



Take Action to Prevent Abuse of Older Adults

Counterpoint Tools

Resources to Enhance Practice

Health and safety

Health care and social service workers may be allowed to share personal or health information when there are significant health and safety concerns.

The relevant privacy laws are different in each province and territory. Some provinces only allow sharing information in urgent situations. Other provinces and territories have broader standards.

Who decides when to share?

In some provinces and territories, an employee is able to decide whether or not it is appropriate to share information. In other jurisdictions, an employee will need to first consult with the head of a public body (e.g. the director of a hospital), or someone else with decision-making authority.

Health care and social service workers should ask their employer or regulatory body about when to share information.

The Privacy Commissioner in your province or territory may also be able to provide you with information about privacy responsibilities and complaints procedures.

Key points

Privacy rights need to be protected.

In most circumstances, you will need to get consent from an adult with mental capacity before sharing personal or health information.

If an adult does not have mental capacity, then you may be able to get consent from a legally appointed guardian, substitute decision-maker or committee.

If you cannot get consent, then you may share personal or health information in some circumstances.

Where adult protection laws impose a legal duty to respond to abuse or neglect, most professionals are allowed to share personal or health information.

Information may be shared without consent when authorized by law, helping with a police investigation, fulfilling the purpose for which the information was collected, or responding to a significant health and safety concern.

Ask your employer and regulatory body about when to share personal or health information with another person or agency.

Find out if your employer has policies on sharing personal and health information.

Confidential Patient and Client Information

Responding to Elder Abuse and Neglect

This material contains information and guidance for practice. The information is not legal advice. In many instances it will be your obligation to ensure that an older adult gets legal advice as soon as possible. All material provided is up to date as of August 31, 2010.

Privacy rights

Protecting personal and health information is vital to everyone. Technology has enhanced the ability to share information, but health care employees, social workers, medical practitioners and other professionals are legally obligated to limit the disclosure of personal and health information.

The privacy rights of older adults need to be respected. In certain situations, the law allows professionals to share personal or health information about an older adult who is experiencing or at risk of abuse or neglect.

Privacy violations include eavesdropping, surveillance or physical intrusions, such as trespass (entering a privately owned or occupied space). This brochure focuses on the right to privacy of information.



Privacy and the law

Each province and territory has specific laws that explain when it is legal to share personal or health information.

The easiest way to comply with the law is to get consent before sharing personal or health information.

If it is not possible to get consent, the law may allow you to share personal and health information in certain situations.

Consent and mental capacity

Health care and social service workers may share personal or health information when an adult with mental capacity has given consent to have this information shared.

Consent means an individual agrees to something that another person proposes. For example, a patient needs to give consent before a doctor can legally perform a medical procedure. Likewise, an older adult may give consent before a health care employee can share information with another person or agency.

If an adult with mental capacity gives consent to share information with another person or agency, there is no violation of privacy rights.

An adult with mental capacity may give, refuse or withdraw consent.

What if an older adult does not have mental capacity?

If an older adult does not have mental capacity, then a guardian, substitute decision-maker, or committee may be appointed to make certain decisions.

See the *Mental Capacity and Consent: Responding to Elder Abuse and Neglect* brochure for more information about mental capacity and consent.

Sharing information without consent

Sometimes it is not possible to get consent. For example, when there is a need for emergency action, you may need to share personal or health information without consent.

If there is no consent from an adult with capacity, then you may only share information when:

- authorized by law;
- helping a police investigation;
- consistent with the purpose of collecting the information; or
- responding to health and safety concerns.

Authorized by law

You may share personal or health information with another person or agency, without consent, when explicitly authorized by law.

In jurisdictions where adult protection laws and other laws impose a legal duty to respond to abuse or neglect of an older adult, most professionals are allowed to share information with an appropriate person or agency.

See *Factsheets Responding to Elder Abuse and Neglect* for more information.

Police investigations

Health care and social service workers are permitted to share personal or health information when assisting the police with an investigation. For example, a health care employee would be allowed to provide personal or health information to an investigating police officer, without consent.

Consistent with purpose

Health care and social service workers may share personal or health information, without consent, when the purpose of sharing the information is consistent with the reasons why the information was collected. For example, a health care employee would be allowed to share information with medical staff in order to effectively communicate the needs of a patient and deliver health care services.