

camh

When a family member has questions about privacy and consent

Patient privacy is very important. Health care workers ensure that they respect a patient's right to privacy by asking them who they would like to be involved in their care and what information they would like to be shared. This is why you may have to wait until your family member has given consent before you can receive information from the health care team or share information with them.

This pamphlet answers common questions about privacy and consent. It is not a document that gives legal advice. If you need legal advice, please contact a lawyer.

Terms to know

Capacity to consent is a person's ability to give permission for something to happen. A person's capacity to consent to collecting, using or disclosing their personal health information is determined by evaluating whether they are able to:

- understand the information that is relevant to deciding whether to consent, and
- appreciate the likely outcomes of giving, not giving or taking away consent.

Confidentiality refers to the moral, ethical, legal, professional and employment obligation to protect the information entrusted to us.

Consent is when a person (or someone on their behalf) gives permission for something to happen (e.g., allowing the treatment team to collect, use or disclose their personal health information).

A **Form 1** is an application for psychiatric assessment, signed by a doctor. It provides authority for the person to be taken to a psychiatric facility and detained for up to 72 hours in order to conduct the assessment. A **Form 2** is signed by a Justice of the Peace. It allows the police to bring a person to a hospital for assessment.

Personal health information is identifying information about a person's physical or mental health and health care. It includes their health history, health care programs and services, health care providers, substitute decision makers, health card number and other personal identification numbers.

Privacy refers to a person's right to control how information about them is collected, used and disclosed.

A **substitute decision maker (SDM)** is a person who is appointed and legally entitled to make decisions for someone who is incapable of making decisions for themselves. Unless there is a power of attorney or a guardian, the SDM will be a family member. If there are no family members, the SDM will be the Public Guardian and Trustee.

Privacy, consent and the law

Four laws set out the legal rules that Ontario hospitals and health professionals must follow.

The **Mental Health Act** sets out rules for admitting patients to psychiatric facilities and for issuing and renewing community treatment orders (CTOs). It ensures that the rights of patients are protected. That includes the right to apply to the Consent and Capacity Board for a review of any involuntary admission or CTO.

The **Health Care Consent Act** sets out rules for getting consent to treatment. It also explains that health care providers cannot give treatment without informed consent, except in emergency circumstances.

The **Personal Health Information Protection Act** sets out rules for collecting, using and disclosing personal health information.

The **Substitute Decisions Act** sets out rules for guardianships and powers of attorney.

Can I share information if my family member is in crisis?

If your family member comes to the emergency department on a Form 1 (emergency assessment), the health care team may ask you to share information that will help them decide whether to admit your family member. Similarly, if your family member is in crisis and the care team feels that an emergency assessment is required, they may ask you for information without getting consent from your family member.

Once the care team has made an admission decision, they will stop sharing information with you or collecting it from you until your family member has given them verbal or written consent.

Can I attend appointments with my family member?

A clinician will ask your family member privately if they want you to attend assessments and appointments. Your family member can consent to have you there for the whole meeting or a portion of the meeting, or they can choose not to give consent for you to be there at all.

What if my family member is a minor?

There is no age of consent in the Personal Health Information Protection Act. Any capable patient over age 16 must consent before their personal health information can be collected from or shared with their family (or anyone else). If the patient is under age 16, they or their family member can provide consent. However, if there is disagreement and the minor is capable, the minor's wishes must be respected. Capacity for consent is determined by the clinical team on a case-by-case basis.

How can I talk to my family member about giving consent?

- If your family member stops sharing information, respect their decision and talk with them about it.
- Have a conversation with your family member about what kind of information it would be helpful for you to know, and why.
- If your family member understands the request for information and why that information would be helpful for you, they may reconsider their decision not to share information.

Can my family member give consent to share only some information?

Consent is not an "all-or-nothing" situation. Your family member can give the health care team consent to share specific information; for example, they can consent to tell you what medication they are taking, but not what they discuss in therapy.

Your family member can also change their mind about what information the team can share with you. This is their right and you may no longer be able to access the information.

How does my family member give consent?

There are two ways a patient can give their health care team consent to share personal health information with a family member. They can complete a consent form, or they can give verbal consent to the care team. The form is filed in the patient's health record, and verbal consent is documented in the record.

Consent needs to be specific to what information the patient wishes to share and who it can be shared with. The patient can modify or withdraw consent at any time through their care team.

Can I speak with the care team if my family member has not given consent?

The health care team must follow laws and the rules of their regulatory college when deciding whether to collect personal health information from families or share it with them. As a general rule, the care team cannot collect or share this information without consent from the patient.

- If your family member does not give consent to share information with you, know that the care team is committed to having ongoing conversations with your family member about possible future consent and your involvement in their care, where it is appropriate.
- The care team can give you general information about the program or service and share information about family-focused supports.
- The care team will require your family member to give consent before the team can collect information from you. This information will also be shared with your family member. It includes safety concerns you bring to the team without your family member's consent.
- You can share information with the care team without consent if there is a significant safety concern that involves risk of serious bodily harm to the patient, family or public.

What if my family member needs a substitute decision maker?

- An assessment is required to determine whether your family member is capable or incapable of making the decision in question.
- If your family member is deemed incapable, the health care team will need to determine who the appropriate SDM will be.
- The care team refers to a list of people, as outlined in the laws, to determine the appropriate SDM.

How do privacy and consent work with a substitute decision maker?

- Once the health care team identifies an appropriate SDM, they will share only basic information with them to decide if they are available and willing to be an SDM.
- If you are appointed the SDM, the care team will share as much information as they feel is necessary, and is legally appropriate, for you to make informed treatment decisions for your family member.

Resources

CAMH Information and Privacy Office

416 535-8501 ext. 33314

privacy@camh.ca

www.camh.ca (Search for "legal rights, protection of health info.")

Psychiatric Patient Advocate Office

1 800 578-2343

www.ppao.gov.on.ca

Patient Ombudsman

1 888 321-0339

<https://patientombudsman.ca>

Consent and Capacity Board

1 866 777-7391

www.ccboard.on.ca

For more information on mental health, including addiction, or to download a copy of this resource, please visit our website:
www.camh.ca

This publication may be available in other formats. For information about alternative formats, to order multiple copies of this brochure, or to order other CAMH publications, please contact CAMH Publications:
Toll-free: 1 800 661-1111
Toronto: 416 595-6059
Email: publications@camh.ca
Online store: <http://store.camh.ca>

To make a donation, please contact the CAMH Foundation:
Tel.: 416 979-6909
Email: foundation@camh.ca

If you have questions, concerns or compliments about services at CAMH, please call the Client Relations Office:
Tel.: 416 535-8501 ext. 32027
Email: client.relations@camh.ca

Family members are welcome to contact the Office of Family Engagement for information and help getting connected:
1025 Queen Street West (McCain Complex Care & Recovery Bldg.), ground floor
Tel.: 416 535-8501 ext. 33202
Email: family.engagement@camh.ca
Website: www.camh.ca/families

Disponible en français.

camh
mental health is health

© 2021 CAMH 5582b-iv / 05-2021 / F6524