

Guidance on client consent to provision of data to the Department of Health

The Commonwealth *Privacy Act 1988* and associated Australian Privacy Principles (APPs) in Schedule 1 of that Act set the overarching requirements for the collection and use of all personal information by organisations and entities involved in the Primary Mental Health Care Minimum Data Set (PMHC MDS). A key feature to the operation of the PMHC MDS is based on obtaining client consent to the collection, use and disclosure of their personal information.

Specific responses to two issues commonly raised are provided below.

(a) Can PHNs collect the required MDS data?

Under Australian Privacy Principle (APP) 3, an organisation can collect health information where it is reasonably necessary for its functions or activities, and the individual concerned consents to the collection, or another exception applies.

As commissioners and regional planners, PHNs require a range of data to remunerate service providers as well as monitor overall regional service provision and plan future service improvements. These are all core functions of PHNs and require that PHNs collect and analyse data on what services are delivered, to what clients, at what costs and with what outcomes. Without data, PHNs cannot undertake these functions.

Additionally, most PHNs have set up centralised referral coordination points to which the GP or other referrer forwards client and referral details. This centralised function allows referrals to be processed and services selected to match the client's needs as well as giving the PHN an efficient method for managing demand.

Client consent is critical to the process. While APP 3 includes provision for health information to be collected without consent under the 'health management activities exception', the conditions for this are limited and may not be applicable (see <https://www.oaic.gov.au/engage-with-us/consultations/health-privacy-guidance/business-resource-collecting-using-and-disclosing-health-information-for-health-management-activities>). Under the previous ATAPS/MHSRRA programs, PHNs set up appropriate consent processes for clients to agree to information being provided to the PHN. For most PHNs, specific forms are available on their websites for use by referrers or health practitioners, including versions that can be downloaded and integrated into GP clinical software, enabling secure electronic transmission to referral triage teams.

Most forms currently available on PHN websites relate only to the former ATAPS program and do not reflect the wider range of services to be delivered from mental health flexible funding. It is therefore recommended that PHNs review and update as required their consent processes to reflect the wider range of services that they are now responsible for commissioning.

(b) Can PHNs supply the data to the Department of Health?

Provision of information to the Department is necessary for government to undertake its role in funding, monitoring and planning future national service delivery.

Supply of PMHC MDS data by PHNs to the Department of Health is governed by APP 6 which regulates how an organisation may use and disclose the health information that it collects. Under APP 6, if an organisation collects health information for a particular or 'primary purpose', it generally cannot use or disclose that information for a 'secondary purpose' unless an exception applies. A specific exception under APP6 allows personal information to be used or disclosed for a 'secondary purpose' where there is client consent.

A new item has been added to PMHC MDS to confirm that client consent for data supply to the Department has been obtained. Any records attached to clients for whom the consent flag is not checked as 'yes' will not be passed to the Department.

PHNs should therefore ensure that the consent processes they establish include client consent to the provision of data to the Australian Government Department of Health.

Suggested wording for obtaining consent and informing clients

Most PHNs have included wording in previous consent forms used for the former ATAPS/MHSRRA programs to seek client consent to providing data both to the PHN and the Department. These can serve as a basis for any new forms developed. Generally, consent is obtained by the referrer, and in some cases, the health practitioner to whom the patient is referred. The specific responsibilities for this will vary however according to the referral and service delivery arrangements established within each region.

Arrangements also need to be put in place by PHNs to cover instances of self-referral such as to low intensity services, and for data collection for mental health nursing services previously delivered by the former Mental Health Nurse Incentive Program (MHNIP). It is therefore not practical to propose a single, comprehensive consent form that will cover all variations.

PHNs should however ensure that their referral and other forms created to obtain client consent includes wording along the following lines:

"I consent to my information being provided by [insert PHN name] to the Department of Health to be used for statistical and evaluation purposes designed to improve mental health services in Australia. I understand that this will include details about me such as date of birth, gender and types of services I use but will not include my name, address or Medicare number. I understand that my information will not be provided to the Department of Health if I do not give my consent."

It is important to note that this is a separate consent from that provided by the client to allow the PHN to gather information. This is the same as previous ATAPS/MHSRRA requirements and has been managed by most PHNs by providing multiple 'tick boxes' on their client consent forms.

Many PHNs also have consumer information brochures that explain the services offered. These provide a useful format to assure the client about the confidentiality of their information and its protection under Australia's privacy laws. The Department is aware that several PHNs have used their information brochures in this way.

Where advice about privacy and confidentiality are included on information brochures, or as part of the consent process, the Department suggests the following wording as possibly suitable for local use or adaptation to suit your PHN referral and data collection arrangements. This suggested wording is intended to complement the PHNs existing information (in relation to the Departmental use of the data), not replace it.

Mental health services funded through the (PHN name) undergo regular review and evaluation by the Australian Department of Health (the Department of Health) which are aimed at informing ongoing service improvements. This is a requirement of all Primary Health Networks across Australia. To enable the Department of Health to conduct the regular review and evaluation of mental health services, (PHN name) provides data about services and clients to the Department of Health. The Department of Health uses the data to produce statistical and evaluation reports, which are based on summary statistics for our region.

Some of the data provided to the Department of Health includes information such as date of birth, gender and details about types of services used. Please note that the information provided does not include your name, address or Medicare number. Your information will only be provided by [PHN name] to the Department of Health if you give your consent. If you do not give your consent your information will not be provided to the Department of Health.

Protecting your privacy

(PHN name) is committed to providing you with the highest level of service and confidentiality, and this includes protecting your privacy. (PHN name) is bound by the Commonwealth Privacy Act 1988 and the Privacy Amendment (Private Sector) Act 2000, which outlines the principles concerning the protection of your personal information.