to disclosure of everything in their medical record.

6 For further guidance see NSW Ministry of Health Privacy Manual, Version 2, section 11.2.2.

7 Under the Regulation a prescribed CSNSW officer means either:
   (a) the Commissioner of Corrective Services or
   (b) a correctional officer or departmental officer authorised by the Commissioner to exercise the functions of a prescribed CSNSW officer for the purposes of the Regulation.

8 Regulation, clause 294(a).
(b) **That the life of an inmate/patient will be at risk if the inmate/patient continues to be detained in a correctional centre.**

*Applicable Justice Health & Forensic Mental Health Network policies:*
Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)
Justice Health & Forensic Mental Health Network Policy 1.380 Suicidal and Self Harm Behaviour Management (where inmate/patient is at risk of self-harm)

(c) **That, because of illness, an inmate/patient will not survive sentence or is totally and permanently unfit for correctional centre discipline.**

*Applicable Justice Health & Forensic Mental Health Network policies:*
Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)
Justice Health & Forensic Mental Health Network Policy 1.170 Early Release For Health Related Reasons

(d) **That an inmate/patient should not, on medical grounds, be employed at work of a particular nature.**

*Applicable Justice Health & Forensic Mental Health Network policies:*
Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)

(e) **That an inmate’s/patient’s medical condition is such that the inmate/patient is unfit to travel, or should only travel by particular means.**

*Applicable Justice Health & Forensic Mental Health Network policies:*
Justice Health & Forensic Mental Health Network Policy 1.261 Medical Recommendations – Special Transport (Adult)
Justice Health & Forensic Mental Health Network Form Medical Certificate Consideration for Special Transport

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9 Regulation, clause 294(b).
10 Regulation, clause 294(c).
11 Regulation, clause 294(d).
12 Regulation, clause 294(e).
(f) **That the mental state of an inmate/patient requires special observation.**

*Applicable Justice Health & Forensic Mental Health Network policies:*

Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)

Justice Health & Forensic Mental Health Network Policy 1.380 Suicidal and Self Harm Behaviour Management

(g) **That an inmate’s/patient’s diet, exercise or other treatment should be varied or modified for reasons of health.**

*Applicable Justice Health & Forensic Mental Health Network policies:*

Justice Health & Forensic Mental Health Network Policy 1.135 Diets – Clinically Recommended

Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)

(h) **That an inmate/patient has, or appears to have, a serious infectious disease.**

A list of the serious infectious diseases required to be reported by Justice Health & Forensic Mental Health Network prescribed officers is attached to these Guidelines as Annexure A. Reporting of matters required under the Regulation is generally provided by the Population Health Unit of Justice Health & Forensic Mental Health Network to the Office of the Commissioner.

*Applicable Justice Health & Forensic Mental Health Network policies:*

Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)

See also the following Justice Health & Forensic Mental Health Network policies relevant to the management of infectious diseases:

- Justice Health & Forensic Mental Health Network Policy 1.363 Sexually Transmissible Infections and Blood Borne Viruses – Early Detection Program
- Justice Health & Forensic Mental Health Network Policy 1.242 HIV/AIDS - Management, Care and Treatment

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13 Regulation, clause 295(1)
14 Regulation, clause 296(1)
15 Regulation, clause 299(1)
16 Refer to NSW Ministry of Health Policy Directive PD2006_014 *Notification of Infectious Diseases under the Public Health Act 1991*
Justice Health & Forensic Mental Health Network Policy 1.275 Management of Suspected Cases of Meningococcal Disease
Justice Health & Forensic Mental Health Network Policy 1.245 Immunisation of Patients
Justice Health & Forensic Mental Health Network Policy 1.422 Tuberculosis – Surveillance and Management of Confirmed and Suspected Cases

In relation to HIV/AIDS, it should be noted that this provision provides an express exemption from the usual confidentiality obligations in respect of HIV/AIDS related information under section 17 of the Public Health Act 1991.

(i) That an inmate/patient has died in custody

- Under the Regulation if a prescribed Justice Health & Forensic Mental Health Network officer becomes aware that an inmate/patient has died, this must be reported to the Commissioner. CSNSW may request access to relevant information relating to the deceased inmate’s/patient’s medical records for the purpose of assisting with its investigation into the death of an inmate/patient.
- This does not mean that CSNSW will have access to the inmate/patient’s health record, rather, that Justice Health & Forensic Mental Health Network will provide relevant health information relating to the inmate/patient for the purpose of assisting with CSNSW’s investigation into the death of an inmate/patient.
- CSNSW is a law enforcement agency pursuant to the Health Records and Information Privacy Act 2002 and the relevant disclosure of health information has been allowed under that Act in circumstances where it is reasonably necessary for the exercise of law enforcement functions where there are reasonable grounds to believe that an offence may have been, or may be, committed. This exemption does not oblige Justice Health & Forensic Mental Health Network to supply the information and it needs to balance the seriousness of the offence, the public interest and the confidentiality of the deceased in reaching a decision to release the information. This exemption may also extend to the medical records/information of the perpetrator of any offence related to a death in custody.
- Where the cause of death of an inmate/patient is unclear, health information may be relevant to the law enforcement agency’s investigation as to cause of death.

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17 Regulation, clause 300
18 see Health Privacy Principles 10(1)(i) and 11(1)(j) in the Health Records and Information Privacy Act
The applicable Justice Health & Forensic Mental Health Network policies below provide guidance about the staff members who should be processing these requests for information.

**Applicable Justice Health & Forensic Mental Health Network policies:**
Justice Health & Forensic Mental Health Network Policy 1.120 Continuum of Care - Death in Custody
Justice Health & Forensic Mental Health Network Policy 2.030 Incident Reporting and Management
Deaths in Custody policy 13.2 (Corrective Services NSW operations procedures manual)

**(ii) General reports on an inmate/patient’s health**

*Principle: Clause 297(2) of the Regulation requires Justice Health & Forensic Mental Health Network to prepare and submit a general report on an inmate/patient’s health to the general manager of a correctional centre, if requested to do so by the general manager.*

Where the general manager of a correctional centre requests a general report on an inmate/patient’s health, a report must be prepared by relevant Justice Health & Forensic Mental Health Network staff. A general report prepared in accordance with this section will contain general information only about an inmate/patient’s overall state of health, and generally should not, for example, disclose any specific medical conditions. Unless the inmate/patient has consented to the disclosure of the information to the general manager, the proposed report should be submitted to the Justice Health & Forensic Mental Health Network’s Executive Director Clinical and Nursing Services for approval prior to being provided to the general manager. A copy of the report should be retained in the inmate/patient’s medical record.

**(ii) Threats to life, health or safety**

*Principle: Justice Health & Forensic Mental Health Network staff (being a “delegated officer”) may disclose to the Commissioner/the Contractor relevant health information of an inmate/patient where there are reasonable grounds for believing that disclosure is necessary to lessen or prevent:*

19 This is of course subject to any specific requirements contained elsewhere in these Guidelines, for example, in relation to serious infectious diseases.
• a serious and imminent threat to the life, health or safety of the inmate/patient or any other person, including Justice Health & Forensic Mental Health Network or CSNSW staff,\(^{20}\) or
• a serious threat to public health or public safety.\(^{21}\)

Except in emergencies, the approval of Justice Health & Forensic Mental Health Network’s Executive Director Clinical and Nursing Services should be sought prior to the disclosure of information in these circumstances.

**Applicable Justice Health & Forensic Mental Health Network policies:**
Justice Health & Forensic Mental Health Network Policy 1.231 Health Problem Notification Form (Adult)
Justice Health & Forensic Mental Health Network Policy 2.030 Incident Reporting and Management

(iii) Serious indictable offences

**Principle:** Where a Justice Health & Forensic Mental Health Network staff member, in the course of providing a health service to inmates/patients forms the knowledge or belief that a serious indictable offence has been committed, and that the staff member has information that might be of material assistance in securing a conviction, he/she will seek authorisation from the Executive Director Clinical and Nursing Services, Justice Health & Forensic Mental Health Network or the Chief Executive before sharing confidential health information without the consent of the inmate/patient.

Section 316(1) of the Crimes Act 1900 provides that where a person:
• knows or believes that a serious indictable offence has been committed by another person; and
• has information which might be of “material assistance” in securing the apprehension or conviction of the offender,

\(^{20}\) Health Records and Information Privacy Act 2002, Schedule 1, Health Privacy Principle 11(1)(c)(i). For further guidance see NSW Health Privacy Manual, Version 2, section 11.2.3. This does not affect the obligation of Justice Health & Forensic Mental Health Network to report to CSNSW in the circumstances outlined above, such as where the life of an inmate/patient will be at risk if the inmate/patient continues to be detained in the correctional centre.

and the person fails without reasonable excuse to report the information to a member of the Police Force or “other appropriate authority”, then the person is guilty of a criminal offence and is liable to a penalty of up to two years’ imprisonment.

A “serious indictable offence” is defined as an offence which attracts a penalty of five years’ imprisonment or more. This covers offences such as drug trafficking, serious assaults, sexual assaults, murder and manslaughter, but does not cover minor possession offences or any offences under public health legislation.

Where the information was obtained by the person in the course of the profession or vocation of medical practitioner, nurse, psychologist, social worker (including a counsellor or a support worker for victims of crime) or a researcher for professional or academic purposes, then a prosecution for an offence against section 316(1) may not be commenced without the approval of the Attorney General.

The aim of this provision is to protect health service providers who, in good faith and on reasonable grounds, do not disclose this information to police.

**Applicable Justice Health & Forensic Mental Health Network policies:**

Justice Health & Forensic Mental Health Network Policy 2.024 Disclosure of Criminal Activity

**(iv) Law enforcement requests for information**

*Principle: Justice Health & Forensic Mental Health Network staff may disclose to the Commissioner/the Contractor relevant health information of an inmate/patient where the disclosure is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed.*

This exemption permits Justice Health & Forensic Mental Health Network to disclose relevant information to any “law enforcement agency” which includes (in addition to

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22 This does not affect the obligation of Justice Health & Forensic Mental Health Network to report to CSNSW in the circumstances outlined above, such as where the life of an inmate/patient will be at risk if the inmate/patient continues to be detained in the correctional centre. Sexual assault is considered separately in section (iv) below.
CSNSW) the NSW Police, the Australian Federal Police, the NSW Director of Public Prosecutions, and the NSW Crime Commission.²³

Any requests for information from a law enforcement agency should be in writing, identifying the requesting officer (for example, in the case of NSW Police, including badge number) and confirming the officer is a representative of a law enforcement agency. The request should also indicate the reason why the law enforcement agency is seeking the information.

Requests should only be dealt with by Justice Health & Forensic Mental Health Network’s Executive Director Clinical and Nursing Services.

In considering whether to release information to a law enforcement agency, the following factors should be taken into account by Justice Health & Forensic Mental Health Network:

- The need to balance the important public interest in assisting law enforcement agencies to pursue their law enforcement and public protection functions with their own obligations of confidentiality to their inmates/patients and the sensitive nature of health information.
- The law enforcement exemption covers any information relating to an offence which has or may be committed, provided that information is “reasonably necessary” to assist the law enforcement agency to perform its functions.
- The exemption requires only that there is a reasonable basis for considering that an offence may have been committed, or may be committed. This test does not require a probability or likelihood that an offence has been committed.
- Generally, the information supplied should be limited to confirmation of identity and address. The only exception is where the law enforcement agency can confirm they are investigating the commission of an offence and that the information is “essential to the execution of their duty”. In such circumstances, there may sometimes be situations where additional, limited clinical information can be provided to the law enforcement agency, having regard to:

²³ For a full list of “law enforcement agencies” see Health Records and Information Privacy Act 2002, section 4(1).
the seriousness of the offence involved. For example, does it involve an offence involving serious physical harm such as attempted murder, assault or domestic violence?

the level of public risk. Is there an ongoing public risk or risk to particular individuals that would be addressed by the health service providing information?  

the impact of the disclosure on client/patient care and the therapeutic relationship. The nature of the service being provided and the potential that the client/patient may discontinue obtaining care and treatment, should be considered, as well as the possible impact on the client's/patient's mental state or wellbeing.

Where information is to be disclosed by Justice Health & Forensic Mental Health Network staff to a law enforcement agency:

The information should not generally be provided over the phone unless in response to a previous written request or where the requesting officer’s identity can be verified.

Access should be limited to information that is directly relevant to the inquiry and clearly necessary for the purpose.

The information disclosed should be fully documented.

Where clinical information is necessary, this should be limited to a general outline of the client’s/patient’s condition and/or injuries.  

Applicable Justice Health & Forensic Mental Health Network policies:

- Justice Health & Forensic Mental Health Network Policy 5.011 Assaults Involving Patients
- Justice Health & Forensic Mental Health Network Form – Assaults Incident Form
- Justice Health & Forensic Mental Health Network Policy 2.024 Disclosure of Criminal Activity

(v) Sexual assault

**Principle:** Justice Health & Forensic Mental Health Network staff may provide health information of an inmate/patient to CSNSW staff (or staff of a Contractor) regarding a sexual assault only with the consent of the inmate/patient. Where transfer of the inmate/patient to a sexual assault service is required, only the need for transfer will

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24 This also falls into HPP 11(1)(c) – see section (ii) above.

25 For further information refer to the NSW Ministry of Health Privacy Manual Version 2, specifically at 11.2.3, 11.2.7 and 11.3.4.
be disclosed in accordance with the Justice Health & Forensic Mental Health Network sexual assault policy.\textsuperscript{26}

**Applicable Justice Health & Forensic Mental Health Network policies:**

- Justice Health & Forensic Mental Health Network Policy 5.140 Sexual Assault Management
- Justice Health & Forensic Mental Health Network Form: Referral to Emergency Department following an allegation of Sexual Assault
- Justice Health & Forensic Mental Health Network Population Health Guidelines: Procedure for Sexual Assault Management in the Custodial Environment, including the Forensic and Prison Hospital

Employees of Justice Health & Forensic Mental Health Network and their contractors and sub-contractors should be aware that in relation to the reporting of sexual assaults, the interagency Guidelines for responding to adult victims of sexual assault jointly issued by the Ministry of Health, Police and Director of Public Prosecutions (2006),\textsuperscript{27} establish appropriate protocols and procedures for all issues dealing with sexual assault and Justice Health & Forensic Mental Health Network will advise its staff to refer to that policy for guidance on appropriate action.

**(vi) Sensitive information**

*Principle: Justice Health & Forensic Mental Health Network staff will consider the sensitivity of health information, and will follow NSW Ministry of Health policy directives and guidelines in considering disclosure to CSNSW (or where applicable a Contractor).*

Inmates/patients may have different expectations about how some of their health information will be used or disclosed, which can be based on their own cultural or personal background, family situation, a feeling that certain information may be particularly stigmatising, or additional legal restrictions imposed on use or disclosure. Some common examples include: services provided to inmates/patients by specialist genetics services, drug and alcohol services or sexual health services and the special restrictions which apply by law to the release of adoption and organ donation information. For further

\textsuperscript{26} This does not affect the obligation of Justice Health & Forensic Mental Health Network to report to CSNSW in the circumstances outlined above, such as where the life of an inmate/patient will be at risk if the inmate/patient continues to be detained in the correctional centre.

guidance on statewide NSW Ministry of Health policies to guide staff on management of personal health information in some of these circumstances, see NSW Ministry of Health Privacy Manual, Version 2, section 15.9.

(vii) Compliance with Health Privacy Principles of the Health Records and Information Privacy Act 2002 (HPPs)

**Principle:** Except as specifically provided in these Guidelines, Justice Health & Forensic Mental Health Network will comply with all of the HPPs in respect of health information, including medical records, that it collects and uses.

A summary of the HPPs is attached to these Guidelines as Annexure B

(viii) Compliance with other statutory provisions relating to the disclosure of health information or medical records

**Principle:** For the avoidance of doubt, Justice Health & Forensic Mental Health Network may divulge health information, including medical records and their contents, where there is a statutory power or obligation to do so.

Examples include (but are not limited to):

- Power of official visitors under the Mental Health Act 2007 to obtain information and inspect records relating to patients.
- Power of the Director-General of the NSW Ministry of Health under section 122 of the Health Services Act to conduct an inquiry into the administration, management and services of Justice Health & Forensic Mental Health Network.
- Compliance with requests for information and documents in accordance with statutory authority by regulatory and investigative bodies such as the Health Care Complaints Commission.
- Section 118 of the *Work Health and Safety Act 2011*, allows Work Health and Safety Entry Permit Holders to inspect, make copies of, any documents that is directly relevant to the suspected contravention. A Work Health and Safety Entry Permit Holder may enter a workplace for the purpose of inquiring into a suspected contravention of the *Work Health and Safety Act 2011* that relates to, or affects, a relevant worker. The Work Health and Safety Entry Permit Holder must reasonably
suspect before entering the workplace that the contravention has occurred or is occurring.\textsuperscript{28}

**Applicable Justice Health & Forensic Mental Health Network policies:**

- Justice Health & Forensic Mental Health Network Policy 5.110 Work Health and Safety

7. DATA AND RESEARCH

7.1 Justice Health & Forensic Mental Health Network and CSNSW (and where applicable Contractors) may use de-identified information for purposes of internal statistical and research purposes. In the case of external applications for statistical and research purposes, confidentiality and ethical professional standards apply. “De-identified information” is information or opinion about a person whose identity cannot be ascertained from the information or opinion. For information to be classified as de-identified it must not contain identifiers which, if linked with other information, could lead to the identity of a person. If there is a reasonable chance that the information is potentially “identifiable”, it cannot be classified as de-identified.\textsuperscript{29}

7.2 These “identifiers” don’t necessarily have to be an inmates/patients “name” and “address”. There may be circumstances where an inmate’s/patient’s medical or other circumstances are so unusual or unique so as to identify them even without their name and address details being provided, in which case the information is not de-identified and cannot be provided.\textsuperscript{30}

7.3 All research applications involving inmates, Probation and Parole clients, CSNSW staff or other access to Corrective Services records or facilities must first be approved in writing by the Commissioner. Interested parties are referred to section 267 of the Act and clause 172 of the Regulation for further information.

7.4 Except for publicly available information, information concerning the management of inmates in a correctional centre may only be provided with the approval of the Commissioner.

\textsuperscript{28} For further guidance see NSW Ministry of Health Privacy Manual, Version 2, section 11.3.11
\textsuperscript{29} For further guidance see NSW Ministry of Health Privacy Manual, Version 2, section 5.3.
\textsuperscript{30} For further guidance see NSW Ministry of Health Privacy Manual, Version 2, section 11.2.4
8. CHIEF EXECUTIVE OFFICER OF JUSTICE HEALTH & FORENSIC MENTAL HEALTH NETWORK’S RIGHT OF ACCESS

8.1 Section 236B of the Act provides the Chief Executive of Justice Health & Forensic Mental Health Network, for the purpose of ensuring that the provisions of the Act and Regulation (insofar as they relate to medical, surgical or dental treatment or to the health of offenders) are being complied with at a correctional centre, with a right of free and unfettered access at all times to:

(a) all parts of the correctional centre;
(b) all medical records held at the correctional centre; and
(c) all offenders held in custody at the correctional centre.

8.2 Section 244 of the Act provides an equivalent right of access to the Chief Executive of Justice Health & Forensic Mental Health Network to managed correctional centres.

Justice Health & Forensic Mental Health Network and CSNSW (and where applicable Contractors) acknowledge that this right of free and unfettered access cannot be delegated to any other person\textsuperscript{31}.

9. HEALTH LEGISLATION AND POLICIES

(a) Several existing Acts require Justice Health & Forensic Mental Health Network staff to maintain the confidentiality of health information acquired in the course of their work.

(b) Justice Health & Forensic Mental Health Network staff must also comply with NSW Ministry of Health policy directives. The \textit{NSW Ministry of Health Privacy Manual (Version 2)} (Policy Directive 2005_593) provides operational guidance to Justice Health & Forensic Mental Health Network staff to assist in complying with the Health Records and Information Privacy Act (2002). This document outlines guidance in relation to the circumstances in which patient consent is required for the use or disclosure of information. Justice Health & Forensic Mental Health Network staff
should access this document for more detailed guidance. Other relevant items of legislation include:

- *NSW Health Administration Act 1982*
- *NSW Mental Health Act 2007*
- *NSW Public Health Act 1991*
- *NSW State Records Act 1998*
- *NSW Government Information (Public Access) Act 2009*

10. **OBLIGATIONS OF HEALTH PROFESSIONALS**

(a) Some health professional groups including nursing, medical practitioners, dental practitioners and psychologists are registered under health professional registration legislation, which also provides a basis for clinical and professional standards and defines “professional misconduct” and “unsatisfactory conduct”.

(b) Breach of the confidence owed by a health care provider to an inmate/patient may constitute professional misconduct and may therefore be subject to disciplinary action.

(c) Various professionals’ codes of ethics also require that confidentiality of personal information be maintained. Although such codes do not have the binding authority of a statute, breaches may incur disciplinary action. More broadly, they are a reflection of the prevailing view of proper conduct among the health professions.

11. **HEALTH SERVICE CODE OF CONDUCT**

All Justice Health & Forensic Mental Health Network staff, contractors and sub-contractors are to be bound by the principles of its code of conduct, which covers a wide range of personal and professional behaviour, including a requirement that all Justice Health & Forensic Mental Health Network employees, contractors and sub-contractors observe the confidentiality of personal and other official information.
12. OBLIGATIONS OF CORRECTIVE SERVICES STAFF

In the course of their employment CSNSW staff may have access to confidential inmate/patient health information. It is acknowledged that CSNSW staff may only access inmate/patient health information where this is required in the course of their employment.

It is acknowledged that consistent with the obligations on Justice Health & Forensic Mental Health Network staff under the Guidelines, where health information (including medical records) is held by CSNSW or CSNSW staff as required for CSNSW management and functions, pursuant to the Health Records and Information Privacy Act the health information should not be disclosed to any person outside CSNSW and its staff (including to inmates/patients) except in accordance with the Principles set out in Part 6 of this document (insofar as they are applicable to CSNSW and CSNSW staff).

This includes compliance with Health Privacy Principles of the Health Records and Information Privacy Act 2002 (HPPs) and applicable CSNSW policies.

A summary of the HPPs is attached to these Guidelines as Annexure B.
13. ANNEXURES
Annexure A – list of serious infectious diseases required to be reported to CSNSW

• Acquired immunodeficiency syndrome (AIDS)
• Acute viral hepatitis
• Adverse event following immunisation
• Botulism
• Cholera
• Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease
• Diphtheria
• Food borne illness in two or more related cases
• Gastroenteritis among people of any age, in an institution (eg. among persons in educational or residential institutions)
• Haemolytic Uraemic Syndrome
• *Haemophilus influenzae* type b invasive infections
• Influenza (Avian)
• Legionnaires’ disease
• Leprosy
• Lyssavirus
• Measles
• Meningococcal disease
• Paratyphoid
• Pertussis (Whooping cough)
• Plague
• Poliomyelitis
• Rabies
• Severe Acute Respiratory Syndrome (SARS)
• Smallpox
• Syphilis
• Tetanus
• Tuberculosis
• Typhoid
• Typhus (epidemic)
• Viral haemorrhagic fevers
• Yellow fever
## COLLECTION PRINCIPLES

<table>
<thead>
<tr>
<th>HPP 1</th>
<th>Purposes of collection of personal health information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal health information must be collected by lawful means and for a lawful purpose. The purpose must be directly related to, and reasonably necessary for, an organisation’s functions or activities.</td>
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</tbody>
</table>

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<tr>
<th>HPP 2</th>
<th>Collection and Information sought to be relevant, not excessive, accurate and not intrusive</th>
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<tr>
<th>HPP 3</th>
<th>Collection from individual concerned</th>
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<tbody>
<tr>
<td>Personal health information must be collected from the individual it relates to, unless that is unreasonable or impractical.</td>
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<thead>
<tr>
<th>HPP 4</th>
<th>Individual to be made aware of certain matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reasonable steps must be taken to inform the individual about how the information may be used, who may access it, and the consequences of not providing it. The individual should be told what agency is collecting the information and that they have a right to access it. This information should generally also be given to the individual where information about them is collected from someone else, unless certain exemptions, listed in the Act and the Statutory Guidelines apply.</td>
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## SECURITY PRINCIPLES

<table>
<thead>
<tr>
<th>HPP 5</th>
<th>Retention and security</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal health information held by public health agencies must be securely housed and protected against loss or misuse. Information must be kept only as long as is necessary for the purpose (or as required by a law, such as the State Records Act), and must be disposed of securely.</td>
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## ACCESS AND AMENDMENT PRINCIPLES

<table>
<thead>
<tr>
<th>HPP 6</th>
<th>Information about personal health information held by organisations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisations that hold personal health information must allow individuals to find out whether they hold information about that individual, and, if so, what kind of information they hold, what it is used for, and whether and how the individual can access it.</td>
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<tr>
<th>HPP 7</th>
<th>Access to personal health information</th>
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<tbody>
<tr>
<td>Individuals must be allowed to access the personal health information an organisation holds about them. This must be done without excessive delay or expense.</td>
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<tr>
<th>HPP 8</th>
<th>Amendment of personal health information</th>
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<tbody>
<tr>
<td>Individuals may request that their personal health information be amended to ensure that it is accurate, relevant, up to date, complete and not misleading. Organisations must either make the requested amendments or, if requested, attach to the information a statement by the individual of the amendment they sought.</td>
<td></td>
</tr>
</tbody>
</table>

For further guidance on the HPPs, refer to the NSW Ministry of Health Privacy Manual. Relevant section references are provided. The Privacy Manual is available on the NSW Ministry of Health intranet at: http://internal.health.nsw.gov.au/legal/Privacy/

<table>
<thead>
<tr>
<th>ACCURACY PRINCIPLES</th>
<th>Privacy Manual Section 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>HPP 9</td>
<td>Accuracy</td>
</tr>
<tr>
<td></td>
<td>Organisations must take reasonable steps to ensure that the personal health information they hold is relevant, up to date, complete and not misleading.</td>
</tr>
</tbody>
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<tr>
<th>USE PRINCIPLES</th>
<th>Privacy Manual Section 11</th>
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<tbody>
<tr>
<td>HPP 10</td>
<td>Limits on use of personal health information</td>
</tr>
<tr>
<td></td>
<td>Personal health information can be used for the purpose for which it was collected or a directly related purpose. Information may be used for other purposes only in circumstances defined in legislation. This includes where the person has consented to the use, there is a lawful excuse or the use is a “directly related purpose” such as management, training, research, investigation, law enforcement and serious threats to individuals or the public.</td>
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<tr>
<th>DISCLOSURE PRINCIPLES</th>
<th>Privacy Manual Section 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>HPP 11</td>
<td>Limits on disclosure of personal health information</td>
</tr>
<tr>
<td></td>
<td>The provisions for disclosure of personal health information are the same as those for use of this information. They also include a provision that a person’s personal health information may be disclosed to immediate family members for compassionate reasons, provided that this is not contrary to the expressed wish of the individual.</td>
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<tr>
<th>OTHER PRINCIPLES</th>
<th>Privacy Manual Sections 8 &amp; 13</th>
</tr>
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<tbody>
<tr>
<td>HPP 12</td>
<td>Identifiers</td>
</tr>
<tr>
<td></td>
<td>Identifiers can only be applied to personal health information if this is reasonably necessary to carry out the organisation’s functions. Public health system identifiers may be used by private sector agencies, but only in defined circumstances and with strict controls.</td>
</tr>
<tr>
<td>HPP 13</td>
<td>Anonymity</td>
</tr>
<tr>
<td></td>
<td>Provided that it is lawful and practicable, individuals should be given the option of not identifying themselves when dealing with health organisations.</td>
</tr>
<tr>
<td>HPP 14</td>
<td>Transborder data flows and data flows to Commonwealth agencies</td>
</tr>
<tr>
<td></td>
<td>As a general principle, personal health information must not be transferred to a Commonwealth agency or an organisation in another state jurisdiction unless the receiving agency applies personal health information privacy policies and procedures substantially similar to those of NSW.</td>
</tr>
<tr>
<td>HPP 15</td>
<td>Linkage of health records</td>
</tr>
<tr>
<td></td>
<td>Personal health information must not be included in a system that links health records of one health service with health records in another health service unless the individual it relates to has expressly consented.</td>
</tr>
</tbody>
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Annexure C - List of policies referred to in the Guidelines

Justice Health & Forensic Mental Health Network policies and forms:

1. Policy 1.120 Continuum of Care - Death in Custody
2. Policy 1.135 Diets – Clinically Recommended
3. Policy 1.170 Early Release For Health Related Reasons
4. Policy 1.231 Health Problem Notification Form (Adult)
5. Policy 1.242 HIV/AIDS - Management, Care and Treatment
6. Policy 1.245 Immunisation of Patients
7. Policy 1.261 Medical Recommendations – Special Transport (Adult) Justice Health & Forensic Mental Health Network Form Medical Certificate Consideration for Special Transport
8. Policy 1.263 Medical Holds
9. Policy 1.275 Management of Suspected Cases of Meningococcal Disease
10. Policy 1.363 Sexually Transmissible Infections and Blood Borne Viruses – Early Detection Program
11. Policy 1.380 Suicidal and Self Harm Behaviour Management (where Policy 1.422 Tuberculosis – Surveillance and Management of Confirmed and Suspected Cases)
12. Policy 2.010 Leadership & Management – Code of Conduct
13. Policy 2.024 Disclosure of Criminal Activity patient/inmate/patient is at risk of self-harm
14. Policy 2.030 Incident Reporting and Management
15. Policy 4.030 Requesting and Disclosing Health Information
16. Policy 5.011 Assaults Involving Patients
17. Form – Assaults Incident Form
18. Policy 5.110 Work Health and Safety
19. Policy 5.140 Sexual Assault Management
20. Form – Referral to Emergency Department following an allegation of Sexual Assault

NSW Ministry of Health

2. NSW Ministry of Health Policy Directive PD2006_014 Notification of Infectious Diseases under the Public Health Act 1991

Corrective Services NSW