AMA VICTORIA
PRIVACY LAW INFORMATION KIT



AMA VICTORIA

ADVANCING THE MEDICAL PROFESSION
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INTRODUCTION

This privacy law information kit has been developed by AMA Victoria to assist practices to comply with the changes to Australian privacy law which commence on 12 March 2014.

The changes will affect the way medical practitioners and practices collect, use and disclose patient information.

The *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) amends the *Privacy Act 1988* (Cth) and implements 13 new Australian Privacy Principles (**APPs**) which will apply to the public and private sector alike. The APPs will replace the existing nine Information Privacy Principles (**IPPs**) (applying to the public sector) and nine National Privacy Principles (**NPPs**) (applying to the private sector).

In Victoria, health practitioners are also subject to the *Health Records Act 2001* (Vic) which requires organisations dealing with health information to comply with the 11 Health Privacy Principles (**HPPs**). The new APPs are very similar to the existing Victorian HPPs.

The sample policies provided in this kit are a starting point for practices to enable them to comply with the new laws. Practices and practitioners should read the policies carefully to be sure that they accurately reflect the way in which personal information is handled. The sample policies should be amended where necessary if there are any discrepancies.

Further information on compliance with the new privacy laws, and on privacy law generally, can be obtained from AMA Victoria.

DOCUMENTS IN THIS KIT

1. **Sample *Practice Privacy Policy***

The sample *Practice Privacy Policy* is compliant with the requirements of Australian and Victorian privacy law and is intended for use by medical practitioners or practices that handle personal information. Practices should read the document carefully and fill out practice details where indicated. The sample policy should be amended where necessary to ensure the document reflects the way in which your practice handles personal information. AMA members may wish to contact us regarding any proposed amendments to the sample policy.

2. **Sample *Access to Personal Information Policy***

This policy sets out the guidelines about how a patient may access their personal information held by a practice. It is compliant with the requirements of Australian and Victorian privacy law to provide access to personal information. A copy of the *Access to Personal Information Policy* should be provided to any patient wishing to access their medical record, together with a *Request to Access Medical Record Form.*

3. ***Request to Access Medical Record Form***

This form is to be filled out by any patient wishing to access their medical record. The practice is entitled to charge a fee for providing this service. Applicable fees have been set by the *Health Records Regulations 2010* (Vic), which are indexed and change from time to time. A copy of the current fee schedule can be obtained from AMA Victoria.

4. ***Letter Acknowledging Receipt of Request for Access to Medical Record***

This letter should be provided to the patient on receipt by the practice of a signed *Request to Access Medical Record Form.* The *Privacy Act 1988* (Cth) requires that any request for access be responded to within a reasonable time. A copy of the letter should be kept on the patient's file.

5. ***Request to Amend Medical Record Form***

This document is to be filled out by a patient who wishes to make an amendment to their medical record held by the practice. A copy of the signed *Request to Amend Medical Record Form* should be kept on the patient's file. Guidance about amendments to medical records can be found in the *Practice Privacy Policy*. If there is uncertainty about whether the requested amendment is lawful, please contact AMA Victoria.

Note:
Fields highlighted in [YELLOW] are to be filled out by the practice or practitioner. The practice/practitioner can then print (or save) the populated document for future use.

PRACTICE PRIVACY POLICY

[INSERT NAME OF PRACTICE] (**Practice**) takes your privacy seriously. Privacy protection and confidentiality of health information is essential for quality health care and we are committed to protecting the privacy and confidentiality of the information we handle about you.

This policy explains:

- how we collect, store, use and disclose your personal information;
- how you may access your personal information;
- how we protect the quality and security of your personal information;
- how you may seek correction of any personal information we hold; and
- how you may make a complaint about our handling of your personal information.

In addition to our professional and ethical obligations, at a minimum, our Practice handles your personal information in accordance with federal and state privacy law. This includes complying with the federal Australian Privacy Principles (**APP**s) forming part of the *Privacy Act 1998 (Cth)* and the Victorian Health Privacy Principles (**HPP**s) forming part of the *Health Records Act 2001* (Vic).

More information about the APPs and HPPs can be found on the Australian Information Commissioner's website www.oaic.gov.au or in hard copy on request from our Practice reception.

Collection of information

The Practice collects and holds personal information about you so that we may properly assess, diagnose, treat and be proactive in your health care needs.

The type of personal information we collect may include:

- personal details (name, address, date of birth, Medicare number);
- your medical history;
- notes made during the course of a medical consultation;
- referral to other health services providers;
- results and reports received from other health service providers; and
- credit card or direct debit information for billing purposes.

Wherever practicable we will collect this information from you personally - either at the Practice, over the phone, via written correspondence or via internet if you transact with us online.

In some instances we may need to collect information about you from other sources such as referring doctors, treating specialists, pathology, radiology, hospitals or other health care providers.

In an emergency, we may collect information from your immediate family, friends or carers.

Use and disclosure

Your personal information will only be used or disclosed for purposes directly related to providing you with quality health care, or in ways you would reasonably expect us to use it in order to provide you with this service.

This includes use or disclosure:

- to the professional team directly involved in you health care, including treating doctors, pathology services, radiology services and other specialists outside this medical practice. For example, this may occur through referral to other doctors when requesting medical tests or in the report or result returned to us following the referrals;
- to the Practice's administrative staff for billing and other administrative tasks necessary to run our practice. Our staff are trained in the handling of personal information in accordance with the *Practice Privacy Policy*;
- to your health insurance fund, Medicare or other organisations responsible for the financial aspects of your care;
- where required by law, for example, pursuant to a subpoena;
- to insurers or lawyers for the defence of a medical claim; and/or
- to assist with training and education of other health care professionals.

If you do not wish for your information to be used for training of health professionals, please tick here: ☐

Our practice does not intend to disclose your personal information to overseas recipients.

Information Quality

We aim to ensure the information we hold about you is accurate, complete, up to date and relevant. To this end our staff may ask you to confirm that your personal details are correct when you attend a consultation. Please let us know if any of the information we hold about you is incorrect or not up to date.

Storage

Our Practice takes all reasonable steps to protect the security of the personal information we hold, by:

- securing our premises;
- using passwords on all electronic systems and databases and varying access levels to protect electronic information from unauthorised interference, access, modification or disclosure; and
- storing hard copy records in secure filing cabinets or rooms that are accessible only to Practice staff.

Access to your personal information

Under law you have a right to access personal information we hold about you. Please contact our Practice Manager for more information on our *Access to Medical Records Policy*.

We ask that you put your request in writing. A fee for the retrieval and copying of your medical record will apply, charged in accordance with the schedule of fees specified in the *Health Records Regulations 2008* (Vic), plus GST. This fee is not redeemable through Medicare.

Amendment of your personal information

If you consider the information we hold about you is not correct, please contact the Practice in writing. You have the right to have any incorrect information corrected.

What happens if you choose to withhold your personal information?

You are not obliged to give us your personal information. However, if you choose not to provide the Practice with the personal details requested, it may limit our ability to provide you with full service. We encourage you to discuss your concerns with our reception staff prior to your first consultation or with your doctor.

What about use of personal information for direct marketing?

Australian privacy law limits the use of personal information for direct marketing of goods and services. We do not use your personal information for direct marketing.

What should I do if I have a privacy complaint?

If you have a complaint regarding the way your personal information has been handled by our Practice, please put it in writing and address it to the practice manager (insert details). We will acknowledge receipt of your complaint within 14 days, and endeavour to provide a full response within 30 days of receipt.

Should you be dissatisfied with our response, you may lodge your written complaint with the Victorian Privacy Commissioner at https://www.privacy.vic.gov.au and/or the Victorian Health Services Commissioner at http://www.health.vic.gov.au.

If you have a query regarding our Practice's privacy policy, please contact our practice manager who will be happy to discuss the matter with you.

PRIVACY CONSENT FORM

(to be read in conjunction with the *Practice Privacy Policy*)

I, _____ have read and understand the information
insert patient name

Contained in the [INSERT NAME OF PRACTICE] *Practice Privacy Policy*, including:

- the types of personal information collected by the Practice, the reasons why it is necessary to collect it and the circumstances in which my personal information may be used or disclosed;
- that I may request access to my personal information, which may be granted in accordance with the Practice's *Access to Personal Information Policy*. I will be provided with a written reason if access is denied;
- that I may request an amendment to my personal information if it is incorrect. I will be provided with a written reason if a request for amendment is denied;
- that my personal information will not be used for direct marketing or disclosed to overseas recipients;
- that I am not obliged to provide the Practice with my personal information, but withholding information may limit the Practice's ability to provide me with full service.
- that I have the right to lodge a compliant about the handling of my personal information if I am dissatisfied, which will be dealt with in accordance with the Practice's complaint handling procedure.

Signed _____
Patient or parent/guardian of patient

Date _____

ACCESS TO PERSONAL INFORMATION POLICY

Under the *Privacy Act 1988* (Cth) and the *Health Records Act 2001* (Vic), you have a legal right to access the personal information **[INSERT NAME OF PRACTICE]** (**Practice**) holds about you (such as your medical record), subject to some exceptions.

Access Fees

The Practice is entitled to charge an appropriate fee, determined in accordance with the *Health Records Regulations 2002* (Vic), plus GST, to cover the administrative costs of this service. Our reception will advise you of the applicable fee, which is not redeemable under Medicare or private health insurance.

How do I request Access to my Personal Information?

Patients who wish to access or obtain a copy of their personal information should put their request in writing using the attached *Request to Access Personal Information Form*, and submit the form to our Practice reception. All requests will be acknowledged in writing within 14 days of receipt of the request.

Ordinarily, access to the requested information will be provided within 30 days.

How will Access be Provided?

Access may be provided by:

- inspecting your medical record (or a print out of your record) at the Practice.; and/or
- providing a copy of the requested information in person or via secure email or post (additional fees for postage may apply); or
- providing an accurate summary of the information, instead of a copy, if you and the doctor agree that a summary is appropriate.

We recommend that you make an appointment with your doctor to view your medical record together, so the doctor can assist you to understand and interpret the material contained within it. A consultation fee will apply in addition to the administration fee, plus GST. The fee is not redeemable via Medicare or private health insurance.

Can I Amend my Medical Record?

You will not be permitted to remove any contents of your medical record from the Practice. Should you wish to amend or delete any personal information, you will need to fill out a separate written request using the *Request to Amend Medical Record Form* available from reception.

When will Access to My Medical Record be Refused?

Access to your personal information may be legitimately withheld in certain situations, including (among others):

- where access would pose a serious threat to the life, health or safety of any individual or the public;
- where access would cause unreasonable impact on the privacy of other individuals;
- where the request is frivolous or vexatious; or
- where the information is privileged as a result of actual or anticipated legal proceedings.

If access to your personal information is refused, the Practice will provide you with written reasons for the refusal. You will not be charged an access fee in this instance. If access is refused, you are welcome to contact the Practice to discuss means by which access may be facilitated.

If you have any queries regarding the above policy, please contact the Practice Manager who will be happy to discuss these with you.

REQUEST TO ACCESS MEDICAL RECORDS FORM

I, _____ of _____
insert patient name *address*

(*please tick one*)

☐ request access to; or

☐ give consent for _____ to access

the documents listed on the following page, in **Table A**.

I have been advised of the applicable administration fee for this service, charged in accordance *Health Records Regulations 2002* (Vic), which is not redeemable via Medicare.

I understand the Practice may request I attend a consultation with my doctor to discuss the information contained in my medical record. In this instance, a consultation fee will apply which is not redeemable via Medicare.

I understand I will not be permitted to remove, amend or delete any contents from my medical record. If I wish to make any amendments or deletions, I must submit a request in writing to the Practice using the *Request to Amend Medical Record Form*.

I understand I am permitted to obtain copies of some or all of the contents of my medical record. Copies may not be available immediately at the time of inspection but will be made available to me as soon as practicable after the inspection.

Table A - List of requested documents

☐ entire medical record;

or

☐ all documents relating to the diagnosis/treatment of the following condition/s;

(*please briefly describe condition/s*)

1. _____
2. _____
3. _____
4. _____
5. _____

and/or

☐ the following documents:

(*please describe documents requested*)

1. _____
2. _____
3. _____
4. _____
5. _____

Signed _____
Patient or parent/guardian of patient

Date _____

Please fill out below, If applicable

Signature of person authorised to be given access to patient's medical record _____

Date _____

REQUEST TO AMEND MEDICAL RECORDS FORM

I, _____ of _____
insert patient name *address*

request to amend my medical record held by [INSERT NAME OF PRACTICE] (**Practice**) as described in **Table A,** below.

I understand the Practice has the right to request me to attend a consultation with my doctor to discuss my medical record. I have been advised of the applicable fees for this service and that the fee will not be redeemable via Medicare.

I understand that the Practice has the right to refuse my request if the Practice is satisfied that the information contained in my medical record is not incomplete, incorrect, irrelevant, out of date or misleading, or if the requested amendment contains information that is incorrect or misleading. The reasons for any refusal will be provided to me by the Practice in writing.

If I am dissatisfied with the way my personal information has been handled, I may lodge a complaint addressed to the Practice Manager which will be dealt with according to the Practice's compliant handling process.

Signed _____
Patient or parent/guardian of patient

Date _____

Table A - Description of requested amendment/s:

LETTER ACKNOWLEDGING RECEIPT OF REQUEST FOR ACCESS TO MEDICAL RECORD

[INSERT NAME OF PRACTICE]

[ADDRESS]

[CONTACT DETAILS]

[DATE]

Dear [INSERT NAME OF PATIENT],

Thank you for submitting your request to access personal information held by [INSERT NAME OF PRACTICE], dated [INSERT DATE OF REQUEST].

We received your request on [INSERT DATE REQUEST RECIEVED]. We will contact you shortly to discuss how access may be provided and to inform you of the applicable fee, which will be charged in accordance the *Health Records Regulations 2002* (Vic). Normally, access will be provided within 30 days of receipt of request.

If we are not able to provide you with access to your record, we will provide you with the reasons for refusal in writing. No fee will apply in this circumstance.

If you have any queries, please contact [INSERT NAME OF PRACTICE MANAGER] who will be happy to discuss these with you.

Yours sincerely,

[INSERT NAME OF PRACTICE MANAGER

[INSERT NAME OF PRACTICE]

SUMMARY OF AUSTRALIAN PRIVACY PRINCIPLES (APPS) – HEALTH SERVICE PROVIDERS

APP 1 Open and Transparent management of personal information

The practice must have an up to date and available privacy policy that covers specified information. The privacy policy must be made available to patients free of charge.

APP 2 Anonymity and Pseudonymity

Individuals must have the option of not identifying themselves, or using a pseudonym, unless impracticable or unlawful.

APP 3 Collection of solicited information

Sensitive information (including health information) must only be collected:

- with consent from the individual (or authorised guardian); and
- where reasonably necessary for the functions and activities of the practice (that is, the provision of health services).

Information should only be collected from the patient unless it is impracticable to do so.

Example: *Information about a patient's family member is collected while taking a history. This is acceptable if the information is reasonably necessary to treat the patient.*

APP 4 Dealing with unsolicited information

Where an entity receives personal information it did not solicit, it must determine whether the information could have been collected under APP 3. If not, the information must be de-identified or destroyed.

APP 5 Notification of collection of personal information

Individuals must be made aware of the nature of the personal information the practice collects. This includes information on:

- accessing and amending medical records
- how to make a complaint
- whether information will be used for direct marketing or disclosed to overseas recipients.

The practice's privacy and patient consent documents should cover these points.

APP 6 Use and disclosure of personal information

Information collected by the practice must only be used for a primary purpose or a secondary purpose directly related to the primary purpose, and only where the patient has provided consent to the use or disclosure.

A '**primary purpose**' is the reason the information was collected (for example, for the provision of health care)

A '**secondary purpose**' is a purpose ancillary but closely related to the primary purpose. For example, using patient details for billing purposes, or disclosing patient details to a specialist for referral.

Disclosure may also be required by law, including where there is a:

- warrant from Police to access medical records
- subpoena to produce document or give evidence
- obligation of mandatory notification of child abuse or notifiable disease.

Use or disclosure for a secondary purpose is also lawful in 'permitted general situations', without consent of the patient. These most relevant of these include:

- where necessary to lessen or prevent a serious threat to the life, health or safety of an individual or the public and it is unreasonable/impracticable to obtain the patient's consent. The threat need not be 'imminent' but it must be 'serious'.
- in instances of suspected or actual unlawful activity or serious misconduct that relates to the practice's functions and use or disclosure is necessary to take appropriate action.
- to locate a missing person – if the practice has a reasonable belief that the use or disclosure of personal information is reasonably necessary to locate a missing person. **Example:** *medical records indicate a 17 yr old male who has been reported missing was proposing to travel interstate to meet a girl he met on facebook.*
- to defend or establish a legal or equitable claim.
- to lawyers or insurers in response to complaints or claims.
- for confidential mediation/ADR processes – practices have the right to use or disclose patient information during a confidential alternative dispute resolution process such as mediation.

There are 3 'permitted health situations' where a practice can use or disclose health or genetic information for a 'secondary purpose'. These are:

- Research- if relevant to public health or safety and it is impracticable to obtain a patient's consent. The research must be conducted in accordance with research guidelines and the practice must reasonably believe that the information will not be further disclosed by the recipient.
- Prevention of a serious threat to the life, safety or health of a genetic relative. ***Example:*** *a female daughter may request access to her mother and grandmother's medical records to determine the nature of their disease.*
- Responsible person/Guardian – where a patient is either physically or mentally incapable of giving consent, a practice may disclose information to a responsible person or guardian where the disclosure is necessary to provide appropriate care or treatment to the patient or for 'compassionate reasons'. The disclosure must not be contrary to the wishes of the patient and limited to the extent necessary for care or compassion.

APP 7 Direct Marketing

The practice must not use personal information for direct marketing unless the individual has given specific consent for this to occur.

Direct marketing involves the use of personal information to communicate with an individual to promote goods and services.

Example: *sending patients an SMS offering discounted services at the practice is direct marketing and not permitted.*

Direct marketing is permitted where an individual would have a reasonable expectation that this would occur and they can easily 'opt out'.

APP 8 Cross border disclosure of personal information

If the practice is going to send personal information overseas, it must take reasonable steps to ensure the overseas recipient will not breach the APPs. There are exceptions where the overseas recipient has a similar enforceable law in place or the patient has consented after being expressly informed that information will be sent overseas.

Example*: having a contract with an overseas cloud service provider that requires compliance with APPs.*

APP 9 Use of Government Identifiers

The practice must not adopt, use of disclose a government related identifier unless:

- the adoption, use or disclosure is required or authorised by law
- it is reasonably necessary to verify the identify of the individual.
- It is reasonably necessary to fulfil the obligations to a Commonwealth agency or state or territory authority;
- The practice believes it is reasonably necessary to lessen or prevent a serious threat to the life, health or safety of an individual or the public;
- The practice reasonably believes use or disclosure is necessary to take action in relation to suspected unlawful activity or misconduct of a serious nature
- The practice reasonably believes use or disclosure is necessary for enforcement related activities of an enforcement body.

A government related identifier includes a Medicare number, Centerlink reference number, driver's licence or passport number.

Example: *the practice is not permitted to use Medicare numbers as the basis for patient identification. However, a practice can view and record Medicare numbers to verify the identification of a patient and for billing purposes.*

APP 10 Quality of personal information

Practices must take reasonable steps to ensure the personal information it collects uses or discloses is accurate, up to date complete and relevant.

APP 11 Security of personal information

Practices must take reasonable steps to protect the personal information it holds from misuse, interference, loss, unauthorised access, modification or disclosure.

Example: *Practices should issue staff with passwords to access patient databases that are changed on a regular basis, and store hard copy files in lockable filing cabinets or rooms, accessible only to authorised practice staff.*

APP 12 Access to personal information

The practice must, on request, provide a patient with access to their personal information within a reasonable time, unless an exception applies (see APP 6 above).

The practice is entitled to charge a 'reasonable' fee for access under the *Privacy Act 1988* (Cth). The Victorian *Health Records Act* 2001 (Vic) sets specified fees for access to medical records. Further information on these fees can be obtained from AMA Victoria.

Any refusal must be accompanied by written reasons and information on how the patient may lodge a complaint.

APP 13 Correction of personal information

A practice must take reasonable steps to ensure the personal information it holds is up to date, accurate, complete, relevant and not misleading. There is a positive obligation on practices to correct information where it is wrong.

The practice must acknowledge a request for an amendment to their medical records, within a reasonable time. No charge can be made for the practice making the requested changes.

Example: *Reception staff should confirm the contact details of the patient are up to date when they present for an appointment.*

Health Records Act 2008 (Vic) obligations

In addition to the obligations imposed by the APPs under the *Privacy Act 1988* (Cth), the *Health Records Act 2008* (Vic) imposes 11 Health Privacy Principles (HPPs) which apply specifically to the collection, use, disclosure and handling of health information in Victoria.

The HPPs are substantially the same as the APPs and so it is not required to set them out separately. There are, however, two added obligations imposed by the HPPs that are not included in the APPs. These are:

HPP 10 – a practice must provide a patient with information about their medical record if the practice is transferred, sold or closed.

HPP 11 – a practice is required to transfer a patient's health information to another health service provider upon request from the patient.

FOR MORE INFORMATION

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