

PRIVACY PROTECTION FOR INDIVIDUALS RECEIVING SERVICE – PROCEDURE AND EXPECTATIONS OF CONTRACTORS

Overview

As a service provider, contractors are responsible for the collection, maintenance, and use of personal information for the individuals receiving services. Contractors must act in a responsible and lawful manner to make sure the appropriate protections and safeguards for personal information are in place and followed.

Individuals (receiving services) refer to the following:

- Adults receiving services
- Children receiving services
- Family members of adults or children receiving services
- Friends of adults or children receiving services
- Legal guardians or designates of adults or children receiving services

Personal information will refer to factual or subjective information that may identify the individual. It does not include certain publicly available information a supported person's name, title, and business contact information or certain publicly available information. Personal information can be in any form including written, oral, and electronic.

Purpose

- To protect individuals from harm resulting from the unauthorized or inappropriate release of personal and confidential information.
- To comply with legislation regarding the protection of personal information.
- To comply with best practices concerning the confidentiality of personal information.

Expectations

Contractors will comply with provincial and federal legislation and regulations as well as best ethical and professional practices regarding the protection and release of personal and confidential information relating to the individuals and families the organization supports.

Collection and Use of Personal Information

Personal information will be collected by fair and lawful means.

Contractors will limit the collection and use of personal information from individuals to that which is required by law, and to that which is required to effectively plan and provide services. Contractors will only collect information for purposes that a reasonable person would consider appropriate, including:

- to understand the needs and objectives of supported individuals.
- to plan and/or deliver services to supported individuals.
- to fulfill requirement to provide the service outcomes outlined in their contracts with funders.

Examples of collected information may include, but are not limited to:

- Identification data (e.g. name, address, Social Insurance Number, Personal Health number, BCID, etc.).
- Medical, functional, behavioural, psychiatric or psychological assessments, reports and meetings outcomes.
- Family and personal histories, as appropriate.
- Prior histories
- Verbal or written reports from families, friends, or advocates.
- Reports, care plans and protocols, summaries, serious incident reports, written or electronic correspondence and other documentation generated as a reasonable result of receiving services.

Individuals and their families (as appropriate) will be informed of the purposes and range of information collected and used.

Wherever possible, personal information will be collected directly from the individual. An individual may withdraw in writing his or her consent to the collection, use or disclosure of personal information at any time. This withdrawal of consent may be subject to legal or contractual restrictions and reasonable notice.

The LSN Manager will inform the individual of the consequences of a withdrawal of consent in a way that is relevant and meaningful to the individual. The LSN Manager will inform the individual that the withdrawal of consent may result in the possible termination of service because of the contractor's inability to administer its contractual or service delivery responsibilities.

Consents

Consents will be required for the use and disclosure of personal information to third parties. Consents will be specific with respect to the information that can be disclosed, to whom the information can be disclosed, and where appropriate, the time limits for disclosure. Consents may be obtained verbally or in writing, although written consents will generally be preferred or required over verbal ones.

BACI's LSN Department has discretion to accept email, letters, designated forms, or facsimiles as acceptable forms of written consent. In appropriate circumstances, BACI's LSN Department may seek the individual's consent to the collection, use and disclosure of personal information by notifying them that their consent will be assumed unless they expressly inform BACI's LSN Department otherwise. Further, implied consent may arise through action or inaction on the part of the individual.

Regardless of the method used by BACI's LSN Department to obtain consent, it will fairly and reasonably bring the individual's attention to the issue of consent as well as provide a fair and reasonable time frame for response. BACI's LSN Department will not provide false information, or use dishonest nor misleading ways to obtain these consents.

Consent for Children

Consent for children or youth must be given by a parent or legal designate. If the courts have not assigned a legal designate and the child or youth has capacity to understand the nature of the consent, the child or youth may provide the consent.

Use of Non-Legal Designates for Consents

Where appropriate, BACI's LSN Department may assist an individual who cannot provide informed consent through a legal representative. BACI's LSN Department may also attempt to identify someone to serve as a non-legal designate to sign consents on behalf of the individual. A non-legal designate may include a family member, friend, advocate, or temporary substitute decision-maker.

While a non-legal designate does not have the legal authority to act on behalf of the individual, BACI's LSN Department will recognize his or her moral authority in circumstances where consent is required and where there may be a clear concern with the individual's ability to provide informed consent.

Consents from non-legal designates does not keep BACI's LSN Department from its responsibility to follow legal and contractual requirements.

Acceptance of a person in the role of a non-legal designate is conditional upon BACI's LSN Department being satisfied that the designate:

- Is at least 19 years of age.
- Is in regular contact with the individual (no fewer times than once per year).

- Is capable of giving, refusing or revoking consent.
- Is in a relationship of trust with the individual.
- Is acting in the best interests of the individual.
- Is acting on the basis of the individual's beliefs and values.

BACI's LSN Department will seek direction from relevant stakeholders as to how consents will be gathered for adults for whom there is no legal designate. Options include, but are not limited to:

- The individual signs all consents.
- The individual and a non-legal designate signs all consents.
- The individual signs all consents, but copies are issued to non-legal designate(s) so that there is opportunity to contest their use.
- A non-legal designate signs consents on behalf of the supported individual.

This process will be reviewed at the discretion of BACI or as requested by a stakeholder.

Honouring the Individual Preferences of Adults with Legal Designates

Although legal or non-legal designates may be identified for providing consent, BACI's LSN Department will also request consent from the individual, where it is appropriate and meaningful to do so. If an individual does not consent to a decision or activity in which their designate has given consent, BACI's LSN Department will honour the individual's choice, provided there is no concern about the individual's health and safety.

Circumstances Where Consent is Not Required

The Association may lawfully collect, use or disclose information without the knowledge or consent of the individual where:

- the collection, use or disclosure of the personal information is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- it is reasonable to use for the purposes of an investigation or legal incident;
- it is reasonable to expect that the information could be useful in the investigation of a law which may have or is about to be broken;
- the information is publicly available;
- it is required or authorized by law (e.g. to comply with a subpoena, warrant or order issued or made by a court, person or body with valid jurisdiction);
- the information is used for the purpose of responding to an emergency that threatens the life, health or security of an individual; or
- the disclosure is made to a lawyer representing BACI.

Access to Records

Contractor's access to individuals' records will be limited to authorized persons (the direct contractors, the LSN managers, administrative staff responsible for the LSN file management, or persons or organizations entitled to access records as per legislation).

The Association will limit access to individual records on a "need to know" basis.

Requests by individuals to view their onsite records may be made to the LSN Manager. Requests to view Central files or archives may be made to the Privacy Officer. Where possible, an individual's request to review his or her record will be met within 5 business days. Requests to view central files or archived records will be addressed within 30 days of receiving them.

While an individual has the right to view the contents of their records, there may be provincial and/or federal restrictions on what may be viewed. Where BACI has to restrict access to information, it will make a reasonable effort to provide the individual with as much of the information as possible

BACI has discretion to charge a reasonable fee to recover costs involved in responding to requests for information (e.g. labour, archive retrieval fees, photocopying in order to sever information, etc.).

Accuracy of Information

BACI's LSN Department will make every reasonable effort to make sure that the personal information it collects and uses is accurate and complete. Contractors are responsible for updating individuals as soon as changes occur.

Individuals may request changes to the applicable records when they believe information is inaccurate. BACI may not be able to destroy the record, but BACI will replace the incorrect information with the correct information and archive it as soon as it is reasonable to do so. BACI must be satisfied that incorrect information does exist in order for new information to replace it.

Protection of Personal Information

BACI will have security and safeguards to protect personal information against theft or unauthorized access, disclosure, copying, use, modification or disposal. BACI will take reasonable steps to protect personal information, regardless of the format in which it is held. Safeguards may include, but are not limited to the following:

- Records will be stored in a secure location consisting of locked cabinets within a locked room
- Information will not be left unattended or be accessible by anyone by anyone without authorization or consent.
- Security related to technology/electronics will have protection applications that meet the standards of effectiveness.
- Hardware/software installation and maintenance will be reviewed and tested for security features; and
- Virus shields/firewalls will be used and regularly updated;
- Electronic systems used to manage information will have a plan in place to respond to a disaster or systems failure. The plan will include a protocol for regular data-backup, a protocol for recovering data and restoring systems to normal operations after disaster(s), and a protocol for operating electronic systems during disasters in an emergency mode (transferability of function).

Disclosure to Third Parties

Personal information will not be disclosed to third parties without express consent from the individual (examples of statutory exceptions noted below) and when necessary under the contractual requirements. Where an individual cannot provide fully informed consent, and where no legal

representative exists, BACI may disclose information if it meets contractual responsibilities and is in the best interest of the individual.

Individuals will be informed of the purpose for disclosing the information and its implications in a manner that is meaningful to them. They will also be invited to participate in disclosures to the extent that they are capable and interested in doing so.

Requests by third parties for written disclosures of an individual's personal information will be directed to the Privacy Officer.

When making disclosures of personal information to third parties, BACI will take reasonable steps to make sure the recipient has good safeguards in place to ensure the information will be protected. The Association will not disclose information that it deems to be unnecessary or irrelevant to the stated purpose of information requests.

Disclosures to Family Members

Family members play a key role in the planning and direction of their child's life. BACI recognizes and values the role family members play. However, BACI also recognizes the rights of all adults to have their information kept private and only disclosed with their consent. BACI may share information with family members when it is in the best interest of individual and when it is difficult to get informed consent from the individual. BACI may also disclose information to family members when the individual's health and safety may be at risk.

BACI will inform the individual and family members of this practice during orientations to service, and as appropriate, prior to disclosures being made to family members. When an individual clearly communicates he or she does not wish information to be shared with family members, BACI will not make the disclosure. BACI will honour the individual's choice and will explain the consequences of this decision to the individual in a meaningful way.

If a family contests the withholding of information, the family member will be directed to contact the BACI Privacy Officer. If the complaint remains unresolved, the family member will be immediately referred to the Provincial Office on Privacy Matters.

Privacy-Related Concerns and Complaints

Individuals with questions or concerns regarding the collection, use, retention, disclosure or disposal of personal information may contact the BACI Privacy Officer. Complaints will be resolved as per the Conflict Resolution Policy.