

New laws to improve quality and safety in the health system

Frequently asked questions – for patients

What is changing?

From 27 August 2020, Victoria will have new laws to help keep patients safe in health care. The laws will make it easier for some health services and parts of the government to share information and work together to make Victorian health care safer and better for patients.

In some situations, health services and the government can already share information with each other to help make health care safer and better. This means that sometimes, they can share information about individual patients, staff or contractors that would usually be confidential. The new laws will create a better system for sharing this information.

Which health services and parts of government are covered by the new laws?

The new laws will allow these health services to share information:

- public health services and public hospitals
- hospitals run by religious groups
- private hospitals
- day procedure/surgery centres
- ambulance and non-emergency patient transport services
- Victorian Institute of Forensic Mental Health.

The new laws will allow these parts of the Victorian Government to receive and share information:

- Safer Care Victoria
- Victorian Agency for Health Information
- Department of Health and Human Services.

Why is sharing information about health care important?

Information is the most important tool we have to check if health care is safe, and fix it when there is a problem. Knowing when and why things go wrong means we can learn from mistakes or problems that harm patients. We can also detect when problems happen again and again, and stop these patterns continuing. To do this, health services and the government sometimes need to work together by sharing information about people who give or receive health care.

For example, a person might die after going to more than one hospital for help, but not getting the right diagnosis. If that happens, it is important that all the hospitals can get together and share information about what happened, so they can understand the patient's whole healthcare experience. Then they can learn from their mistakes and try to prevent the same thing happening to someone else. If they can't share the information with each other, they won't have the whole story, and can't learn all the important lessons to protect other patients.

Is it new for information about health care to be shared?

No, it is not new. Under existing laws, health services can (and do) already share information about patients for reasons other than providing care to that patient directly. They can already share information to make health care safer and better. And in the right situation, they do not have to ask or tell the patient.

For example, imagine you are harmed while being treated in a hospital. The existing laws already let the hospital share your information with healthcare safety experts from the government. This helps them work together to understand and learn from what happened to you, and prevent the same thing happening to someone else. The new laws will also allow this, but with a better system in place to support the sharing of information.

Why are these changes needed?

The existing laws let health services share confidential information to help make health care safer and better for patients. But sometimes this does not happen. This is because the health services are unsure when they can and cannot share information, and are worried about getting it wrong. When they decide not to share the information, opportunities to learn all the lessons from the patient's experiences are lost.

The new laws aim to make things clearer. They aim to make sure everybody knows when information can be shared to make health care safer and better. This should mean health services feel more comfortable to share information when they need to. This means there will be more opportunities to learn about incidents and problems, and to improve quality and safety.

How will the changes affect me as a patient or client?

The most important thing is the changes will not affect your day-to-day life as an individual. Your experiences of using healthcare or government services will be the same. Just like under the old laws, your personal information will be kept confidential, and will only be shared when needed to help improve safety and quality.

Over time, we expect that information shared under the new laws will help improve the healthcare system. And this should make health care better and safer for everyone.

Will I be asked or told if my information will be shared?

Sometimes you will be asked or told, but not always. Health services have privacy policies and notices that are available to patients. The health services should update these to explain that information can be shared to help make health care better and safer. Health services **can** tell you that they want to share your information. Under privacy laws, health services usually should talk to people if their information will be shared and explain what will (and will not) happen to it.

However, health services and the government **do not have to** tell you or ask for your permission (consent) to share your information for quality or safety reasons. This is because it is not always practical or possible to talk to people or ask for permission. For example, sometimes it might be important to share information about the care of somebody who has died. Other times, information might be needed quickly, and waiting for permission could put other people in danger. For example, there might be a concern about lots of people being given the wrong medication in a hospital ward. Health services might need to give health information about all the people treated on that ward during a certain period to safety experts, to find out who was given the wrong medications and why. Waiting to try and get permission from everybody first might put more people in danger of being given the wrong medication.

Can I see the information that is shared about me?

Under the new laws, health services can share your information without showing it to you. However, other laws give everybody the right to access information about them that is held by organisations, including health services. This includes the right to access your medical record or other health or personal information, except in some limited circumstances. You will continue to have this right when the new laws are in place. The right applies to all information about you, whether it was shared under the new laws or not.

If you wish to see any information a health service or the government holds about you, you can ask for it informally, and they may choose to share it with you. If they choose not to share it with you informally, you can ask for it formally in writing. If the information you want is held by the government or a public health service, you will need to make a 'Freedom of Information' request. You can learn more about this from the Office of the Victorian Information Commissioner. If the information you want is held by a private health service, you will need to ask for your records using the *Health Records Act 2001*. You can learn more about this from the Victorian Health Complaints Commissioner.

How widely can my information be shared?

Most of the time, information will go from a health service to the Victorian Government. There are limits on how, when and where your information can be shared under the new laws. Under the new laws:

- the only reason your information can be shared or used is to try to make health care better and safer for patients
- your information cannot be used or passed on for any other reason
- health services and the government can only share the part of the information about you that is needed to make health care better and safer. They can't just share your whole record unless that is really needed
- your information can only be shared with and between some parts of the Victorian Government (the Department of Health and Human Services, Safer Care Victoria and the Victorian Agency for Health Information), but no other part of the Victorian Government
- your information cannot be shared with the Australian Government, or any other organisations or services. For example, it cannot be shared with Centrelink, immigration authorities, law enforcement agencies, the National Disability Insurance Agency, compensation bodies (like the Traffic Accident Commission or WorkSafe Victoria) or anybody else
- health services will sometimes be allowed to share your information with each other, but only in special situations, and only with specific permission from the Minister for Health.

These rules apply unless it must be shared due to another law or legal order (for example a court order).

Will my identity be removed from information that is shared?

Sometimes we can remove the parts of information that might identify you, and the information is still helpful to make health care better and safer. But not always.

Knowing your identity can be important to make sure we share information about the right person. Sometimes, even if some things like your name and birth date are removed, it might still be possible to identify you from other information in the records (for example, information about your job or family).

Sometimes, we need to know your identity so we can track down records about you in more than one health service and bring them together. This helps us understand all parts of your healthcare experience, and your whole story. For example, imagine you are harmed because something went wrong when you were moved from the care of an ambulance to the care of a hospital. The people investigating what happened would need information from the ambulance as well as the hospital. They would need to confirm who you are to link these pieces of information. Having all the information means the

investigators can understand the full story, so they can learn from what happened and prevent the same thing happening to someone else.

Do the changes affect my human rights under the Victorian Charter of Human Rights and Responsibilities?

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) applies to all the public authorities who will receive information under the new laws. The new laws do not change that. The Charter includes a right to privacy. The new laws mean there are small changes to how your privacy is managed, but this will be done in accordance with the requirements of the Charter and the rest of your rights around privacy will stay the same.

What if I think someone has broken the new laws?

If you think the new laws have been broken, you can make a complaint. For example, you might think your information has been shared when it should not have been. If you think a health service or other entity may have broken the laws, you can complain to the Victorian Health Complaints Commissioner.

Do the new laws affect any other laws?

The new laws will change the way information about individuals is shared when trying to make health care better and safer. So it does affect how some privacy laws will apply to those situations. However, the new laws do **not** change:

- your legal right to raise concerns about health practitioners and health services (for example with the Australian Health Practitioner Regulation Agency or the Victorian Health Complaints Commissioner)
- the way privacy laws work in situations where information is shared for reasons other than trying to make health care better and safer for patients
- how registered health practitioners are overseen by the Australian Health Practitioner Regulation Agency
- the role of the Coroner in investigating a death
- the requirements for confidential information must be stored and kept secure by health services and the government.

What are some examples of when the new laws may be used?

Example 1

Reviewing differences in surgery outcomes between different hospitals

Imagine that patients having the same type of surgery in one hospital are much more likely to die or have severe complications than patients in other similar hospitals. This would need to be investigated by Safer Care Victoria, to find out if there are problems at that hospital that need to be fixed.

The hospitals would need to share details about patients who had the surgery (e.g. medical conditions and age), so the investigators could compare the patients at the different hospitals. Safer Care Victoria could use this information to identify any reasons why patients at one hospital tend to have worse outcomes from surgery. And if possible, they could recommend changes to make the surgery safer for patients at that hospital.

Example 2

Understanding the cause and impact of people being given the wrong amount of a medication

Imagine that patients at several hospitals were given the wrong amount (dose) of a medication, causing them harm. This would need to be investigated by the government's patient safety specialists at Safer Care Victoria, so there is an opportunity to make sure the errors stop, and don't happen again.

For the investigation to work well, the hospitals would need to share information about staff and patients with Safer Care Victoria. This would allow Safer Care Victoria to understand the full picture, join the dots and identify patterns. For example, to identify if a particular doctor was involved in all the errors. Or if any patients might have received the wrong dose but not know, and be in danger. Safer Care Victoria could use the information to work out if the problem is due to a doctor, equipment, medication manufacturer or something else. And whether it is a widespread issue, or only happening in one or two hospitals. Safer Care Victoria could use all of this information to work out why the errors happened, and what needs to be done to make sure they don't happen again.

Example 3

Learning from patients' complaints

It is important health services and the government learn from patient complaints to prevent the same problems happening to other people. Complaints from patients can be a sign that there are quality and safety problems in a health system. Under the existing laws, some hospitals do not give Safer Care Victoria information about patient complaints because they are worried about privacy. Sometimes they choose not to share the information even though the patient told them they could share it. The new laws will allow valuable patient complaint information to be used to learn about the safety of health care, and work to improve it.

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