KINGSTON GENERAL HOSPITAL

ADMINISTRATIVE POLICY MANUAL

Subject: Consent Management/Lock-box **Number: 09-054**

Prepared/Reviewed by: Privacy Office, CIO Leaders, Professional Practice Council, Nursing Practice Council, Patient Family Advisory Council, Planning and Performance Committee

Page: 1 of 4
Original Issue: 2017.01
Revised: NEW

Issued by: President and Chief Executive Officer

Principle

Under PHIPA, a Health Information Custodian (HIC) must have consent for the collection, use and disclosure of personal health information for healthcare purposes. Under the *Personal Health Information Protection Act, 2004 (PHIPA)*, an individual has the right to withhold or withdraw permission for the collection, use and disclosure of the individual's PHI for the purpose of providing or assisting in the provision of health care to the individual.

HICs are responsible for implementing policies and procedures that enable individuals to express their privacy preferences in regards to their PHI in order to effectively manage consent directives/lock-box.

Preamble:

In order to comply with PHIPA, it is imperative that everyone involved in the collection, use and disclosure of PHI, follow consent directives. Unauthorized access to an individual's PHI can have serious consequences. This policy sets out the practices and procedures for respecting and managing consent directives/lock-box and overrides of consent directives/lock-box.

Definitions:

Access: Under PHIPA, 'access' refers to an individual's right to view or obtain copies of their own PHI. Under this policy, the term also refers to any action that involves an authorized individual being able to view or use PHI, as in the context of providing health care and treatment.

Agent: A person who acts on behalf of the Health Information Custodian (HIC) in exercising powers or performing duties with respect to personal/private information whether or not employed (or paid) including: volunteers, students, physicians, consultants, nurses, vendors and contractors.

Circle of Care: The "circle of care" is not a defined term under PHIPA. It is a term of reference used to describe the provisions of PHIPA that enable custodians to rely on an individual's assumed implied consent when collecting, using or disclosing personal health information for the purpose of providing or assisting in providing health care.

Consent Directive/Lock-box: A directive made by a patient to withhold or withdraw, in whole or in part, his or her consent to the collection, use, and disclosure of their PHI (i.e. lock/block the PHI) for the purpose of providing or assisting in the provision of health care and treatment.

Consent Directive Override: Refers to certain circumstances when a health care provider may access or override PHI that is subject to a consent directive/lock-box.

Express Consent: Is obtained when the patient explicitly agrees to the collection use and disclosure of their PHI.

Health Information Custodian (HIC): As defined in the PHIPA, 2004 states a" person or organization who has custody or control of Personal Health Information as a result of or in connection with performing the person's or organization's powers or duties or the work as described in section 3 (1) of the act."

Implied Consent: Permits one to conclude from the surrounding circumstances that a patient would reasonably agree to the collection, use and disclosure of their PHI.

Valid Consent: To be a valid consent:

- The patient must have the capacity to consent, meaning that the patient is able to understand what the ability to decide upon consent entails as well as the consequences of giving, withholding, or withdrawing consent,
- It must be obtained directly from the patient or someone with legal authority to consent for the patient (i.e. substitute decision maker, guardian),
- It must be pertinent to the health care of the patient,
- It must be obtained voluntarily (without deception or coercion), and
- It must be knowledgeable, meaning it must be reasonable to believe that the patient understands the reasons for collecting, using or disclosing the information and that they have the right to withhold or withdraw consent.

Policy:

1. Obtaining Consent

   As required under PHIPA and internal policies, procedures, and protocols, KGH is obligated to obtain implied or express consent for the collection, use and disclosure of a patient's PHI as permitted under the Act. The implied consent model is used in in order to provide the patient information to health care providers in the circle of care.

2. Withholding or Withdrawing Consent with Consent Directives

   PHIPA gives patients (or their substitute decision-makers) the right to give, to withhold or to withdraw consent to the collection, use or disclosure of the patient's PHI for the purpose of providing or assisting in the provision of health care to the patient. Patients may exercise this right at any time by making, modifying or withdrawing a consent directive (i.e. lock-box).

3. Overriding Consent Directives

   In a situation where a HIC or agent requires access to PHI that is protected by a consent directive, the agent must make an override. There are specific conditions which must be met to override a consent directive:

   i. If the agent obtains express consent of the patient who owns the PHI;
   ii. If the agent has reasonable grounds to believe that the collection, use or disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily

harm to the patient who owns the PHI; and if it is not reasonably possible for the custodian or the agent seeking to collect the PHI to obtain the patient's consent in a timely manner;

iii. If the agent seeking to collect the PHI believes on reasonable grounds that the collection is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person, or group of persons, other than the patient who owns the PHI.

Procedure

1. Obtaining Consent

1.1. Implied Consent

A custodian or an agent within the circle of care of an individual may rely upon the implied consent if the collection, use and disclosure are for the purpose of providing health care. To ensure that reliance on implied consent is appropriate:

1.1.1. Give the patient the information they need to understand why the PHI is being collected and how it may be used or disclosed.

1.1.2. The HIC is responsible to post notices and brochures in high traffic areas and waiting rooms that outline the reasons for collection, use and disclosure of PHI.

1.2. Express Consent

Express consent is required to access, collect, use and disclose PHI outside the circle of care or when the information is locked by a consent directive/lock-box.

2. Creating, Modifying or Removing a Consent Directive/Lock-box

A patient may apply a consent directive/lock-box to their PHI at any time. Patients who wish to create a consent directive/lock-box, modify or remove it, must notify the HIC and/or agents.

2.1. The HIC and/or agent must provide the patient with the appropriate form:

a. A *Consent Directive: Request to Lock Personal Health Information* form (Appendix A) must be submitted to create or modify a consent directive/lock-box.

b. A *Revoking of Patient Consent Directive to Lock Personal Health Information* form (Appendix B) must be submitted to remove a consent directive/lock-box.

The forms are located on the Intranet under Privacy, Personal Health Information (PHI), Forms link.

2.2. After completion of the form, the patient's request is submitted to the Privacy Officer/delegate. Upon receipt of the request, the Privacy Officer/delegate must meet with the requestor.

2.3 Notify the individual that the consent directive/lock-box is active. Log the patient notification.

3. Overriding a Consent Directive/Lock-box Applied on a Record

When a consent directive/lock-box is applied to a record and an agent wishes to access the locked data, a message will appear on the screen.

3.1 The agent wishing to access the locked data must call Patient Records through Vocera at KGH extension 1335.

3.2 There are three conditions to access data protected by a Consent Directive/Lock-box. See policy statement #3.

3.3 The agent that has accessed the locked data must only use the information for the purpose identified prior to the override. After the purpose is met, the agent must notify Patient Records to re-lock the record and securely destroy the information accessed if it was printed and unnecessary to keep as part of the record.

3.4 Patient Records will then notify the Privacy Office of the override, and the Privacy Office will adhere to the in-house protocol to complete the override process and to ensure the override was appropriate.

3.5 Privacy Office will notify the individual of the override. In some cases, the IPC will also be notified.

Authorizing Signature

_____

Jim Flett,
Interim President and Chief Executive Officer

Related Policies
01-155 Auditing of Access to Hospital Electronic Data and Information
01-220 Records Management
01-221 Privacy Practices
05-045 Bulletin Boards, posting of notices and posters
09-050 Disclosure of Personal Health Information
09-055 Protection of Personal Health Information
09-140 Access to and Correction of Personal Health Information
09-180 Patient Records: Medical Records Retention/Destruction