

Access to Information and Representation Agreements

This fact sheet is for representatives, appointed in a Representation Agreement, and discusses your rights and duties with respect to accessing information about the adult.

Why is access to information important?

You will need authority to access information about the adult in order to help them.

If you do not have this authority, privacy legislation prevents professionals and third parties from discussing information about the adult with you or providing access to records.

What authority do I have as a representative?

As a representative, you have the same right to access information about the adult as the adult has for themselves, if it relates to your area(s) of authority.

If you have authority to help the adult with health and personal care matters, you can

access information such as the adult's diagnosis and proposed treatment. You will also have access to test results and other medical reports.

If you have authority to help the adult with routine financial affairs, you may access documents and records from the bank/credit union, Canada Revenue Agency and other provincial and federal institutions involving finances.

As well as the right to access information, you can release/provide information about the adult to others when carrying out your duties. However, you also have a duty to keep the adult's information private except for necessary purposes.

Introducing yourself and the Representation Agreement

The Representation Agreement is proof of your authority and you will need to have it available when acting in your role as representative.

1. Do not lose the original or let any third party keep it. While you need to keep the original safe, remember it also has to be accessible when you need it.
2. Make sure your paperwork is complete before taking it or sending it to a third party. Check that you have signed the Agreement. Is there a monitor or alternate who needs to sign?
3. It may be wise to take/send a copy of the [Definition of Routine Management of Financial Affairs](#) when dealing with a financial institution, Canada Revenue, Motor Vehicle Branch and others.
4. Remember that if you are using a Representation Agreement Section 7 (RA7), the accompanying Certificates are part of the legal document.

Providing the Agreement in person

- If you are providing the Agreement in person, you may also need to produce photo identification to prove you are the person appointed as representative.
- A photocopy is usually sufficient for health care providers or the hospital. See heading on page 3 about accessing medical records.
- When dealing with a financial institution, you will need the original the first time. Do not go to the teller—meet with a financial services specialist. They can make a copy of the original and sign it as a true copy. They must give the original back to you.

Providing the Agreement by mail/fax

- You may need to provide a copy of the Agreement by regular mail or fax.
- Some institutions may require you to send a *certified* copy by regular mail. To do this, you can take the original to a lawyer or notary public and ask them to certify a *true copy of the original*. They will charge a fee for this. You can mail the certified/true copy to the institution to put on file.

Can anyone appointed in the Representation Agreement request information?

No. Only the representative has authority to access the adult's information. The Agreement might name a monitor or alternate(s) but they do not have the authority to access information from a third party. (A representative may share information with the alternate and monitor once they have it.)

If an alternate is acting in the place of a representative, the right to access information is passed on to that person as long as they are in the representative role.

What information am I legally entitled to access as a representative?

The Representation Agreement Act, in Section 18, says that a representative may request the same information and records that the adult is entitled to if they relate to:

- a) the representative's area(s) of authority; or
- b) the adult's incapability.

A representative's area of authority is determined by the Representation Agreement Act and the wording in the Representation Agreement. Check the Agreement for a heading called *Authority of Representative*. This will tell you what area(s) your authority covers—health care, personal care, routine management of financial affairs and/or obtaining legal services.

The right to access information relates to your area of authority for decision making. For example, a representative who has authority for health and personal care can access health care records and has authority to assist or act on the adult's behalf with respect to health care decisions.

A representative is also entitled to information related to the adult's incapability, regardless of their area(s) of authority. This might involve assessments of the adult's mental abilities and how that relates to diagnosis, treatment or qualification for services.

Elsie

A few years ago, Elsie made a Representation Agreement for health and personal care appointing her sister Dorothy as her representative and her brother Otto as the alternate. She also made a separate Representation Agreement Section 7 for legal affairs and routine finances naming Otto as her representative and Dorothy as the monitor. When Elsie developed dementia, she eventually had to move to a care facility. Her siblings visit her regularly and are actively involved in helping to manage her affairs. Although the staff know both Dorothy and Otto,

Dorothy is the representative who has authority to view and discuss health and personal care matters concerning Elsie. If Dorothy is not available, Otto, the alternate, can move up to replace her and he will have the same authority.

On the other hand, Otto is the representative who has authority to access Elsie's tax information from her accountant or Canada Revenue Agency. As the monitor, Dorothy cannot move up to replace Otto in accessing information or making decisions; only the person in the representative role has that authority.

Jai

Jai has a developmental disability and lives with a home share family. Jai made a Representation Agreement Section 7 (RA7) with his parents and older brother. The Agreement covers all four areas of authority. Jai's parents are his representatives and his brother is the alternate. The Agreement says they must act together (jointly) for routine management of financial affairs. This means both representatives should be listed with third parties to enable access to information related to Jai's finances. Third parties may prefer to correspond

with one representative but both representatives are responsible for being up-to-date. They must act jointly when helping Jai with decisions or management of his financial affairs.

The Agreement says that the representatives may act independently (one or both) for other areas. This means that if there are concerns about Jai's living arrangements (personal care), either one of the representatives may follow up with the service providing agency or Community Living B.C.

How do I access medical records?

You may need to access the adult's medical records from a hospital or mental health assessment program as part of an insurance claim, to apply for services or to review for accuracy. You may be asked to complete a *Request to Access/Release of Patient Information form* and to provide a copy of the Representation Agreement as proof of your legal authority.

Although the law says that you may access records if they relate to your area of authority, a representative who does not have authority for health care but does have authority for legal affairs may access medical records if it is necessary in order to fulfil their duties.

For example, if Elsie was in a car accident when taking a day trip she would need help with the accident claim. Dealing with the claim falls under Otto's authority for legal affairs. However, he will need access to Elsie's medical records. Dorothy can get these as she has authority for health care but if she is busy helping Elsie get care for her injuries, Otto can use his authority for legal affairs to access Elsie's relevant medical records as they are required for settling the insurance claim.

What information is an adult entitled to?

People are entitled to see almost any file that concerns them. There are rare exceptions, such as when the release of a document would somehow breach national security or compromise an investigation by law enforcement, but in most cases people may access all information and records that relate to themselves. For example, an adult is entitled to information in their medical file kept by their doctor and/or at the hospital.

What if I am refused access to information or records?

If you have ensured your paperwork is in proper order and you have explained that you are assisting the adult to manage their affairs yet you are still having difficulty obtaining information, ask the third party to explain the reason.

If the institution still does not recognize your authority and refuses the request, the next step is to put the request in writing, stating what information you require and providing a copy of the entire Agreement and your contact information. Ask them to respond in writing so you have a record.

Refusals do arise sometimes because the legislation regarding Representation Agreements is still quite recent and institutions may not be familiar with it. Besides putting the request in writing and providing a copy of the RA, you can also refer staff to Nidus (www.nidus.ca), the Office of the Public Guardian and Trustee and/or the Ministry of Justice.

If the institution rejects your request, you may need to contact the relevant office that governs privacy and access of information for the institution. Unless you know for sure you are dealing with a federal institution, the best place to start is with the Office of the Information and Privacy Commissioner for BC - <http://www.oipc.bc.ca/for-the-public.aspx>.

Rules of Confidentiality – when may I share the adult's information with someone else?

The law states that as a representative you must not disclose information or records obtained in the exercise of your authority except to the extent necessary:

- (a) to perform your duties;
- (b) for the purposes of an investigation by the Public Guardian and Trustee; or
- (c) to make an application to or comply with an order of the court.

This means that if you are a representative with authority for routine management of financial affairs, you may, for instance, provide an accountant with relevant information about the adult's finances. However, you may not disclose information about the adult to others if it is not related to your duties.

For example, Otto is named as Elsie's representative in her RA7 and has authority over her routine financial matters. Otto may provide Elsie's income tax information to her accountant so that he may prepare her tax return. He may not, however, discuss the details of Elsie's finances in conversation with Elsie's neighbour, as this disclosure is not necessary to perform his duties and may be a violation of Elsie's privacy.

If the Representation Agreement names more than one representative and/or an alternate(s), you will need to share information with them to avoid misunderstandings and to facilitate their roles. It could be particularly important for the alternate(s) to know what is going on if they have to act on short notice. Since the monitor's role is to make sure the Agreement is working for the adult, reviewing records falls naturally under their duties. If the adult also has an Enduring Power of Attorney, you will need to share information with the attorney(s) as well. Any alternate, monitor or attorney also has a duty to keep the adult's information private.

In the case of Dorothy and Otto, Dorothy is the one who accesses Elsie's health and personal information and Otto has access to her financial and legal information. However, they will need to share this information with each other in order to fulfill their duties.

Elsie's eligibility for a subsidized bed in residential care and other health care services will depend on her tax assessment. There will be costs for equipment, clothing and other health and personal care needs. Essentially Dorothy and Otto will work as a team in order to carry out Elsie's wishes and meet her needs.

Can I authorize someone else to have access to the adult's information?

A representative may be able to authorize someone else to access information about the adult's affairs. For example, the Canada Revenue Agency (CRA) allows someone with legal authority to act on the adult's behalf to grant access to their tax information to another individual or business.

Jai's representatives may add Jai's brother, the alternate, to the list of those authorized to access information from CRA.

It is important to distinguish between the authority to access information and the authority to make decisions. A representative cannot grant or delegate their authority for decision making to anyone else, except in the area of investments and only according to specific requirements.

In the case of health and personal care, it is common that friends and family may accompany the adult to a medical appointment or discuss an issue with staff at the facility. However, these friends and family will need to communicate any information to the representative as only the representative has authority for decision making.

In Jai's situation, the home share provider may accompany Jai to an appointment with the doctor or dentist. If the doctor or dentist determines Jai is not capable of informed consent, then they must get consent for any treatment from one of the representatives authorized for health and personal care. It is the representative who has authority to assist Jai or if necessary, to act on his behalf.

Some third parties may not allow you to authorize anyone else to access information. In any case, the best approach is to be in good communication with everyone involved in the adult's life and to ensure the roles and duties are clear.

Additional Resources

Nidus has many resources on our website. Click on the links below or find them at www.nidus.ca
- Information - Representation Agreement - Resources.

[Definition of Routine Management of Financial Affairs](#)

[Role of Representative](#)

[Role of Monitor](#)

[Confirmation of Substitution Form](#)

[Resigning as a Representative or Alternate](#)

[Access to Information as an Attorney in an EPA](#)

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