



Access Alliance

Multicultural Health and Community Services

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CLIENT PRIVACY AND CONFIDENTIALITY

POLICY

Access Alliance Multicultural Health and Community Services (AAMHCS) believes in Health with Dignity which is demonstrated by a respect for the privacy and confidentiality of clients' personal health information (PHI) and patient rights regulations which vary by discipline. Everyone who registers with AAMHCS is a client and their information is protected and that information will be shared appropriately and on an as needed basis in order to make internal and external referrals (considered to be within the "circle of care") and bring together the services and programs that a client may require. When registering a client is asked to sign the AAMHCS Service Agreement and provided with a brief explanation and/or access to materials that review their right to privacy and confidentiality.

The Ontario *Personal Health Information Protection Act, 2004* regulates how the Centre manages clients' personal health information and sets out how the legislation is implemented at AAMHCS.

The Client Privacy and Confidentiality Policy supports the appropriate discussion of client information between staff and to minimize the likelihood of an inappropriate or inadvertent disclosure of client information in the performance of duties and responsibilities.

Any breach of this Policy or the inappropriate disclosure of patient information may result in disciplinary action up to and including dismissal. Reasonable effort will be made to determine if the breach of confidentiality or disclosure of information was intentional or unintentional.

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APPOINTING A PRIVACY OFFICER

In accordance with the Personal Health Information Privacy Act, AAMHCS will appoint a privacy officer (and designate) and post a written statement of its information practices describing how clients may access their health information, identifying the privacy officer and how to make contact for questions or complaints.

RELEVANT SUPPORT FORMS AND DOCUMENTS

- AAMHCS’s Client Privacy and Confidentiality Statement
- Disclosure without Consent Tables and Legislation
- Mandatory Disclosure Tables
- Consent to Release Medical Information, Consent to Release Medical Records (Ingoing and Outgoing)
- Accessing Personal Health Information
- Requesting a Change to Personal Health Information

PART 1: CONFIDENTIALITY OF CLIENT INFORMATION

Personal health information is given to AAMHCS in trust. Personal health information will remain confidential and will be released only with appropriate consent or when required by law or exceptional circumstance. PHI will be discussed and shared by staff in the performance of their professional duties as it relates to health care service and provision for the client – this is known as “the circle of care”. PHI may also be used when necessary and appropriate in order to facilitate effective and efficient management practice and operations, professional supervision and quality assurance and improvement including accreditation.

Employees of AAMHCS (and any volunteers, students or people or companies with service contracts who have access to confidential information - “staff and others”) will be expected to sign a confidentiality agreement and to abide by, but are not limited to, the following procedures and practices *that support the spirit and application of this policy*:

1. Staff and others are required to respect the privacy of clients and to keep personal information of clients in confidence which extends as well to keeping confidential the fact that a person is a client and receiving service or attending programs at AAMHCS;
2. PHI must always be protected from view of clients and unauthorized persons, it must always be properly attended to and never left unattended anywhere in the agency or in places where unauthorized persons can view it;
3. Staff and others must only (re)view the content of a chart when necessary and as it relates to the (professional) task or purpose at hand and within the context of the staff and other’s role (role related);
4. Staff and others will disclose information only when authorized by the client/authorized person, when legally obligated to do so or when disclosure is essential to the prevention of harm to the client or other people; when required by court order or law staff must inform and consult with their supervisor or designate and inform the client except where required not to do so or when safety is an issue; Staff will provide only the information required and no more; staff will make the information available only to those people requiring the information;

5. PHI will only be used for the purposes for which it was collected or with an authorized person's expressed consent;
6. PHI documented outside of the chart must be properly stored in a locked or secured (password protected and not available to more than the provider documenting the information) device; information locked in an office or available electronically to more than the provider is not considered secure;
 - a. This locked or secured information must be entered into the chart within 24 hours;
 - b. The locked or secured information must then be properly destroyed (shredded or fully deleted);
7. Discussions about PHI either between staff and others or between staff, others and authorized persons will focus only on issues related to participation in and care, will take place in private and/or in a confidential and/or privacy positive manner;
 - a. staff and others will refrain from discussing personal (ie. *identifiable*) health information in public areas including reception or hallways where they may be overheard by other clients or staff;
8. Referrals by staff and others internally will be made only with verbal agreement of the client or authorized person;
 - a. Referrals made externally can be with verbal or written consent of the authorized person
 - i. Once a referral is made and a connection is made the staff or others will be considered part of the circle of care;
 - ii. Time limits may be imposed on external circle of care providers as necessary or appropriate for treatment, support, etc. and by the authorized person
 - b. Internal messages about a client will refer to a client by their initials or chart number only (non-identifiable), and not by use of full name or other identifiable information;
9. If privacy and/or confidentiality is breached, the client must be informed and the breach will be fully investigated by the Privacy Officer or designate;
10. Clients have the right to refuse or withdraw their consent to the collection, use or disclosure of PHI.

PART 2: CLIENT RECORDS

Each client who registers with the agency will have a personal health information record (e-chart) which is used for the provision of services and are necessary to maintain, where appropriate, the standards of professional/legal/regulated record keeping, the documentation and communication of health information about clients to other relevant health care providers. The EMR must enable a substitute provider, or whoever is involved in the care of the client, to form an accurate picture of the client's issues and what has been done for their benefit.

HEALTH RECORDS INCLUDE

1. Individual client record:
 - The name, address, date of birth, name of person to be notified in case of emergency, a unique chart number, and, health insurance number, if available;
 - An appropriate health history of the client;
 - The date(s) that the client saw the provider(s) and the name(s) of the provider(s) seen;
 - Particulars of each provider's encounter with the client, including advice given and referrals made as well as:

- A. Investigations ordered by the provider(s) and the results of the investigations;
 - B. Each diagnosis made by the provider(s);
 - C. Each treatment prescribed by the provider(s); and
 - D. Every written report received from another provider regarding the client.
2. An appointment record indicating the name of each client seen or treated, and the provider that rendered the service.

PROTOCOLS

1. Documentation of client encounters shall be done through entry in the electronic medical record (EMR) currently used;
2. All client encounters will be charted in the EMR within 24 hours following the encounter;
 - a. Client encounters include telephone calls, if/when significant advice or material was discussed;
3. Interdisciplinary team consultation, case conferences, pertinent third party consultations and discussion about patient care will be documented in the EMR by the most appropriate health care provider;
4. Documentation relating to client encounters should be clear, concise, accurate, and legible and meet legal requirements of the relevant professional colleges or recognized effective documentation practices of the provider(s);
5. The information contained in the EMR should accurately reflect the encounter and be as objective as possible; comments that are personal observations on the appearance, motivation of clients have no place in the record;
6. If a client wishes to change or disagree with information in their EMR, they may do so by adding their written comment, which should be signed, dated and scanned in to the EMR.

PART 3: INFORMED CONSENT

AAMHCS collects personal health information in order to provide care and services to clients. The Centre also uses this information to evaluate, plan and manage our services and programs and to facilitate appropriate teaching and research. We collect as much information as needed to provide clients with high standards of health care, and to meet stated goals including provincial and legal responsibilities. AAMHCS is permitted to use personal health information for these purposes without consent.

PROTOCOLS

1. The *Personal Health Information Protection Act, 2004* provides that individuals who are competent and 16 years of age or older are entitled to invoke the rights and protections under the Act.
2. As part of the registration process, all new clients receive information about collection, use and disclosure of personal information either verbally and/or through an orientation package;
 - a. The information reviews the Privacy and Confidentiality Policy and outlines the reasons for collecting personal information and how it will be used;
3. Once a client who is seeking services has been informed of AAMHCS's Privacy and Confidentiality Policy, the client will be assumed to consent to the policy, unless he or she states otherwise;

4. In other circumstances, a client's consent will be required for the collection, use and disclosure of personal information; A client will not be assumed to have implicitly consented in the following two circumstances. The staff will obtain the client's express consent when disclosing personal health information to
 - a. someone other than a health information custodian, or
 - b. health information for a purpose other than providing or assisting in health care.
5. A competent client has the right to refuse to consent for collection of personal health information or to other elements of AAMCHC's Privacy and Confidentiality Policy;
 - a. If the refusal to consent will compromise client care, the provider will discuss the risks and benefits for the provision of quality health care;
 - b. The provider will seek ways to facilitate ongoing quality care;
 - c. If the client continues to refuse, the refusal should be noted in the chart, along with the provider's efforts to encourage the client to make a decision that would permit ongoing care.
 - d. If the situation cannot be resolved provision exists for "Terminating Client Relationship".
5. If a child is under the age of 16, then his or her parents or guardians have a general right to access and control the child's personal health information
 - a. However, children have a right to information relating to treatment decisions or counselling decisions if they are competent and their consent is necessary to access their health record.
6. Clients (including children) are presumed to be competent to consent to the collection of personal health information, unless a provider has reason to believe otherwise.

PART 4: USE OF PERSONAL HEALTH INFORMATION

At AAMHCS the information relating to a registered client will be shared by the staff providing services and support to the client – these staff people are part of the "circle of care".

AAMHCS may use all or parts of clients' personal health information to:

- Provide care and treatment;
- Get payment for clients' care and treatment (from the Ministry of Health and Long Term Care, OHIP, IFH, or others);
- Contact clients regarding events and issues;
- Plan, administer and manage our internal operations;
- Conduct quality improvement and professional development activities;
- Train students and staff working in the Centre;
- Conduct research;
- Compile statistics; and
- Fulfill other purposes permitted or required by law.

At AAMHCS we share client information with health professionals outside AAMHCS, when we make a referral to a specialist or when a client requests service from another professional, such as a pharmacist. This policy is designed to facilitate the provision of services to our clients with a minimum of delays.

A competent client has a general right to refuse consent to the use of his or her personal health information or to other elements of AAMHCS's privacy and confidentiality policy.

PROTOCOL

1. In a case where a client withdraws consent or puts conditions on use of personal health information, this fact will be noted in the chart and appropriate steps taken to segregate or block access to those areas of the chart using means found in the current EMR;
 - a. A notation will be added to the notes section of the client's electronic chart, starting with the notation LB (lock box), an explanation of the restriction, the date of entry and initials of the person entering the information (i.e. "LB: Client does not wish to have his personal health information shared with his mother. Aug. 2, 2005 jc");
 - b. Information cannot be put in an LB if the law requires disclosure;

PART 5: DISCLOSURE OF PERSONAL HEALTH INFORMATION

The agency has a duty to safeguard a client's personal health information and ensure that it is not inadvertently disclosed to unauthorized individuals. There are two circumstances under which health care providers can disclose PHI:

- a. with consent of client or substitute decision maker;
- b. when permitted under legislation and/or where required by the law and include search warrants, subpoenas, court order, etc. or where failure to disclose may cause imminent and significant harm to the client or a third party;
 - i. These are mandatory reports and failure to comply can result in allegations of professional misconduct.

GUIDELINES

- Health care providers are encouraged to inform their patients when they are required to make a mandatory report whenever it is prudent to do so;
- Physicians and other providers are required to include specific information and occasionally to provide professional medical opinions in mandatory reports;
- The Executive Director must be made aware of any mandatory disclosure made

Mandatory Disclosure: under certain circumstances a provider will be required to make a mandatory disclosure/report. Please see the following two documents:

- Disclosure without Consent Tables and Legislation
- Mandatory Disclosure Tables

Permissive Disclosure: under certain exceptional conditions a provider will need to disclose or report including

- a. Disclosure to Prevent Imminent Danger – Duty to Warn
- b. Incapacity
- c. Emergency situations
- d. Disclosure of Harm
 - i. When a physician becomes aware, while treating a patient, that the patient has suffered harm in the course of receiving health care, he or she should consider whether the harm does or can be reasonably expected to negatively affect the patient's health and/or quality of life. If it does, then it is the physician's obligation to inform the patient about the harm sustained.

PRECAUTION - Police: Information should only be released to police under certain circumstances - with client consent, when there is a legal obligation (in the form of a document) to do so such as a search warrant, subpoena or summons or where there is imminent harm. Otherwise, providers should not disclose any information received in the

course of treating a client. A photocopy (scan) of the document should be placed into the client's e-chart. Care should be taken not to mislead or provide false information. In case of doubt, legal advice should be sought. The Executive Director or designate must be notified immediately (no later than next business day) and will seek legal advice as necessary.

Client Focused Requests re: Disclosure

Every competent client also has the right to withhold disclosure, withdraw disclosure or put conditions on disclosure of personal health information

PROTOCOL

1. When a client or a third party calls requesting disclosure of a client's personal health information, the staff will not release the information. They will take steps to get client consent or a release of information, verify the caller's identity and ensure the caller or third party is entitled to receive the information that is being sought, before any information is disclosed;
 - a. Agency staff will take down the request, make the appropriate enquiries, and then return the phone call;
2. If withholding/withdrawing disclosure or putting conditions on disclosure will compromise client care, the provider should discuss this with the client and explain the need for the disclosure of personal health information that is being sought.
 - a. The provider should encourage the client to reconsider the decision and seek ways to facilitate ongoing quality care.
 - b. If the client continues to state that he or she wishes to withhold/withdraw disclosure or put conditions on disclosure, this should be noted in the chart, along with the provider's efforts to encourage the client to change a decision that would permit ongoing care.
 - c. See above for use of LB;
 - i. The staff person who is responsible for this will be the staff person to whom the request is first made;
 - d. If the situation cannot be resolved and if necessary, please see "Terminating Client Relationship".

PART 6: ACCESS TO AND RELEASE OF PERSONAL HEALTH INFORMATION

Clients' personal health information records are the property of AAMHCS. Clients, parents or person(s) with legal custody, substitute decision makers, executors or administrators of the estate are an "authorized person" and have the right to access and can provide consent to release personal health information though this is subject to a number of exceptions. The originals shall not be released except with the permission of the Executive Director, or designate.

PROCEDURE

1. an authorized person can make the request to access information either to a provider or to the Privacy Officer or designate;
 - a. a Request for Access to Personal Health Information must be in writing (please use official form) and contain the following:
 - i. a description of what personal health information is requested;
 - ii. information to confirm the person making the request is an authorized person;
2. The Centre will respond to requests for access as soon as possible and not more than 30 days after the request is received;

- a. If the chart is not available and after a reasonable search, the Privacy Officer or designate will inform the client of this in writing;
 - b. If the client's request for access is denied, the Privacy Officer or designate will write the client, explaining the reasons for the refusal;
 - i. the Privacy Officer will also explain that the client can appeal the decision to the Ontario Privacy Commissioner.
 - c. If access is refused in part, the Privacy Officer will work with staff to separate the information in the chart and provide the client with the information to which they have a legal right of access.
3. If no exception applies and the requested information can be found, the client has the right to review the original information;
 - a. An AAMHCS staff person will monitor the client while viewing the information;
 - i. When possible, the provider who is most involved in the client's care (or a designate) will review the information with the client to explain any questions about medical terms or abbreviations
4. The client has the right to have a copy of the information;
 - a. the Centre will charge a fee for photocopying the information
 - i. The photocopied information will be ready as soon as possible but no longer than within 5 business days.
5. In order for client/patient information to be released written consent by an authorized person must be obtained;
 - a. Please use the Release of Personal Health Information form (outgoing);
 - i. The written request must include the following:
 1. Their name(s)
 2. Organizations and staff Person's name
 3. Name of person and/or organization to which information is being released
 4. Specific information to be released
 5. Purpose of the information to be released
 6. Date consent given
 7. Limits to the consent
 8. Signature of the authorized person
 9. Signature of witness

Exceptions to access to PHI

- A record created for quality assurance purposes, or that contains quality of care information or raw data from a standardized psychological test or assessment;
- A record that is subject to a legal privilege or other legal restriction;
- A parent or guardian of a child 16 years of age or older will not be granted access to any information or records concerning the child without the written permission of the client;
- Situations in which granting access could be reasonably expected to create a risk of serious harm to the client's treatment or recovery, or of serious bodily harm to the client or another person; and
- Situations in which granting access could be reasonably expected to lead to identifying a person who was legally required to provide the information, or a person who provided the information in confidence.

PART 7: REQUESTS FOR CORRECTIONS TO PERSONAL HEALTH INFORMATION

Every client has the right to request a correction to his or her personal health information if he or she believes that it is inaccurate or incomplete. A client is generally entitled to have the requested correction made if he or she can satisfy the provider that the record is inaccurate or incomplete and has provided the information necessary for making the correction.

PROTOCOL

1. The client can make the request orally or in writing, either to a provider or to the Privacy Officer;
 - a. A Request for Correction of Personal Health Information form must be filled out;
 - b. If the request is not in writing, then the provider or Privacy Officer will record this information in the client's chart or on a Request for Correction of Personal Health Information form.
2. The Centre will respond to these requests as soon as possible and within 30 days of the request.
3. Requests for corrections will be referred to the provider who authored the record that the client is requesting to correct.
 - a. The Privacy Officer may refer the request for correction to a provider other than the author of the record if:
 - i. the author is not available;
 - ii. the Privacy Officer would like another professional's opinion about the accuracy or completeness of the record;
 - iii. the client has specifically requested that another provider assess the record.
 1. AAMHCS will inform the author of the record (if available) that the client has requested another provider's assessment
4. The author or provider will assess the client's request and determine whether to make the correction;
 - a. A provider can indicate whether he or she agrees to the correction on the Request for Correction of Personal Health Information form;
 - i. Whether the provider corrects the record, he/she should inform the Privacy Officer of the outcome, so that the Privacy Officer can inform the client in writing.
5. If the request for a correction is granted, the record must be changed, but without obliterating the original entry.
 - a. If this is not possible, then the incorrect information will be severed from the record using the means provided within the current EMR program
6. Once a correction has been made, the client may request that the health information custodian send written notice of the correction to those individuals to whom the custodian had disclosed the original incorrect information
 - a. the custodian must comply with this request to the extent possible, unless the correction cannot reasonably be expected to have an impact on the ongoing provision of healthcare or other benefits to the client.
 - b. The Privacy Officer will maintain a record of all corrected charts on behalf of the agency;
 - i. This record will include the chart number, client name, date of correction and type of correction.
 - c. If a request for correction is refused, the Privacy Officer will write the client and explain the reason for the refusal. The client may prepare a short statement of disagreement and request that it be sent to others to whom the Centre disclosed the contested information.

- i. The Centre is required to comply with this request, to the extent possible, unless the statement of disagreement cannot reasonably be expected to affect the ongoing provision of health care or other benefits to the client.
7. If the chart contains a correction, a note should be placed in the chart starting with the notation C, the date of correction and initials of the person entering the information (i.e. "C: Aug. 2, 2005 jc")
 - a. The staff person who is responsible for this will be the staff person to whom the request is first made.
8. A provider is not required to make a correction if:
 - a. he or she reasonably believes that the request is frivolous, vexatious or made in bad faith (requests will only be refused on these grounds in the rarest of circumstances);
 - b. the record was originally made by another professional and the current provider does not have the knowledge, expertise or authority to correct the record; or
 - c. it relates to a professional opinion or observation that the provider made in good faith.

PART 8: RETENTION, TRANSFER AND DISPOSAL OF PERSONAL HEALTH INFORMATION

Health records will be retained for a period of ten years after the client attains the age of 18, or, if the client is 18, the record will be kept for ten years after the date of the last entry in the record.

Records will be kept for as long as reasonably necessary if they may be required for a client's continuing care, to defend a legal action, or by a government health insurance plan or a professional licensing authority.

PROTOCOL

1. These records will be electronically archived and preserved for long term retention;
2. If a client's health information is stolen, lost or accessed, used or disclosed by unauthorized persons, the Privacy Officer will inform the client as soon as possible but no longer than 5 business days.
3. If the Centre is requested to transfer a client's personal health information to another CHC or physician, the Centre will keep the original chart and only transfer a photocopy or electronic duplicate of that chart.
4. Records may be destroyed by a permanent method (i.e. completely shredded or deleted so as to make the information irretrievable) with the permission of the Executive Director;
 - a. A record of the destruction must be kept and this record must include: an identification number for the destroyed chart; the name of the client whose chart has been destroyed; the date of destruction and the method of destruction.

PART 9: PREVENTING UNAUTHORIZED ACCESS TO PHI

Security safeguards appropriate to the sensitivity of the information shall protect personal health information at AAMHCS. Regardless of the format in which the information is contained, it will be protected against loss, theft and unauthorized access, use or disclosure. Appropriate security safeguards will be used to provide necessary protection including: physical measures (restricting access to offices, etc.); technological tools (passwords, etc.) and organizational controls (confidentiality agreements, etc.). Employees are to access the computers, files and other recorded information of the AAMCHC only as authorized and required for stated purposes.

Relevant policies and procedures in the following areas support and outline the prevention of unauthorized access to PHI:

- a. Information Management
- b. Customer Service and Support
- c. Risk and Security
- d. Quality
- e. Governance

PART 10: CHALLENGING COMPLIANCE – launching a complaint

Any individual (client, community member, etc.) is able to launch a complaint regarding a breach of privacy. Please see the Making a Complaint Policy. The complaint will go directly to the Privacy Officer or designate.

Making a Complaint about a breach of privacy:

1. Follow the Making a Complaints Policy and timeline. Please note - A statement outlining the procedure for a breach of confidentiality complaint is available to all clients and community members;
2. All complaints about a breach in confidentiality received in writing that include the name and contact information of the person making the complaint will be responded to (addressed, investigated, etc.) as soon as possible (within 5 business days) but no longer than 30 business days; the Privacy Officer or Designate will:
 - b. Record the date a complaint is received and the nature of the complaint.
 - c. Inform complainant of avenues of recourse in a breach of privacy
 - d. Ensure the agency's response meets the requirements of the legislation;
 - e. Notify the Executive Director of any complaints of a breach of privacy made in writing;
 - f. Notify the Privacy Commissioner as required.

DEFINITIONS

Personal health information includes all identifying information that we collect about a person that relates to his or her physical and mental health, health history, health number or substitute decision-maker. It includes information about the health history of the person's family members and health care services that have been provided to the person over time.

A **chart** is a record containing a client's personal health information. AAMHCS has both paper and electronic charts. In this policy, a client's chart is also referred to as a client's **personal health information record**.

A **health information custodian** includes, among others, organizations and health care providers within the health care sector. The definition includes community health centres.

An **agent of a custodian** is someone who performs activities on behalf of a custodian. For example, administrative staff can be the agent of a doctor, who is a health information custodian.

Implied consent permits providers to conclude from the circumstances and the client's statements and conduct, that he or she is agreeing.

Express consent is obtained when clients explicitly agree to the collection, use or disclosure of their personal health information. It can be given in writing, orally, by telephone or electronically.

The noun/verb **use** refers to the ways in which the Centre uses a client's personal health information.

The noun **disclosure** and the verb **disclose** are used interchangeably and refer to the ways in which the Centre shares a client's personal health information with providers, organizations and others outside of the Centre.

BACKGROUND DOCUMENTS

College of Nurses of Ontario, 2006.

Practice Standard, Therapeutic Nurse- Client Relationship Revised, 2006
Confidentiality and Privacy - Personal Health Information 2005 #41069

College of Physicians and Surgeons, 2000.

Ending the Physician – Patient Relationship Policy # 4-00

College of Physicians and Surgeons of Ontario (2006).

Mandatory Reporting, Policy # 3-05.

Confidentiality of Personal Health Information March/April 2006 Policy #8-05

Information and Privacy Commissioner, Government of Ontario (2004) Your Health Information: Your Rights

Medicine Act, 1991

Nursing Act, 1991

Ontario Hospital Association, Ontario Hospital eHealth Council, Ontario Medical Association and Office of the Information and Privacy Commissioner of Ontario (2004) Physician Privacy Toolkit

Personal Health Information Protection Act, 2004

Registered Health Professionals Act, 1991

Weston, Dorene (2005). Implementation Plan for Compliance with Privacy Legislation
Full Circle Consulting .