



Waitemata
District Health Board
Best Care for Everyone

Hospital Services

North Shore Hospital Campus
Shakespeare Road, Takapuna
Private Bag 93-503, Takapuna
Auckland 0740
Telephone: 09 489 0527
Facsimile: 09 486 8339

5 December 2018



Dear [REDACTED]

Re: Official Information Act request – ACC treatment-related injury

Thank you for your Official Information Act request, received 12 November 2018, seeking data from Waitemata District Health Board (DHB) regarding ACC treatment-related injuries.

Waitemata DHB provides care to the largest DHB population in New Zealand, currently standing at more than 630,000 people. In addition to providing care to our own resident population, we are also the Northern Region provider of forensic mental healthcare and child disability services.

Further, Waitemata DHB is the Metro Auckland provider of community alcohol and drug services and child and adolescent dental services.

Caution is advised in comparing raw data provided by different DHBs unless they provide care for a similar population size and offer a comparable range of services and complexity of care.

Please note that treatment-related injury data recorded by Waitemata DHB did not necessarily occur during care provided by our DHB.

For example, a case of treatment injury may have occurred under the care of a private provider but would be recorded against Waitemata DHB if the patient was subsequently referred into our care.

In the event of a confirmed treatment-related injury, the approach of our DHB is to assist the patient to access the support they are entitled to.

Responses to your specific questions are provided below.

For the period 1 July 2017 to 30 June 2018:

- *The number of treatments and/or procedures, that have resulted in serious complications meeting the ACC definition of “treatment-related injury” and/or an unexpected death.*

During this period, Waitemata DHB recorded 742 events meeting ACC’s definition of treatment-related injury. This included one treatment injury resulting in unexpected death. This data should be seen in the context of Waitemata DHB managing more than 130,000 hospital admissions in 2017/18.

-
- *The number of treatment-related injury claims filed by Waitemata District Health Board to ACC.*

A total of 1,308 claims were filed by Waitemata DHB. This included those claims accepted, declined or held.

- *The number of treatment-related injury claimants in the above period that have subsequently died, for which Waitemata District Health Board is aware of their death.*

It is important to note that it is highly likely that there is no correlation between a death and a possible treatment-related injury. In response to the question, 91 claimants have subsequently died. Please note this is the number of patients with treatment-related injury claims **lodged** who subsequently died.

- *“The number of internal investigations related to treatment-related injury claims for this period, by status (i.e., Pending, Open,...)”*

The number of internal investigations related to Waitemata DHB’s processing of treatment-related injury claims is zero. We have interpreted ‘internal investigation’ as being separate to the normal treatment injury investigation process.

- *Copies of Waitemata District Health Board policies and manuals pertaining to the identification, reporting and investigation of treatment-related injuries and for the filing of treatment-related injury claims to ACC.*

The documents outlined below describe how treatment injuries are managed within Waitemata DHB:

- **ACC Treatment Injury September 2017** Information for staff and patients.
- **Treatment Injury Investigation and Claims Process** – this detailed process document is currently in **draft form** as a guidance tool for two-three specialised staff working on treatment-related injury claiming. It has not been formally approved by Waitemata DHB but does largely reflect current practise, albeit that it is still subject to change. The document will be finalised as a procedural document and be additionally supported by a formal Treatment Injury Policy document in early 2019. It has been redacted to remove computer file pathway details and individual staff member names as this information is not relevant to your request.
- **Treatment Injury Reporting 2009** policy. This document is available to staff but is not fully reflective of current practise. It will be superseded by the new Treatment Injury Policy in 2019.

Copies of these documents are enclosed.

- *If any of the above documents have been updated since, or were not effective on the 18th or 19th December 2017, additionally copies of the relevant policies that were effective on those dates.*

The Treatment Injury Investigation and Claims Process document were developed in 2018, so were not effective on 18 or 19 December 2017. The other documents listed above are those which were in effect on those dates.

-
- *Details or copies of any policies or staff expectations related to outreach to the relatives of patients who have suffered a treatment-related injury.*

Information about treatment-related injuries is confidential to each patient. Generally, we can only disclose such information to a patient's relatives with the patient's consent.

The circumstances in which we can disclose information to a third party, such as a patient's relatives, without the patient's consent are set out in Rule 11 of the Health Information Privacy Code. See this link for a copy of the Health Information Privacy Code:

<https://www.privacy.org.nz/assets/Files/Codes-of-Practice-materials/HIPC-1994-2008-revised-edition.pdf>).

In addition, section 4.7 of Waitemata DHB's **Health Information/Privacy – Third Party Requests Policy** covers the release of information to family members. A copy of the policy is enclosed.

The **ACC Treatment Injury September 2017** brochure referred to above also provides general information about patient authorisation of ACC claims for treatment-related injuries.

I trust that this information meets your requirements. Waitemata DHB, like other agencies across the state sector, supports the open disclosure of information to assist the public's understanding of how we are delivering publicly-funded healthcare.

This includes the proactive publication of anonymised Official Information Act responses on our website from 10 working days after they have been released.

If you feel that there are good reasons why your response should not be made publicly available, we will be happy to consider this.

Yours sincerely



Cath Cronin
Director Hospital Services
Waitemata District Health Board

* Registered health professionals include:

- audiologist
- chiropractor
- dentist, dental technician or clinical dental technician
- medical laboratory technologist
- medical practitioner (doctor, surgeon, anaesthetist, etc.)
- medical radiation technologist
- midwife
- nurse
- occupational therapist
- optometrist
- pharmacist
- physiotherapist
- podiatrist.

ACC Contact information

North Harbour branch

HSBC Centre, 5-7 Corinthian Drive
Private Bag 300-991,
Albany, Auckland
Ph: (09) 448 9810
Fax: (09) 913 8811

Henderson branch

111-115 Lincoln Road
Private Bag 93-107
Henderson, Auckland
Ph: (09) 822 5800
Fax: (09) 915 8101

ACC Treatment
Injury Cover Assessment Centre
0800 735 566

ACC Patient / Client Helpline
0800 101 996



Treatment Injury

What you need to know

What is a treatment injury?

A treatment injury is a physical injury (damage or harm to body tissue) you get while seeking or receiving treatment from a registered health professional*.

Treatment includes diagnosis, monitoring, investigation or advice.

What types of injuries may be covered?

Examples include:

- infections following surgery or other treatment
- allergic reactions to prescribed medication
- injuries during and after surgery
- injuries during assisted childbirth e.g. ventouse delivery, forceps
- pressure injuries.

What may not be covered?

When the injury is:

- the result of a health condition you had before you received treatment
- a necessary part, or an ordinary consequence of your particular treatment
- caused by a decision an organisation made when allocating health resources
- caused because you unreasonably delayed or refused to give consent for your treatment
- treated, but the treatment didn't achieve the desired result.

Treatment injury and ACC (Accident Compensation Corporation)

ACC assesses your claim against the legal treatment injury criteria set out in the Accident Compensation Act 2001. If the injury meets the criteria for cover, then you can apply to ACC for assistance.

How do I make a claim?

Ask your medical practitioner to complete an ACC45 Injury claim form with you.

You complete your side of the form which includes part C: patient authorisation and declaration. This gives Waitemata DHB permission to lodge the claim, and ACC the authority to collect medical and other records that are relevant to your claim.

What next?

ACC will gather the required information to assess your claim for cover. This may include medical notes, reports, and advice from those who have been involved in your care.

Treatment injury claims are complicated and ACC can take from a few weeks to several months to make a cover decision.

Once a decision has been issued ACC will notify you in writing and, if required, will contact you to discuss how it can assist in your recovery.

Keep any related medical certificates and receipts for costs and other support related to your claim. ACC may help with these costs if your claim is accepted.

What assistance does ACC provide?

If accepted for cover ACC may assist you with:

- treatment costs
- weekly compensation for wages you have lost because of your injury. If you do need time off work because of the injury, please ask your doctor to complete an ACC18 medical certificate
- home help or childcare assistance
- other types of support depending on your circumstances.

What happens if ACC does not approve my claim?

ACC will write to you and explain its decision. If you disagree with its decision, you can talk it through with ACC staff.

If you wish, you do have the right to request an independent review. You can discuss your options with ACC and how to do this.



Identifying and Lodging Treatment Injury Claims

Identification of potential TI cases

Potential TI cases are identified from various sources. Generally the identification is based on the various treatments and diagnoses which can be associated with a TI eg *repair, revision, debridement, washout*, etc. The sources are checked each morning:

- Trendcare
- Riskpro
- Acute Theatre List
- [xxx]'s work
- Potential TI cases report from iPM – Inpatient
- Potential TI cases report from iPM – Elective Surgery Waitlist List
- From the Ward
- From Outpatient Clinics

Inpatient cases

Step 1 – identification and initial consideration

The cases in the above sources are skimmed by the TI RN Case Manager (TI CM) to select those which appear worth further investigation. On a daily basis, these processes result in 5-10 cases to be considered.

Once identified:

1. Add potential TI cases to the RN TI spread sheet
2. Take a laptop to the wards so the spread sheet can be used and updated. The cases can be clustered by Ward to facilitate efficient ward visits.
3. On the wards, the TI CM completes a variety of processes as much as possible and as appropriate, including: checking clinical notes held in the patient's file to determine eligibility, discussing with the clinician/s, explaining TI and gaining consent from the patient (if appropriate - NB The ACC45 **must** be signed by the patient, or by their representative. Hospital staff can sign the form, as long as the patient has given permission to do so.), printing off multiple patient labels for putting on the ACC45 if progressed, taking a photo of pressure injuries, taking photos of or photocopying clinical notes not on Clinical Portal (CP8) which will be needed to support a claim (particularly relevant with pressure injuries), etc.
4. The spread sheet can be updated on the Ward as useful. The *Running Notes* field should be used to capture notes on outstanding issues and the *Date to Check Prompt* field as useful to prompt a check back at a certain date.
5. As a result of this process, some cases will be determined as **not meeting the TI criteria** and the Review Status will be updated to "Not TI – NFA".

[If ready/agreed: add to Ward Notes in CP8 OR "Contacts and Diaries" on iPM to capture work done.]

If Outpatient case

For outpatient cases, the initial consideration process will be similar but not include the Ward-based process and the patient will need to be contacted by phone.

The rest of the process is the same.

Completed ACC2152 and related ACC45's by post or fax

Some completed forms are sent by fax or post for lodging by the ACC Unit. They are generally sent to Unit office in the first instance. The TI Claims Administrator will pass these directly to the TI CM for review and progressing as below.

Step 2 – TI Claim preparation

Those cases which appear to meet the criteria, are now progressed through the TI claim preparation process. This is generally at the desk.

1. The TI CM now continues the consideration of the case by further reviewing the clinical notes on CP8. This includes Clinic Letters, Radiology results, etc as appropriate to the case and the injury.
2. If it appears to be a TI, then proceed as below. If not a TI or deemed not worth pursuing, update spread sheet Review Status to "Not TI – NFA"
3. Progressing a TI claim process - the relevant clinical records are saved into a new folder opened in G drive/[xxx]. The naming convention is: *Smith, John – NHI2345*.
4. Use PDF Creator to 'print' the clinical records into the newly created folder. Name them to a basic level and the TI Claims Administrator can re-name as needed.
5. Add all the relevant records. Use Running Notes only to record any outstanding clinical records still needing to be gathered by the TI CM before the claim can be lodged.
6. Continue to complete the necessary steps to prepare the claim for the TI Claims Administrator to lodge:
 - a. Complete additional ACC forms as required:
 - i. ACC2152 if TI
 - ii. ACC18 if additional injuries or diagnoses to original ACC45
 - iii. new ACC45 if new, unrelated injury with 2152
 - b. Gain patient consent
 - c. Liaise with/notify the clinician (allowing them 5 days to respond to the notification email as per [xxx] if direct clinician consent has not been discussed)
 - d. Note pages and time taken (allow 30 mins per 2152 as clinical input is used)
7. When all necessary documents are available and, as necessary, the 5 day notification period with the clinician has passed, the claim should be passed to the TI Claims Administrator for lodging or final preparation processes.
8. Email the TI Claims Administrator (1 claim per email):
 - a. Request the claim be lodged
 - b. Include a scan of the signed ACC2152
 - c. Indicate that the relevant supporting documents are in the shared folder

- d. Note as necessary any further documents which should be gathered or that the TI Claims Administrator should check for and add eg the authorised Clinic Letter, etc.
9. Update the spread sheet with the date of hand-over and outstanding documents being gathered.
10. Within the next day or two, take the hard copies of signed documents (ACC2152 form, hard copy of confirmation email from Clinician as appropriate, etc) to the TI Claims Administrator for processing/storing. ACC45 forms to be lodged go direct to ACC Claims Administrator.

Step 3 Claim Lodgement

1. TI Claims Administrator compiles the claim documentation from the shared folder for the patient. This will typically include:
 - ACC forms:
 - a. ACC2152 if TI
 - b. ACC18 if additional injuries or diagnoses to original ACC45
 - Other supporting documents which have been added to the patient's shared folder by the TI CM
 - Any additional documents requested by the TI CM
2. Enter the information into the Treatment Injury Database (G:\[xxx] under the e-lodgements tab.

In the pink fields, enter the number of pages of notes you sent/are sending under the DHBC code, and the time taken to complete the ACC2152 under the DHB2152 code. Check the TI CM spread sheet (G:[xxx] for her time (allow 30 mins for each 2152 by TI CM) and pages. Combine time of both roles and enter total pages sent.

3. Email the claim and supporting documents to clinicalnotes@acc.co.nz and cc in TIClaims@acc.co.nz.
4. As necessary, use PDF factory to compile into one document using Adobe Acrobat Pro. If over 10MB, compress or split. Ensure the cover note to ACC is clear about the attachments or number of emails.
5. Put a copy of the email sent to ACC into the folder G:[xxx]
6. Update iPM as per procedure
7. When the hard copy documents ie signed ACC2152 form, confirmation email from Clinician, etc are available from the TI CM, file these as appropriate for Clinical Records or long term storage.

Other tasks

1. Respond in a timely manner to any requests ACC post or email regarding the claim. See section below 'Requests from ACC' for more information.
2. Weekly on a Friday, check all claims to see if any have been accepted or declined. Fill in the Accepted or Declined section.
3. When the monthly reports are emailed from ACC which advise on the current status of TI claims, this report should be used to update the spread sheet and also emailed to the ACC Revenue team and the ACC Unit Manager.

4. The Quality & Risk Team ([xxx] is contact) has access to the ACC TI spread sheet and so are able to monitor TI cases as relevant.

Requests from ACC (ROI – Release of Information) – Reports, 2152’s and Clinical notes

ACC often send requests for information to the ACC Unit. These need to be dealt with as soon as possible. All requests in progress need to be kept in the TI Claims and Requests folder.

Clinical notes

Some types of clinical information will need to be accessed from the Clinical Records Department (CRD). Forward the request email to CRD and put the email in the relevant Outlook folder so it can be tracked/chased as needed.

If the request concerns an inpatient, the request email should not be forwarded to CRD until the patient is discharged as they will not have the necessary information until this time.

Reports

Using the “Report request” template email the appropriate Dr for any requests from ACC regarding reports. Send copies of any relevant notes and include the specific information ACC have asked them to write about. When received, scan and email to clinicalnotes@acc.co.nz. Update spread sheet with appropriate detail. Keep the scanned copy in the ACC TI scanned folder. Hard copy goes in the appropriate box.

Other

ACC2152 and related ACC45’s by post or fax

These should be passed to the TI CM for review and progressing.

Problems with doctors not responding to requests

Requests are sent followed by a reminder notice after 1 week, and an overdue notice one week after this. Once another week has passed, check it has not been dictated with transcription and is not waiting to be typed. If there is still no report, escalate to [xxx]

If the requests are for the Mental Health service it is likely to take significantly longer, due to the nature of their procedures. As necessary, liaise with the Clinical Director and ACC about the process.

Extensions of time

If you know a doctor is away or needs further time to complete a report, email ACC for an extension of time. This also applies to delays in receiving notes that may be with another service.

Invoicing for time spent and pages/reports submitted

There is no direct invoicing role for the TI Claims Administrator other than to keep the spread sheet up to date and accurate in terms of the time taken, pages/reports submitted. The ACC Revenue team access this data themselves to invoice ACC for these costs.

Non-residents

For all non-resident claims process as per usual but make sure you contact the Non-Resident Support Team.

Contacts

[xxx]

Treatment Injury Reporting

Overview

This document This document describes the policy for Treatment Injuries at Waitemata DHB, and under what circumstances a Treatment Injury claim should be lodged with ACC.

Contents This document contains the following topics

<u>Topic</u>	<u>See Page</u>
Introduction.....	1
Policy.....	2
Inclusion and Exclusions.....	2
Process of reporting.....	2

Introduction

Purpose This document describes the meaning of Treatment Injury and the policy for registering Treatment Injury claims with ACC.

Scope All staff within Waitemata DHB who are involved in patient care must comply with this policy document.

Associated documents The table below identifies associated documents.

Type	Title/Description
Presentation	WDHB Treatment Injury Presentation

Treatment Injury Reporting

Policy

Purpose

This document defines the term treatment injury and provides direction about when treatment injury should be registered with ACC, according to the ACC specifications.

Definition

Treatment Injury is described in the Injury Prevention, Rehabilitation, and Compensation Act 2001 as “*personal injury resulting from treatment given by, or at the direction of, one or more registered health professionals*”. It also includes those situations where injury arises from a lack of treatment.

Inclusion and Exclusions

A treatment injury that changes the course of care or results in death will be registered with ACC.

A treatment injury with no long term effect and no short term support required, will not be registered with ACC. This is a self limiting event and requires no further action.

- A Treatment Injury that was deemed to be self limiting but later requires further treatment may still be registered with ACC.
-

Process of reporting

The ACC Unit will manage the Treatment Injury Reporting process as the single point of contact.

All clinical staff will cooperate with the ACC Unit by reporting events in a timely manner and completing the documentation as required by ACC.

Information will be provided to ACC so that the patient is assisted to get what they are eligible to receive.

Reporting incident in RiskPRO

All incidents are recorded on the RiskPro system but not all treatment injury incidents will be registered with ACC.

Health Information/Privacy – 3rd Party Requests

Contents

1.	Overview	1
2.	Patient Information - Disclosure & Purpose of Collection	2
2.1	Disclosure Provisions.....	2
2.2	Requests for Information Made Under Specific Legislative Provisions	2
3.	Limits on Disclosure	2
3.1	What May be Disclosed Under Rule 11 of the Code.....	3
3.2	Further Situations Permitting Disclosure.....	3
3.3	Minimum Disclosure.....	4
4.	Provisions Allowing Disclosure to a Third Party	4
4.1	Disclosure for Treatment or Safety Purposes	4
4.2	Accepted Actions.....	5
4.3	ACC & Private Insurers.....	5
4.4	Government Department (including CYFS).....	5
4.5	Coroners Office / Police Inquest Officers.....	5
4.6	Police	6
4.7	Family Members.....	6
4.8	Health and Disability Commissioner.....	7
4.9	Representatives and Lawyers	7
4.10	Other Health Providers.....	8
4.11	Requests from Overseas.....	8
5.	The Effect of Section 22F of the Health Act	8
5.1	Reasons for Refusing a Request Under Section 22F	8
5.2	Medical Note Transfer	9
5.3	Disclosure to a Child’s Representative	9
6.	Disclosure Under the Official Information Act 1982.....	9
6.1	Principle of the Act.....	9
6.2	Management of Requests.....	9
7.	Requests for Information for Statistical, Research, & Educational Purposes	9
7.1	Accepted Process	10

1. Overview

Purpose

This document sets out the expected processes for dealing with 3rd party requests for health information (i.e. requests made by an individual for health information about someone other than himself or herself). This document **must** be read in conjunction with the following Privacy and Health Information Management policies:

- Health Information/Privacy – General
- Health Information/Privacy – Accuracy & Correction
- Health Information/Privacy – Client Access

Scope

This policy and the associated Privacy and Health Information Management policies apply to all:

- Staff employed by WDHB
- Contractors

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	1 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

- Volunteers
- Visiting health professionals
- Students undertaking training or education within the organisation

Unless otherwise stated, this policy **does not** apply to Waitemata District Health Board staff who require information for the care and treatment of WDHB clients.

2. Patient Information - Disclosure & Purpose of Collection

Waitemata DHB wishes to be open about routine disclosures that occur during the treatment of clients and that constitute a purpose for which the information was obtained. This ensures that patient/clients are not surprised when information is disclosed in accordance with these practices.

All patients/clients must receive a copy of the pamphlet titled: “Your Health Information - Things You Need to Know.” This identifies anticipated disclosures and clearly sets out the WDHB policy on disclosure to family/whanau, caregivers and others who may live with a patient.

2.1 Disclosure Provisions

There are a number of legislative provisions in New Zealand that require or permit the disclosure of health information. These provisions can be categorised as either:

1. Legislation which requires the **notification** of health information (e.g. certain notifiable diseases)
2. Legislation which requires the **supply of health information on request** (e.g. information to other health professionals involved in a patient’s care)
3. Legislation which permits the **disclosure of health information** (i.e. such disclosure is at the discretion of the health provider and/or is initiated by the health provider)

2.2 Requests for Information Made Under Specific Legislative Provisions

Sometimes 3rd parties refer to particular legal provisions that permit them to request specific information from WDHB. These requests are usually made by Government agencies (e.g. WINZ, CYFs) and should normally be in writing.

Any questions or concerns about specific statutory requests should be referred to the Privacy Officer or another WDHB Legal Advisor. In all cases, reasonable steps should be taken to ensure that the requestor is entitled to the information and that only directly relevant information is disclosed in response to the request.

3. Limits on Disclosure

Rule 11 of the Health Information Privacy Code places limits on disclosure of health information but disclosure is generally still within the discretion of Waitemata DHB. That is, we are not always **obliged** to disclose health information, but we may **choose to do so** in accordance with the Rule 11 exceptions. There are other factors that may bear upon the decision to disclose information (e.g. ethical/professional codes of conduct and duties confidentiality, etc).

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	2 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

3.1 What May be Disclosed under Rule 11 of the Code

In addition to the specific statutory provisions that govern some requests, Waitemata DHB may disclose health information under Rule 11 of the Health Information Privacy Code when it believes on reasonable grounds that:

- Disclosure is to, or authorised by, the individual concerned, or by his or her representative (but note the exceptions to “authorisation” below);
- Disclosure is a purpose for which the information was obtained (e.g. where information is required for the further treatment of the individual or in accordance with the WDHB disclosure to family/caregivers and people who live with patients policy outlined above);
- The information is in the public domain;
- The information is general (not specific or detailed) concerning the presence, location, and condition/progress of the patient in hospital on a particular day (provided disclosure is not contrary to any express request of the individual or his or her representative); or
- The information concerns only the fact of death and the disclosure is by a registered health professional, or by a person authorised by Waitemata WDHB to advise:
 - A person nominated by the individual
 - The individual’s representative
 - The individual’s partner, spouse, principal caregiver, next of kin, whanau, or close relative; or
 - Some other person whom it is reasonable in the circumstances to inform.
- The information to be disclosed is that an individual is, or has been, released from compulsory status under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and disclosure is made to the individual’s principle caregiver.

3.2 Further Situations Permitting Disclosure

If a situation does not fall within the categories outlined on previous pages, and is not a request by a health provider under section 22F of the Health Act, there are other situations where information can be disclosed. If a staff member believes on reasonable grounds that it is not desirable or practicable to obtain a patient’s authorisation, disclosure is still permitted where:

- Disclosure if directly related to one of the purposes for which the information was obtained;
- The information is disclosed by a registered health professional in accordance with recognised professional practice to a person nominated by the individual or to the principal caregiver or a near relative of the individual concerned (provided disclosure is not contrary to any express request of the individual or his or her representative);
- The information is to be used in a form in which the individual is not identified (e.g. statistical or research purposes provided ethical approval has been given if necessary);
- It is necessary to prevent or lessen a serious and imminent threat to public health, public safety or the life or health of any individual;
- It is to the news media about an accident victim and concerns only the nature of the injuries sustained, provided disclosure is not contrary to the express request of the individual or his or her representative (refer Waitemata DHBs “Media Policy”);
- It is by a person authorised by the Chief Executive or a member of the Waitemata Health Senior Management Group to a person authorised by a health training institution who requires the information for the purposes of merely identifying suitable candidates for health education in order to seek their consent to disclosure

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	3 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

- It is necessary for a professionally recognised:
 - accreditation;
 - external quality assurance programme; or
 - risk management assessment
 Provided the information is not:
 - published in a form which could reasonably be expected to identify any individual; or
- Disclosed by the accreditation, quality assurance or risk management organisation to any third party;
- To do otherwise would prejudice the maintenance or enforcement of the law, or the conduct of any legal proceedings (see also section 22C of the Health Act in relation to medical officers of penal institutions, probation officers, social workers, police officers, etc., and refer to sections 59 and 69 of the Evidence Act 2006);
- It is necessary for the purposes of section 20 of the Misuse of Drugs Act 1975 or section 49A of the Medicines Act 1981;
- It is in accordance with an authority granted by the Privacy Commissioner under section 54 of the Privacy Act

3.3 Minimum Disclosure

If the decision is made to disclose information in circumstances where the individual's authorisation has not been obtained, the disclosure should be made only to the extent necessary to meet the request.

In some circumstances, a request may be met without disclosing any personally identifying information – this may be a preferable option.

4. Provisions Allowing Disclosure to a Third Party

4.1 Disclosure for Treatment or Safety Purposes

One of the purposes for obtaining health information is to ensure safe and effective clinical care. This may mean that information needs to be obtained from or shared with the patient's family, caregivers or other people in certain circumstances. The details of this process are covered in the Health Information/Privacy (1) – General policy - "Disclosure for Treatment or Safety Reasons" section, which all clinical staff are expected to be familiar with. See also the Regular Requestors – Family Members discussion below.

There are a number of third parties who regularly make requests for information. They are:

- ACC & Private Insurers
- ACC Medical Misadventure Unit (MMAU)
- Coroners Office/Inquest Officers
- Family Members
- Government Departments
- Health & Disability Commissioner
- Legal Representatives
- Other Health Providers
- Police

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	4 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

4.2 Accepted Actions

Where possible the intent of WDHB policy should be applied within the constraints and requirements of the identified legislation (i.e. release only to the extent necessary to achieve the desired purpose).

Note: If the individual managing a request is unsure of the response process, or any other aspect of a request, the matter should be referred to the appropriate Privacy Advisor, Privacy Officer or a Legal Advisor.

4.3 ACC & Private Insurers

All requests should be directed to the Quality & Risk Facilitator.

- Where a request from ACC or a private insurer for patient information is accompanied by the consent of the patient concerned, that information should be made available to ACC or the private insurer
- If the consent of the patient is not available, the request shall be refused.
- When refusing a request the reason for refusal should be explained.

4.4 Government Department (including CYFS)

All requests for information from Government agencies (excluding other health providers) should set out the information requested and the reasons for the request. Unless it is an emergency, these requests should usually be in writing. If the requestor is relying on a specific law that permits us or requires us to release information, the exact legal provision should be identified.

Before releasing any information please check whether the power to request the information makes disclosure *mandatory* or *discretionary*. Do we have to provide the information or can we choose to do so? Where *mandatory*, is what is being sought covered by the legal provision being quoted? For example section 66 of the Child, Young Persons and Their Families Act 1989 *requires* us to release information “relating to any child or young person” for care and protection purposes. Parent’s records are often sought by CYFS under this section but in most instances can not be said to be “relating to” the child, so caution is needed.

If you are unsure how to respond to a request, do not hesitate to seek advice from a WDHB Legal Advisor or the Privacy Officer.

4.5 Coroners Office / Police Inquest Officers

When the Coroner is investigating a death, the Police act as his or her representatives and should be provided with a copy of the deceased’s medical records when requested.

- In the case of a *sudden death* and where the matter has been referred to the Coroner, the Police will request the original clinical record for the pathologist. Before release, the clinical record **must** be copied, original stacked and registered out by Clinical Records Department before releasing the original.
- A Coroner may require a health professional who attended a person before death to submit a report relating to a deceased person that contains such information as the Coroner specifies in writing (section 10(2)(b) Coroners Act 1988).
- Any questions or concerns about these requests should be referred to the WDHB Legal Advisors.

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	5 of 10

Health Information/Privacy – 3rd Party Requests

4.6 Police

- Waitemata District Health Board has the discretion to disclose information unless a search warrant is produced. Even if a warrant is produced you may wish to seek legal advice before disclosing the information – sometimes there are legal grounds for challenging a warrant (such as when a patient is charged with a criminal offence and the police want to access his or her medical records as part of the investigation).
- If the police produce a warrant and you are unsure what to do, advise the officer in charge that you are not refusing to comply with the warrant but that you want to seek legal advice before handing any documents over. Contact a WDHB Legal Advisor immediately.

All requests from Police to approach an inpatient should be forwarded to the Duty Manager (or equivalent), who will liaise with the Ward Co-ordinator to ensure that ward activities are not disrupted.

Upon request, health information may be released to any member of the Police for the purposes of exercising the officer's powers, duties or functions (section 22C(2)(f) Health Act 1956). In some circumstances information can also be released to the police in accordance with Rule 11(2)(i)(i) of the Code. Both these provisions *permit* but do not *require* WDHB to provide the information so a decision still needs to be made about what information should be released.

The circumstances surrounding the request and ethical obligations of confidentiality should be carefully considered before any disclosure is made and you should consult with the clinical director and/or Privacy Officer.

If the police are acting as agents of the Coroner then they have wider powers to request information – see the section above.

4.7 Family Members

Family members do not have an automatic right to information about a patient, even if that patient is a child or young person. Sometimes patients/clients may authorise disclosure of their notes to certain family members or permit full details of their condition to be discussed with family members. In these cases the directions of the patient/client should be clearly documented in the clinical record.

The policy titled Health Information/Privacy (1) – General, states that we may choose to share information with families/caregivers and people that a client lives with if we believe that it is necessary for the care and treatment of the patient or for the safety of the patient or others. Note: this does not arbitrarily require WDHB staff to disclose information to these groups of people. Whether or not it is appropriate to share information in a particular case will depend on the individual facts of the situation. A number of factors need to be considered when making these decisions and these matters are clearly outlined in the Privacy/Health Information (1) – General policy – “Disclosure for Treatment or Safety Reasons” section.

In certain situations, consultation with family and whanau is specifically required under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Mental Health service employees must also be familiar with, and have regard to, the Ministry of Health guidelines on Involving Families/Whanau (November 2000).

Mental Health consumers should be encouraged to complete management plans or advance directives that specifically allow the disclosure of information to family and whanau during times that they are unwell.

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	6 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

Sometimes, if a family member is providing health or disability services to a client, it may also be appropriate to treat their request for information as a request made under section 22 F of the Health Act. See the discussion on this section below.

In the case of children under 16 years of age, disclosure to a parent or guardian is permitted where the child is unable to exercise his or her rights. Just because a child is 16 years or younger does not necessarily mean that they are unable to exercise their rights.

Whether or not they are able to do so will depend on their level of maturity and understanding. Parents do not have an automatic right to access their child's health information. Section 22 F of the Health Act and Rule 11 (4) of the Code allow requests from parents to be refused in certain circumstances.

4.8 Health and Disability Commissioner

Upon request, health information should be made available to the Commissioner, after contact has been made with the Chief Executive Officer or WDHB Quality & Risk Facilitator.

Individuals receiving a letter regarding a complaint about them personally should contact the General Manager of their Service or professional advisor. Health Professionals may also wish to consult with their own indemnifiers, insurers, or representatives in relation to this matter. Note: Staff should not copy or hand over patient clinical information without notifying the WDHB Quality & Risk Facilitator.

4.9 Representatives and Lawyers

Upon request health information should be made available to the legal representative of a patient (i.e. Welfare Guardian, executor) unless the holder of the information has reasonable grounds for believing that the patient does not wish for the information to be disclosed (section 22F (2) Health Act 1956).

- Where a patient is dead their legal representative is the Executor or Administrator of their estate.
- Where a patient is under the age of 16 years, their legal representative is their parent or guardian. Note however, the comments regarding requests from family members.
- Where a patient is neither dead nor under 16 years of age, and is unable to exercise his or her rights, their representative is that person who appears to be lawfully acting on that patient's behalf or in his or her interests
- Under the Children, Young Persons and their Family Act 1989 and the Care of Children Act 2004 the Court has the power to appoint a solicitor to represent a child or young person in relation to any proceedings before the Court and for any other purpose the Court deems appropriate. This solicitor is known as "Counsel for the Child".
- Upon request, health information about the child should usually be made available to Counsel for the Child. With older children, difficult issues can arise about whether to release sensitive information provided in confidence by the child. In these cases it may be appropriate to seek advice from the Privacy Officer before the information is disclosed.

In other situations, if a lawyer requests access to information about their own client, the request should generally be accompanied by:

- a letter confirming that the lawyer acts for the patient; and should
- include a signed authority from the client permitting the lawyer to access the records that have been requested.

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	7 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

There are some exceptions to this rule so any queries or problems should generally be referred to the WDHB Legal Advisor.

4.10 Other Health Providers

- Upon request, health information must be disclosed to any person who is, or will be, providing health or disability services to the patient to whom the information relates unless there is a lawful excuse for not disclosing it. Such an excuse would be where the holder of information reasonably believes that the patient to whom the information relates does not want it to be disclosed (section 22F (1) Health Act 1956). Further information about dealing with section 22 F requests is set out later in this document. Requests for information by GP's (as the patient's primary physician) may be made verbally, which means that telephone requests are acceptable. If there is any doubt about the identity of the GP, then the GP should be phoned back at his or her surgery as a means of verifying his or her identity. (*Always first refer to the patient's Admission Sheet to confirm the name of the elected GP*).
- If the patient expressly requests that health information not be disclosed, a GP's request for information may need to be refused, depending on the circumstances. See the section 22 F discussion below regarding requests for information from other health providers.

4.11 Requests from Overseas

- Any requests from overseas agencies or providers should be referred to the WDHB Legal Advisors.

5. The Effect of Section 22F of the Health Act

Where disclosure is requested by:

- An individual;
- An individual's representative (as defined at page 8 of the WDHB Privacy and Health Information – General Information Policy); or
- Any other person who is providing, or is to provide health or disability services to that individual (e.g. that person's GP, specialist or community nurse)

Waitemata DHB must disclose the relevant information unless disclosure is precluded by one of the reasons listed below.

5.1 Reasons for Refusing a Request Under Section 22F

The reasons for refusing to disclose information under Section 22F of the Health Act are when:

- There is some lawful excuse for withholding the information. (This does not include a failure to pay a bill).
- There are reasonable grounds for believing that the individual does not want the information to be disclosed.
- Refusal is authorised by the Health Information Privacy Code.

Rule 11(4) of the Health Information Privacy Code allows section 22F requests made by a representative to be refused if disclosure of the information would be:

- a) contrary to the individual's interests; or

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	8 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

- b) there are reasonable grounds for believing that the individual does not want the information disclosed; or
- c) there would be good grounds for withholding information under Part IV of the Privacy Act if the individual concerned had made the request.

5.2 Medical Note Transfer

Section 22F provides authority for transferring medical notes from one clinic to another if a patient is to be transferred. The principles outlined above apply to requests for both verbal and written patient information.

5.3 Disclosure to a Child's Representative

In the case of children, it may not always be appropriate to disclose the information to a representative, for instance, where abuse is suspected or in the case of older children. If so, the possible reasons for refusal under Part IV of the Privacy Act 1993 should be considered such as the fact that disclosure would be contrary to the individual's interests.

6. Disclosure under the Official Information Act 1982

6.1 Principle of the Act

Waitemata DHB is subject to the Official Information Act 1982.

The general principle underlying this Act is availability of information; however, there are some withholding grounds.

- Section 9(2) (a) of the Act allows information to be withheld if it is necessary to protect the privacy of a natural person (including a deceased person). Rule 11 (above) is useful in deciding whether there is a privacy interest that needs protecting.

If section 9(2)(a) seems to apply, Waitemata DHB must consider whether, in the particular circumstances, there is a sufficiently strong public interest in making the information available which outweighs the privacy interest.

6.2 Management of Requests

All requests received pursuant to the Official Information Act should be directed to the WDHB Legal Advisor.

7. Requests for Information for Statistical, Research, & Educational Purposes

Waitemata DHB receives numerous requests for patient information for statistical, research and educational purposes (e.g. requests may come from other medical agencies, research groups, benchmarking agencies, medical students, etc).

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	9 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.

Health Information/Privacy – 3rd Party Requests

7.1 Accepted Process

The relevant manager must approve all requests for access and release.

- For research matters, refer to the Clinical Board Co-ordinator.
- For statistical and educational purposes refer to the General Manager of the service under which the information has been gathered.

If the patient information requested does not identify the individual then it may be released to external agencies.

If the patient information requested does not reveal the identity of the patient, but will reveal cost information about WDHB patients, it should be referred to the relevant General Manager.

If the patient information requested does identify the individual then the matter should be referred to the Legal Advisors for clarification.

Issued by	Legal Advisor	Issued Date	July 2016	Classification	01003-05-027
Authorised by	Director of Nursing and Midwifery	Review Period	36 months	Page	10 of 10

This information is correct at date of issue. Always check on Waitemata DHB Controlled Documents site that this is the most recent version.