



FNDHO
First Nations Digital Health Ontario



What is Circle of Care?

**Learn More About Sharing Personal Health
Information within the Circle of Care**

Circle of Care Review

“Circle of Care” is not defined in the Personal Health Information Protection Act (PHIPA) but it refers to those within an individual’s health care team who are actually involved in the care or treatment of a particular client.

Members of a client’s Circle of Care can rely upon “implied consent” to collect, use and disclose the client’s personal health information for the purposes of the client’s care. The notion of implied consent and Circle of Care allows the health care team to share information without obtaining the client’s express consent each time.

First Nation health centres are faced with different situations within their administration since they deliver a variety of programs and services through departments separate from health.

PHIPA sets out 3 requirements to establish whether a Circle of Care exists, which would permit a Health Information Custodian (HIC) to rely upon implied consent:

Recipient is a Health Information Custodian (HIC)

The recipient of the information must also be a HIC under PHIPA, such as:

- Regulated health care providers
- Hospitals
- Pharmacies and Labs
- Ambulance services
- Long-Term Care Homes
- Psychiatric facilities
- Retirement Homes
- Community health centres, programs or services
- Mental health centres, programs or services (including some Treatment Centres)

The following examples are **NOT** HICs, and therefore cannot be within a client’s Circle of Care, i.e. express consent is required from the client to share personal health information with:

- Employers
- Schools
- Family members
- ISC/NIHB
- Traditional healers
- Spiritual healers
- Police
- Child protection agencies
- Insurance Companies

First Nation Context:

A First Nation or Tribal Council that delivers health care programs and services is a HIC. The First Nation is a HIC only in relation to the health programs and services delivered and the personal health information collected within its health centre. Some examples of the distinction are listed in the chart on page 3.

② Purpose for Sharing

To fall under “implied consent” in the Circle of Care, the Personal Health Information must be shared for the purpose of providing or assisting in the provision of health care to the individual client. The HICs must be part of the direct or follow-up treatment of the individual. It can’t be used for things such as research or surveillance, fundraising, or for assisting a different client.

③ No Conflict with Previous Consent

The client must not have previously withheld or withdrawn consent in relation to the sharing. For example, if the client says “Don’t share this information with my family doctor.”

If these requirements are not met, the intended sharing is outside the client’s Circle of Care and you must either obtain express consent of the client OR find some other provision in PHIPA which permits sharing.

Application in a First Nations Context:

Disclosing Personal Health Information about a client to a person or department within the First Nation’s administration but outside of the health centre’s direct operations, should be considered outside the Circle of Care unless the other person or department also delivers health programs and services and would qualify as a HIC, separately.

Application in a First Nations Context Continued:

Disclosure Group Examples	In Circle of Care?	
School nurse	POSSIBLY	<ul style="list-style-type: none"> • The school nurse is a HIC. • Yes, they are within the Circle of Care if other PHIPA requirements are met: Purpose for Sharing and No Conflict with Previous Consent (p. 2). • No, if other PHIPA requirements are not met: Purpose for Sharing and No Conflict with Previous Consent (p. 2).
Registered social worker	POSSIBLY	<ul style="list-style-type: none"> • A registered social worker providing health services is a HIC. • Yes, they are within the Circle of Care if other PHIPA requirements are met: Purpose for Sharing and No Conflict with Previous Consent (p. 2). • No, if other PHIPA requirements are not met: Purpose for Sharing and No Conflict with Previous Consent (p. 2).
Provincially-licensed long-term care homes and retirement homes	POSSIBLY	<ul style="list-style-type: none"> • Provincially-licensed long-term care homes and retirement homes are HICs. • Yes, they are within the Circle of Care if other PHIPA requirements are met: Purpose for Sharing and No Conflict with Previous Consent (p. 2). • No, if other PHIPA requirements are not met: Purpose for Sharing and No Conflict with Previous Consent (p. 2).
Medical transport drivers	POSSIBLY	<ul style="list-style-type: none"> • Yes, they are within the Circle of Care if accountable to the health centre • No, they are not within the Circle of Care if accountable to First Nation administration and not directly to the health centre. Express consent is required to share information.
Jordan's Principle staff	POSSIBLY	<ul style="list-style-type: none"> • Yes, they are within the Circle of Care if accountable to the health centre. • No, they are not within the Circle of Care if accountable to First Nation administration and not directly to the health centre. Express consent is required to share information.
Indigenous Transition Facilitators (ITFs)	POSSIBLY	<ul style="list-style-type: none"> • Yes, they are within the Circle of Care if accountable to the health centre. • No, they are not within the Circle of Care if accountable to First Nation administration and not directly to the health centre. Express consent is required to share information.
School administration	NO	<ul style="list-style-type: none"> • No, the school is not a HIC and is not within the Circle of Care. Express consent is required to share information.
Chief and Council	NO	<ul style="list-style-type: none"> • No, Chief and Council is a political body and is not a HIC nor is it within the Circle of Care. Express consent is required to share information.
First Nation housing and food security programs	NO	<ul style="list-style-type: none"> • No, the housing department is not a HIC and is not within the Circle of Care. Express consent is required to share information.
Child protection agencies	NO	<ul style="list-style-type: none"> • No, a child protection agency is not a HIC and is not within the Circle of Care. Express consent or some other legal authority is required to share information.

Even if PHIPA permits a HIC to rely upon the Circle of Care, only the least amount of information should be shared that is required to allow the person to provide the services.

It's also important to note that the HIC may still decline to rely upon the "implied consent" and may seek express consent from the client at any time. Therefore, if you are not certain whether the sharing is permissible within the Circle of Care, you may ask for express consent. Sharing within the Circle of Care is not mandatory. It simply permits a minimal amount of sharing if the conditions are met.

Summary

There are 3 requirements to establish a Circle of Care, that would allow a HIC to rely upon a client's "implied consent" for the sharing of Personal Health Information.

1. Must be HIC to HIC sharing.
2. Sharing must be for the purpose of providing or assisting in the provision of health care to the individual client.
3. The client must not have previously declined consent for the sharing.

Always Remember:

There are special considerations when dealing with Personal Health Information sharing within First Nation administration. Because First Nations deliver a variety of programs and services for members, some of which are unrelated to health, each program or service should be evaluated as whether they would qualify as a HIC in their own right, before relying upon implied consent.

Relying upon implied consent for sharing within the Circle of Care is permissive and not mandatory. If in doubt whether sharing is permitted, obtain express consent of the client or refer to PHIPA for other provisions that may permit sharing.

Likewise, there are other situations which permit a HIC to share information without consent, beyond the implied consent provisions of PHIPA.

Example: Reporting under child protection legislation, or in certain emergency situation.

** This document only considers Circle of Care.*

Questions?

Email us at info@FNDHO.ca to learn more.



**Advancing Digital Health Capacity
for First Nations
in Ontario**