

## Requesting and Disclosing Health Information

**Policy Number** 4.030

**Policy Function** Clinical Information Management

**Issue Date** 21 September 2017

**Summary** All staff who work within the NSW Health public health system, including employees, contractors and other health service providers who in the course of their work, have access to personal health information are bound by the *Health Records and Information Privacy Act 2002 (HRIPA)* and *NSW Health Privacy Manual for Health Information*.

This document provides guidance to all Justice Health and Forensic Mental Health Network staff, on requesting and disclosing health information in accordance with relevant legislation and Ministry of Health policy.

**Responsible Officer** Executive Director Corporate Services

- Applicable Sites**
- Administration Centres
  - Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
  - Health Centres (Adult Correctional Centres or Police Cells)
  - Health Centres (Juvenile Justice Centres)
  - Long Bay Hospital
  - Forensic Hospital

**Previous Issue(s)** Policy 4.030 (September 2015)

- Change Summary**
- Wording and Terminology Changes
  - Addition of Referral or Report requests for Legal Purposes (Court Report Coordination Unit operations)
  - Update to Subpoena processes
  - Addition of Communication/Media Releases
  - Deletion of cover letters, flowchart within the appendices

**HPRM Reference** POLJH/4030

**Authorised by** Chief Executive, Justice Health & Forensic Mental Health Network

## 1. Preface

All staff who work in NSW Health, including employees, contractors and other health service providers who in the course of their work, have access to personal and health information are bound by the [Health Records and Information Privacy Act 2002 \(HRIPA\)](#) and [NSW Health Privacy Manual for Health Information](#).

This policy provides guidance to all Justice Health & Forensic Mental Health Network (JH&FMHN) staff for procedures related to requesting and disclosing health information in accordance with relevant legislation, court orders and policy.

## 2. Policy Content

### 2.1 Mandatory Requirements

The requesting and disclosing of a patient's health information between JH&FMHN and any other party must be in compliance with relevant privacy laws and the 15 Health Privacy Principles (HPPs) under the [HRIPA](#). Requests for the patient's health information can also be made under the [Government Information \(Public Access\) Act 2009 \(GIPA Act\)](#) (Refer to [s3.1.2](#) of this policy).

- Health Records must only be made available to:
  - Relevant JH&FMHN health care personnel for patient care,
  - Other JH&FMHN staff involved in:
    - patient safety,
    - investigation of complaints,
    - relevant auditing activities,
    - research (subject to JH&FMHN ethics committee approval),
    - urgent public health investigations for protecting public/population health, or
    - other purposes as approved by the JH&FMHN Chief Executive or their authorised delegate.
  - Patients or clients to whom the record relates, or their authorised agent, in accordance with relevant Ministry of Health (the Ministry) policies and legislation as outlined in [s5](#) of this policy.
- Under the [Crimes \(Administration of Sentences\) Regulation 2014](#), Health Records at each correctional centre or inpatient setting must be kept in the custody of a prescribed JH&FMHN officer (usually the Nursing Unit Manager (NUM)). Their content must not be divulged to any person external to JH&FMHN (including the patient or their authorised agent) except in accordance with [JH&FMHN Guidelines on the Use and Disclosure of Inmate/Patient Medical Records and other Health Information](#), or as required in the procedures outlined in this policy.
- Any request to disclose health information must be directed to the Network's:
  - Health Information and Record Service (HIRS) Medico-Legal unit if the application is under [HRIPA](#) or for external health agencies that relates to ongoing care purposes.
  - Right to Information Officer if the request clearly indicates it is an access application under the [GIPA Act](#).

- Court Report Coordination Unit (CRCU) if the request (verbal or written) is made by NSW Courts, Crown Solicitor's Office, Legal Aid, Aboriginal Legal Service, Office of the Director Public Prosecutions, Serious Offenders Review Council, State Parole Authority or any other external legal agencies (i.e. police, private solicitors) in relation to medical or psychiatric clinical reports, referrals, as outlined in the *CRCU Operational Guidelines*.
- NUM or Care Coordinator if the request is made by the Mental Health Advocacy Service, or
- Relevant service stream within JH&FMHN if the request is made by or sent to the Statewide Community and Court Liaison Service, Adolescent Court and Community Team, Integrated Care Service, Connections Program or Community Integration Team.

## 2.2 Implementation

JH&FMHN staff should regularly check the Ministry's Policy Directives and Guidelines intranet page for the most current policies, guidelines and information bulletins on requesting and disclosing health information.

### **Service Directors / Managers are responsible for:**

- Ensuring the requirements of this policy are disseminated and implemented in their facility / service.
- Ensuring clinicians within their facility / service have timely access to the Health Record.

### **Court Report Coordination Unit (CRCU) is responsible for:**

- Providing centralised point of contact for Courts and external agencies requesting medical and psychiatric reports on patients and those not yet in custody.
- Managing clinical report requests, in accordance with agreed procedures outlined in the CRCU Operational Guidelines.

### **Health Information and Record Service (HIRS) is responsible for:**

- Processing requests for health information in accordance with this policy unless the request relates to the departments / services outlined in [s2.1](#) of this policy.
- Monitoring compliance with this policy, including compiling monthly statistics on the number of requests received.

### **Health Centre Clerks / Health Centre Administration Clerks / Nursing Unit Managers / Privately Operated Facilities are responsible for:**

- Facilitating the timely dispatch of patient health records related to requests for health information to the HIRS if the patient is in custody.
- Ensuring there is sufficient health information available to the clinicians by creating a temporary health record that comprises of the last three months of documentation (including progress notes, assessments, observations, medication charts and any other information that is required for ongoing patient care) when the record is sent to HIRS.

All other relevant staff are responsible for adhering to mandatory requirements outlined in this document, unless otherwise directed by legislative or Ministry's requirements.

Any questions regarding releasing or requesting health information should first be directed to the JH&FMHN Medico-Legal unit. Contact details are:

### Medico-Legal Unit

Health Information and Record Service  
Silverwater Correctional Complex  
Phone No (02) 9289 5168  
Fax No (02) 9289 5014 or (02) 9289 5172  
Street Address Holker Street, SILVERWATER NSW 2128  
Postal Address Private Bag 144  
SILVERWATER NSW 1811

## 3. Procedure Content

The procedures outlined in this policy relate to the disclosure of, or request for health information in the following circumstances:

- Health Information for Personal Reasons,
- Enquiries from Family and Significant Others,
- External Health Agencies for Ongoing Care Purposes,
- Third Parties / External Agencies (Non-Health Care),
- Referral or Report requests for Legal Purposes.
- Subpoenas,
- Protected Patients.

The majority of requests for health information are processed by the HIRS Medico-Legal unit. The Health Record includes information in both paper and electronic formats. To obtain a full clinical picture of the patient's health status, staff must review both the paper-based and the electronic Health Record. Staff must not assume that the paper Health Record holds all patient health information.

### 3.1 Health Information for Personal Reasons

Access to health information for personal reasons may be made under the [HRIPA](#) (for personal and health information) or the [GIPA Act](#) (for Government Information that may include personal and health information). All requests require an applicant's proof of identify in the form of a certified copy as per section 12.6 of the [NSW Health Privacy Manual for Health Information](#). The minimum requirement is to provide evidence of either an Australian passport or driver's licence, however the Network may require further proof(s) of identity at their discretion.

[HRIPA](#) requests are processed by the Medico-Legal unit at the HIRS and will be actioned during normal business hours, Monday to Friday.

#### 3.1.1 Health Records and Information Privacy Act 2002 (HRIPA)

Access to personal health information is facilitated via the provision of copies of the patient's Health Record or, when clinically appropriate, supervised viewing of the Health Record.

The patient, or authorised representative, should submit a completed original JH&FMHN *Application for Access to Health Record* form JUS020.005, processing fees (see [IB2016 047 Health Records and Medical/Clinical Reports – Rates](#) for charges related to health records), and proof of identity, to the Medico-Legal unit. All application details will be recorded as a Medico-Legal record in the Hewlett Packard Records

Management (HPRM) system. If the patient is in custody at the time of the request, refer to [s3.9](#) of this policy for details on how to retrieve the file.

There may be rare circumstances where the request for health information of a health record will need to be referred to the Department Head or delegate for review and a decision made as to whether the applicant should be granted access to all or part of the health record.

The Health Record must be reviewed by the HIRS Medico-Legal unit to check whether the patient has any documented mental health issues or has been admitted to either The Forensic Hospital (FH), Long Bay Hospital Mental Health Unit (LBH MHU) or the Mental Health Screening Units (MHSU). If the patient has documented mental health issues, the Medico-Legal unit will contact the NUM or Mental Health clinician to discuss risk factors and/or risk of harm relating to the patient or patient's authorised representative receiving a copy of their file.

If the patient has been admitted to FH, LBH MHU or MHSU, the HIRS Medico-Legal unit will forward a copy of the Health Record to the Statewide Clinical Director Forensic Mental Health or delegate for review and determination of whether access should be granted to all or part of the Health Record. A determination should be provided as outlined in section [3.1.1](#) (part c) of this policy.

If the patient has not had an admission to any of the above-mentioned units or does not have documented mental health issues, the HIRS Medico-Legal unit must review the Health Record to ascertain whether access to the information may place the person seeking their information, or another person, at risk of harm.

Once the file has been reviewed, a determination is sought from four possible outcomes:

(a) **Access Granted Without Condition**

If the Medico-Legal Manager/Statewide Clinical Director Forensic Mental Health, NUM or Mental Health Consultant is satisfied that there is no risk of harm as per provisions of the [NSW Health Privacy Manual for Health Information](#), the health information will be granted without condition. A copy of the Health Record is forwarded to the patient along with an accompanying Access Granted cover letter by HIRS.

(b) **Access Granted With Condition**

If the Medico-Legal Manager/Statewide Clinical Director Forensic Mental Health, NUM or Mental Health Consultant determine that only part of the record should be accessed, a copy of the approved section of the Health Record must be forwarded to the patient along with an accompanying *Access Granted* cover letter in addition to advising the patient or authorised representative that they may apply for their health information under the [GIPA Act](#) (Refer to [s3.1.2](#) of this policy).

(c) **Supervised Access Granted**

If the Statewide Clinical Director Forensic Mental Health, NUM or Mental Health Consultant or delegate has concerns regarding the impact that granting access to the information may have on the patient, a letter explaining this should be given to the patient, and a copy filed in the Health Record.

If supervised access is granted and the patient is in custody or in The FH, a NUM Supervised Access cover letter is sent from HIRS to the NUM or delegate requesting they call that patient to the Health Centre and review the notes together. The NUM or delegate must not provide copies of the Health Record.

If supervised access is granted and the patient is no longer in custody, a health care provider or HIRS Manager/Medico-Legal Manager must supervise access to the Health Record. A Patient Supervised Access cover letter is sent by HIRS to the patient to arrange an appointment to view the Health Record.

(d) **Access Refused**

If access is denied, an Access Refused cover letter must be sent by HIRS to the patient informing them that the request has been refused. Patients, or authorised representatives, may request the information under the [GIPA Act](#).

Fees associated with accessing personal health information are available on the [Information Bulletin](#).

The HIRS Medico-Legal unit must ensure no unauthorised material is provided, such as information identifying a person who has made a child protection notification to Family and Community Services.

### 3.1.2 Government Information (Public Access) Act 2009

All requests for information under the [GIPA Act](#) must be referred to the JH&FMHN Legal Advisor at (02) 9700 3000 or [GIPAinfo@justicehealth.nsw.gov.au](mailto:GIPAinfo@justicehealth.nsw.gov.au). The HIRS Manager will assist the Legal Advisor with processing all applications that require access to a Health Record with proof of identity being required. Copies of all GIPA correspondence relating to the release of Health Information must be filed in the Health Record.

Under the [GIPA Act](#), there is a presumption in favour of disclosing government information unless there is an overriding public interest against disclosure. Requests for information under the [GIPA Act](#) may be processed as either an informal or formal application.

#### 3.1.2.1 Informal Applications

While JH&FMHN reserves the right to require a formal GIPA application, the following information may be provided in response to an informal request:

- (a) Copies of correspondence, where a person requesting the correspondence was the person who sent it
- (b) Documents that contain only personal information about a particular individual, provided this individual is requesting the information
- (c) Documents already made public in some other way, and/or
- (d) Other reasonable requests for information for which release would not raise any potential concerns in terms of public interests and considerations against disclosure.

The Right to Information Officer will determine whether there is public interest for or against the release of information under an informal application and whether reasonable conditions should be imposed.

#### 3.1.2.2 Formal Applications

- (a) The patient, or their authorised representative, must complete a GIPA Access Application form or submit a letter outlining any information required. A formal application for information under the [GIPA Act](#) must:
  - i. Be in writing and sent to JH&FMHN
  - ii. Clearly indicate that it is an access application made under the [GIPA Act](#)
  - iii. Be accompanied by a fee of \$30, or meet the requirements for fees waive (Refer to [s3.1.3](#) of this policy)

- iv. State a postal address in Australia as the return address for correspondence in connection with the application
  - v. Include such information as would be reasonably necessary, as determined by the Right to Information Officer, to enable identification of requested information.
- (b) Upon receipt of a formal application for information, the Right to Information Officer must:
- i. Decide whether an application is valid within 5 working days
  - ii. Conduct a reasonable search for all documents held by JH&FMHN that fall within the scope of the application
  - iii. Conduct a public interest test for each identified document to determine public interests considerations for and against the release of information
  - iv. In most circumstances, submit a response to the applicant within 20 working days.
- (c) If access to information is refused and an applicant requests an internal review of the decision, the internal review must be undertaken by an officer who is no less senior than the person who made the original decision. The review decision must be made as if it was a fresh application. There is a \$40 fee for an internal review application.

### 3.1.2.3 Refusal to Disclose Health Information

Applications made by a patient or authorised representative for their Health Record may also be refused as per provisions outlined within the [NSW Health Privacy Manual for Health Information](#).

This is most often likely to arise where access may place the person seeking their information, or another person, at risk of harm. HPP 7 of the [HRIPA](#) therefore allows refusal of access if a refusal “is authorised or allowed under a law”. This provision is designed to recognise circumstances where access could also be refused under the [GIPA Act](#). If access can be refused on this basis under the [GIPA Act](#), the health service will be “lawfully authorised” to refuse access under [HRIPA](#).

However, in such circumstances, decision making should be clearly documented, including in which circumstances access will not be granted, which considerations were made to determine whether to disclose or not disclose certain information, and the professional status of the person who has made that decision. There may also be other grounds for refusal in the [GIPA Act](#). Staff should refer any enquiries to the Legal Advisor, Clinical and Corporate Governance.

## 3.2 Enquiries from Family, Carer and Significant Others

General enquiries from a patient’s family, carer, significant other or legal representative are sometimes made directly to the Health Centre or Inpatient Ward. Health information must not be provided without the patient’s written consent (JUS020.035).

A JH&FMHN staff member responding to an enquiry must:

- advise the enquirer that detailed health information cannot be provided without the patient’s consent,
- offer to ask the patient to telephone them so their questions can be answered directly by the patient, or
- if the enquirer requires detailed health information, advise the enquirer to contact the Client Liaison Officer (CLO) in the Clinical and Corporate Governance Unit on (02) 9700 3051 who will arrange a *Consent to Liaise* form (JUS020.035).

If the enquirer contacts the CLO, the CLO will forward the enquirer details and a JH&FMHN *Consent to Liaise* form (JUS020.035) to be completed by the patient to the NUM of the patient's health centre/ward. Once the consent is complete, the NUM is to contact the enquirer and return the completed consent to liaise form to the CLO. If the enquiry suggests dissatisfaction or a complaint with our service, the JH&FMHN policy [2.015 Patient Complaints Handling](#) is to be followed.

Patients admitted to either the Forensic Hospital or the Long Bay Hospital Mental Health Unit may nominate a Designated Carer. This nomination provides the necessary consent for staff to disclose Health Information to the Designated Carer. No additional consent is required from the patient.

### 3.3 External Health Agencies for Ongoing Care Purposes

#### 3.3.1 Requests from JH&FMHN to an External Health Provider

JH&FMHN may request information about current JH&FMHN patients from external agencies, including hospitals, outpatient/community facilities, General and /or Specialist practice and medical centres.

Requests for health information from an external health provider generally require the JH&FMHN clinician to request the patient to provide consent to release by signing the NSW Health state approved *Consent to Obtain Health Information from external agencies* form (SMR020.081). Although patient consent is not strictly required to release health information for ongoing patient care or for certain secondary purposes as defined within the [NSW Health Privacy Manual for Health Information](#), it is preferable that, wherever possible, patient consent be obtained to involve the patient in his/her health care decisions.

A JH&FMHN clinician should, if appropriate, request the patient to complete *Consent to Obtain Health Information from external agencies* form (SMR020.081). If it is not possible to obtain patient consent, it should be noted on the form and the reason why it was not possible. A request for health information is scanned with the consent form to the Release of Information – Custodial Health clerk. The Release of Information – Custodial Health clerk is to ensure that the JH&FMHN *Consent to Obtain Health Information from external agencies* form (SMR020.081) is completed accurately and filed within the Health Record and the health information from the external provider is scanned into the Justice Health electronic Health System (JHeHS).

#### 3.3.2 Requests from External Health Provider to JH&FMHN

External health providers requesting patient health information may include hospitals, outpatient/community facilities, doctor's offices and medical centres that require information to treat former JH&FMHN patients. Such requests are processed by the HIRS Medico-Legal unit during regular business hours. Any requests from external health providers received after hours will be actioned by the HIRS After-Hours clerks. If the patient's file is at the Health Centre where the patient was most recently located, the request is forwarded to the clinic for them to complete.

JH&FMHN may also be required to provide health information for current JH&FMHN patients to external health providers as part of a referral or a booked appointment that is managed by the Integrated Care Service (ICS). Refer to JH&FMHN policy [1.264](#) for guidance on how to process these requests.

All external health provider requests for former JH&FMHN patients must be in writing via fax, email or mail. Requests can be made by letter on the external health provider letterhead. The letter must include:

- the patient's full name and any aliases,
- date of birth,
- specific details of information required, and
- the purpose for which the information is requested, if relevant.



If the patient is in custody at the time of the request, the Medico-Legal unit would make a determination if the request is valid. If the patient is not in custody at the time of the request, a copy of the required health information from the paper Health Record and electronic Health Record is forwarded to the external provider, accompanied with an *External Agency – Information Supplied* cover letter issued by HIRS. If the required information is not available, the external provider is contacted and advised by HIRS and an *External Agency – No Information Supplied* cover letter is issued.

### **3.3.3 Statewide Community and Court Liaison Service, Adolescent Court and Community Team, Integrated Care Service, Connections Program, and Community Integration Team**

The Statewide Community and Court Liaison Service (SCCLS), Adolescent Court and Community Team (ACCT), Community Integration Team (CIT), Integrated Care Service (ICS), and Connections Program require health information to be obtained from and disclosed to other health providers. These requests are actioned by the respective service staff and appropriate JH&FMHN or State Health Record Consent forms are to be used.

## **3.4 Third Parties / External Agencies (Non-Health Care)**

Patients can consent to or authorise any third party or external agency to access their Health Records. As a general principle, most third party or external agency requests will be actioned by HIRS Medico-Legal unit during normal business hours; however, all requests from third parties that explicitly reference the [GIPA Act](#) must be actioned by the Right to Information Officer (refer to [s3.1.2](#)).

### **3.4.1 HRIPA/GIPA Fee Waiver/Discounts for Processing Charges**

Fees associated with accessing personal health information are updated regularly on the NSW Ministry's [Information Bulletin](#) *Health Records and Medical/Clinical Reports - Rates*.

All HRIPA applications that request a discount need to be formally requested in writing to the HIRS Manager. All GIPA applications that relate to health information and request a discount need to be formally requested in writing to the GIPA Release of Information Officer.

If the application requests a full waiver of fees, the HIRS Manager or GIPA Release of Information Officer is to seek approval from the Executive Director Corporate Services as per JH&FMHN policy [2.022 Delegations Authority](#). A fee waiver or discount is only to be considered in processing charges if:

- there is evidence of financial hardship, or
- the application is from a not-for-profit organisation (including a person applying for or on behalf of a not-for-profit organisation), or
- JH&FMHN is satisfied that the information applied for is of special benefit to the public generally, or
- the applicant is the holder of a current Pensioner Concession card issued by the Commonwealth.

### **3.4.2 Solicitors**

All solicitor requests relating to the release of patient information, excluding requests made under the [GIPA Act](#), must be forwarded to the HIRS Medico-Legal unit for processing. The request must be in writing using the organisation's letterhead, not a fax or photocopy, must include a processing fee of \$33 (includes first 80 pages of photocopying) and a valid consent.

The form of consent must include:

- patient full name and any aliases,
- date of birth,

- date of written consent (within the last three months),
- specific details of information required,
- the name of the applicant being authorised and their relationship to the patient,
- the purpose for which the information is requested, (where relevant).

According to the [NSW Health Privacy Manual for Health Information](#), a photocopy of the original consent document can be accepted when provided by the patient, third parties, and government agencies. An additional authority similar to or using the JH&FMHN *Consent to Release Health Information* form JUS020.015 is required when the health record contains information identified as being sensitive information: Sexual assault notes, Drug and alcohol notes, HIV/AIDS serology results, sexual health, genetic information, organ / tissue donor identification, domestic violence, transgender status, mental health, IVF and artificial insemination programs, adoption notes, aboriginal health notes and records of children considered to be at risk.

In cases where the solicitor seeks to obtain information on behalf of the patient (such as [HRIPA](#) or the [GIPA Act](#) requests), a risk assessment of possible harm to the patient and/or any other person must be conducted. The process is outlined in sections [3.1.1](#) and [3.1.2](#) of this policy.

### 3.4.3 Insurance Companies

All Insurance Company requests relating to the release of patient information must be forwarded to the HIRS Medico-Legal unit for processing.

The request must be in writing using the organisation's letterhead, must include a processing fee of \$33 (includes first 80 pages of photocopying), and a valid consent.

The form of consent must include:

- patient full name and any aliases,
- date of birth,
- date of written consent (within the last three months),
- specific details of information required,
- the name of the applicant being authorised and their relationship to the patient,
- the purpose for which the information is requested, ( where relevant), and

Where the request is made for information relating to an insurance or compensation claim, a photocopy of the insurance application or compensation claim form, signed and dated by the client/patient, containing the patient's consent to disclosure, is sufficient authority for the disclosure of a medical report or summary of injuries. Other information should not be provided without the clearly documented consent of the patient.

An additional authority similar to or using the JH&FMHN *Consent to Release Health Information form* JUS020.015 is required when the health record contains information identified as being sensitive information: Sexual assault notes, Drug and alcohol notes, HIV/AIDS serology results, sexual health, genetic information, organ / tissue donor identification, domestic violence, transgender status, mental health, IVF and artificial insemination programs, adoption notes, aboriginal health notes and records of children considered to be at risk.

### 3.4.4 HCCC and Ombudsman

Requests from the [Health Care Complaints Commission](#) (HCCC) and [Ombudsman](#) are referred to the Client Liaison Officer (CLO). All request must be recorded as a Medico-Legal record in the HPRM system by the CLO.

The request must be in writing using the organisation's letterhead and include:

- patient full name and any aliases,
- date of birth,
- cite the relevant provision allowing release of Health Records,
- specific details of information required, and
- the purpose for which the information is requested, if relevant.

If a written order specifying the relevant section of the [Health Care Complaints Act](#), [Ombudsman Act](#) or [HRIPA](#) is not provided, a copy of the written consent from the client/patient authorising the release of health records to HCCC is required.

If the complaint pertains to a patient currently in custody the CLO will forward the request to the NUM of the facility and cc the HIRS Manager. The NUM is to review the request and determine the amount of photocopying that is required in consultation with the HIRS Manager. If the entire health record is required to be photocopied, the NUM courier the health record to HIRS. If the request requires only a couple of pages (up to 10) to be photocopied then the NUM is to complete this action. All photocopied documents are to be sent to the CLO who will review, make any notation against the request within HPRM prior to documents being sent to the HCCC/Ombudsman.

If the complaint pertains to a patient no longer in custody, the CLO forwards the request to the HIRS Medico Legal unit. The HIRS Medico Legal unit photocopies the relevant documents and forwards them to the HCCC/Ombudsman. The CLO is informed that the request has been completed and finalises it by making a notation against the request within HPRM.

### **3.4.5 Corrective Services NSW (CSNSW) and Juvenile Justice (JJNSW)**

On admission into custody or detention, the patient must be informed of JH&FMHN's duty of care and legislative requirements to disclose health information to CSNSW and JJNSW. This disclosure may be via *Patient Administration System* (PAS), inter-provider case management, transport and movement orders and various certificates. The JH&FMHN *Authority to Disclose Health Information* form (JUS020.020) must be completed on admission into custody/detention.

Some health information is communicated to CSNSW and JJNSW via PAS to Offender Integrated Management System (OIMS) and Client Information Management System (CIMS) respectively. Not all alerts are transferred back to OIMS or CIMS. PAS alerts that are transferred back have a suffix of CSNSW or JJ. Comments recorded against these PAS alerts are also transferred back and visible to OIMS or CIMS users. Comments must be clinically appropriate and professionally recorded using accepted JH&FMHN clinical or corporate abbreviations. The JH&FMHN [Alert Definition Document](#) outlines the specific alerts that transfer between Clinical Applications and OIMS/CIMS.

Other relevant policies and the JH&FMHN [Guidelines on the Use and Disclosure of Inmate/Patient Medical Records and Other Health Information](#) should be accessed for further guidance regarding the communication of health information to CSNSW and JJNSW.

### **3.4.6 Health Records Access for CSNSW and JJNSW Allied Health Professionals**

Allied Health professionals from CSNSW and JJNSW may access patient Health Records for whom they have direct clinical responsibility.

The CSNSW or JJNSW Allied Health professional must request access to the Health Record from the NUM or delegate. This request may be made verbally. The NUM or delegate must document in the Progress Notes

detailing who accessed the Health Record and when. The NUM or delegate would also need to sit with the Allied Health professional to review the electronic Health Record in JHeHS.

Patient consent is not required where the CSNSW/JJNSW psychologist is the treating health professional.

In all other cases where the CSNSW and JJNSW Allied Health or Community staff are not clinically involved in patient care, written patient consent is required and should be forwarded to the HIRS Medico-Legal unit for processing as per [s3.3.2](#) of this policy.

### **3.4.7 Community Corrections (formerly Probation and Parole)**

All requests by Community Corrections are processed by the HIRS Medico-Legal unit.

All Community Corrections requests must be in writing via fax or mail. Requests will only be processed if made either using the JH&FMHN *Consent to Release Health Information* form (JUS020.015) or by letter on the Community Corrections letterhead with an accompanying consent form.

The form of consent must include:

- patient full name and any aliases,
- date of birth,
- date of written consent (within the last 3 months),
- specific details of information required,
- the name of the applicant being authorised and their relationship to the patient,
- the purpose for which the information is requested, ( where relevant), and

If the patient is not in custody at the time of the request, the file is retrieved from its storage location and the required information from the Health Record is forwarded to the Community Corrections Officer making the application via fax.

If the patient is in custody at the time of the request, the HIRS Medico-Legal unit will instruct the Health Centre/Ward NUM or delegate where the patient is accommodated on the appropriateness of the disclosure of information. The NUM or delegate will collate the required health information and forward the information directly to Community Corrections.

### **3.4.8 Law Enforcement Agencies (including Police)**

All requests by law enforcement agencies are processed by the HIRS Medico-Legal unit, and are generally processed following:

- receipt of a request in writing accompanied by
- a signed original JH&FMHN *Consent to Release Health Information* form JUS020.015 from the patient, or
- serving of a Search Warrant, or
- serving of a Subpoena.

In the event that a signed JH&FMHN *Consent to Release Health Information* form JUS020.015, a Search Warrant or a Subpoena is not received, the request should be referred to the Manager, Executive Support Unit for consultation with the Chief Executive. A copy of the email and any other associated documents must be filed in the Health Record.

If the Law Enforcement Provider request relates to a death in custody, refer to JH&FMHN policy [1.120 Management of a Death](#).

### 3.4.9 Child Protection

The [Children and Young Persons \(Care and Protection\) Act 1998](#), allows agencies working with children and families to exchange information that promotes a child or young person's safety, welfare and/or wellbeing, whether or not the child or young person has been reported to the Child Protection Helpline.

#### 3.4.9.1 Chapter 16A

[Chapter 16A](#) of the [Children and Young Persons \(Care and Protection\) Act 1998](#) establishes a scheme for sharing information that is relevant, factual and accurate pertaining to the safety, welfare or wellbeing of children and young people between prescribed bodies. Chapter 16A requests can be made verbally or in writing depending on the clinical circumstance. Staff should use their professional judgement to determine whether a form is the preferred method for exchanging information.

It is preferable that the staff exchanging verbal information have a relationship with, or knowledge of the person about whom the information is to be exchanged. This is to ensure the information provided is relevant and understood in the current context of the child, young person and their family. Verbal information will most likely be sought when the request is straightforward or when it is needed urgently. A common example of verbal exchange would be at a case conference or telephone call about a shared client.

[Chapter 16A](#) formal written requests should be forwarded to the Health Information and Record Service Management team for processing. Written exchanges of information under Chapter 16A are encouraged where they occur outside the context of an existing professional relationship between agency representatives or where the information to be exchanged is complex. The required health information is collated and the information exchanged on the form *SMR805.500 Exchange of Information Chapter 16A*.

#### 3.4.9.2 Section 248

[s248](#) of the [Children and Young Persons \(Care and Protection\) Act 1998](#) governs the exchange of information relating to the safety, welfare and wellbeing of children and young people between the Secretary, Family and Community Services, and prescribed bodies.

The provisions in [Chapter 16A](#) are facilitative in nature, whereas [s248](#) contains stronger powers of direction and discretion which are relevant to the statutory role of the Secretary, Family and Community Services (or delegate), in relation to child safety, welfare and *wellbeing*.

[s248](#) requests are processed by the HIRS Medico-Legal unit. If the patient is in custody at the time of the application, the request is forwarded to the Health Centre/Ward NUM where the patient is currently accommodated. The NUM or delegate will collate the required information and forward the information directly to Family and Community Services. Health clerks are not permitted to collate this information.

Consent is not necessary for exchange of information under Chapter 16A or s248 provided that the information exchanged relates to the safety, welfare and/or wellbeing of a child and fulfils the objects and principles of the legislation. Although consent is not necessary, it should be sought where possible, safe and appropriate.

It is important for staff to know when and how information can be shared under Chapter 16A and when seeking the consent of a child or young person or their family is advisable

Further information relating to staff responsibilities are outlined in NSW Health policy directive [PD2013 007](#) *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*.

### 3.4.10 Section 25 Order

The [Crimes \(High Risk Offenders\) Act 2006](#) serves to provide for the supervision and continuing detention of high risk sex offenders and high risk violent offenders. [s25\(1\)](#) of the [Crimes \(High Risk Offenders\) Act 2006](#) allows the Attorney General or delegate to order JH&FMHN to provide them with any document, report, or other information in our possession that relates to the behaviours, or physical or mental condition of any offender. All Section 25 Orders are processed by the HIRS Medico-Legal unit.

### 3.4.11 Mental Health Advocacy Service

The Mental Health Advocacy Service (MHAS) representative must contact the Nursing Unit Manager in the health centre/ward in which the patient is currently located or ICS Care Coordinator by phone or mail to arrange a suitable time to access a Health Record.

When the Nursing Unit Manager or Care Coordinator schedules the appointment, they will advise the representative whether, in the opinion of the treating team, there is any material contained in the Health Record that may cause harm to the patient or any other person.

If the treating team is of the opinion that there is a risk of harm, the Nursing Unit Manager or Care Coordinator will ensure that the psychiatrist is available to speak with the MHAS representative either by phone or in person when the MHAS representative attends the facility.

All interactions with the MHAS, including advice about the treating team's opinion regarding potential harm must be documented in the Progress Notes. The date and time the MHAS representative is scheduled to attend the facility and the actual attendance must also be recorded in the Progress Notes.

The treating team will consider whether any material contained in the Health Record may cause harm to the patient or any other person at the clinical review meetings or in-depth case review as per JH&FMHN policy [1.078](#) *Care Coordination, Risk Assessment, Planning and Review Forensic Hospital*. If required, the treating team should apply to the Mental Health Review Tribunal for an order or direction in relation to the inspection of Health Records, especially if the patient chooses to represent themselves at the Mental Health Review Tribunal.

### 3.4.12 Official Visitors

The medical superintendent or delegate must produce to Official Visitors any registers, books, records, orders, certificates, returns and other documents relating to the admission, care, treatment and control of the patients and other persons and the discharge of persons when requested. This also includes IIMS and RCA reports. Patient consent to produce any Health Records for Official Visitors is not required.

### 3.4.13 Coroners Court

JH&FMHN policy [1.120](#) *Management of a Death* details procedures for the management of health information for Coroners Court.

## 3.5 Referral or Report requests for Legal Purposes

All requests for medical or psychiatric treatment referrals or reports from one of the below legal agencies must be received in writing by JH&FMHN and be immediately directed to the CRCU via email: [crcu@justicehealth.nsw.gov.au](mailto:crcu@justicehealth.nsw.gov.au):

- Crown Solicitors Office (CSO);
- Legal Aid;
- Aboriginal Legal Service (ALS);

- Office of the Director Public Prosecutions (ODPP);
- Other legal representatives (i.e. Police, Private Solicitors);
- Serious Offenders Review Council (SORC); or,
- State Parole Authority (SPA).

This also extends to the CRCU being forwarded all requests or enquiries that are received only from the above legal or external agencies, which relate to but not limited to:

- Medical or psychiatric treatment referrals or tests/examinations (extends to medical or psychiatric treatment referral requests where the patient was seen (privately) by a JH&FMHN Visiting Medical Officer)
- More information relating to the specific services provided by JH&FMHN (which are not outlined in the Overview of Services document).
- Information from the above agencies that relate to patients and are not complaints.

The CRCU will triage and save the request within HPRM as per the *CRCU Operational Guidelines* in addition to contacting the appropriate JH&FMHN personnel. The NUM that receives and forwards the request will be kept informed by the CRCU and all responses must be filed accordingly into the Health Record by the Health Centre Clerk.

If the CLO receives a request from a legal or external agency for a new report to be written or an enquiry about this process, these are to be forwarded to the CRCU.

JH&FMHN must seek to obtain the patient's written consent before any medical or psychiatric report is submitted to a Court or external agency. The Consent to release Health Information to Non-Health Agencies form (SMR020.080) is used in all instances. However, if a patient refuses consent and the request is court ordered, JH&FMHN must process the request within specified timeframes.

JH&FMHN have agreed timeframes for the production of psychiatric and medical reports - at five and four weeks respectively. Should the requesting agency not allow sufficient time for the production of the report, it is the responsibility of the CRCU to advise accordingly. There may be instances where requests can be met outside of these policy guidelines and the CRCU will liaise with the Clinical Operations directorate as required.

### 3.6 Subpoenas

All subpoenas relating to health information must be forwarded to the HIRS Medico-Legal unit for processing. The Medico-Legal Manager or delegate is to confirm the validity of the subpoena and ensure that the schedule, time and date are documented. All subpoena requests will be actioned during normal business hours, Monday to Friday, however may extend into afterhours depending on the schedule. The written consent of the patient is not required when the request for health information is by subpoena.

In the event the subpoena is accepted by a JH&FMHN staff member other than within the HIRS Medico-Legal unit, the person accepting the subpoena needs to:

- check that it is addressed to JH&FMHN;
- ensure that it has an official stamp on it;
- check that a time and date the subpoena is due has been documented; and,

- check that the subpoena is served within the appropriate date, if it is not then the Network does not need to accept it.

Once accepted, the staff member is to contact the HIRS Medico Legal unit immediately, scan and email the subpoena prior to forwarding the original subpoena via mail. The Medico Legal unit will check the compliance dates as well as other information and contact the issuer of the subpoena for any further details if required.

In the event that a Health Record has been subpoenaed and the patient is not a party to the proceedings, they must be notified that the subpoena has been received and advised of the return date. The patient is notified only if they are in custody at the time of the request.

A sensitivity test or a review of the information is also conducted by the Medico-Legal Manager. If the information is deemed to be sensitive, a sensitive information notice is applied to the information and the Registrar of the court is notified. The Judge is then responsible for making a final decision on whether the information should or should not be released.

Sensitive information can include (but is not limited to):

- Sexual Assault
- Drug and Alcohol
- HIV/AIDS
- Domestic Violence
- Genetic Information
- Organ/Tissue Donor Identification
- Adoption Notes
- Aboriginal Health Notes
- Transgender status
- Mental Health
- Records of Children considered to be at risk
- Records containing information on persons other than the patient.

Where documents cannot be produced by the return date, the Medico-Legal Manager must advise the court and solicitor who requested the subpoena by telephone and in writing. The letter must outline the reason why it was not possible to comply with the return date. A copy of the letter is filed in the patient's Health Record.

Concerns relating to the scope of the subpoena or if it is in relation to a civil matter must be referred directly to the JH&FMHN Legal Advisor, Clinical and Corporate Governance Unit. A copy of the email should be filed in the patient's Health Record.

### **3.6.1 Short Serviced/Court Ordered Subpoenas**

When HIRS receives a short serviced subpoena for production of documents, the staff member receiving the subpoena must ensure that the subpoena will be complied with within the short turnaround and also check that there is a specified response timeframe, including date and time accepting the subpoena. If a short serviced subpoena is accepted by someone outside of the HIRS Medico Legal unit, the staff member is to contact the HIRS Medico Legal unit immediately, scan and email the subpoena prior to forwarding the original subpoena via mail.



### 3.6.2 Staff Subpoenaed

When a staff member receives a subpoena for production of documents (other than medical records, that member must contact the JH&FMHN Legal Advisor, Clinical and Corporate Governance Unit to ensure ongoing compliance. A subpoena for production of medical records should be referred to HIRS immediately.

When a staff member is served with a subpoena to give evidence, the JH&FMHN Legal Advisor must be notified immediately. Ongoing support will be provided by the Legal Advisor to the staff member.

### 3.6.3 Support Mechanisms

Within JH&FMHN the legal advisor is available for ongoing support and advice in complying with subpoenas. A staff member who is part of a professional association can also contact their member group for support and assistance. The Employee Assistance Program (EAP) is also available to staff as a support mechanism for non-legal support.

## 3.7 Protected Patients

Protected Patients (P Patients) are those housed at the Special Purpose Centre (SPC) at Long Bay Correctional Complex. All release of health information requests relating to P Patients must be forwarded to the HIRS Medico-Legal unit to coordinate and process.

The request must be in writing on letterhead, not a fax or photocopy, and must include the P Patient's signed original authorisation. The request must include:

- the patient's P number,
- date of birth,
- date of written consent (within the last 3 months),
- specific details of information required,
- the name of the person being authorised and their relationship to the patient, and
- the purpose for which the information is requested, if relevant.

The original authority must be obtained as evidence of patient consent to the disclosure of information. If one was not provided with the application, the solicitor should be advised to use the JH&FMHN *Consent to Release Health Information* form JUS020.015.

## 3.8 Adolescent Consent

Prior to requesting or disclosing information relating to adolescent patients, staff should assess the maturity of the young person, in particular their ability to understand the content of the records and consequences of their decision. The following principles can be used as an age guide:

- Where a patient is less than 14 years of age, consent given by a parent or legal guardian is necessary.
- Where the patient is between 14 and 16 years of age, the young person is generally able to consent to access to, or disclosure of, their own health record. Effort should be made to seek the consent of a parent or legal guardian unless the patient indicates a strong objection, and this is reasonable in the circumstances.
- Where the patient is 16 years of age or over, they should generally be capable of consenting to access to, or disclosure of, their own health record for themselves.

### 3.9 Dispatching Health Records to the HIRS Medico-Legal Unit

If the patient is in custody at the time of a Medico-Legal request, the Medico-Legal unit will request the patient's Health Records from the Health Centre/Ward. The Nursing Unit Manager/Nurse in Charge (NUM or delegate) is responsible for facilitating the timely dispatch of the record to the HIRS Medico-Legal unit.

Prior to sending the Health Record to HIRS, the NUM or delegate must photocopy the current treatment sheets and medication chart of the Health Record to ensure sufficient clinical information is available to the centre to facilitate clinical care. The original medication chart is to be kept in the health centre and the photocopied medication chart is to be sent with the original record to HIRS. If the current volume of the Health Record has been opened for less than one month, the previous volume of the Health Record must also be photocopied. The photocopied notes must be filed in a Health Record cover, with 'Temporary Copy' written on the front cover and kept at the health centre. A temporary volume must also be created on [PAS](#) and if the patient is transferred, the Temporary Copy must be sent with them. When the original is returned to the Health Centre, the Temporary Copy must be destroyed and the Temporary Copy deleted from PAS as per the *Health Record Procedure Manual*.

### 3.10 Dispatching Health Information to External Parties

The disclosure of health information to external parties may be either by fax, email, surface mail or courier. In all instances, processes must ensure the information is sent to the appropriate location. If staff are unsure of the correct process they are to contact the HIRS Manager or refer to the Health Record Procedure Manual for further information. All instances where health information is sent to an incorrect party must be logged in IIMS. The incorrect party must also be notified by the Medico-Legal unit to confidentially destroy the documents, or send them back to HIRS via Toll Priority courier to be destroyed as per the *Health Record Procedure Manual*.

### 3.11 Policy Compliance Monitoring

The HIRS will undertake audits to monitor policy compliance. Audit results will be reported to the Manager Information Management (IM) on an annual basis.

### 3.12 Communications/Media Relations

In accordance with JH&FMHN policy [2.018 Media and Communications \(External\)](#), requests from the media, and/or contentious issues that may be of media or public interest, are coordinated by the Performance & Planning directorate and approved by the Chief Executive.

Media requests for patient information should be directed to the Executive Director Performance & Planning in the first instance and the Right to Information Officer for requests made under the [GIPA Act](#).

A patient's health information can only be released to the media once the patient, or in specific circumstances the guardian or next of kin, provides consent.

For requests related to coronial or other legal proceedings, it is an offence to make comment that could be seen to interfere with or undermine the authority of the judiciary or courts. It is permissible to confirm a matter is before the courts; however details on the case, patient or incident should not be released. Again the response would be coordinated through the Performance & Planning directorate, and would typically state that it is inappropriate to provide specific comment while the matter is subject to investigation, and may also express condolences to the patient or family, if appropriate.

## 4. Definitions

### Must

Indicates a mandatory action or requirement.

### Patient Health Record

Indicates a patient has a paper-based and electronic health record.

### Should

Indicates a recommended action that needs to be followed unless there are sound reasons for taking a different course of action.

## 5. Legislation and Related Documents

### Legislation

[Children and Young Persons \(Care and Protection\) Act 1998](#)

[Crimes \(Administration of Sentences\) Regulation 2014](#)

[Government Information \(Public Access\) Act 2009](#)

[Health Care Complaints Act 1993](#)

[Health Records and Information Privacy Act 2002](#)

[Mental Health \(Forensic Provisions\) Act 1990](#)

[Ombudsman Act 1974](#)

### NSW Ministry of Health Information Bulletins and Policy Directives and Manuals

[IB2016 047 Health Records and Medical/Clinical Reports – Rates](#)

[PD2006 050 Health Records and Medical/Clinical Reports – Charging Policy](#)

[PD2010 065 Subpoenas](#)

[PD2013 007 Child Wellbeing and Child Protection Policies and Procedures for NSW Health](#)

[NSW Health Privacy Manual for Health Information](#)

SMR020.080 *Consent to Release Health Information to Non-Health Agencies*

SMR805.500 *Exchange of Information Chapter 16A.*

### JH&FMHN Policies, Forms and Guidelines

[1.120 Management of a Death](#)

[1.078 Care Coordination, Risk Assessment, Planning and Review Forensic Hospital](#)

[2.015 Patient \(Consumer\) Complaints Handling](#)

[1.253 Access to Local Public Health Services](#)

[2.018 Media and Communications \(External\)](#)

JUS020.015 *Consent to Release Health Information*

JUS020.030 *Statewide Community and Court Liaison - Consent to Release Health Information*

JUS020.035 *Consent to Liaise*

JUS020.210 *Connections Program Project - Consent to Release Health Information*

*Court Report Coordination Unit (CRCU) Operational Guidelines (DG50852/13)*

[\*Guidelines on the Use and Disclosure of Inmate/Patient Medical Records and Other Health Information\*](#)

*Health Record Procedure Manual (DG84413/16)*

*Judicial request for a JH&FMHN Psychiatric Assessment & Court Report*

External Website [\*Health Care Complaints Commission\*](#)

[\*Ombudsman\*](#)