



## Hospitals

# My Health Record expansion program

## Privacy and consent

### What is My Health Record?

My Health Record commenced in 2012 and was then known as the Personally Controlled Electronic Health Record (PCEHR). Operated by the Australian Digital Health Agency, My Health Record is a secure online summary of a consumer's health information that can be accessed by authorised healthcare providers taking part in their care. Consumers with a My Health Record will be able to set privacy settings, which allows them to control what goes into the record, and who sees it.

### Change in the participation model

In July 2018 the participation model will change from 'opt in' to 'opt out', meaning every Medicare card holding Australian will be offered a My Health Record unless they choose not to have one during the three month opt out period that will run from 16 July to 15 October 2018. This will be followed by a 30 day reconciliation phase to allow for the processing of paper-based forms.

### Consumer consent and My Health Record

When a consumer registers for a My Health Record in the current opt in model, they automatically give a standing, or ongoing, consent to records containing their health information being uploaded to their record by healthcare providers involved in their care.

When a standing consent model has been employed by a health service there is no requirement for a healthcare provider to obtain consent on each occasion prior to uploading clinical information. There is also no requirement for a consumer to review clinical information prior to it being uploaded.

However, it is good practice to talk to the consumer about the kind of information that will be uploaded. This will also allow the consumer to make an informed decision on whether documents or certain types of information are to be uploaded to their record. Once informed, the onus is on the consumer to inform the health service if they do not wish a document (or class of document types) to be uploaded, which should be recorded appropriately.

### Consent for consumers under the age of 18

Currently, minors aged from 14 years and up to 18 years have the capacity to make their own decisions in respect of healthcare information and are able to register for and manage their own My Health Record. However, some may choose not to exercise that power and may prefer to have their parent(s) or legal guardian(s) continue to act on their behalf.

A healthcare provider may or may not know whether a minor has taken control of their record. It is advisable that healthcare providers confirm with minors from 14 years of age whether they want documents added to their My Health Record.

### No impact to existing consumer consent model with the opt out model

The standing consent model will continue to apply regardless of the changes to the participation model to be introduced in 2018. Consumers will be given the opportunity to opt out of having a My Health Record created if they choose to do so. The 'opt out' window will be 3 months in duration. If a consumer does not choose to opt out of having a My Health Record created, standing and ongoing consent policy will apply.

### Victorian health service consent obligations

- ◆ It is good practice that all health services accessing My Health Record implement a method for capturing consumer consent to upload information to their My Health Record. A consumer can change their consent at any point in their care, and appropriate workflows should be followed e.g. withdrawal of consumer consent
- ◆ Participating health services require a My Health Record document management policy in line with both national and state privacy laws as they can sometimes differ per state, on how they manage consumer consent to load and view consumer health information to My Health Record.
- ◆ A consumer's level of My Health Record consent can be different at each healthcare organisation, and should be captured separately by each health service.



- ◆ As a document author, a consumer may ask your health service to not upload to, or remove an uploaded document from, their My Health Record. The health service must make all reasonable steps to comply.

## Consumers can exercise control over their My Health Record

Consumers have the ability to control which healthcare provider organisations can access and upload clinical documents to their My Health Record. A consumer can also control what information is stored in their record and which health services can access that information.

The following consumer controls can be employed;

### Requesting that records not be uploaded

If there are specific records that the consumer does not want uploaded to their My Health Record, they are required to inform your service, who must then comply with that request.

### Removing documents from their record

If a document has been uploaded to a consumer's My Health Record and they would like to have it removed, they can have it 'effectively removed'. This means it can no longer be viewed by any healthcare providers, even in an emergency. Consumers can ask the healthcare provider who uploaded the document to remove it or they can remove it themselves by logging in to their My Health Record. Health Service procedures should be known and followed in this instance. As a general rule most health services ask consumers to manage their document removal should they change their mind after or during an episode of care.

### Access codes

Consumers can limit access to their entire record (using a Record Access Code) or to particular documents (using a Limited Document Access Code). The consumer will need to provide their access codes to a healthcare provider in order for them to access their My Health Record. A healthcare provider will be prompted by their clinical software if an access code is required. If a consumer restricts access to documents in their record, the healthcare provider organisations that uploaded those documents will still be able to access them.

### Access history log

The access history log in a consumer's My Health Record contains the following information:

- ◆ the date and time that a consumer's My Health Record was accessed/edited;
  - ◆ the health service (rather than the individual healthcare provider), who accessed/edited My Health Record; and
- ◆ details of the action that was performed (e.g. when a clinical document was created or removed, when individual contact details were amended, when representatives have been added or removed). This includes actions performed by external providers (i.e. Medicare) and patients when accessing their own My Health Record.

### How can health services access a consumer's My Health Record in an emergency?

- ◆ Healthcare providers are permitted to collect, use and disclose the information in a consumer's My Health Record if it is unreasonable or impracticable to obtain consent and if it is reasonably believed that this is necessary to lessen or prevent a serious threat to an individual's life, health or safety, or prevent a serious threat to public health or safety. If these conditions are not met when emergency access is gained, the healthcare provider will be breaching the law and penalties may apply.

### Understanding rules made under the My Health Records Act

- ◆ The suite of legislation and guidelines that regulates the operation of the My Health Record system includes the My Health Records Rule 2016. These legally binding rules provide information on the functions of the My Health Record system and set out the obligations of health services. Being aware of these obligations under these rules will ensure that appropriate procedures and policies are in place to protect patient privacy and ensure the proper handling of their personal information (refer below for links to My Health Record legislation and rules).

## Key contacts

### Digital Health Standards and Advisory

Department of Health and Human Services  
[myhealthrecordexpansion@dhhs.vic.gov.au](mailto:myhealthrecordexpansion@dhhs.vic.gov.au)

### Office of the Victorian Information Commissioner

#### Privacy and Data Protection

Phone: 1300 666 444  
PO Box 24274 Melbourne VIC 3001  
<https://www.cpdp.vic.gov.au/>

### System Operator

Phone: 1800 723 471  
My Health Record  
Box 9942 Sydney NSW 2000

## For further information

Select this link: [My Health Record](https://www.myhealthrecord.gov.au/) or visit  
<<https://www.myhealthrecord.gov.au/>>