Australian Government

Australian Digital Health Agency

Understanding the My Health Record Emergency Access (break glass) provision

My Health Record

ACKNOWLEDGEMENT

We would like to acknowledge the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to Elders both past and present.

My Health Record

A secure, legislated, patient-controlled, electronic summary of an individual's key health information, able to be accessed by authorised individuals and registered healthcare providers involved in a person's care anywhere in Australia at any time.

- You can choose who it's shared with
- You can choose who can access it
- You can choose what's in it.

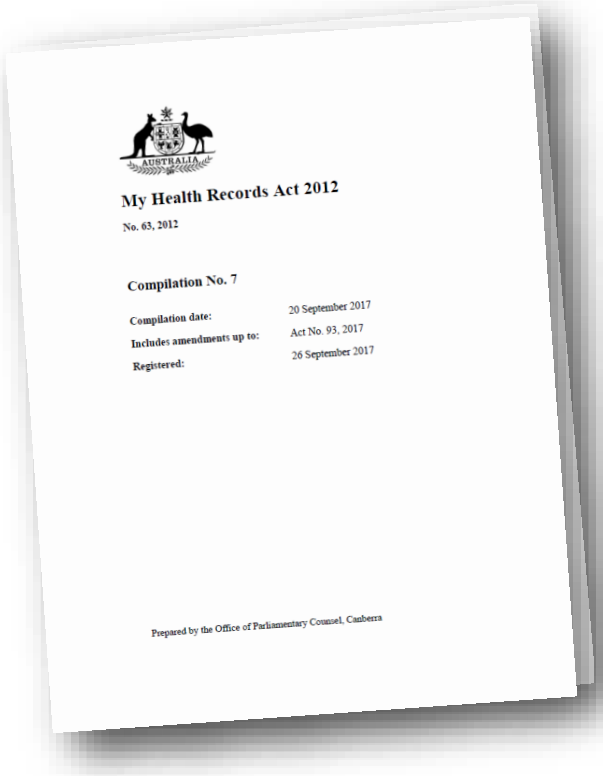
Legislation

The My Health Record system is supported by a legislative framework that sets controls around who can access the system and the information contained within.

Relevant acts and instruments include:

- My Health Records Act 2012
- My Health Records Regulation 2012
- My Health Records Rule 2016
- My Health Records (Assisted Registration) Rule 2015
- My Health Records (National Application) Rules 2018

Healthcare provider access to the My Health Record system



My Health Records Act 2012

No. 63, 2012

Compilation No. 7

Compilation date: 20 September 2017

Includes amendments up to: Act No. 93, 2017

Registered: 26 September 2017

Prepared by the Office of Parliamentary Counsel, Canberra

Under the *My Health Records Act 2012*, registered healthcare provider organisations are authorised to:

- upload information to the My Health Record System and
- view information in the System

for the purpose of providing healthcare services.

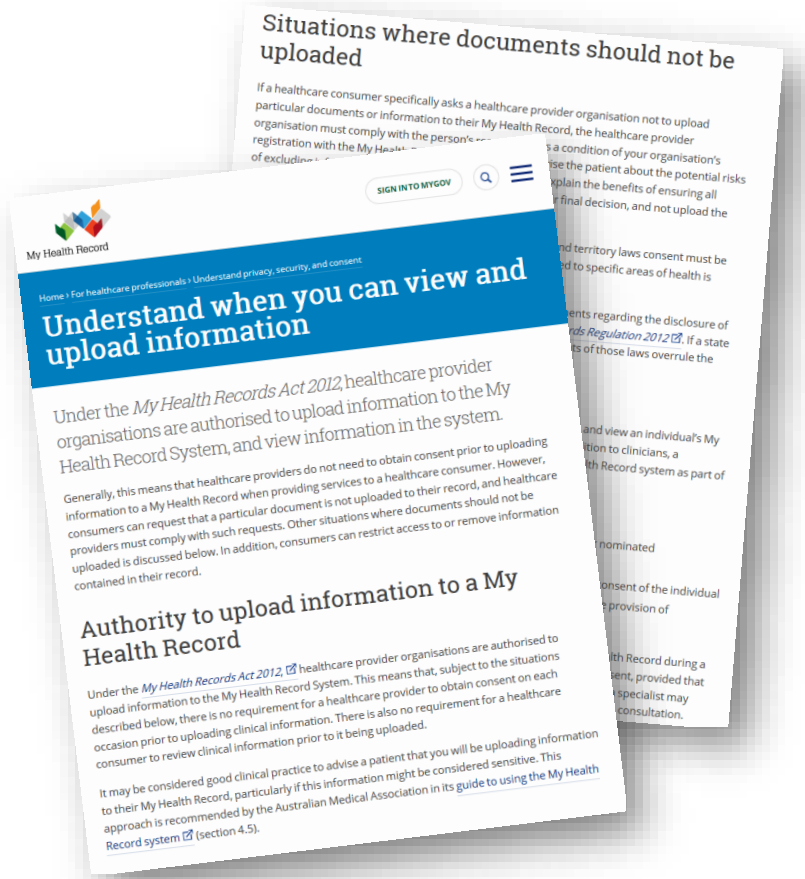
Access must be in accordance with access controls set by the individual.

When not to upload information

If a consumer requests that specific information ***not*** be uploaded, this request **must be adhered to**.

In addition, providers must comply with relevant state and territory laws relating to disclosure of specific health conditions (for example, HIV).

Additional information is available on the My Health Record website on the ‘Understand when you can view and upload information’ page.



Consumer access controls

By default, healthcare provider organisations have ‘general access’ to records in the My Health Record System.

This enables viewing of all documents within an individual’s record, *except* for

- information in the consumer-only notes section of the record
- any documents that the person has previously removed.

Individuals can choose to add additional access controls to their record to:

restrict access to their entire record, using a record access code

restrict access to specific documents

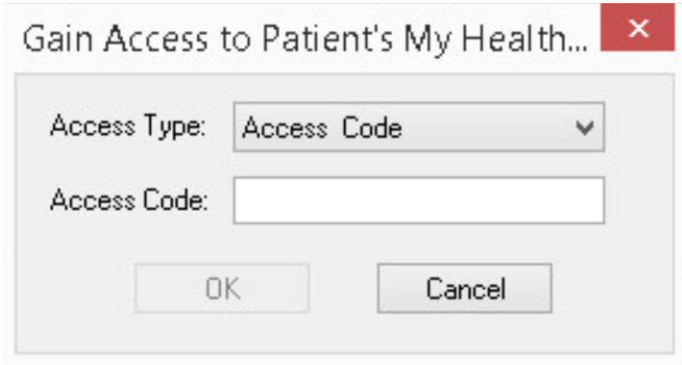
Set a limited document access code to enable sharing of restricted documents

Consumer access controls

Providers will be prompted by their clinical software if a record access code is required.

- If this occurs, ask the individual to provide the record access code to enable access to the My Health Record.

Best Practice RAC Prompt



MedicalDirector RAC Prompt

Consumer access controls

If specific documents are restricted, the individual can choose to give their providers a Limited Document Access Code.

- Providers need to enter this code into their clinical information system to gain access to the restricted document(s).

Alternatively, an individual can change access levels for their healthcare provider organisations using the “Manage Access by Healthcare Providers” screen within their My Health Record.

Access in an emergency

In an emergency, healthcare providers can access the My Health Record System via their clinical information system, or via the Provider Portal.

If consumer access controls are in place, a provider may bypass these controls if certain criteria apply – as defined in section 64 of the *My Health Records Act 2012*. This provision, known as the Emergency Access provision, is sometimes referred to as a ‘break glass’ function.

It is important to understand when this function can lawfully be used.

Emergency Access provision

The Emergency Access provision can ***only*** be used if the healthcare provider:

- reasonably believes that there is a **serious threat** to the **life, health and safety** of an individual; AND
- reasonably believes it would be **unreasonable or impracticable** to obtain the **consent** of the healthcare recipient whose My health Record is to be accessed

OR

The healthcare provider:

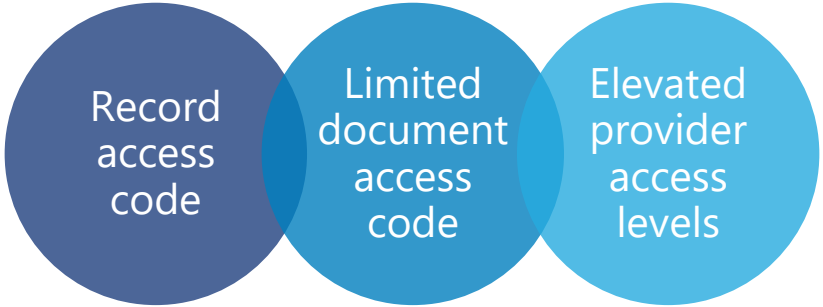
- reasonably believes that access to the record is necessary to **lessen or prevent** a **serious threat to public health or public safety**.

Consent and Emergency Access

The legislation states that Emergency Access should only be used where it is "***unreasonable or impracticable to obtain*** *the healthcare recipient's* ***consent***".

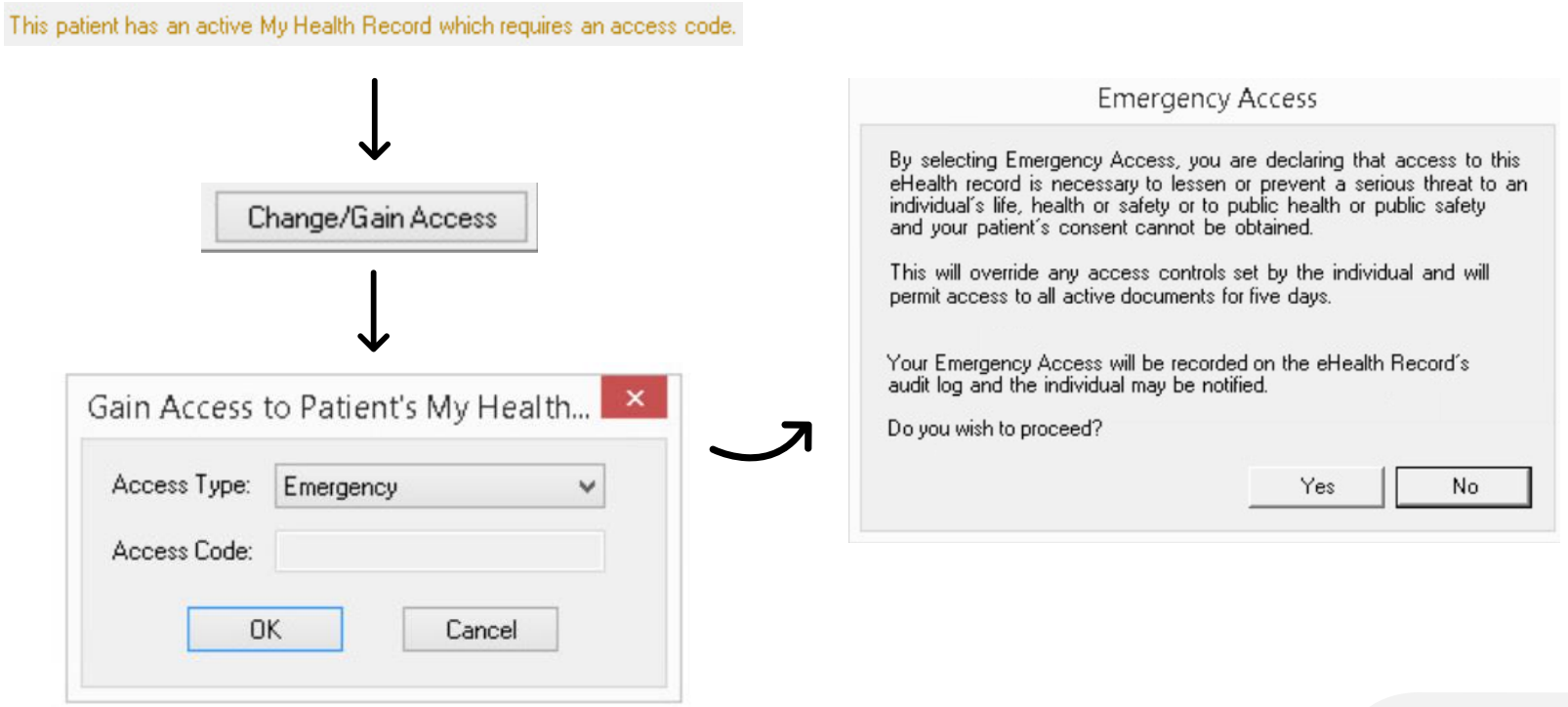
This relates to the fact that Emergency Access only needs to be used if access controls have been set (otherwise, access for providers is already available).

In this context, consent options include:

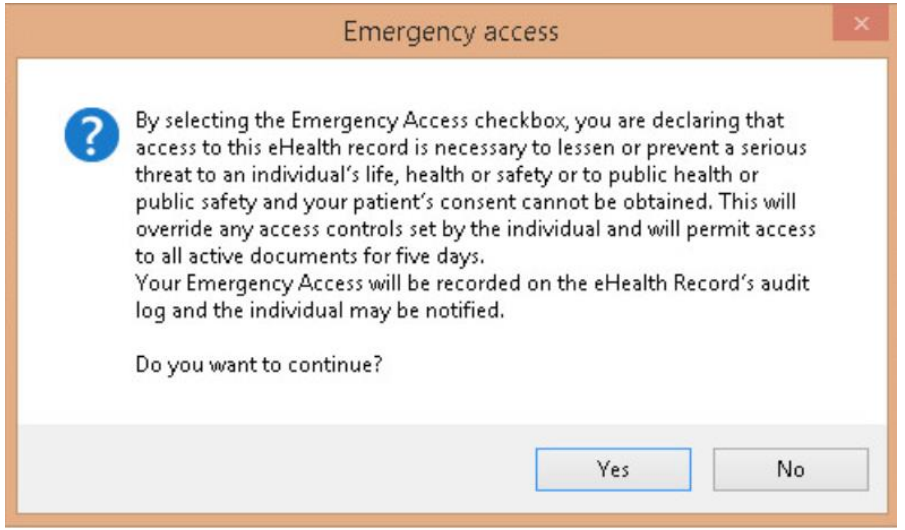


Therefore, to use Emergency Access in accordance with the legislation, it must be "**unreasonable or impracticable**" for the consumer to provide consent via one of these methods.

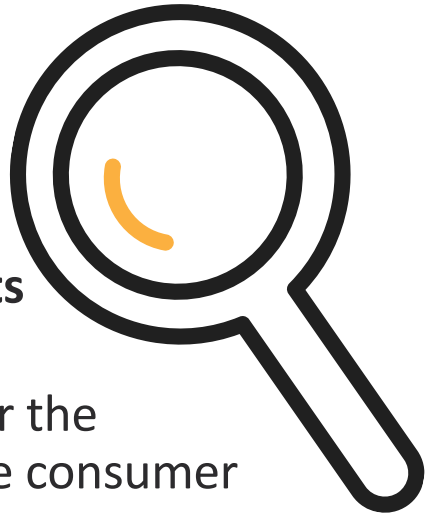
Using the Emergency Access Function in MedicalDirector



Using the Emergency Access Function in Best Practice



Use of emergency access is monitored



- Healthcare providers are prompted to accept a warning before emergency access is activated.
- It is important to **ensure that the legislative requirements apply** *before* you proceed.
- Use of emergency access is **listed in the access history** for the consumer's My Health Record – this can be viewed by the consumer and any authorised or nominated representatives.
- Consumers can also elect to receive an **SMS or email notification** whenever emergency access is used.

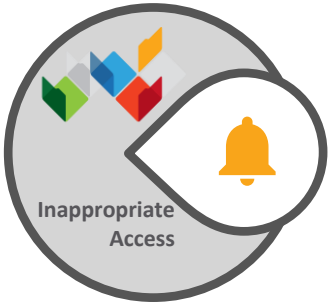
All use of the Emergency Access provision is **actively monitored** by the Australian Digital Health Agency, as System Operator of the My Health Record System.

Increased penalties for misuse of information

- Healthcare providers are authorised to use the My Health Record when delivering healthcare.
- My Health Record Harsher fines and penalties will apply for unauthorised access or use of My Health Record information

Prior to Amendment Bill	Current State
$126,000 for an individual	**$315,000 for an individual**
Up to 2 years' jail time for an individual	**Up to 5 years' jail time for an individual**

Examples of inappropriate use



You **must not** use emergency access:

- to check whether any restricted documents exist
  (except where there is a serious threat to the individual's life, health or safety and they are unable to provide consent; or to lessen or prevent a serious threat to public health or safety).
- to gain access when an individual has forgotten the access code they have set
  (except where there is a serious threat to the person's life, health or safety)
- to view your own My Health Record or a record of a family member
- to demonstrate how to use the emergency access function

It is important to note that unlawful use of the emergency access function is subject to **civil and/or criminal penalties** under the *My Health Records Act 2012*.

Additional information

Information about emergency access is available on the My Health Record website: www.myhealthrecord.gov.au

A printable brochure is available for you to share with your staff and colleagues. Visit:

- My Health Record Website

https://www.myhealthrecord.gov.au/for-healthcare-professionals/howtos/emergency-access

You can also email questions to: myhealthrecord.compliance@digitalhealth.gov.au

Australian Government
Office of the Australian Information Commissioner

November 2018

Privacy fact sheet 23

Emergency access and your My Health Record

Under the My Health Record system, healthcare providers can obtain emergency access to your record in certain circumstances. This factsheet explains who can obtain emergency access and in what situations, what information can be accessed and how long the access lasts.

What is a My Health Record?

A My Health Record is an online summary of your health information, such as medicines you are taking, any allergies you may have and treatments you have received. It was previously known as a Personally Controlled Electronic Health Record (PCEHR) or eHealth record.

Your My Health Record allows your doctors, hospitals and other healthcare providers (such as physiotherapists) to view your health information, in accordance with your access controls. You are also able to access it online yourself.

The My Health Record system opt-out period commenced on 16 July 2018, and you now have until 31 January 2019 to advise the Australian Digital Health Agency if you do not want a My Health Record to be automatically created for you. Although the My Health Record system has previously been a self-register model, every individual with a Medicare or Department of Veterans' Affairs card who does not already have a record will now be automatically registered to have a My Health Record, unless they choose not to have one.

For further information about the My Health Record and what to do if you don't want a record created, visit the My Health Record website or call the My Health Record Help line on 1800 723 471. You can also read the OAIC's opt-out FAQs.

Who can gain emergency access to your My Health Record?

Under the *My Health Records Act 2012* (My Health Records Act), healthcare provider organisations, the System Operator (the Australian Digital Health Agency) and other system participants (such as registered repository operators, registered portal operators and

OAIC

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https://www.oaic.gov.au/individuals/privacy-fact-sheets/health-and-digital-health/privacy-fact-sheet-18-the-oaic-and-the-my-health-record-system

Questions

Contact us

Help Centre	1300 901 001
Email	help@digitalhealth.gov.au
Website	digitalhealth.gov.au
Twitter	twitter.com/AuDigitalHealth

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