

Your Healthcare

Rights and responsibilities

A guide for
NSW Health staff



Health

NSW DEPARTMENT OF HEALTH

73 Miller Street

NORTH SYDNEY NSW 2060

Tel. (02) 9391 9000

Fax. (02) 9391 9101

TTY. (02) 9391 9900

www.health.nsw.gov.au

Produced by:

Primary Health and Community Partnerships Branch

Strategic Development Division

SHPN (PHCP) 110035

ISBN 978-1-74187-626-0

Further copies of this publication can be obtained from:

NSW Department of Health website at: www.health.nsw.gov.au

Disclaimer: Content within this publication was accurate at the time of publication.

This work is copyright. It may be reproduced in whole or part for study or training purposes subject to the inclusion of an acknowledgment of the source.

It may not be reproduced for commercial usage or sale. Reproduction for purposes other than those indicated above, requires written permission from the NSW Department of Health.

© NSW Department of Health 2011

March 2011

Contents

Introduction	ii
Access	1
The right to receive health care	
Safety	3
The right to safe and high quality care	
Respect	4
The right to be treated with respect, dignity and consideration	
Communication	5
The right to be informed about services, treatment and options in a clear and open way	
Participation	7
The right to be included in decisions and choices about health care	
Privacy	9
The right to privacy and confidentiality regarding personal information	
Comment	10
The right to comment on care and have concerns addressed	
Appendix	11
Legal framework	11

Introduction

In Australia everyone shares a fundamental right to basic health care. In 2008 Australian Health Ministers agreed to a national charter and the seven basic rights summarised in the Australian Charter of Healthcare Rights:

Access

The right to receive health care

Safety

The right to safe and high quality care

Respect

The right to be treated with respect, dignity and consideration

Communication

The right to be informed about services, treatment and options in a clear and open way

Participation

The right to be included in decisions and choices about health care

Privacy

The right to privacy and confidentiality regarding personal information

Comment

The right to comment on care and have concerns addressed

These rights contribute to the formation of partnerships between patients and public healthcare providers, and lead to the best outcomes. Recognising an individual's rights places a responsibility on others to respect those rights. Productive partnerships operate within a climate of mutual respect.

This policy outlines how these rights are achieved in New South Wales. NSW Public Health employees play a vital role in the process, as people seeking or receiving care are not always in the position to achieve their rights. Staff are encouraged to fully understand the contents of this policy and support patients in realising their rights wherever possible.

Access

The right to receive health care

Access to health care is a fundamental right for everyone in Australia. NSW Health provides a range of community and public hospital services. These services are offered in a way that ensures equal access regardless of gender, marital status, disability, culture, religious beliefs, sexual orientation, age or geographic location. In this section the funding arrangements are outlined for these services.

Public Patients

Under the Medicare scheme, basic health services are subsidised or provided free of charge. In New South Wales these services are defined under the National Healthcare Agreement Act and include:

- professional treatment in a public hospital as an admitted public patient for inpatient care, as well as some outpatient and community health services (where available)
- payment of all, or part, of the cost of care from a doctor, a medical specialist or an optometrist and, under some circumstances, a psychologist, dentist, nurse practitioner or midwife
- payment of part of the cost of most prescription medicines through the Pharmaceutical Benefits Scheme

Access to these services in New South Wales is governed by clinical need within a time framework that appropriately meets that need.

Private Patients

Individuals in public hospitals can elect to be treated as either public or private patients regardless of their health insurance status.

Those who choose to be treated as private patients will be responsible for the costs of their treatment. It is the patient's responsibility to ask doctors involved in their care, their health fund (if they are a member of a fund) and the hospital providing treatment, for information on the costs before going to hospital.

Services not covered by Medicare or Private Insurance

Hospital admission offices must provide information on fees not covered by Medicare and/or private health insurance. These might include personal expenses such as TV hire, telephone calls and outpatient services, including prescription drugs, surgical supplies, aids and appliances. In an emergency situation, patients or relatives/carers should be advised of these costs.

Ambulance services

Ambulance services are not covered by Medicare. People treated and/or transported by paramedics are responsible for paying any associated fees, regardless of whether or not they were the one who requested the ambulance.

Some private health insurance funds offer 'ambulance cover' as part of their hospital cover or as 'ambulance only' cover.

For further information contact the Ambulance Service of NSW:

- website - www.ambulance.nsw.gov.au
- email - generalenquiry@ambulance.nsw.gov.au

Ambulance transport is provided at no charge if the person involved:

- holds a Pensioner, Veterans' Affairs or Health Care Card
- is covered by Third Party or Workers Compensation Insurance.

Ambulance transport is provided, at no charge, as part of the public hospital to public hospital inter-facility patient transport service.

Emergency care

Treatment in public hospital Emergency Departments is free to all permanent Australian residents.

People presenting to Emergency Departments for treatment are assessed by highly qualified health care professionals to determine the urgency and seriousness of their illness or injury and the type of immediate treatment required. Once patients are assessed they are categorised according to the level of urgency requiring attention, not on the basis of who arrives first.

When the required treatment resources are not available locally, the patient will be transferred or referred to a service able to deliver the appropriate care.

Non-emergency care

Individuals with minor, non-urgent illnesses or injuries should visit a general practitioner or an after-hours medical centre for assessment and treatment. General practitioners can provide advice about any further specialist medical treatment required. Patients may have to wait for non-emergency specialist treatment depending on the urgency and the availability of the particular care required.

healthdirect Australia, a 24-hour telephone health advice line is also available where Registered Nurses provide expert health advice. The number is 1800 022 222.

Those waiting to be admitted to hospital and worried about the waiting time can contact the Waiting Time Coordinator in each hospital or Health Service. Contact details are listed on the NSW Health website at: www.health.nsw.gov.au/hospitals/waitingtimes/index.asp

Alternatively these patients can contact the Surgery Access Line -1800 053 456.

Access to NSW Health Services by non-Australian residents

Reciprocal Agreements

Australia has Reciprocal Health Care Agreements with some countries whereby visiting citizens of those countries are entitled to Medicare cover for immediate and necessary treatment.

Refugees and Asylum Seekers

Refugees are eligible for health care under Medicare. Asylum seekers may be subject to their conditions of entry into Australia.

Further information about eligibility criteria to access services covered under Medicare is available by contacting Medicare:

- telephone contact 132 011
- email: medicare@medicareaustralia.gov.au
- website at www.medicare.gov.au

Safety

A right to safe and high quality care

People using public health services in New South Wales have the right to be cared for safely and appropriately.

This means that they will:

- have access to the range of services required
- receive health care on the basis of their assessed need regardless of their financial situation or whether they hold private health insurance
- receive immediate care in a public hospital when urgent treatment is needed to prevent loss of life
- receive care at an appropriate time based on the urgency of their case. Those patients who are sickest will be looked after first
- have access to a healthcare interpreter or telephone interpreter if needed.

Managing Safety

NSW Health gathers information on any incident that might affect patient safety, even if the incident did not result in harm. This information is analysed and where appropriate used to make changes in the way things are done.

A patient involved in an incident during treatment receives an apology and explanation. They are treated with empathy and honesty in an environment where health employees can openly discuss with the patient, relatives and/or carer what has happened, the effects, and what will be done to prevent it happening again.

The National Open Disclosure Standard provides principles to address the interests of everyone involved. These include:

- openness and timeliness of communication
- acknowledgement of the incident
- expression of regret/apology
- recognition of the reasonable expectations of the patient and their support person
- health employees need for support
- confidentiality.

The NSW Policy Directive provides advice on Open Disclosure and is available on the NSW Health website at: www.health.nsw.gov.au/policies/pd/2007/PD2007_040.html

Respect

The right to be treated with respect, dignity and consideration

Everyone seeking or receiving health care and those who provide that care have the right to be treated with respect. Health care will be provided in a manner that shows courtesy and consideration for a person's culture, religious beliefs, sexual orientation, issues arising from a disability and right to privacy.

To support staff in the use of accurate, appropriate and non-offensive language when communicating with Indigenous peoples NSW Health has published, *Communicating positively - A guide to appropriate Aboriginal terminology*. The brochure provides advice on how to show cultural respect when working with Aboriginal people and communities. A copy is available at www.health.nsw.gov.au/hospitals/healthcare/index.asp.

Visiting rights

NSW Health respects the right of patients to receive visitors and be given privacy. NSW Health Staff should respect that some cultures may require visiting family members to take greater responsibility for the patient's needs than usual.

NSW Health supports the rights of people with guide dogs to visit patients and any other approved visits involving pets.

Respect for others

All patients, health employees and visitors are asked to:

- respect all policies and practices, such as visiting hours, infection control measures, smoke-free zones and limitations on the use of mobile phones around medical equipment
- not damage or take without permission, any health service equipment, stores or property
- not harass, abuse, threaten or put any person at risk of physical or psychological harm.

Unacceptable Behaviour

NSW Health has a zero-tolerance approach to threatening, abusive or violent behaviour by any person. In all cases, whether located on health service premises or during health visits, appropriate action will be taken to protect patients, health employees, visitors and health service property.

A copy of the NSW Health policy, *Zero Tolerance Response to Violence in the NSW Health Workplace* is available at: www.health.nsw.gov.au/policies/PD/2005/PD2005_315.html

Communication

The right to be informed about services, treatment and options in a clear and open way

Healthcare providers contribute to the right of communication by providing open, complete and timely information to patients about their treatment throughout the period of care, and by ensuring that pertinent patient information is gathered.

Patients have a responsibility to be honest and open in providing information and to ask questions about their care. It is recognised that they may not always be in the position to do this. NSW Health employees have a role in assisting patients in achieving this right.

Providing and obtaining information

To ensure the best health care, it is important that patients are supported in:

- confirming their name, date of birth and other details as requested before any procedure or surgery is undertaken and whenever there is a transfer of care. This allows health services to correctly identify patients and ensure they are booked in for the right procedure, by the right person, at the right time throughout their patient journey
- telling the healthcare provider the name and contact details of the person who can provide medical consent in a situation where they may not be able to do this themselves
- asking questions and consulting with their other healthcare providers and relatives, before making a decision about a health care procedure
- giving their healthcare provider as much information as possible about their health, including any allergies or medical conditions. This should include full and accurate details about any prescription medications, complementary medicines, homeopathic and natural remedies, use of alcohol, tobacco or other drugs as these may compromise or interfere with treatment
- telling their healthcare provider if they are being treated for the same problem by someone else
- telling their healthcare provider about any changes to their condition and any reactions to the treatment

- following treatment directions given by their healthcare provider or letting their healthcare provider know that they are not going to follow the treatment regime
- telling their healthcare provider if religious or cultural beliefs make it difficult for them to have treatment
- telling their healthcare provider if they have disability related issues that should be considered when making a decision about treatment
- letting their healthcare provider know if they want to be treated as a private patient and asking for an estimate of the costs.

Ensuring information about treatment is understood

The healthcare provider

Healthcare providers will clearly explain to the patient his or her condition, the proposed treatment, the material risks and the alternatives. Patients and/or their carers will be given ample time to ask questions about the suggested treatment, the risks involved and alternative choices.

The patient

Patients should ensure that all questions have been asked, particularly those of greatest importance to them. Before giving consent for treatment, they should fully understand the processes involved in their treatment. If necessary, a healthcare interpreter, family member or authorised person should be present to clarify information.

Carer involvement

Patients must give permission for a carer being consulted and included in healthcare discussions. Once this permission is given healthcare providers must listen to carers and give them the opportunity to provide and receive information about the patient's condition.

Carers should be informed about the patient's discharge from hospital and be included in any consultations about the discharge planning process.

Carers will be asked about their ability and willingness to care for the patient at home. Appropriate support options should be put in place.

Primary Carers under 18 years of age will also be recognised and included in a patient's treatment and ongoing care. These carers will be provided with information about where to obtain support with their caring role. For more information contact the health service's Carer Support Officer.

People with disabilities have a range of support needs. Family members, carers and disability support health employees may assist with support needs in consultation with health professionals. However, they are not obliged to assist.

Access to medical records

Patients have the right to request a copy of their medical record or to speak to a healthcare worker about what is contained in their record.

Requests to view or obtain a copy of a medical record are made to the Clinical Information Department or the Manager of the health service attended by the patient. The health service should provide a response within 20 days of the request being received.

Access to the medical records of another person, such as a family member, can also be requested by a legal guardian or authorised representative for the patient. Those wishing to view a medical record will need to make an appointment and complete a release of information form.

It may be recommended that the person making the request review the information in the presence of a doctor, usually the patient's general practitioner. In this case the health service will provide the designated general practitioner with the medical record.

There may be a fee associated with a request to view and/or obtain copies of medical records to cover costs. Further information is available at: www.health.nsw.gov.au/policies/pd/2005/PD2005_593.html

Legislation governing access to health records

There are some circumstances where the law does not compel health services to provide access to records, such as where there is information about a third party or if in the opinion of the patient's doctor, information in the file may affect the patient's physical or mental wellbeing. People denied access to their medical information have the right to pursue the matter further.

NSW Health Privacy legislation (s12.3) provisions

The patient or authorised person can request the medical record be reviewed by a third party, such as an independent medical practitioner. The independent medical practitioner will determine whether the patient should be allowed to view all or part of the medical record.

If the independent medical practitioner decides against viewing the record, the person making the request has the right to request an internal review of this decision by more senior managers in the health service. If they are not satisfied with the outcome, they have the right to complain to the Privacy Commissioner. Complaints can also be made to the Privacy Commissioner if records have been disclosed improperly to a third party.

Access under the Government Information (Public Access) Act 2009

People can also apply for access to medical records under the Government Information (Public Access) Act, which governs internal reviews of the situation under separate laws.

If a person is not satisfied with the results of an internal review governed by either of the above acts then they have the right to a review by the Administrative Decisions Tribunal. More information is available at: www.lawlink.nsw.gov.au/adt

The Clinical Information Department, or the Manager of the health service where the patient is receiving treatment, provides information about ways to access health records.

The office of the Information Commissioner can also provide information and advice. More information is available at: www.informationcommissioner.nsw.gov.au

Participation

The right to be included in decisions and choices about health care

Healthcare providers contribute to the right of participation by encouraging those who use the health system to make fully informed decisions. Throughout the patient's visit, healthcare providers will discuss with the patient treatment plans.

Patients are encouraged to take part in the decision making process, including transfers to other services and/or discharge from hospital. Healthcare Interpreter Services will be arranged if required.

Patients have the right, where circumstances permit, to have a relative or other support person with them at all times.

Consent

Patients must give consent before receiving treatment. In most cases this will be verbal consent. It is NSW Health policy that written consent is given for some procedures, such as surgery.

Patients have the right to withhold consent. In this case they will not receive treatment. In a life-threatening emergency where the patient is too ill or unconscious, consent is not required.

Consent by minors

The consent of a parent or guardian is required for treatment for children under the age of 14 years. After this age, children may seek treatment and give consent on their own behalf, provided they fully comprehend what is proposed.

The decision to give consent can be made jointly with parents. Usually, unless the child objects, a parent or legal guardian is asked for consent where a child is between 14 years to 16 years. In most cases a person aged 16 and over is capable of providing informed consent.

Consent by a 'person responsible' or Guardian Tribunal

A 'person responsible' may be a parent (when the patient is under 18), a guardian, a spouse (including de-facto or same sex partner), a carer, a close friend or relative.

If an adult is unable to give consent for treatment due to an accident or disability, the 'person responsible' can consent to most forms of treatment on the patient's behalf.

If there is no 'person responsible' or that person is not available, the Guardianship Tribunal can give consent to medical and dental treatment on behalf of the patient. These issues can be discussed with the patient's doctor and the hospital's Social Work Department.

'Persons responsible' and the Guardianship Tribunal can only consent to treatment that is in the patient's best interests. More information is available on the Tribunal's website at: www.gt.nsw.gov.au or by telephone: Toll free: 1800 463928, Main switch: (02) 9556 7600 or Telephone typewriter: (02) 9556 7634.

Consent to the use of aspects of personal health information

Aspects of personal health information may be used or disclosed without patient consent for public interest research projects. Any use of patient information must comply with strict protocols and be approved by a Human Research and Ethics Committee.

Seeking a Second Opinion

Patients who have doubts about treatment or procedures explained to them have the right to talk to their general practitioner and seek a second opinion. Subject to the nature of the illness, the health service will provide advice on the availability of an alternative medical practitioner.

10 Tips for Safer Health Care has been developed by NSW Health to help patients take a responsible role in decisions affecting their health care. The pamphlet can be downloaded at: www.health.nsw.gov.au/quality/10tips/index.html

Student Education

It is not unusual for patients in teaching hospitals to be asked if students or health employees in training can be present while care or treatment is provided. This practice contributes to improving professional skills.

Patients have the right to say no to this request. Their decision will have no bearing on their treatment or access to services at the time or in the future, and will not be added to records.

Health and Medical Research

Health and medical research leads to improvements in health care. Health and medical research regularly occurs within the public health system and patients may be asked to participate. They will be given information about the research and asked to decide if they want to take part.

Patients have the right to say no to this request. Their decision will have no bearing on their treatment or access to services at the time or in the future, and will not be added to records.

Community Involvement

NSW Health has a clear mandate for involving communities in the planning and delivery of health care across NSW. Structures are in place in every health service to support community participation in health service planning and delivery on an ongoing basis. Individuals, who would like to become involved, can contact the Consumer and Community Participation Office at their local health service to find out more.

Privacy

The right to privacy and confidentiality regarding personal information

All health employees are required to keep information about patients and their health care confidential. Aside from special circumstances, privacy laws covering access to patient records require that only healthcare employees can view and share this information for the purposes of providing care. The information is kept secure to prevent unauthorised access and misuse.

Special circumstances where information may be disclosed

The health service treating a patient may disclose personal health information in other situations as required by law. These include where:

- the law requires that a report is made to another government agency, such as in the case of suspected child abuse, or to notify infectious diseases
- it is necessary to prevent or lessen a serious and imminent threat to a person's health or welfare
- there is evidence that an offence may have been committed, and the disclosure is necessary to the functions of a law enforcement agency
- it is necessary to find a missing person
- it is necessary for the funding, management and planning of the health service
- a court order such as a warrant or subpoena is issued.

Aspects of personal health information may also be disclosed for public interest research projects. Any use of patient information must comply with strict protocols and be approved by a Human Research and Ethics Committee.

A Privacy Leaflet is available for patients outlining how the health service may handle personal information. These are available in English and other languages at: www.health.nsw.gov.au/policies/pd/2005/PD2005_593.html

Breach of Privacy

Individuals who believe a health service has breached the terms of privacy laws with regards to personal health information have the right to request an internal review in accordance with the Health Records and Information Privacy Act 2002 and the NSW Privacy and Personal Information Protection Act 1998.

Further details are available in the publication, Information Sheet for Privacy Internal Review. This brochure is available from the health service privacy contact officer or at: www.health.nsw.gov.au/policies/gi/2006/GL2006_007.html

Privacy Appeals

Individuals not satisfied with the outcome of an internal review conducted by the health service have the right to lodge an application with the Administrative Decisions Tribunal for a review of the health service's conduct. For more information go to: www.lawlink.nsw.gov.au/adt

Privacy Complaints

The NSW Privacy Commissioner can investigate complaints about privacy. For more information go to: www.lawlink.nsw.gov.au/privacynsw

Comment

The right to comment on care and have concerns addressed

NSW Health believes it is important for patients, families, carers and visitors to comment on health care and have any concerns dealt with properly and promptly. This feedback contributes to our capacity to improve and deliver better health care.

When things go right

It is important to know when things are going right as well as when things require improvement. Satisfied patients, families, carers and visitors are encouraged to let the health service know when they have received excellent treatment. Compliments provide a clear indication of what is valued by people seeking or receiving health care services. Compliments also boost morale and encourage health employees to provide excellent service again. The health service will make sure that these compliments are passed on. More information is available on "Your Health Care Concerns" website at www.health.nsw.gov.au/hospitals/healthcare/index.asp

Ways of making a complaint

Tell the hospital or service concerned

It is best in the first instance for the person with the complaint to tell the hospital or service concerned. This can be done in person or by telephone. Experience shows that complaints are best resolved locally. Resolving concerns locally also helps maintain good relationships between those using health services and those providing them.

Those voicing a concern or making a complaint are encouraged to remain calm and to be clear about what happened, when it happened, their concern and what they want the health service to do about it. It is useful to keep a note of the time and date of the discussion, what was discussed, the outcomes of the conversation, and what, if any, agreement was reached.

Contact the health manager or patient support officer

Individuals may prefer to discuss concerns with the Hospital's designated complaints officer. The complaints contact officer will:

- identify the main concerns about care received
- assist with any specific needs the patient might have while in hospital
- answer any questions regarding services, hospital policies and procedures
- ensure the complaint is treated confidentially
- keep those making the complaint informed about the process and outcome.

Complaints contact officers are available Monday to Friday, during business hours. For assistance outside of these hours, contact the director of nursing or senior nurse on duty.

Contact the health service directly, preferably in writing

People not satisfied with how their complaint has been managed can write to the Director of Clinical Governance of the health service. A copy should be kept for their records.

The Health Care Complaints Commission (HCCC)

The Health Care Complaints Commission is independent of the public health system. Anyone can lodge a complaint with the HCCC. Officers will explain the process of making a complaint and provide assistance if required. Complaints must be in writing.

For information about making a complaint or to contact the HCCC go to: www.hccc.nsw.gov.au

Those requiring an interpreter can phone the HCCC Telephone Interpreter Service on 131450 and ask for assistance.

Appendix: Legal Framework

The following legislation is applicable to the rights and responsibilities of patients in NSW public health services:

- National Health Act 1953 (Cth)² - Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs
- Medicare Australia Act 1973(Cth)
- Health Insurance Act 1973(Cth)
- Government Information (Public Access) Act 2009 (NSW)
- Health Care Complaints Act 1993 (NSW)
- Health Services Act 1997 (NSW)
- Privacy and Personal Information Protection Act 1998 (NSW)
- Health Records and Information Privacy Act 2002 (NSW)
- Mental Health Act 2007 (NSW).

1. This means public hospital services as defined by the National Healthcare Agreement (NHCA).

2. Refers to Commonwealth Government legislation

