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18 September 2020

9(2)(a)

RE Official information request CDHB 10388

I refer to your email dated 14 August 2020 requesting the following information under the Official Information Act (OIA) from Canterbury DHB regarding Canterbury DHB Policies and procedures documents pertaining to Oranga Tamariki. Specifically:

Could you please post me the CDHB policy and procedures documents on:

- 1. Reports of concern to Oranga Tamariki**
- 2. Dealing with Oranga Tamariki without the knowledge of the patient**

Our Management of Child Abuse and Neglect Policy applies. We note that you were sent a copy of that policy in December 2019 in response to your previous Official Information Act request CDHB 10217.

- 3. Dealings with the police without the knowledge of the patient**

Our Release of Patient Information Policy is attached as **Appendix 1**. This references relevant information, including the Health and Health Information Privacy Code (HIPC).

- 4. Transferring of babies between the maternity ward to NICU without the patient's knowledge**

No written policy or procedures exist, we expect that such transfers would be discussed with the parent/s.

- 5. Patients' rights to be informed about decisions being made about them**
- 6. Patients' rights to be informed about medication administered to them**

Our Informed Consent Policy is attached as **Appendix 2**, which references the Code of Health and Disability Consumers Rights 1996.

7. Policy on departments providing information to external agencies when the patient has made a complaint about them

Canterbury DHB follows its normal patient information policy. The DHB doesn't know if a patient has made a complaint against the external agency.

8. Policy and disclosure for the mothers and babies service, social work outpatient Women's, NICU social work, nurses and registrars

Our Management of Child Abuse and Neglect Policy would apply (see response to Question 1).

9. Policy of holding and circulating incorrect information about the patient to other CDHB departments and external agencies

Our Privacy Policy (attached as **Appendix 3**) applies and reflects Rule 7 (requests for correction) and Rule 8 (accuracy of information) of the Health Information Privacy Code (HIPC).

10. Policy and procedure of CDHB making diagnoses under mental health

Diagnoses are made following assessments by clinicians.

I trust this satisfies your interest in this matter.

Please note that this response, or an edited version of this response, may be published on the Canterbury DHB website after your receipt of this response.

Yours sincerely



Ralph La Salle
Acting Executive Director
Planning, Funding & Decision Support

Release of patient information

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Policy

All staff and others to whom this policy applies will comply with the "Release of Patient Information Policy".

Purpose

The purpose of this policy is to ensure that the Canterbury DHB meets its legal requirements pursuant to the Health Information Privacy Code 1994 by ensuring staff know how patient information is to be accessed and by whom.

Scope/Audience

This policy applies to:

- All staff employed by the Canterbury DHB.
- All Visiting Health Professionals and students undertaking training or education within the organisation.
- All independent practitioners contracted to provide patient care.

This policy does not apply to the accessing of health information by Canterbury DHB staff who require that information for the care and treatment of patients.

This policy covers:

- Patients accessing health information about themselves.
- Third parties accessing health information about a patient.
- Telephone requests for health information.
- The role of the Privacy Officer.
- Information forwarded by Facsimile.
- Requests for information for statistical, research and educational purposes.

Associated documents

- Release of Health Information Ref 3393 Release of Health Information Access Form
- Health Information Privacy Code 1994

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- Privacy Act 1993
- Code of Health & Disability Services Consumers' Rights
- CDHB Manual, Volume 2 - Legal and Quality
- Informed Consent Policy

1 General policy statements

- The Health Information Privacy Code 1994 ("the Code") applies specific rules to better ensure the protection of individual privacy.
- All staff and other people to whom this policy applies should familiarise themselves with the Code and in particular Rule 11 of the Code regarding the disclosure of health information. (A full copy of the Code is available from the Patient Information Office, any Privacy Officer or Corporate Legal).
- The Canterbury DHB must give reasonable assistance to an individual making a request for health information about themselves regardless of whether or not the Canterbury DHB holds the information.
- The Canterbury DHB must either supply the information or notify the individual or agency that the information will not be made available and why within 20 working days of receipt of a request.
- Unless a prior arrangement has been made, an individual or agency must not be charged for the information supplied.
- Canterbury DHB staff, including medical staff do not have a right to access their own health information or that of relatives, friends etc simply because they are in a position to do so, unless that access is required in order for medical staff to treat that individual.
- Consequently all access by staff for any reason other than for the purpose of treating the patient must be in conjunction with the consent of the individual concerned.

2 Patient Access to own Records

- As a general rule, a patient is entitled to access information held by Canterbury DHB about him/her.
- The request to view patient information may be verbal or written. Proof of identification is required.
- All requests to view health information by a patient, who is not resident in a hospital at the time of making the request, should be directed to the Patient Information Office, or the appropriate Privacy Officer.

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- Requests for copies of patients' records should be directed to the Patient Information Office, or the appropriate Privacy Officer.
- Prior to a patient viewing their records, a check should be made to ensure that no third party information is incorrectly recorded in the patient records. If third party information is found in the notes, the notes should be referred to the Patient Information Office or the appropriate Privacy Officer so that a copy can be made which deletes or corrects the third party information.
- Original patient records must not be corrected without seeking the advice of Corporate Legal.
- Information may only be withheld from the person to whom it relates in circumstances where the release of that information may endanger the safety of an individual. Where a staff member is in doubt in relation to the safety of an individual the request must be discussed with the patient's clinician or a member of the medical team responsible for the care of the Patient. A decision not to grant a request should only be given after consultation with the patient's clinician/medical team members and the patient's GP.
- All patients requesting to view their health information must be given the opportunity to discuss the information with a health professional.
- Discretion should be used as to whether supervision should occur during viewing of records to preserve the integrity of the record.

3 Children – Access to their own Health Information

- Like all other individuals, children have rights of access to health information about themselves. However, where a child is under 16 years of age and disclosure would be contrary to their interests, access may be refused.
- Any decisions concerning the release of health information involving children should be made as much as possible in consultation with the child.
- Refer to page 9 in relation to requests from family members/legal representatives accessing information about children.

4 Third Party Requests for Patient Information

4.1 Introduction

There are many legislative provisions in New Zealand that require or provide for the disclosure of health information.

Such provisions can be categorised as either:

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- i. Legislation which requires the notification of health information, i.e. certain notifiable diseases.*
- ii. Legislation which requires the supply of health information on request, i.e. information to other health professionals involved in a patient's care.*
- iii. Legislation which permits the disclosure of health information, i.e. such disclosure is initiated by the health provider.*

4.2 General policy

- Third Party requests for information should be in writing and should be directed to the Patient Information Office, or the appropriate Privacy Officer.
- As a general rule, the consent of the patient to the release of the information should accompany the request.
- The request should state what information is required, for what purpose and with what authority (i.e. under what power).

5 Common Requests for Patient Information From

5.1 Accident Compensation Corporation (ACC)

Policy

Where a request from ACC for patient information is accompanied by the consent of the patient concerned, that information should be made available to ACC. If the consent of the patient is not available, the request shall be refused. When refusing a request the reasoning behind the decision should be explained. If in doubt, the matter should be referred to Corporate Legal.

Procedure

1. Ensure written request is received from ACC (i.e. release not initiated by the Canterbury DHB).
2. Ensure ACC have stated they have valid authority for release of information ie completed ACC45 Form for current claim.
3. Establish under what statutory authority the request is being made (Injury, Prevention, Rehabilitation and Compensation Act 2001).
4. Identify the extent of the disclosure (ie. what is actually being requested).
5. Disclose within 20 working days of receiving request.

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5.2 ACC Treatment Injury Unit

Policy

Requests from the ACC Treatment Injury Unit for copies of medical notes or a report from a health professional should be directed to the Patient Information Office of Christchurch Hospital who will liaise with the appropriate Health Professional for a response.

Procedure

1. Ensure written request received from ACC.
2. Direct the request to the Patient Information Office, Christchurch Hospital.
3. Direct request to the appropriate Health Professional for response. (Ensure response is provided within 10 working days.)
4. If considered appropriate, (given the nature of the claim, complexity, etc.) refer the response to Corporate Legal for consideration.
5. Forward report to the ACC.
6. Upon receiving a finding from the ACC, advise of outcome is forwarded to Quality and Corporate Legal.
7. Respond to ACC as appropriate.

5.3 Child, Youth and Family (CYF)

Policy

Under S66 CYPFA Act 1989, Canterbury DHB can be required to release information to a Care and Protection Co-ordinator, Social Worker or member of the Police, where that information is required for the purpose of determining whether a child or young person is in need of care or protection.

In addition and upon request, health information may be released to a social worker or a care and protection co-ordinator for the purposes of exercising that person's powers, duties or functions under the Children, Young Persons and their Families Act 1989 (section 22C(2)(c) Health Act 1956). The powers, duties or functions of social workers and care and protection co-ordinators include ensuring the care, welfare and protection of children from abuse and neglect.

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Procedure

1. Ensure a written request is received from CYF
2. Establish under what statutory authority the request is being made.
3. Identify the extent of the disclosure.
4. Disclose to a Social Worker or Care and Protection Co-ordinator within 20 working days of receiving the request.

Policy

Any person who believes that any child or young person who has been or is likely to be, harmed, ill treated, abused, neglected or deprived may report the matter to a social worker or member of the Police. If a person does so in good faith, they are immune from prosecution for disclosing such information (sections 15 & 16 Children, Young Persons and their Families Act 1989).

Procedure

1. Ensure that the information to be disclosed is disclosed to a Social Worker or member of the Police.
2. Ensure that a copy of all information released is kept in Canterbury DHB's records.

5.4 The police

Policy

Upon request health information may be released to any member of the Police for the purposes of exercising that person's powers, duties or functions (section 22C(2)(f) Health Act 1956).

All requests from Police to approach an inpatient are forwarded to the Corporate Security Advisor who will liaise with the Patient Information Office or appropriate Privacy Officer to ensure that the ward activity is not disrupted.

Any requests from Police which require the specific consent of a patient such as the giving of a blood sample, breath test etc should be referred to the clinician or health professional caring for the patient.

Generally speaking it is Canterbury DHB's policy to co-operate as much as possible with members of the Police.

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Procedure

1. Except in an emergency situation ensure that a written request is received from the Police.
2. Ensure that the request states the statutory authority under which the request is being made (ie. S22C(2)(f) Health Act 1956).
3. Identify the extent of the disclosure (i.e. disclose only what is requested).
4. Disclose within 20 working days of receiving a request.

5.5 Other Health Providers

Policy

Upon request health information must be disclosed to any person who is or will be providing health or disability services to the patient to which the information relates unless there is a lawful excuse for not disclosing it. Such an excuse would be where the holder of information reasonably believes that the patient to whom the information relates does not want it to be disclosed (section 22F(1) Health Act 1956).

Procedure

1. Ensure that the identity of the other Health Provider is established (if a telephone request) or that a written request is received.
2. Establish whether there are reasonable grounds to believe that the individual would not want disclosure to take place. If not;
3. Disclose within 20 working days.

1.5.6 Family Members

Refer also to Legal Representatives (see page 11)

Policy

Family members do not have an automatic right to information about a patient, even if that patient is a child or young person.

Where a patient has the capacity to give consent, health information should not be disclosed to family members without the consent of the patient.

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In the case of children under 16 years of age, disclosure to a parent or guardian is permitted where the child is unable to exercise his or her rights.

Just because a child is 16 years or younger does not necessarily mean that they are unable to exercise their rights. Whether or not they are able to do so will depend on their level of maturity and understanding.

If a child is unable to exercise his or her rights because he or she is too sick or too young, information may be disclosed to a parent or guardian.

Requests for health information from family members may be refused where the disclosure would be contrary to the child's interests, likely to endanger the safety of an individual or would involve the unwarranted disclosure of the affairs of another individual.

Procedure – Adult Patient

1. Ensure individual has consented to the release of health information to that particular family member and if so,
2. Disclose within 20 working days.

Procedure – Child Patient

1. Regardless of age, establish whether the child is able to exercise his or her rights and if so, to what extent.
2. Ascertain whether the child consents to the release of the information.
3. Consider if disclosure would be contrary to child's interest, likely to endanger the safety of an individual or the unwarranted disclosure of the affairs of another individual. If not,
4. Disclose within 20 working days.
5. If child is unable to exercise his/her own rights, ie. because he/she is too young or too ill, disclosure to parents or legal guardians is permitted.

5.6 Legal Representatives

Policy

Upon request health information should be made available to a legal representative of a patient unless the holder of the information has

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reasonable grounds for believing that the patient does not wish for the information to be disclosed. (section 22F (2) Health Act 1956)

Where a patient is dead their legal representative is the Executor or Administrator of their estate.

Where a patient is under the age of 16 years, their legal representative is their parent or guardian. (Note however, the comments regarding requests from family members).

Where a patient is neither dead nor under 16 years of age, and is unable to exercise his or her rights, their representative is that person who appears to be lawfully acting on that patient's behalf in his or her interests.

Under the Children, Young Persons and their Family Act 1989 the Court has the power to appoint a solicitor to represent a child or young person in relation to any proceedings before the Court and for any other purpose the Court deems appropriate. This solicitor is known as "Counsel for the Child". Upon request health information should be made available to a Counsel for the Child.

Procedure

1. Establish who is the legal representative by:
 - Sighting a copy of the Will or probate of a deceased patient.
 - Identifying the parent or legal guardian of a child.
 - Identifying the Counsel for the Child.
2. Establish whether there are reasonable grounds to believe that the individual would not want disclosure to take place.
3. Disclose within 20 working days.

5.7 Work and Income New Zealand (WINZ)

Policy

Work and Income New Zealand have wide powers to obtain information about an individual.

Upon request health or demographic information may be released to any employee of the Department of Social Welfare for the purposes of administering section 75 of the Social Security Act 1964 which relates to beneficiaries in hospitals (section 22C(2)(d) Health Act 1956). Furthermore, section 11 of the Social Security Act provides that the Department of Social Welfare may require any Crown agency to provide such information as the Department requires for the purpose of determining:

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- Whether any person receiving or having received or claimed a benefit is entitled to that benefit;
- Is entitled to a card which provides a benefit;
- Is required to contribute towards a benefit or service they require;
- The financial circumstances or whereabouts of a person indebted to the Crown.

Procedure

1. Ensure a written request is received from Social Welfare.
2. Establish under what statutory authority the request is being made (i.e. section 22C(2)(d) Health Act 1956).
3. Identify the extent of the disclosure (ie. disclose only what is requested).
4. Disclose within 20 working days of receiving a request.

5.8 Probation Officers

Policy

Upon request health information may be released to any probation officer for the purposes of exercising that person's powers, duties or functions under the Criminal Justice Act 1985 (section 22C(2)(b) Health Act 1956).

Procedure

1. Ensure a written request is received.
2. Establish under what statutory authority the request is being made (i.e. section 22C(2)(b) Health Act 1956).
3. Identify the extent of the disclosure (i.e. disclose only what is requested).
4. Disclose within 20 working days of receiving a request.

5.9 Coroner's office

Policy

A Coroner may require a health professional who attended a person before death to submit a report relating to a deceased person that contains such information as the Coroner specifies in writing. All requests received from the Coroner's Office should be directed to the Medical Advisors' Office for a report to be forwarded to the

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Coroner. A copy of the Medical Advisors' report shall be sent to Corporate Legal.

Procedure

1. Ensure a written request is received from the Coroner's Office.
2. Refer the matter to the Medical Advisors' Office.
3. The Medical Advisor's Office should notify the Coroner that a response is being prepared.
4. Response forwarded to Corporate Legal.
5. Response forwarded to the Coroner.

5.10 Health & Disability Commissioner

Policy

The Health and Disability Commissioner has the power to investigate complaints in relation to a breach of the Code of Health and Disability Services Consumer's Rights. Upon request, health information should be made available to the Commissioner but contact should first be made with Corporate Legal. Any staff member who received a letter regarding a complaint about them should contact Corporate Legal. Health Professionals may wish to consult with their own indemnifiers, insurers or representatives in relation to this matter.

Procedure

1. Ensure a written request is received from the HDC.
2. Prepare a response in conjunction with the appropriate Complaints Officer and Corporate Legal.
3. Response forwarded to the HDC.

5.11 Requests pursuant to the Official Information Act 1982

Policy

Upon receiving a request pursuant to the Official Information Act to provide information which contains information about an identifiable individual, a decision is required to be made as to whether the withholding of the information is necessary to protect the privacy of a person (including a deceased person) and that the preservation of that individual's privacy outweighs the public interest in making the information available.

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All requests received pursuant to the Official Information Act should be directed to Corporate Legal.

Procedure

Refer the request to the Corporate Legal.

5.12 Miscellaneous Requests from Various Government Departments

Policy

Upon request health information may be supplied to:

- Any medical officer in a penal institution for the purposes of exercising that person's powers, duties or functions under the Corrections Act 2004 (section 22C(2)(a) Health Act 1956).
- Any employee of the Ministry of Health for the purposes of administering the Health Act 1956, the Health and Disability Services (Safety) Act 2001 or compiling statistics for health purposes (section 22C(2)(g) Health Act 1956).
- Any employee of the Ministry of Transport for statistical or research purposes in relation to road safety or the environment (section 22C(2)(i) Health Act 1956).
- Any employee of a purchaser of Health and Disability Services, but only if it is essential for the purposes of exercising any of that purchaser's powers, duties or functions under the Health and Disability Services Act 1993 (section 22C(2)(j) Health Act 1956).

Procedure

1. Ensure a written request is received.
2. Establish under what statutory authority the request is being made (ie. section 22C(2)(a) Health Act 1956).
3. Identify the extent of the disclosure (ie. disclose only what is requested).
4. Disclose within 20 working days of receiving a request.

6 Miscellaneous legislation

Health Practitioners Competence Assurance Act 2003

When the person in charge of a licensed hospital, a registered medical practitioner, a medical officer of health or the head of nursing services considers that a medical practitioner or nurse is

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unable to perform his or her professional duties satisfactorily because of some mental or physical disability, that person must notify the Nursing Council of New Zealand, or the Medical Council of New Zealand under the Health Practitioners Competence Assurance Act 2003.

Medicines Act 1981 and Misuse of Drugs Act 1975

A medical officer of health may disclose statements relating to an individual whom he/she has reason to believe is or is likely to become dependent on any prescription or restricted medicine, (section 49A (1) Medicines Act 1981), or dependent on any Controlled Drug (section 20(1) Misuse of Drugs Act 1975).

Land Transport Act 1998

If a person who holds a driver licence becomes subject to a compulsory inpatient treatment order or becomes a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, the person in charge of the hospital to which the person is directed or in which he/she is detained must notify the Director of Land Transport Safety of the making of the order or of the person's status as a special patient and the driver licence shall be suspended so long as the order or status persists.

Mental Health (Compulsory Assessment and Treatment) Act 1992

When a clinician is contemplating the use of compulsion under the above Act, s.7A requires the clinician to consult with the family or whanau of the patient or prospective patient, unless it is not practicable to do so. Such consultation will necessarily involve divulging health information and s.7A provides that such is not a breach of the Privacy Act or Health Information Privacy Code.

7 Requests made by Telephone

Requests for health information may be received over the telephone.

This policy is applicable to telephoned results from Laboratory and Radiology and other clinical services.

General information regarding the presence, location, condition and progress of a patient in hospital may be given to general enquirers unless a patient has specifically requested no disclosure. The media may be told an individual's identity and the nature of injuries resulting from any accident. Such disclosures will not breach the Code.

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Notwithstanding the above provision, staff should be alert to the heightened sensitivity of patients in certain settings (eg psychiatric services; alcohol and drug services; sexual health; termination of pregnancy).

7.1 Requests from other Health Professionals

Staff giving information to other health professionals by telephone must:

- Take all reasonable care that the person receiving the information is actually entitled to that information.
- If in doubt of caller entitlement, request a telephone number and call back when the number and caller identity have been verified.
- Where appropriate have the recipient repeat the information to ensure accuracy.

7.2 Requests from Patients

Staff giving information to patients by telephone must establish the identity of the caller. This can be done by asking the full name, address and date of birth of the individual and checking these with the details held by Canterbury DHB.

No personal information is to be given until the identity of the caller and the authority to receive information is established.

8 Information forwarded by facsimile

General Policy

- It is imperative that information forwarded by facsimile is sent to the correct facsimile number.
- The name of the person to whom the information is intended and the full facsimile number must be included on the facsimile header sheet. Facsimile numbers should be verified.
- Facsimiles should be marked "private and confidential".
- Facsimiles should contain the following confidentiality statement:
"CAUTION: The information contained in this facsimile is confidential. If the reader is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error, please notify us immediately."

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- Information should not be forwarded by facsimile unless authorisation is obtained from the individual concerned.
- All requests for information received via the fax must be signed by the individual requesting the information.

9 Requests for Information for Statistical, Research & Educational Purposes

General Policy

- Canterbury DHB receives numerous requests for patient information for statistical, research and educational purposes, for example:
- Requests may come from other medical agencies, research groups, benchmarking agencies, medical students etc.
- If the patient information requested does not identify the individual then it may be released to external agencies.
- If the patient information requested does identify the individual then the matter should be referred to Corporate Legal for clarification.
- If the request does not reveal the identity of the patient but will reveal cost information about Canterbury DHB patients the matter should be referred to the General Manager, Finance.

Policy Owner	Corporate Solicitor
Policy Authoriser	Executive Management Team
Date of Authorisation	27 November 2013

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RELEASED UNDER THE OFFICIAL INFORMATION ACT

Informed Consent

Purpose

To ensure CDHB and WCDHB follow an approach to informed consent which:

- is patient-centred and supports people to make an informed and voluntary choice about their care; and
- complies with relevant legal, ethical and professional standards regarding informed consent.

Policy

Informed consent is part of all clinical service and must be obtained from a patient before any treatment is provided, except where:

- specific legislation allows the treatment to be provided without consent;
- the common law allows services to be provided without consent (for example, in an emergency); or
- the patient is incompetent.

The informed consent process involves four elements including:

- checking to ensure the person is **competent** to make the decision to undergo or refuse the proposed treatment;
- effective communication;
- providing the person with **sufficient information** to enable them to make an informed decision about the proposed treatment; and
- the person giving consent **voluntarily**.

Informed consent is not the act of filling out a form, but rather a process of exchange of information so that an informed decision can be made by that person.

Competence

Every person is presumed competent unless there are reasonable grounds for believing that the person is not competent.

The person must be capable of understanding the essential nature of their condition along with the treatment proposed, its intended benefits, risks and possible side effects.

A competent person has the right to refuse treatment or services, even if it is not in their best interests, results in significant harm, or even death.

Medication, intellectual disability, mental illness, the influence of alcohol or other substances or physical injuries all may affect the informed consent process, and may amount to reasonable grounds for believing the person is not competent. In each case reasoning outlining why the person is not considered competent must be documented.

A decision which seems unwise to others is not reasonable grounds for believing the person is incompetent.

Information about Capacity, and assessing Capacity, can be found on Hospital HealthPathways under ['Legal and Ethical'](#).

Treatment of an incompetent person

Except in case of emergency, if the patient is rendered temporarily incompetent, the planned health care procedure should be delayed until the patient is able to provide informed consent. See pages 5 and 6 regarding treatment of an incompetent patient.

Competence and children

The health professional must assess competence of a child as with an adult. Capacity includes the ability to understand and to make a decision in relation to the particular treatment. The assessment and the child's decision must be documented in the clinical notes.

Children 16 years and over: Under the Care of Children Act 2004, a child who is 16 years or over, or is or has been married, in a civil union, or living in a de facto relationship can consent, assuming he or she is competent, to any medical procedure (including blood donation and surgical and dental procedures). Consent to medical treatment and procedures expressly includes the right to refuse consent.

Children under 16 years: It is generally agreed that children under 16 years of age can consent to their own treatment if they are competent to make a decision about the particular treatment.

Incompetent children: If a child is incompetent to make an informed choice and give informed consent, services may be provided:

- With the consent of the child's legal representative; or
- In an emergency, to save the child's life or prevent serious risk to his or her health;
- Without consent, provided the treatment is in the child's best interests and the requirements set out in Right 7 (4) of the Code have been satisfied.

Effective communication

Information is to be provided in a form, language and manner that enables the person to understand the information provided to them. Where necessary and reasonably practicable, this must involve arranging for an independent interpreter to be present in person or by phone. Interpretation by family members or other personal support persons should not be relied upon. This is because the lack of independence creates an inherent risk to the accurate exchange of information.

The Booking and Requesting Interpreters procedure gives information on the limited circumstances when family, friends and untrained staff members can interpret.

The environment must be one in which the person and the provider of the health and disability services feels that they are able to communicate openly, honestly, and effectively.

Sufficient information

Every person has the right to information that a reasonable person, in that person's circumstances, would expect to receive, including:

- An explanation of their condition;
- An explanation of the options available, including an assessment of the expected risks, side effects, benefits and cost of each option (including no treatment);
- The estimated duration for the service
- The possibility of additional treatments or procedures that can be anticipated,
- Any proposed participation in teaching or research, including whether the research requires and has received ethical approval;
- Any other information required by legal, professional, ethical and other relevant standards;
- The results of tests; and
- The results of procedures.

Other relevant information may include private treatment options, the option of a second opinion, implications of existing advance directives, issues related to the use of blood products, issues related to body parts, precautions following the procedure, recovery and planned follow-up.

In many situations, a patient would expect to be informed of which clinician will be performing or leading their treatment. For example, in some cases a patient will consent to a procedure at a pre-admission clinic but enter a pooled waiting list for a theatre booking with the next available surgeon. In this situation, the patient should be informed of the process for allocating theatre bookings and advised who their surgeon will be prior to their procedure.

The discussion should include an opportunity for the individual to ask questions and have their questions answered.

The discussion must take place with a person who is suitably qualified and experienced and has sufficient knowledge of the individual's condition and the proposed services.

Voluntary choice

The individual must be allowed to make a decision (either to accept or decline healthcare services) freely, without any form of coercion or constraint.

Documentation of consent

Consent (oral or written), must always be recorded in the patient's clinical notes. If written consent is required, it must be obtained using one of the forms associated with this policy or another form which has been approved as an exception by the legal team and the Chief Medical Officer.

Written consent

Consent must be obtained in writing if:

- General anaesthetic or conscious sedation is to be used;
- There is a significant risk of adverse effects;

- The patient is to participate in any research;
- The procedure is experimental.

Recordings and imaging

Where recordings and imaging are made as part of patient treatment or management, informed consent is required.

These recordings and imaging may only be used for education and research purposes if appropriate consent is given ([see Agreement to Clinical Imaging form](#)).

Refusal or withdrawal of consent

Every competent patient has the right to refuse service and withdraw consent for service for any reason (including religious beliefs).

- This decision must be respected (noting the few exceptions regarding decisions on behalf of children and incompetent persons).
- The person should be informed of the implications their refusal may have on their clinical outcome.
- The best standard of care and support possible in the circumstances is to be offered to that patient.
- No undue influence or pressure is to be brought to bear on that patient.

Appropriate members of the clinical team must be informed of the decision.

The following should be documented in the patient's clinical notes;

- A full account of what happened (including date and time);
- What the patient was told, his or her response;
- Whether any relatives or witnesses were present;
- An assessment of the patient's competence.

It may sometimes be appropriate, if the risks are unusually high, to ask the patient to provide a written acknowledgment of their refusal and their acceptance of the risks involved. This record is not to be framed as a waiver of responsibility or liability by CDHB or WCDHB. CDHB and WCDHB remain responsible for the quality of care we provide and our actions.

When this decision is made by one or more people on behalf of a child or incompetent person, there may be provision for the decision to be legally challenged. For example, a person holding an enduring power of attorney for an incompetent adult cannot refuse treatment intended to save the person's life or prevent serious damage to their health. When situations such as this occur, advice should be sought from the Clinical Director / Corporate / Legal.

How long is the consent valid for?

The validity of consent is variable. If any of the following situations are fulfilled the patient's consent should be considered invalid and retaken:

- The nature of the procedure changes

- There is progression of the condition
- Change in the health status of the individual (prognosis)
- Change in the individual's competence
- Change in the expected outcome or side effects
- Change in treatment options
- Elapse of more than 3 months between consent and the beginning of the treatment.

Advance directives

Every person has the right to use an advance directive under Right 7 (5) of the Code of Rights.

An advance directive is made by the person, while they are competent, about a possible future health care service that is intended to be used only when the person is incompetent. An advance directive can be made orally or in writing but for clear communication and evidentiary purposes a written advance directive is preferred.

A valid advance directive is binding on health professionals and should be followed unless there are reasonable grounds for believing it is not valid.

An advance directive is valid when the person:

- Was competent;
- Anticipated and intended his or her decision to apply to the prevailing circumstances;
- Had been sufficiently informed to make the decision; and
- Reached their decision without undue influence or coercion.

Persons legally entitled to give consent on a person's behalf

A welfare guardian or an Enduring Power of Attorney (EPOA) for personal care and welfare can consent on behalf of an incompetent adult.

- They cannot refuse treatment intended to save a person's life or prevent serious damage to a person's health.
- An EPOA is activated when a health practitioner has certified that the patient is mentally incapable. This "activation" must occur before an attorney can act in respect of a "significant matter".
- An EPOA for property cannot consent to personal care or treatment decisions.

A person cannot consent on behalf of an incompetent adult simply because they are that person's next of kin, a member of their family or a close friend.

Treatment without consent under Right 7(4)

Where a person is not competent to make an informed choice and give informed consent, and no person who is legally entitled to consent on the patient's behalf is available (and it may not be an emergency), right 7(4) allows a health professional to administer treatment without consent where:

- It is in the best interests of the person;
- Reasonable steps have been taken to ascertain the views of the person; and

Either:

- a) If the person's views have been ascertained, and having regard to those views, the health professional believes, on reasonable grounds, that the provision of services is consistent with the informed choice the patient would make if he or she were competent; or
- b) If the patient's views have not been ascertained, the health professional takes into account the views of other suitable persons who are interested in the welfare of the patient and available to advise the health professional. The suitable persons are not being asked to give informed consent. Rather it is a matter of taking their views into account in deciding whether the proposed treatment is in the patient's best interests and the patient would have consented.

Treatment without consent where permitted by legislation

Some specific legislation overrides an individual's right to refuse treatment. This includes:

- *The Mental Health (Compulsory Assessment and Treatment) Act 1992*, where statutory criteria are met for treatment of mental disorder.
- *The Substance Addiction (Compulsory Assessment and Treatment) Act 2017*, where a court has ordered detention for the treatment of alcohol or drug dependence.
- *The Health Act 1956* provides for compulsory treatment in specified circumstances, e.g. some Infectious Diseases.

Students and teaching

Informed consent must be gained for the presence or involvement of students or other staff who do not have a direct role in the treatment team during the health care procedure. The reasons for the presence or involvement must be explained to the patient.

The clinician is expected to exclude any students during the discussion to allow the patient to make a decision without undue pressure (real or perceived).

Additional treatments or procedures

If an unexpected event occurs and the person has not given their prior informed consent to any additional treatments, no further treatment can be undertaken without first pausing to obtain consent, unless those treatments are required in an emergency situation or immediately for the preservation of life.

Applicability

Applies to all CDHB or WCDHB staff (permanent or casual/temporary), including contractors, visiting health professionals and students working in any CDHB or WCDHB facility and to all organisations providing services and treatment on behalf of CDHB or WCDHB.

Roles and Responsibilities

Obtaining consent

The **registered health professional** who is responsible for the service/treatment being proposed has duty of care to enable an informed choice to be made about that treatment before any treatment begins.

This responsibility may be delegated provided that delegated person is suitably qualified and experienced and has sufficient knowledge of the individual's circumstances, condition and the proposed service/treatment.

Legal advice

The **legal team** is responsible for advising on informed consent when requested.

The legal team will oversee legal obligations and potential concerns and complaints relating to consent for CDHB and WCDHB.

Training

Education on informed consent is professionally and clinically based. CDHB and WCDHB's informed consent processes and divisional practice will be included as part of clinical staff induction and ongoing training within their department as required.

Governance

Divisional quality teams monitor informed consent processes through customer feedback and regular reporting processes, escalating concerns to clinical governance committees when necessary.

Clinical governance committees will ensure that compliance with this policy is monitored. The focus of monitoring is to verify that the:

- Informed consent process occurs.
- A written consent is obtained when appropriate.
- Consent and the discussions between the health professional and person are recorded in the clinical notes.

Policy measurement

Incidents and complaints relating to poor compliance with the policy are reported using the Incident Management Reporting System.

Patient experience feedback will provide data about informed consent.

Area or topic specific audit will occur as per local audit schedules.

Associated material (inclusive)

Related documents

- Agreement to Treatment form
- Request for Treatment form
- Treatment without consent form
- Agreement to Clinical Imaging Form
- General photography/ Video Filming consent
- Electronic Interpreter Booking form
- Interpreter Services Patient Information

Legislation and standards

- Code of Health and Disability Services Consumers' Rights 1996 Rights 5, 6 and 7.
- Health and Disability Services Standard 2008: 1.10
- Medical Council of New Zealand Statement on information, choice of treatment and informed consent, March 2011

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RELEASED UNDER THE OFFICIAL INFORMATION ACT

Privacy policy

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Policy

All staff and others to whom this policy applies will comply with Canterbury DHB's legal and ethical obligations concerning patient privacy and confidentiality.

Purpose

The purpose of this policy is to ensure the protection of individual privacy within the Canterbury DHB and to ensure that the Canterbury DHB meets its obligations pursuant to the Privacy Act 1993 and the Health Information Privacy Code 1994.

Scope/Audience

This policy applies to:

- All staff employed by Canterbury DHB.
- All visiting health professionals and students undertaking training or education within the organisation.
- All Canterbury DHB volunteers.
- All independent practitioners contracted to provide patient care.
- All contractors with Canterbury DHB, i.e. cleaners, security guards, etc.

Associated documents

- Health Information Privacy Code 1994.
- Health Act 1956.
- Privacy Act 1993.
- Official Information Act 1982.
- Code of Health & Disability Services Consumers' Rights.
- Canterbury DHB Manual, Volume 2 - Legal and Quality
- -Release of Patient Information Policy.
- Canterbury DHB Manual, Volume 11 - Clinical

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- Informed Consent Policy
- Canterbury DHB Manual, Volume 3 - Human Resources
 - Employee Health Information Policy.

1 Introduction

The accumulation of details about a person's health, disabilities or treatment constitutes information of the greatest sensitivity.

During the course of carrying out their day to day activities all staff and others who come on to a hospital site will come into contact with confidential information. All such individuals have ethical, legal and contractual obligations to uphold and observe patient confidentiality.

All staff and others to whom this policy applies should familiarise themselves with the Health Information Privacy Code 1994. A full copy of this Code is available from the Patient Information Office, any Privacy Officer or Corporate Legal.

The Health Information Privacy Code is a Code of practice issued by the Privacy Commissioner pursuant to the Privacy Act 1993. The Code is specific to the health industry and regulates how we deal with the health information concerning our patients.

1.1 Privacy Officers

The CanterburyDHB has a Corporate Privacy Officer who is also the Senior Corporate Solicitor.

The roles and responsibilities include:

- Protect and promote individual privacy by encouraging compliance with the Code.
- Deal with requests for information.
- Work with the Privacy Commissioner on any investigations; and;
- Otherwise ensure compliance with the Act and The Code.

Other Privacy Officers in the Canterbury DHB are:

- Corporate Solicitor
- Patient Information Team Leader, Christchurch Hospital
- Customer Services Manager, Christchurch Hospital
- Medical Records Officer - Mental Health Services
- Customer Services Co-ordinator, Older Persons Health TPMH, Specialist Mental Health Services and Community Dental Services

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2 Health Information Privacy Code 1994 (“The Code”)

2.1 General Policy

The Health Information Privacy Code applies to everyone working in the health sector who handles health information. The Code sets out 12 rules which provide a framework for the management of personal health information. The rules are interlinked, so that policies concerning collection of information can affect what happens when it is disclosed. Some rules set out a principle, then provide exceptions to it.

The Code co-exists with ethical obligations. It does not override them, and ethical obligations do not override the Code. Health professionals must comply with the Code and with their professional code of ethics.

2.2 Information Covered by the Code

The Code covers health information about an identifiable individual (even if they are deceased), including information about:

- a person's health or disabilities;
- a person's medical history;
- any health or disability services provided to someone;
- patients, which is collected while providing health and disability services to them. This might include collecting addresses or information relevant to a subsidy entitlement.

2.3 Meaning of “Representative”

The term “representative” is frequently used in the Code.

It means:

- When a person is dead – the executor or administrator of their estate. (The person dealing with a deceased's assets in accordance with their Will.)
- Where a person is under 16 – a parent or guardian.
- Where neither the above apply but the person is unable to give consent or exercise his or her rights – someone who seems to be lawfully acting on the person's behalf or in his or her interests.

3 Rule 1 – Necessity and Purpose

The Canterbury DHB must not collect health information unless that information is collected for a lawful purpose connected with a

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function or activity of the Canterbury DHB and the collection is necessary for that purpose.

Consequently, the Canterbury DHB must not collect superfluous information to that required to treat a patient. Information such as a patient's income, sexual orientation, marital status etc should not be collected unless it is necessary in order to provide care and treatment to that patient.

4 Rule 2 – Information Should Be Collected From the Patients Themselves

Generally, information about patients should be collected from those patients. However, Rule 2 lists a number of exceptions to this general principle, such as:

- Where the patient has authorised collection from someone else.
- Where collecting information from patients would prejudice their interests, prejudice the purpose of collection, or prejudice the safety of any person.
- Where collecting the information from the patient is not reasonably practicable.

An example of when Rule 2 may apply is when family members accompany a patient. Often family members will be anxious to advise a health professional of the nature of an injury or the symptoms of an illness but they may not have an accurate understanding of the nature of the injury or illness. Health professionals should always try to obtain information (in the first instance) from the individual concerned and should verify with the patient if possible, information collected from another source.

5 Rule 3 – Steps to be Covered When Collecting Information

Where information is collected directly from patients, the Canterbury DHB must take reasonable steps to ensure they are made aware of a number of matters, including:

- That information is being collected - this is not always obvious, e.g. if video or audio recording is used.
- The purpose of collection, i.e. if personal non health information is required for completing ACC forms etc, the Canterbury DHB must explain why that information is being collected.
- The intended recipients of the information - there is no need to list every possibility but a general indication should be given.

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- The consequences of not supplying the information - i.e. a particular treatment may not be able to be given or a subsidy applied for.
- The patient's rights of access to their information and right to request a correction given by Rules 6 and 7 of the Code (refer pages 38 and 48).

Exceptions to fulfilling Rule 3 requirements include:

- The patient has authorised the Canterbury DHB not to do so.
- Compliance by the Canterbury DHB would prejudice the interests of the patient or prejudice the purposes of collection, e.g. interaction charts in Child Protection Cases.
- Compliance is not reasonably practicable in the particular circumstances, i.e. it would delay emergency treatments.

If it is not practicable to give an explanation when the information is collected, it should be done as soon as practicable afterwards.

6 Rule 4 - Manner of Collection

Health information may not be collected by unlawful, unfair or unnecessary intrusive means.

For example, a receptionist may ask patients a number of questions for their records upon arrival at a clinic. Consideration should be given as to whether the patient can fill in a form or verify existing written information rather than verbally give personal details in a waiting area where other patients can overhear.

While it is acknowledged that given the space limitations within hospitals it may not always be possible to ensure physical privacy, consideration should be given as to the steps that can be taken to maximise privacy.

7 Rule 5 - Security Safeguards

Rule 5 of the Code requires the Canterbury DHB to take reasonable security safeguards against:

- loss of patient information.
- access, use, modification or disclosure of patient information, without Canterbury DHB's authority.
- other misuse.

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Refer page 9 for best practice guidelines.

An example of how this Rule may apply is in reception areas where sometimes mail is kept (in readiness for collection) on public counters where it can be read by others. In compliance with this Rule, it should be removed from public view. Likewise, a trolley full of medical records should not be left unattended where the public has access.

8 Rule 6 - Right of Access to Personal Information

(Refer also to Canterbury DHB's Release of Information Policy)

People have a right to access information about themselves. This right is given by rule 6 of the Code .

The Right to access is important both from a privacy perspective and from a treatment perspective. Several of the rights in the Code of Health and Disability Services Consumers' Rights are concerned with the communication of information and with Informed Consent. So, when considering a patient's request for personal health information, the Canterbury DHB should consider whether a refusal would hinder the patient's ability to give informed consent to a procedure.

The request to view or have a copy of personal information may be verbal or written. Proof of identification is required for all requests.

Requests for copies of patients' records should be directed to the Patient Information Office at Christchurch Hospital or the appropriate Privacy Officer.

The Canterbury DHB must not charge for making information available in response to a request from the Patient to whom the information relates.

Information may only be withheld if the withholding falls within one of the exceptions in the Code. Some of the common exceptions include:

- Release of the information would be likely to prejudice the maintenance of the law.
- Release of the information would be likely to endanger the safety of an individual.
- Release would involve the unwarranted disclosure of the affairs of another individual or a deceased individual.
- Release would be likely to prejudice the physical or mental health of the requestor.

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For an overview of the steps to be taken in providing access to patient notes refer to Canterbury DHB's Release of Information Policy.

9 Rule 7 – Requests for Corrections

People have the right to ask for their health information to be corrected.

If the Canterbury DHB is not willing to make a correction, it must, if requested, take reasonable steps to attach a statement of the correction sought, but not made. The statement must be attached so that it will always be read with the disputed information.

When a patient disagrees with a diagnosis and wants it removed from the file, careful consideration must be given before altering the original record. Removing the disputed diagnosis could render the notes incomplete. If it is acknowledged that a diagnosis is wrong this should be recorded alongside the original entry.

The Canterbury DHB is required to provide reasonable assistance to any individual wishing to record a statement of correction.

10 Rule 8 – Accuracy

Before using information, the Canterbury DHB must take reasonable steps to ensure information is:

- correct
- up to date
- complete
- relevant
- not misleading.

This can be particularly important where information has been obtained from a source other than the person concerned.

11 Rule 9 – Keeping Health Information

The CDHB policy for disposal of clinical records requires information to be retained for 10 years following death of the patient.

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12 Rule 10 – Using Information

Information obtained in connection with one purpose must not be used for any other purpose unless the use falls within one of the exceptions of Rule 10.

Rule 10 does allow uses which are “directly related” to the purpose for obtaining the information. For instance, information obtained for care and treatment may also be used for administrative purposes related to that care and treatment.

Some of the exceptions to Rule 10 include using information for another purpose if it is necessary to prevent or lessen a serious threat to public health or public safety or health of an individual.

13 Rule 11 – Disclosure of Information

This Rule is dealt with in its entirety in the Canterbury DHB Release of Information Policy. Please refer to that policy when dealing with disclosure of information.

14 Rule 12 – Unique Identifiers

This Rule states that the Canterbury DHB must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the Canterbury DHB to carry out one or more of its functions efficiently. Further, the Canterbury DHB must not assign to an individual a unique identifier that, to the Canterbury DHB's knowledge, has been assigned to that individual by another entity.

A unique identifier is defined as an Identifier:

Measurement/Evaluation

How this policy will be measured on how it is used, e.g. an audit.

- That is assigned to an individual by an agency for the purposes of the operations of the agency; and
- That uniquely identifies that individual.

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15 Rule 12 expressly excludes the NHI number which can be used.

The reasoning behind this Rule is the concept that individuals should not be "labelled" or identified as belonging to a particular group such as "bad payers" for example.

16 Privacy – Recommended Best Practice

16.1 Office/Reception/Areas

- Clinical records should not be kept in places easily accessible by the public and unrelated staff.
- Patients should not be asked to verify personal details in reception/waiting areas where they can be overheard by others.
- Outgoing mail awaiting collection should not be left where it can be seen.
- All computers should be placed so that PC screens cannot be read except by staff entitled to the information. Screen savers should be used.
- Any correspondence, old labels or other documentation containing patient information authorised to be discarded must go in the blue security bins to be shredded.
- Care must be taken that operation lists, clinic lists or any other administrative forms containing patient information are not left in any place accessible to the public.
- Operation or clinic lists should not be left in consultation rooms where they can be seen by other patients.
- Offices and filing cabinets should be locked when unattended.
- Names and details of patients should not be discussed in lifts or other public places.

17 Clinical Records

- All clinical records being transported by hospital staff or through the mail system within hospitals must be suitably covered and secured.
- If clinical records are being carried through a public area, they should be carried in an envelope, if possible, or at least, with the patient's name unable to be viewed.
- Trolleys containing clinical records should not be left in areas accessible to the public or other patients.
- Except where necessary, records should not be left at the patient's bedside unless the patient has consented.

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- Only those staff members involved in the care and treatment of a patient may have access to that person's clinical records.
- Clinical records should not be transported off-site unless off-site storage is required or is absolutely necessary. If so, they should not be left uncovered in a vehicle which must remain locked at all times.

17.1 Identity of Patients

- Wherever possible, patients should be asked on admission to the ward areas if their name can be displayed on room doors, above beds and on name boards.
- Ideally name boards in wards/units should not be able to be viewed by any members of the public.
- Name boards should only show patient name, room allocation and who is responsible for their care.
- Patients can request that no details be released in relation to their condition.
- Unless specific consent is given, only the general condition of a patient, (e.g. satisfactory) can be released.
- If at all possible, patients should not be asked to verify personal details in waiting rooms/ward areas where they can be overheard.
- When requesting information from a patient, all care should be taken to ensure that this is achieved in a manner that respects the individual's privacy.
- Patient's consent must be obtained if a photograph is to be taken of them and such consent must be in writing if the photograph is to be used for educational or research purposes. (Please refer to the Canterbury DHB Informed Consent Policy.)

17.2 Facsimiles and emails

Sending faxes or emails that contain information about patients should be avoided unless necessary, or a dedicated fax line is used.

When a fax or email is necessary, staff should:

- Check the number / Address of the recipient.
- Check the number / Address before sending.
- Where practicable, telephone prior to sending so the recipient is aware it is being sent.
- Fax machines should be placed in rooms that can be secured after hours.

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- Fax machines should be placed in areas where the public are unable to access information coming through.
- All faxes/emails sent should have a disclaimer attached, which contains one of the following:

“Caution: The information contained in this facsimile is confidential. If the reader is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error, please notify us immediately.”

“This email and attachments have been scanned for content and viruses and is believed to be clean. This email or attachments may contain confidential or legally privileged information intended for the sole use of the addressee(s). Any use, redistribution, disclosure, or reproduction of this message, except as intended, is prohibited. If you receive this email in error, please notify the sender and remove all copies of the message, including any attachments. Any views or opinions expressed in this email (unless otherwise stated) may not represent those of Canterbury District Health Board.

17.3 Answer Phones

- Leaving messages about or for patients on their answer phones should be avoided.
- When urgent contact is to be made the only message that is acceptable is to leave the telephone number and name for the person to phone back.
- Under no circumstances should the name of the organisation, the clinical area, or reference for any health care treatment be made.

17.4 General

- Patient details should be checked with the individual concerned to confirm accuracy and that the details are up to date before use.
- Information obtained from third parties should be verified with the patient before use.
- Patients should not be stopped in lifts, corridors or public places and their care discussed.
- Wherever practicable an explanation should be given before information is collected as to its intended use and to whom it may be disclosed.

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- Information disseminated to patients and members of the public such as the Patient Information Booklet should specify to whom information may be released and why.

Policy Owner	Corporate Privacy Officer
Policy Authoriser	Executive Management Team
Date of Authorisation	27 November 2013

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