

13 Miscellaneous (HPPs 12, 14 & 15)

13.1 Identifiers (HPP 12)

Identifiers are used by health services to uniquely identify an individual and their health records. A number of identifiers are used within NSW Health, for example:

- Medical Record Number (MRN) – an identifier used by the hospital or facility to identify a patient and his or her health record.
- Area Unique Identifier (AUID) – an identifier generated for a patient within a Local Health District.
- Enterprise Unique Identifier (EUID) – a state health identifier for a patient provided by the State Enterprise Patient Registry system.
- Individual Health Identifier (IHI) – a national identifier for a consumer provided by the National Health Identifier Service.

While identifiers may not use a person's name and address, they are designed to be unique to a specific individual and hence may be "personal health information", and subject to the privacy laws.

HPP 12 states that a health service may only assign identifiers to individuals if this is **"reasonably necessary"** to carry out any of the health services functions efficiently. All eHealth systems used by NSW Health will automatically assign a unique identifier when collecting health information for inclusion in an individual's electronic health record.

In practice, identifiers are assigned to nearly all individuals who receive services from NSW Health. The exception may be health services which do not require follow up treatment.

HPP 12 also limits on when a private sector agency may use or disclose an identifier assigned by a public sector agency. The primary restriction is that a private organisation may only use a public sector identifier **as its own** where:

- the individual concerned has consented to this
- the use of the identifier in this way is required or authorised by or under law.

HPP 12 also outlines the circumstances where a private sector organisation can use and disclose a public sector identifier. These generally relate to situations where some of the "use" (HPP 10) and "disclosure" (HPP 11) exemptions arise.

13.2 Transferring personal health information out of NSW (HPP 14)

Health services frequently need to transfer personal health information to agencies and health services in other states and territories, as well as to the Commonwealth. This may be for care or treatment purposes, or as part of the Commonwealth-State reporting obligations.

Where a health service wishes to provide information to a body outside NSW, it must comply with both HPP 11 (disclosure) and HPP 14.

HPP 14 regulates when NSW health services can transfer personal health information to an agency outside New South Wales, establishing a list of circumstances when this will be authorised.

The most useful likely provision to rely on will be where the health service reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles, or where the patient consents to the disclosure.

13.2.1 Within Australia

The current status of privacy policy or law means that sharing of information with health services in Australia can occur without consideration of the exceptions listed for HPP 14, noting that:

- The private sector is covered by the *Privacy Act 1988* (Commonwealth)
- All states and territories in Australia either have equivalent privacy laws or binding public sector policies across their respective systems.

13.2.2 Outside Australia

- Countries in the European Union are bound by the European Union (EU) Data Protection Directive, Directive 95/46/EC. As such, disclosure to these countries would comply with HPP 14
- In the United States of America, health information is protected under the *Health Insurance Portability and Accountability Act 1996* (HIPAA) therefore disclosure to anyone in the USA would comply with HPP 14

In relation to other external jurisdictions health services should:

First, seek information from the recipient as to whether there are equivalent privacy laws and if not:

Second, consider whether any of the other exemptions listed in HPP 14(2) apply. These cover:

- **Consent** – the individual to whom the information relates consents to the transfer
- **Contractual obligation** – the transfer is necessary for the performance of a contract between the individual and the health service
- **Benefit to the individual** – the transfer is for the benefit of the individual, and it is impracticable to obtain their consent, and if it were practicable to obtain such consent, the individual would be likely to give it
- **To prevent serious threat to individual or public health** – the transfer is reasonably believed to be necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual or another person, or a serious threat to public health or public safety (see Section 11.2.3)
- **Reasonable steps** – the health service has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles
- **Lawful authorisation** – the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law (see Section 11.3).

13.3 Linkage of health records (HPP 15)

HPP 15 does not affect the ability of NSW Health services to link personal health information electronically with other NSW Health entities. All other HPPs must be complied with prior to any linkage. Such linkage should occur in line with the general terms of this Manual and relevant NSW Health policies.

HPP 15 will apply to the linkage of health records at a state or national level between the public and private sectors, or between two or more private health services. It requires that such a system must be “opt-in”, i.e. that a patient must give “express consent” to participate in such a system. Any such consent must comply with the requirements outlined in Section 5.4 and must be documented.

There are two exemptions to HPP 15. These are:

- a health service is not obliged to comply with the provision if “lawfully authorised or required not to comply”, or non-compliance is otherwise permitted or reasonably contemplated under a law or
- where the linkage is for research purposes and has been approved in accordance with the Statutory guidelines on research.



