

# GUIDELINES FOR DISCLOSURE OF HEALTH INFORMATION

AHS Information & Privacy



# GUIDELINES FOR DISCLOSURE OF HEALTH INFORMATION

This document has been prepared to assist Alberta Health Services (AHS) staff in responding to requests for disclosure of health information under the *Health Information Act* (HIA).

Section 1 is definitions of terms used throughout the document. Section 2 provides general information which applies to all requests to disclose health information. Sections 3 and 4 include detailed guidance related to specific topics and provide examples, scenarios or “FAQs.”

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## SECTION 1 – Definitions

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### Authorized Representative

Section 104 of the HIA outlines persons who may act on behalf of an individual and exercise that individual's rights and powers under the HIA, such as accessing information or consenting to the disclosure of the information. These authorized representatives are as follows:

- The guardian of an individual under 18, if that individual is not assessed to be able of understanding their rights and powers under the HIA and the consequences of exercising these rights (see [Section 3.4.1](#))
- The personal representative of a deceased individual related to the administration of the individual's estate (see [Section 3.3](#))
- A guardian or trustee appointed under the *Adult Guardianship and Trusteeship Act*
- The agent designated in a personal directive under the *Personal Directives Act*, if the directive authorizes the agent to act in this capacity
- If power of attorney has been granted, by the attorney if the power of attorney so authorizes
- The individual's nearest relative under the *Mental Health Act* if doing so is necessary for the nearest relative to carry out their obligations under that Act, or
- By any person with written authorization from the individual. See the AHS [Authorization of Health Information Act Representative](#) form.

### Custodian

A Custodian is an organization or health professional as defined by the HIA who provides a health service. Alberta Health Services is considered a custodian under HIA. Other examples include nursing homes, pharmacists and physicians in their own private office/clinic.

### Diagnostic, Treatment, and Care Information

Includes information about the following:

- The physical and mental health of individual
- A health service provided to an individual
- Information about a health service provider who provides a health service to the individual (including information such as name, business contact information, business title, license number assigned by a professional body)
- A drug provided to an individual, and

- Any other information collected from the patient when a health service is provided, such as medical history and next of kin.

### **Disclosure**

Disclosure refers to the release, transmittal, exposure, revealing, showing, providing copies of, telling the contents of, or giving health information by any means to any person or organization outside of an AHS program or service.

Disclosure includes oral transmission by telephone, voice mail or in person; provision of the information on paper, by facsimile or in another format; and electronic transmission through electronic mail, data transfer or the Internet.

### **Health Information**

Includes individually identifying diagnostic, treatment and care information and registration information.

### **Registration Information**

Includes the following:

- Demographic information, including name, date of birth, personal health number (PHN)
- Location information, including address and telecommunications information, and
- Billing information, including WCB, treaty number and band name.

## **SECTION 2 – Disclosing Health Information**

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### **INTRODUCTION**

AHS facilities, departments and programs often receive requests for information about patients and clients from third parties (i.e., a person external to AHS). For example, AHS may receive a request from a patient's insurance company for the patient's health records. Such requests may be verbal or in writing.

In other cases, an AHS facility, department or program may be considering releasing information about a patient or client to a third party – such as in response to an emergency.

To disclose information means to provide it to anyone external to AHS, such as another custodian (i.e., a physician in their practice outside of AHS) or another third party (i.e., a family member or a police officer). Disclosure occurs when information is shared by any means including verbally, transmitted by fax or email, when records are shown, or copies of records are provided.

In order to release the information, the disclosure of the information must be allowed under the HIA. If the HIA does not permit the disclosure, AHS cannot disclose the information.

## 2.1 GENERAL DUTIES & RESPONSIBILITIES OF EMPLOYEES

Requests seeking information about AHS patients or clients should be handled by AHS employees identified by each division, department or program as responsible to perform this work.

Information must only be disclosed in accordance with an employee's job duties and responsibilities. An employee's role and responsibilities in AHS will determine whether or not they have the authority to disclose information as well as the amount of information that may be disclosed. This is known as the "need to know" principle.

For example, a staff member working at the reception area of a hospital may disclose limited information about a patient to a family member (e.g., their location within the hospital). A nurse on the patient's unit may disclose information about the patient's condition and progress on the day asked. A physician / designate may disclose information about the patient's prognosis.

## 2.2 GENERAL GUIDELINES FOR DISCLOSING HEALTH INFORMATION

Disclosure of information is mandatory only in a limited number of circumstances. When disclosure is not mandatory, employees must exercise discretion when responding to a request for information.

The following principles must be considered whenever health information is disclosed:

- **Least Amount of Information**  
The disclosure of information should be limited to the least amount of information which is essential to carrying out the intended purpose.
- **Highest Degree of Anonymity**  
If information is disclosed for a purpose other than providing a health service or determining the eligibility of an individual to receive a health service, the anonymity of the information must be considered. Consideration must be given to whether aggregate or non-identifying information would be adequate for the intended purpose.
- **Individual's Wishes**  
If a patient/client expressly asks that the disclosure of their health information be limited, these wishes must be considered as an important factor when deciding if and how much information to disclose. For example, if a patient is brought, by family members, into an Emergency Department and asks that staff do not provide any information to his or her family, AHS must generally oblige.

## 2.3 DISCLOSURE TO THE PATIENT/CLIENT OR AUTHORIZED REPRESENTATIVE

As part of routine service delivery, health care providers present the patient/client or their authorized representative (see [Section 1](#)) with information that:

- Informs the patient/client of their diagnosis, treatment and care
- Allows the patient/client to actively participate in health care decisions and care planning, and
- Educates the patient/client on follow up expectations.

The health care provider is responsible for providing information in a manner that the patient/client can understand, including the interpretation of diagnostic results.

## 2.4 DISCLOSURE WITH THE CONSENT OF THE INDIVIDUAL

Health information can be disclosed to any person for any purpose with the consent of the individual that the information is about.

This consent can be obtained from:

- The individual who is the subject of the information, or
- The individual's authorized representative. (See [Section 1](#) for who is an "authorized representative.")

Consent to disclose health information must be provided in **writing**. **An oral consent is not sufficient**. The health information disclosed must be limited to the information specified on the consent form, to the specific individual or organization listed, and within the stated time frames.

You may receive non-AHS consents prepared by law firms, insurance companies or other organizations. These forms often do not comply with the requirements of the HIA. To ensure the consent is valid, the following must be present:

1. An authorization to disclose the health information specified in the consent
2. The purpose for which the health information may be disclosed
3. The identity of the person to whom the health information may be disclosed
4. An acknowledgement that the individual providing consent has been made aware of the reasons why the health information is needed and the risks and benefits to the individual of consenting or refusing to consent
5. The date the consent is effective and the date, if any, on which the consent expires, and
6. A statement that the consent may be revoked at any time by the individual providing it.

The AHS [Consent to Disclose Health Information](#) form meets these six (6) requirements. Other consent forms may be accepted if they meet all six (6) requirements of section 34 of the HIA, as listed above. Whenever possible, use the AHS form.

## 2.5 DISCLOSURE WITHOUT THE CONSENT OF THE INDIVIDUAL

There are provisions in the HIA which authorize disclosure of individually identifying diagnostic, treatment and care information *without* the subject individual's consent or the consent of their authorized representative.

For example, there are provisions that allow for the disclosure of health information without consent to another custodian who is providing health services to the patient or client, or to a person responsible for the continuing treatment and care of the individual.

For more information, refer to Section [3](#) and [4](#) of these guidelines or contact Information & Privacy by emailing [privacy@albertahealthservices.ca](mailto:privacy@albertahealthservices.ca) or calling 1-877-476-9874.

### 2.5.1 Disclosure to other Custodians

Diagnostic, treatment and care information is regularly shared between custodians. A custodian may disclose health information without consent to another custodian for providing a health service to a patient (i.e., for continuity of care), or for other purposes as authorized by HIA.

Remember that AHS must disclose the least amount of information required for the purpose.

#### **Scenario**

A patient is discharged from hospital and the patient's family physician will require a copy of the Discharge Summary in order to provide follow-up care to the patient.

#### **Response**

The patient's family physician is a custodian. Providing a copy of the Discharge Summary to the family physician would be considered a disclosure under the HIA. As the Discharge Summary is required for the family physician to provide follow-up care to the patient, the disclosure is permitted.

### 2.5.2 Disclosure for Continuing Treatment and Care Purposes

The HIA permits the disclosure of individually identifying diagnostic, treatment and care information, without the individual's consent, to the person (not limited to health-care providers) providing continuing treatment and care to the individual.

The HIA does not specify who may be considered a continuing care provider. It may be a family member or friend who has a role in providing care to the patient at home. A continuing care provider could also be a long-term care centre in which the patient has been placed.

The health information that is disclosed must be limited to that required for the type of care provided.

#### **Scenario**

An elderly patient is discharged from an AHS facility and sent home following a bout of pneumonia. The patient's adult daughter will be helping to care for her mother at home for several days.

#### **Response**

The staff on the unit may disclose to the daughter information that is relevant to assist in providing care for her mother at home. Staff would not be able to disclose the entire patient's chart to the daughter (without the mother's consent), as this is more information than is required to provide continuing care.

### 2.5.3 Disclosure of Information to Family and Close Friends

The HIA permits the disclosure of limited information about a patient, without the patient's consent, to family members or those in a close personal relationship.

This could include an "adult interdependent partner" as set out in the *Adult Interdependent Relationships Act*. It could also include a live-in boyfriend/girlfriend who doesn't meet the

definition of an adult interdependent partner, a close friend or other person who can demonstrate a close relationship with the individual who is the subject of the information.

This provision enables a health professional to discuss the diagnosis or condition of the patient with relatives or close friends.

Disclosure must be limited to general information about the individual's *location, presence, condition, diagnosis, progress* and *prognosis* on the day the information is disclosed (i.e., a “snap shot” of the patient’s condition at that point in time). Other information, such as the patient’s medical history, could not be disclosed.

The disclosure must not be contrary to the express request of the individual.

## Scenario

A patient has been brought into an Emergency Department by ambulance. The patient is aware that members of his family will be arriving soon. The patient explicitly asks that no information about his condition be shared with his family.

## Response

Normally, the physician could provide an update on the patient’s condition to family members. In this case, because the patient has stated that he does not want any information shared with his family, staff and physicians should honour that wish.

## 2.5.4 Disclosure to Comply with Legislation and Court Orders

Some situations require AHS to disclose health information in order to comply with the law. Health information may be disclosed without the individual’s consent for the purpose of complying with a subpoena, warrant or order issued by an Alberta court, or if there is an enactment that requires or authorizes the information to be disclosed. For example, the *Adult Guardianship and Trusteeship Act* authorizes disclosure of personal information (including health information) to supporters and co-decision makers. Other examples of enactments that require or authorize the disclosure of health information are found in Section [3.6](#) and Section [4.5](#).

## 2.6 COMPLETING THE DISCLOSURE

### Authenticating the Recipient

Reasonable steps should be taken to authenticate the identity of the person requesting an individual’s health information. This may be done in a number of ways, such as:

- Requiring all written requests to be submitted on the letterhead of the requesting organization, or
- Requesting that an individual show a driver’s license, employee identification or police badge.

### Method of Disclosure

Depending on the nature of the request, disclosures may be completed in writing, verbally, by email or fax. Efforts must be taken to protect the confidentiality of the information consistent with AHS policies and departmental procedures. Visit <http://insite.albertahealthservices.ca/corporate-policies.asp> for more information.

### Notation of Disclosure

When health information is disclosed, a record must be made noting the name of the person (or organization) to whom the information was disclosed, the date and time of the disclosure, and a description of the information that was disclosed. This can be done by making a notation on the patient/client record, by retaining copies of the letter requesting information and the AHS letter of response, or by entering the information on a log in the department.

### Notification Regarding Authority for Disclosure

When health information is disclosed, the recipient must be informed of the purpose and authority for the disclosure. This notification is not required if the disclosure is to another custodian, a police service (see [Sections 3.4](#) and [3.5](#)) or to the individual who is the subject of the information. This information can be included in the letter of response or by completing the [Notice to Recipient of Health Information](#) form and filing a copy on the patient/client file.

## SECTION 3 – Disclosure of Health Information to Law Enforcement Agencies

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### INTRODUCTION

AHS often has contact with law enforcement agencies and may receive requests to disclose the health information of our patients/clients. The following types of police services are considered law enforcement agencies/officers:

- Municipal Police
- RCMP
- Community Peace Officers (CPO)
- First Nations Police
- Sheriffs
- Canada Border Services Agency
- Alberta Gaming and Liquor Commission

Information may be disclosed to a law enforcement agency in the following circumstances:

- With the written consent of the individual. ([See Section 2.4.](#))
- Without the consent of the individual in limited circumstances as described below in Sections 3.1 to 3.7.

### 3.1 CONTACTING FAMILY ABOUT INJURIES, ILLNESS OR DEATH

The HIA allows AHS to disclose individually identifying diagnostic, treatment and care information without the consent of the patient/client if the individual is injured, ill or deceased.

Normally, this is viewed as for the purposes of notifying the next of kin. Contacting the next of kin cannot be contrary to the express request of the patient/client.

### Scenario

An elderly man shows up at the hospital. He is thought to be displaying signs of dementia. A nurse recognizes the individual as the subject of a missing persons report as described by the media.

### Response

In this scenario, the nurse has reason to believe the individual fits the description of a man who was reported missing from the area. The man has no identification and is unable to provide his name or address. Disclosure of limited health information would be authorized to enable police to contact the family members.

## 3.2 IMMINENT DANGER

The HIA allows AHS to disclose health information about a patient/client to prevent or minimize imminent danger to the health or safety of any individual, including to the patient/client. Typically, this disclosure is to law enforcement personnel to protect or apprehend an individual.

To disclose information under this provision, three criteria regarding imminent danger must generally be satisfied:

- Clarity – the intended victim or group of victims must be ascertainable or sufficiently identifiable
- Danger – the danger to the victim must be serious bodily harm or death, and
- Imminence – the risk must be serious and a sense of urgency must be created by the threat of danger. The risk could be a future risk, but must be serious enough that a reasonable person would believe that the harm would be carried out.

### Scenario

A patient who has consumed a significant amount of alcohol has been treated at the hospital following a fall. The nursing staff believe the patient is still significantly impaired and an imminent danger to themselves and other members of the public would exist if he drove home. Staff are unable to dissuade him from leaving the hospital and he proceeds to his vehicle.

### Response

The possible victim, the patient, is clearly identifiable (i.e., “clarity”); the “danger” involves the possibility that the patient could be injured or killed in a car accident; and, there is a sense of urgency (i.e., “imminence”). This situation presents a risk of serious imminent harm to both the patient and other individuals. Therefore, to prevent this harm, AHS staff can disclose the patient’s location, condition, and other relevant information to police, so that police can prevent the patient from driving.

### Scenario

Police present at a hospital requesting information about an individual who has expressed (to non-AHS individuals) his intent to harm or kill co-workers. This individual has been recently treated in the Emergency Room and discharged. The police are requesting information in order to assess the risk, and find and question the individual.

## Response

Police have indicated that there is a serious and urgent threat of imminent harm to a group of individuals. Relevant information to assist police in their investigation may be disclosed, such as the individual's recent mental state and time of discharge.

### 3.3 SUBPOENAS, WARRANTS AND COURT ORDERS

The HIA allows for AHS to release copies of records should law enforcement personnel present a subpoena, warrant or court order. Typically, subpoenas are for staff/records to be brought to court. The subpoena, warrant or court order must be reviewed to determine what information is being requested (e.g., emergency records, lab results, other health records), pertaining to what time period and for whom. The subpoena, warrant or court order will also include the date by which the records must be provided.

Further information can be found on Insite

(<http://insite.albertahealthservices.ca/1214.asp#Subpoenas>) regarding how to respond to a subpoena, warrant or court order. If additional advice is required, contact Legal Services (Clinical Legal Intake Line @ 1-888-943-0904) or the [Privacy Intake line](#).

## Scenario

Police officers arrive in the department with a Production Order to produce specific patient records.

## Response

The Production Order should be carefully reviewed to identify the records being requested, the timeline for a response and other details specific to the Order. Only the information requested in the Order should be provided to the police. Contact Legal Services or Information & Privacy for advice on how to respond.

### 3.4 DISCLOSURES TO PREVENT FRAUD OR LIMIT ABUSE OF HEALTH SERVICES

This section of the HIA allows for disclosure of health information to police or the Minister of Justice and Attorney General where it is believed on reasonable grounds that:

- The information disclosed relates to the possible commission of an offence under a statute of Alberta or Canada, **and**
- The disclosure will detect, limit or prevent fraud or abuse in the use of health services.

The health information disclosed could include all or some of the following elements:

- Name
- Date of birth
- Personal health number
- Nature of any injury or illness
- Date on which a health service was sought or received
- The location where an individual sought or received
- The name of any drug provided to or prescribed to the individual
- The date the drug was provided or prescribed, or

- Information about the health services provider who provided a health service to the individual.

### Scenario

Police are requesting information related to an investigation of an individual alleged to have committed prescription fraud.

### Response

Fraudulently obtaining or attempting to obtain prescription medication is an offence under the *Criminal Code (Canada)*. Police have indicated they are investigating a situation to determine whether an individual is fraudulently obtaining medication. Disclosing information to police will prevent or limit abuse in the use of health services by ensuring funds are only used to pay for medication that has been properly prescribed. Only the patient's name, birth date, and the other details listed above may be disclosed.

## 3.5 DISCLOSURES PROTECTING HEALTH AND SAFETY OF ALBERTANS

In addition to the provision that permits disclosure [to avert or minimize an imminent danger](#), the HIA also allows disclosure of health information where it is reasonable to believe that:

- The information relates to the possible commission of an offence (e.g., a crime), **and**
- The disclosure of the information will protect the health and safety of Albertans.

This provision allows for disclosing information in response to a request from police as well as for proactive disclosure. Disclosure is discretionary. That is, the Act permits but does not require disclosure.

Under this provision, the health information that AHS may disclose about an individual is limited to:

- Name
- Date of birth
- The nature of any injury or illness
- The date on which a health service was sought or received, and
- Whether any samples of bodily substance were taken (not the sample itself or the results).

Providing this limited information will assist the police in obtaining a court order, warrant or subpoena should more detailed information or a copy of the patient's health record be needed.

### Scenario

An individual appears at an AHS facility to receive treatment for assault related injuries. The police contact the facility to request information about the individual indicating they believe the assault relates to recent gang activity in the downtown core of the city. Police indicate they are investigating the situation to determine whether a criminal offence has occurred and advising that the gang related activities are escalating and becoming a greater risk to the safety of the general public.

## Response

The limited health information listed above may be disclosed so that the police can continue their investigation.

## Scenario

Police present at a facility and indicate they are investigating a series of incidents involving arson where individuals have been injured. The police indicate that the most recent arson, which occurred the previous evening, may have resulted in injury to the person committing the crime (e.g., burns to hands and face). The police ask if anyone presented at the facility with such injuries.

## Response

The AHS manager determines that a patient was treated the previous evening with injuries consistent with those cited by the police. The police have indicated that they are investigating an offence (i.e., arson). It may be reasonable to believe that by disclosing limited information about the patient that the health and safety of Albertans will be protected. Any information disclosed must be limited to the relevant information outlined above, such as the patient's name, the date on which health service was sought or received, and the nature of the injury.

## Scenario

An impaired driver, injured in a motor vehicle accident, was transported to the Emergency Department. There, staff observed obvious signs of impairment and formed the opinion that the patient was intoxicated with alcohol. Several other individuals were also injured and have been transported for treatment. The responding police service arrives at the Emergency Department requesting information about the driver.

## Response

The health information relates to the possible commission of an offence under the *Criminal Code (Canada)*. Impaired drivers put the health and safety of Albertans at risk. Health care providers may exercise their discretion and provide only the limited information noted at the beginning of this section to the police, including whether blood or urine samples were obtained. Note that the *results* of the samples would not be provided. The police must obtain a subpoena, warrant or court order to obtain that information.

## 3.6 ENACTMENTS OF ALBERTA OR CANADA

The HIA permits staff to disclose information for the purpose of complying with another law that authorizes or requires such disclosure.

A number of laws authorize or require AHS to disclose health information without the consent of the individual. Examples of this include the *Fatality Inquiries Act*, *Gunshot and Stab Wound Mandatory Disclosure Act* and the *Emergency Health Services Act*.

Three such examples are discussed in the following sections. Contact Information & Privacy for questions about other scenarios or disclosures under other enactments.

### 3.6.1 Gunshot or Stab Wounds

The *Gun Shot and Stab Wound Mandatory Disclosure Act* **requires** AHS to report to police, as soon as reasonably practical and without interfering with the patient's treatment or disrupting the health care facilities regular activities, any gun shot or stab wound. Reporting is not required if staff reasonably believe that the gun shot or stab wound is self-inflicted or unintentionally inflicted.

The information that must be reported is limited to:

- The patient's name (if known)
- Whether the injury is a gunshot or stab wound
- The facility's name and location, and
- When an EMT is reporting, the location attended to treat the injured person.

The report to the police must be made orally (i.e., not in writing) and must be made as soon as reasonably practical.

Health-care facilities must ensure that, at all times, there is a designated individual who is responsible to make these disclosures on behalf of AHS facilities to local police.

#### **Scenario**

An individual arrives in the Emergency Department seeking treatment for a stab wound that was inflicted during a street fight. The individual will not provide the health care team with any details on who did this to them, or why.

#### **Response**

Based on the information provided to staff, it is likely that the stab wound was not self or unintentionally inflicted. Staff working in the hospital are required to report the patient's name (if known), the fact that the injury is a stab wound and the facility's name and location.

Where police have accompanied a patient to the hospital, the report may be made directly to the officer. Where no police are present with the patient, the Emergency Department Charge Nurse or Protective Services staff shall contact the local police service non emergency number to make the disclosure.

The AHS staff reporting to the police must make a written notation of the police service receiving the information, the date of the report, and that the report was pursuant to the *Gunshot and Stab Wound Mandatory Disclosure Act*. This notation should be placed in the progress notes on the patient's chart.

### 3.6.2 Missing Persons

On September 6, 2012, the *Missing Persons Act* came into force. The Act allows AHS to disclose personal and health information, in certain circumstances, to a police service for the purposes of an investigation into the whereabouts of a missing person.

A “missing person” is an individual who cannot be located and there is concern for his or her safety and is defined as:

- An individual who has not been in contact with those persons who would likely be in contact with the individual, or
- An individual whose whereabouts are unknown despite reasonable efforts to locate the individual, and
- Whose safety and welfare are feared for given the individual’s physical or mental capabilities or the circumstances surrounding the individual’s absence.

### Orders

Police may obtain a Court Order, under the *Missing Persons Act*, requiring AHS to make available records, including those that contain contact or identification information, video records, employment information, health information, school information, and any other information specified in the Order. AHS **must comply** with the Order.

### Emergency Situations

In emergency situations, where the police believe a missing person may be at risk of imminent bodily harm or death police can issue a written demand for records that are urgently required to locate and prevent harm to a missing person. The police will issue a written demand using an “Application for Access to Records, Missing Persons Act” form. AHS Staff are to respond to these requests in a prompt manner.

The written demand may request the following records:

- Contact or identification information
- Telephone and other electronic communication records
- Records containing employment information
- Records containing health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if the records do so indicate, which hospital and the date and time of, and the reason for admission, or
- Records containing school or post secondary attendance information.

### Scenario

An AHS facility receives a Court Order issued under the *Missing Persons Act* from the police service ordering that AHS consult its patient records to determine if a missing person, or a “John Doe” fitting the missing person’s description, has been admitted or treated in the last week.

### Response

The facility manager checks their records and determines a patient matching the name and fitting the description was treated and discharged three days earlier. The manager discloses to the police the patient’s name and contact information, the date and time the patient was seen, as well as the nature of injury. The manager then makes a notation on the patient’s chart regarding the disclosure.

### 3.6.3 Ambulance Attendant at Scene of an Incident

The *Emergency Health Services Act* enables AHS Emergency Medical Services (EMS), and its contracted service providers, to disclose information to police about the scene of an incident and any witnesses who are at the scene. This provision also allows EMS to disclose limited health information about the individual to whom the health services were provided.

The information that may be disclosed to the police is limited to:

- Name
- Date of birth
- Nature of any injury or illness of a patient, including any observation of possible impairment;
- Time and date that the ambulance attendant was dispatched to and attended the scene of an incident;
- Location where a patient sought or received an emergency health service;
- Observations regarding the scene of an incident;
- If any disruption of the scene of an incident was observed or was caused by the ambulance attendant, a description of the disruption, including whether any patient was moved, whether specialized equipment was used and whether any materials found at the scene of the incident were disturbed;
- Whether any samples of bodily substances were taken from a patient; and
- The transport destination of any patient removed from the scene of an incident.

#### Scenario

Police officers arrive in the Emergency Department and request information about what EMS staff observed at the scene of a car accident that EMS transported a patient from.

#### Response

EMS staff may disclose to police information observed or collected when dispatched to and attending the scene of the accident. The disclosure may be done verbally or in writing and may include providing police with a witness statement.

Releasing full copies of Patient Care Records (PCR) is not supported as PCRs generally include detailed health information. Detailed health records cannot be disclosed unless a section of the HIA permits the disclosure without the consent of the patient (or police may obtain written consent from the patient).

## 3.7 FREQUENTLY ASKED QUESTIONS RELATING TO DISCLOSURE TO LAW ENFORCEMENT

Question	Response
1. The police want me to contact them to let them know when a patient is being discharged from acute care. They indicate there are outstanding warrants for the person.	Generally, disclosure of this information is not authorized unless: <ul style="list-style-type: none"><li>• The patient consents to the information being disclosed, or</li><li>• An 'imminent danger' situation exists and</li></ul>

<p>Can I provide them with that information?</p>	<p>disclosure is authorized without consent (see <a href="#">Section 3.2</a>). Police should be asked to provide more information that would assist in determining if an imminent danger exists.</p>
<p>2. If a crime has been committed on AHS property and involves a patient/client, can I provide information to the police?</p> <p>Some examples might include a patient:</p> <ul style="list-style-type: none"> <li>• Found trafficking drugs within a hospital</li> <li>• Viewing child pornography on a personal electronic device</li> <li>• Stealing the belongings of another patient</li> <li>• Threatening or assaulting another patient/staff member, or</li> <li>• Obtaining health services with a stolen or 'loaned' personal health care number.</li> </ul>	<p>Disclosure of information is allowed if it will minimize or prevent imminent danger to a person.</p> <p>In other situations, Protective Services or Management staff should be contacted. A decision about proactive disclosure of information to the police should be determined by those designated individuals (in consultation with Legal &amp; Privacy if needed). Disclosure includes only the information relevant to the crime.</p>
<p>3. A patient who is at risk of harming themselves or others has gone missing from the health facility.</p> <p>Can I report this to the police to request their assistance in locating the individual?</p> <p>If yes, how much information can I provide the police?</p>	<p>Information may be disclosed to police if one of the following situations apply:</p> <ul style="list-style-type: none"> <li>• Disclosure is for the purpose of minimizing or averting imminent danger to a person (this may include a situation where a dementia patient is missing and is at risk of wandering into unsafe areas); or</li> <li>• To comply with the <i>Mental Health Act</i> or another enactment of Alberta.</li> </ul> <p>Provide only information necessary to assist the police in locating the individual.</p> <p>The police may then request additional information or records under the <i>Missing Persons Act</i> (see <a href="#">Section 3.6.2</a>).</p>

## SECTION 4 – Other Disclosure Scenarios

### 4.1 BEST INTERESTS OF A PERSON LACKING MENTAL CAPACITY

The HIA allows AHS to disclose information about an individual when that individual lacks mental capacity to provide consent and staff believe disclosure is in the best interests of the

individual. If the individual has a guardian or other person authorized to make decisions on their behalf, staff should try to obtain consent from that person before disclosing information. The health information disclosed is the information that is necessary and will be case specific.

### Scenario

A person is suffering from dementia and there are no family members or a person with whom the individual has a close personal relationship. A qualified provider has determined that the patient is not competent.

### Response

Disclosure may be made to the Office of the Public Guardian to protect vulnerable adults or individuals who are no longer able to make all their own decisions if the disclosure is thought to be in the patient's best interests. The amount of health information that is disclosed must be limited to that which is required for the purpose.

## 4.2 MEDIA, LAW FIRMS AND INSURANCE COMPANIES

An individual's consent is generally required for AHS to disclose his or her health information to media, a lawyer(s) or an insurance company.

AHS staff may receive non-AHS consents prepared by media outlets, law firms or insurance companies. These forms often do not comply with the requirements of the HIA.

In accordance with the AHS [Communications \(Internal & External\) Policy](#), all Media inquiries and requests for comment on behalf of AHS, including requests from media for, or, related to, patient information, must be directed to the AHS Communications Department. AHS Communications will coordinate appropriate response. In the case of patient information requests, AHS Communications will also coordinate necessary patient consent processes. AHS Communications can be reached, 24/7, through the AHS Communications On-Call numbers, as follows:

Edmonton Zone and North Zone: reach Communications On-Call at 780.445.3866.  
Central Zone, Calgary Zone and South Zone: reach Communication On-Call at 403.804.6469.

The AHS Communications policy can be found on Insite at:

<http://www.albertahealthservices.ca/Policies/ahs-pol-communications.pdf>

The AHS Social Media policy can be found on Insite at:

<http://www.albertahealthservices.ca/Policies/ahs-pol-social-media.pdf>

Whenever possible, please use the AHS standard [Consent to Disclose Health Information](#) form.

For more information on "consent," see [Section 2.4](#).

## 4.3 REQUESTS RELATING TO DECEASED INDIVIDUALS

The HIA permits staff to disclose individually identifying diagnostic, treatment and care information, relating to circumstances surrounding the death of the individual or to health services recently received by the individual, to family members of the deceased or another person with whom the individual is believed to have a close relationship. *The disclosure must*

not be contrary to the [express request](#) of the individual. AHS may also disclose limited information to an authorized representative for the purpose of administration of the individual's estate. This request must be in writing and include documentation that shows their authority to request this information.

## Scenario

The immediate family members of a patient who died following a workplace accident have inquired about what the patient's injuries were and treatment provided. They have also asked about the patient's medical history.

## Response

AHS staff may disclose to the family members information about the nature of the patient's injuries and the care that was provided. Staff would not be able to disclose the patient's medical history if unrelated to the circumstances surrounding the death.

## 4.4 REQUESTS RELATING TO MINORS

### 4.4.1 Minors

Individuals under 18 years of age will be able to exercise their own rights or powers under the Act if they meet the test set out in section 104(1)(b) HIA. To determine whether a minor meets this definition it must be demonstrated that the minor understands the nature of the right or power to be exercised and the consequences of exercising such a right. This provision leaves determination of whether an individual meets the test in the hands of AHS. Factors that must be considered are the individual's age, maturity, independence, level of understanding and the nature and complexity of the HIA rights or powers..

### 4.4.2 Guardian of the Minor

If an individual is under 18 years of age, and AHS has determined that the minor does not meet the test under section 104(1)(b) HIA, a guardian can exercise that individual's rights and powers under the Act.

A "guardian" is a person who is legally responsible for the care and custody of the minor. This definition may not extend to the biological parents of a child in all circumstances. Other guardians may be the Director appointed under the *Child, Youth and Family Enhancement Act* (CYFEA) or an individual who has been granted guardianship through an Order by the courts. If circumstances dictate, the document demonstrating the authority of the guardian should be reviewed by the staff who will be disclosing the information.

## 4.5 CHILD AND FAMILY SERVICES AUTHORITY REQUESTS

### Disclosure under Section 4 – A Child in Need of Intervention

Section 4 of the *Child, Youth and Family Enhancement Act* (CYFEA) is an exception to the general privacy rules. If any person has **reasonable and probable grounds** to believe that a child is in need of intervention then they have a **duty** to report the matter forthwith to a Child and Family Services Authority (CFSA) or Delegated First Nation Agency (DFNA) office.

It is important to know that the duty to report is a positive duty on the individual. A failure to report is an offence under the Act. There is no liability for a person who makes a report in good faith.

What constitutes “reasonable and probable grounds” of a child in need depends on the circumstances; however, the belief that a child is in need must have some factual basis.

Some examples of when a child is in need of protection for the purposes of the CYFEA include:

- The child has suffered physical harm or there is substantial risk that the child will suffer physical harm whether it was inflicted by the Guardian of the child or resulted from that person’s failure to protect the child from physical injury;
- The child has been sexually abused or sexually exploited or there is substantial risk that the child will be sexually abused or exploited, either by the Guardian of the child or as a result of that person’s failure to protect the child;
- The Guardian is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child;
- The child has been emotionally injured by the guardian of the child; or the guardian of the child is unable or unwilling to protect the child from emotional injury; or
- The child suffers from a mental emotional or developmental condition that if not remedied could seriously impair the child’s development and the Guardian of the child does not provide, refuses or is unavailable to consent to the treatment.

If you are aware of a child who meets one of the above criteria, you must report this incident to your [local CFSA or DFNA](#).

### **Recent amendments to the Child, Youth and Family Enhancement Act**

In October 2009, section 126 (4) of the CYFEA was amended to clarify the circumstances in which a custodian and/or public body, such as AHS, may release health/personal information to Child and Family Services Authorities (CFSA).

With this amendment, AHS may release health information to CFSA for the purposes of CFSA conducting assessments, investigations or providing services under the CYFEA. Although AHS has the option and may disclose, AHS will usually disclose information under these circumstances. It is important to note though that is not a mandatory requirement.

General privacy principles still require the disclosure of the least amount of information possible while still enabling CFSA to carry out its intended purpose of conducting assessments, investigations or providing services.

The majority of requests for health or personal information occur after an individual has made a report to CFSA that a child is in need of intervention services. However, the CYFEA provides CFSA with a range of options to assist children and families in other situations that require action by CFSA. These options include court orders and agreements.

## 4.6 PENAL INSTITUTIONS

The HIA permits disclosure of relevant diagnostic, treatment and care information to a penal institution employee or other custodial institution so that an inmate can receive appropriate continuing treatment and care. "Other custodial institution" could include a jail, holding cells, remand centre, juvenile detention facility or institution where an individual is being lawfully detained and cannot leave.

In addition, effective October 1, 2011, the *Corrections Act* was amended to allow AHS to disclose inmate health information to a director of a correctional institution for the following purposes:

- A classification process, as described in section 11 of the *Corrections Act*
- Protecting the health, safety and security of inmates, staff and visitors to the correctional institution and the safety and security of the correctional institution
- Addressing or preventing a nuisance, as defined in the *Public Health Act*, in the correctional institution, or
- Addressing or preventing a communicable disease outbreak in the correctional institution.

While this disclosure is at AHS's discretion (i.e., not required), in most situations AHS should cooperate with the request and disclose this information. The amount of health information disclosed must be limited to the minimum amount required for the above purposes.

### Scenario

An inmate/patient has pre-existing medical conditions such as addictions, food allergies, infectious disease, psychological or psychiatric condition, physical disabilities, or is epileptic. The director of the correctional facility or a correctional officer is requesting information so that medications or a proper diet can be offered.

### Response

The director of the facility and correctional officers are responsible for providing offenders appropriate care, delivering food services, and assigning medically appropriate work to an offender. If the health information is relevant and required for the Solicitor General to fulfill these duties, health information about the offender may be disclosed. This might include information about special diets, limits of an offender's physical abilities, or a medication schedule if medication is administered by a correctional officer.