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SPECIAL

Health Records Act 2001 (Vic)

STATUTORY GUIDELINES
on
TRANSFER or CLOSURE
of the
PRACTICE or BUSINESS
of a
HEALTH SERVICE PROVIDER

issued for the purposes of
Health Privacy Principle 10.2

Office of the Health Services Commissioner
(Victoria)

February 2002

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Decision by the Health Services Commissioner under Section 22(1) of the *Health Records Act 2001*

The *Health Records Act 2001* (Vic) (the Act) creates a scheme to regulate the collection and handling of health information in Victoria. The Health Services Commissioner is responsible for the implementation of the Act.

The Act:

- gives individuals a legally enforceable right of access to health information about them that is contained in records held in Victoria by the private sector; and
- establishes Health Privacy Principles (HPPs) that will apply to health information collected and handled in Victoria by the Victorian public sector and the private sector.

The Act will be introduced in a two-phase process. The Health Privacy Principles will operate as voluntary standards from 1 March 2002, and become legally binding from 1 July 2002 when the rest of the Act is fully operational.

I am empowered by section 22 of the Act to “issue, approve or vary guidelines for the purposes of the Health Privacy Principles”. Section 22(6) also states that:

The guidelines may apply, adopt, or incorporate any matter contained in any document, whether

- (a) *wholly or partially or as amended by the guidelines; or*
- (b) *as in force at the time the guidelines are made or at any time before then; or*
- (c) *as in force from time to time.*

Where these guidelines apply, adopt or incorporate any matter contained in any document, this relates to the document as in force from time to time.

Having regard to section 22 of the Act, and having satisfied the publication and comment process required by the section, and having considered the submissions received, I issue guidelines for the purposes of HPP 1.1(e)(iii) and HPP 2.2(g)(iii) under section 22(1) of the Act.

The guidelines comprise the boxed text on pages 10 to 21 and the appendices to which they refer. An introduction to the guidelines is enclosed with them.

- The guidelines concern the collection, use and disclosure of health information for the purposes of research or the compilation or analysis of statistics, in the public interest.

If you require further information about the operation of the guidelines or the Act, please contact my office on 8601 5222.



BETH WILSON
Health Services Commissioner

22 February 2002

Introduction
Statutory Guidelines issued for the purposes of
Health Privacy Principle 10.2 of the
Health Records Act 2001 (Vic)

The *Health Records Act 2001 (Vic)* (the Act) creates a scheme to regulate the collection and handling of health information in Victoria.

The Act:

- gives individuals a legally enforceable right of access to health information about them that is contained in records held in Victoria by the private sector; and
- establishes Health Privacy Principles (HPPs) that will apply to health information collected and handled in Victoria by the Victorian public sector and the private sector.

The access regime and the HPPs are designed to protect privacy and promote patient autonomy, while ensuring safe and effective service delivery, and the continued improvement of health services.

The Act will be introduced in a two-phase process. The HPPs will operate as voluntary standards from 1 March 2002, and become legally binding from 1 July 2002 when the rest of the Act is fully operational. From 1 July 2002, individuals will have a right of access to health information about them, and those collecting and handling health information will be obliged to comply with the HPPs.

The Health Services Commissioner is empowered by the Act to “issue, approve or vary guidelines for the purposes of the Health Privacy Principles”. Section 22 provides that guidelines may be “issued, approved or varied” for a number of HPPs, including HPP 10 in relation to HPP 10.2.

Context

HPP 10 regulates what a health service provider¹ must do with its records when the practice or business is to be -

- sold, transferred or amalgamated (and the provider will not be providing health services at the new practice or business); or
- closed down (including as a result of the death of the health service provider).

The purpose of HPP 10 is to encourage individuals to apply for their health information while it is still readily available, before it has been transferred following closure or sale of a practice, or before an estate has been wound up in the event of the death of a practitioner. This enables individuals to provide their current treating practitioner with their existing health information.

HPP 10.2(a) requires a health service provider (or, if the provider is deceased, the legal representative² of the provider, such as an executor) in the circumstances set out above, to publish a notice in a newspaper circulating in the locality of the practice or business, setting out details of the sale, transfer or closure and what the provider intends to do with the health information held by the practice or business.

¹ See Appendix 2: Glossary.

² See Appendix 2: Glossary.

The health service provider can indicate whether or not they propose to retain the health information or transfer it to the health service provider who has taken over the practice or business (in the case of it being sold) or to the patient or client, or to a new practitioner nominated by them.

If the provider decides to retain the information, and an individual requests the information be given to him or her, the provider may keep the information but must treat the request as an application for access under the Act.³ If the individual has asked that the information be made available to another health service provider, then the information (not the actual records themselves) must be made available to the new health service provider in accordance with HPP 11.

Use of the guidelines

HPP 10.2(b) requires such a provider to “take any other steps” to notify individuals who have received a service from the provider, in accordance with guidelines issued by the Health Services Commissioner. The processes set out in these guidelines therefore must be followed in order for notice to be lawfully given, in accordance with HPP 10.2(b), of the sale, transfer or closure of the practice or business, and the manner in which the provider proposes to deal with the health information held by the practice or business about individuals who have received a health service from the provider.

Sale of the records or business/practice does not contravene other HPPs

It should be noted that, in the case of the sale of a business or practice, the transfer of health information in an original record to the buyer of the business in accordance with HPP 10 would not contravene other HPPs. This makes it clear that the Act does not require consent for such a transfer.

Public bodies

Public bodies, such as public hospitals, should note that HPP 10 operates subject to the *Public Records Act 1973* (Vic). On closure of a practice conducted by a public body, original records required to be retained under the *Public Records Act* cannot be provided to the individual.

Who will be subject to the guidelines?

HPP 10 applies only to a “health service provider”. These are organisations and persons that provide a “health service” as defined by the Act.⁴ The definition includes activities performed that are intended or claimed to assess, maintain or improve an individual’s health. It includes diagnosis or treatment of illness, injury or disability, as well as the provision of disability, aged care or palliative care services and the dispensing of prescriptions. The definition of “health service provider” does not require an organisation to provide such a service exclusively; an organisation is regarded by the Act to be a health service provider “to the extent that it provides such a service” (section 3).

³ This will not apply to organisations which are subject to the *Freedom of Information Act 1982* (Vic). Such organisations should treat such a request as an FOI application.

⁴ See Appendix 2: Glossary.

Health service providers not prevented from taking further additional steps to notify service users

Nothing in these guidelines should be taken as preventing a health service provider from taking any other steps they may consider appropriate, having regard to the particular needs of their patients or clients or to the nature of their practice or business, to notify past or current patients or clients, or those with forward appointments, or other health service providers, of the sale, transfer or closure of the practice or business and what is intended to be done with the health information held by the practice or business.

STATUTORY GUIDELINES
issued for the purposes of
Health Privacy Principle 10.2
Health Records Act 2001 (Vic)

1. Application of the guidelines

- 1.1 These guidelines apply to Health Privacy Principle (HPP) 10.2, which is established under the *Health Records Act* 2001 (Vic).
- 1.2 These guidelines set out the additional steps that a health service provider¹ whose business or practice is to be-
- (a) sold or otherwise transferred and the provider will not be providing health services at the new practice or business; or
 - (b) closed down-
- must take to notify individuals who have received a service from the provider, of the sale, transfer or closure of the practice or business, and the manner in which the provider proposes to deal with the health information held by the practice or business about individuals who have received a health service from the provider.
- 1.3 In these guidelines:
- (a) a reference to a "health service provider" includes, where the provider is deceased, the "legal representative"² of the provider; and
 - (b) a reference to "patient or client" means an individual who has received a health service from a health service provider.

2. Additional steps to be taken

- 2.1 A health service provider shall take the following additional steps to notify patients or clients of the information set out in HPP 10.2(a)(i) and (ii):
- (a) place a written notice containing that information in clear view in the practice or business, for the following period:
 - (i) not less than two months prior to the date of the sale, transfer or closure; or
 - (ii) if, in the particular case, it is not possible to comply with paragraph (i) - a lesser period that is practicable in the circumstances; and
 - (b) provide that information in writing to each patient or client regarded by the health service provider as currently receiving a program of care, a course of treatment or whose condition is scheduled to be monitored or reviewed by the provider, to the extent that such notification is practicable in the circumstances; and
 - (c) where the health service provider considers that a significant proportion of patients or clients of the practice or business have as their first language a language other than English, publish a notice providing that information in such non-English language newspapers circulating in the locality of the practice or business as are appropriate.

¹ See Appendix 2: Glossary.

² See Appendix 2: Glossary.

- 2.2 In determining, for the purposes of paragraph 2.1(b) of these guidelines, whether a patient or client is “currently receiving a program of care, a course of treatment or whose condition is scheduled to be monitored or reviewed by the provider”, the following matters must be taken into consideration:
- (a) the reasonable expectations of the patient or client;
 - (b) the seriousness of the condition of the patient or client.
- 2.3 Paragraph 2.1(b) only applies to a provider who is a pharmacist where:
- (a) repeat prescriptions for prescribed medication are held by the provider;
 - or
 - (b) where a course of treatment (eg methadone) is being administered by the provider.
- 2.4 Where a legal representative of a provider who is deceased is required by paragraph 2.1(b) of these guidelines to determine whether the notification described in that paragraph is “practicable in the circumstances”, the legal representative may take into account his or her capacity to make the determination whether a patient or client is “currently receiving a program of care, a course of treatment or whose condition is scheduled to be monitored or reviewed by the provider”.
- 2.5 The obligation under section 2.1 of these guidelines does not apply to a health service provider, to the extent that it provides –
- (a) pathology services; or
 - (b) radiology services; or
 - (c) diagnostic imaging services.
- 2.6 A health service provider who provides pathology, radiology or diagnostic imaging services must cause the notice that is required by HPP 10.2(a) to be published in a newspaper circulating in the locality of the practice or business, also to be published in a professional publication for those health service providers who, in the ordinary course of their business or practice, request pathology, radiology or diagnostic imaging services on behalf of their patients or clients.

Appendix 1: Health Privacy Principles 10 & 11

The following Health Privacy Principles are extracted from the *Health Records Act* 2001 (Vic).

SCHEDULE 1
Section 19

THE HEALTH PRIVACY PRINCIPLES

10. Principle 10—Transfer or closure of the practice of a health service provider

- 10.1 This Principle applies if the practice or business of a health service provider ("**the provider**") is to be--
- (a) sold or otherwise transferred and the provider will not be providing health services in the new practice or business; or
 - (b) closed down.
- 10.2 The provider or, if the provider is deceased, the legal representatives of the provider, must--
- (a) publish a notice in a newspaper circulating in the locality of the practice or business stating--
 - (i) that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be; and
 - (ii) the manner in which the provider proposes to deal with the health information held by the practice or business about individuals who have received health services from the provider, including whether the provider proposes to retain the information or make it available for transfer to those individuals or their health service providers; and
 - (b) take any other steps to notify individuals who have received a health service from the provider in accordance with guidelines issued or approved by the Health Services Commissioner under section 22 for the purposes of this paragraph.
- 10.3 Not earlier than 21 days after giving notice in accordance with HPP 10.2, the person giving the notice must, in relation to health information about an individual held by, or on behalf of, the practice or business, elect to retain that information or transfer it to--
- (a) the health service provider, if any, who takes over the practice or business; or
 - (b) the individual or a health service provider nominated by him or her.
- 10.4 A person who elects to retain health information must continue to hold it or transfer it to a competent organisation for safe storage in Victoria, until the time, if any, when the health information is destroyed in accordance with HPP 4.
- 10.5 Subject to HPP 10.2, a person must comply with the requirements of this Principle as soon as practicable.
- 10.6 Despite any other provision of the Health Privacy Principles, a person who transfers health information in accordance with this Principle does not, by so doing, contravene the Health Privacy Principles.

- 10.7 If—
- (a) an individual, in response to a notice published under HPP 10.2, requests that health information be transferred to him or her or to a health service provider nominated by him or her; and
 - (b) the person who published the notice elects to retain the health information—
the request must be taken to be—
 - (c) in the case of a request that the health information be transferred to him or her, a request for access to that health information in accordance with Part 5 or HPP 6; and
 - (d) in the case of a request that the health information be transferred to a health service provider nominated by him or her, a request for the transfer of that health information in accordance with HPP 11—
- and it must be dealt with in accordance with this Act.
- 10.8 This Principle operates subject to any other law, including the *Public Records Act* 1973.
- 10.9 For the purposes of HPP 10.1(a), a business or practice of a provider is transferred if—
- (a) it is amalgamated with another organisation; and
 - (b) the successor organisation which is the result of the amalgamation is a private sector organisation.

11. Principle 11--Making information available to another health service provider

- 11.1 If an individual—
- (a) requests a health service provider to make health information relating to the individual held by the provider available to another health service provider; or
 - (b) authorises another health service provider to request a health service provider to make health information relating to the individual held by that provider available to the requesting health service provider—
- a health service provider to whom the request is made and who holds health information about the individual must, on payment of a fee not exceeding the prescribed maximum fee and subject to the regulations, provide a copy or written summary of that health information to that other health service provider.
- 11.2 A health service provider must comply with the requirements of this Principle as soon as practicable.
- 11.3 Nothing in Part 5 or HPP 6 limits the operation of this Principle.
- 11.4 For the purposes of HPP 10.7, this Principle applies to a legal representative of a deceased health service provider in the same way that it applies to a health service provider.

Appendix 2: Glossary

NOTE: Reference in this glossary to “this Act” refers to *Health Records Act 2001* (Vic).

“health service”¹ means--

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it--
 - (i) to assess, maintain or improve the individual's health; or
 - (ii) to diagnose the individual's illness, injury or disability; or
 - (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability; or
- (b) a disability service, palliative care service or aged care service; or
- (c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist; or
- (d) a service, or a class of service, provided in conjunction with an activity or service referred to in paragraph (a), (b) or (c) that is prescribed as a health service--

but does not include a health service, or a class of health service, that is prescribed as an exempt health service for the purposes of this Act generally or for the purposes of specified provisions of this Act or to the extent that it is prescribed as an exempt health service.

“health service provider”² means an organisation that provides a health service in Victoria to the extent that it provides such a service but does not include a health service provider, or a class of health service provider, that is prescribed as an exempt health service provider for the purposes of this Act generally or for the purposes of specified provisions of this Act or to the extent that it is prescribed as an exempt health service provider.

“legal representative”³ in relation to a deceased individual, means a person--

- (a) holding office as executor of the will of the deceased individual where probate of the will has been granted or resealed in Victoria or any other State or Territory; or
- (b) holding office in Victoria or any other State or Territory as administrator of the estate of the deceased individual.

¹ See section 3, *Health Records Act 2001* (Vic).

² See section 3, *Health Records Act 2001* (Vic).

³ See section 3, *Health Records Act 2001* (Vic).

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