

***Health Information Act***  
***Education for all Health PEI Staff***

August 2017



## *Health Information Act*

- New legislation for PEI - rules for personal health information
  - Came into force July 1, 2017
- PEI Information & Privacy Commissioner has power to review complaints and order Health PEI to take actions
  - Violations of the Act are subject to fines and imprisonment

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You may have heard about the HIA already, as there has been a lot of work to get this important law ready for PEI. Up until now, our rules for privacy were mostly set by the Freedom of Information and Protection of Privacy (FOIPP) Act, which was not designed for health care and created some challenges. This new legislation, the HIA, is specifically designed for personal health information and allows that information to flow appropriately between health care providers for the purpose of delivering care to patients, clients and residents. (Health Information Act is abbreviated HIA and personal health information is abbreviated PHI throughout these speaking notes)

The HIA became law on PEI as of July 1, 2017. The great news is that Health PEI has already been following important privacy rules in the FOIPP Act, in our policies and as part of professional and ethical standards. Privacy and confidentiality are not new concepts for us and there is very little change to our day-to-day practices at the frontline required for July 1.

Under the HIA, the Commissioner has authority to review complaints and order Health PEI to take actions based on her review. If we receive an order from the Commissioner, we are required by law to follow it.

Intentionally breaking the rules outlined in the HIA is a serious offence and can be subject to fines up to \$15,000 for individuals and a maximum of 6 month prison term.

FOR MORE INFO – Department of Health & Wellness website ([www.princeedwardisland.ca](http://www.princeedwardisland.ca))  
Commissioner's website ([www.legislativeassembly.pe.ca](http://www.legislativeassembly.pe.ca))

## *What stays the same for Health PEI?*

- Collect, use and disclose personal health information only as required for purposes of care or treatment and to manage the health care system
  - Minimum amount + need to know basis
- Protect personal health information in your care
  - Keep passwords safe, lock filing cabinets, etc

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The HIA will better protect PHI going forward but privacy has always been important for Health PEI. It's important to educate everyone on what's new with the HIA, but equally important to remind all physicians and staff of the current rules and obligations regarding privacy and confidentiality.

One of those rules that has always been in place is limits on collection, use and disclosure of PHI. Health PEI is permitted to collect, use and disclose only the minimum amount of PHI that is necessary for the purpose of delivering care. We also collect and use PHI for managing the health care system, which includes things like evaluating our services and planning new programs.

PHI can be used to make decisions and recommendations on care and treatment. Staff and physicians are only permitted to access PHI on a need to know basis. An example of inappropriate use of PHI would be accessing your neighbour's chart to see why you saw them sitting in the ED waiting room. This is sometimes called "snooping" and is a very serious matter, even if you don't tell anyone else what you read in the chart. There have been highly public cases across Canada of health care professionals being disciplined, fired or charged fines for snooping. You are only permitted to access PHI that you require for the purposes of providing care to a patient, client or resident, or that you require in order to perform your job duties.

Disclosure refers to sharing or releasing someone's PHI to an individual outside of Health PEI. PHI should only be disclosed for the purposes of care, with consent, or as authorized by legislation. An example of unauthorized disclosure of PHI would be posting about a patient, client or resident on social media. Unauthorized disclosure is also subject to discipline, up to and including termination, and fines or imprisonment under the HIA.

Every staff member should be able to answer the question "For what purposes does Health PEI collect, use and disclose my personal health information?" ANSWER: For the purposes of providing you with health care or treatment and for managing the health care system.

We all have a responsibility to keep PHI safe and confidential by protecting it from unauthorized access.

FOR MORE INFO: Health PEI Privacy and Protection of PHI Policy (Coming soon)

## What stays the same for Health PEI?

- Individuals have a right to review and/or receive a copy of their personal health information
  - Follow protocol (Preparation of Personal Information for Disclosure)
- Personal health information can be disclosed to law enforcement and where required by law
  - Follow Disclosure to Law Enforcement policy (form required)
  - Example of required disclosure: *Child Protection Act*

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Patients, clients and residents have a legal right to review and/or receive a copy of their medical chart or PHI, with very limited exceptions. It is sometimes said that Health PEI owns the computers and paper that the PHI is recorded on, but the information itself belongs to the individual it is about. One example of an exception to the right to access is where receiving the PHI could cause harm to the person. If you think this exception may apply, talk to your Manager or Supervisor. The right of access includes individuals receiving an audit of all staff who have accessed their electronic chart.

Individuals can request correction of their PHI but must provide proof of the correct information (for example – to correct a wrong date of birth on file, show ID with correct date). Health PEI is not permitted to correct an opinion or observation in a patient's chart, however we are required to allow the patient to provide a statement of disagreement for filing in the chart.

Health PEI can disclose PHI without consent to law enforcement for the purposes of an investigation or criminal charge. The police must fill out a form, providing the name and identifiers of the person and indicating the reason PHI is required. If you receive a request for PHI from law enforcement, contact your Risk Manager.

Health PEI is required to disclose PHI without consent by some laws, including Child Protection Act.

FOR MORE INFO: Preparation of Personal Information for Disclosure Protocol  
Disclosure of Personal Information to Law Enforcement Agencies – Without Consent  
Policy

## *What's new in the Health Information Act?*

- Applies to “personal health information”
  - Information relating to an individual's health and health care
- Applies to public and private health care providers who collect, use or disclose personal health information
  - Referred to as “custodians” in the Act
  - Includes health care providers outside of Health PEI

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The HIA applies to personal health information. This is defined to include information about a person's health, care and treatment and many other health related pieces of information such as family medical history, genetic information and organ/tissue donation.

The HIA applies to all custodians in PEI, whether they work for Health PEI or in a private clinic or practice. A custodian is defined as a person or organization that collects, use or discloses PHI for the purposes of delivering health care, managing the health system or delivering a government program or service. Health PEI is a custodian under the HIA.

“Health care” is also a defined term in the HIA, which broadly includes any care, service or procedure carried out for a health-related purpose, including diagnosis, treatment, maintenance and health promotion.

Custodians include but are not limited to independent health care professionals (physiotherapists, pharmacists, physicians, chiropractors, naturopaths, optometrists, dentists, etc), private nursing homes and Island EMS. The Workers Compensation Board, unions and insurance companies are not custodians under the HIA.

FOR MORE INFO: Visit the Department of Health and Wellness website ([www.princeedwardisland.ca](http://www.princeedwardisland.ca))

## *What's new in the Health Information Act?*

- Personal health information can be shared between custodians for the purposes of caring for a patient, client or resident
  - Sometimes referred to as “circle of care”
  - Consent can be implied (see next slide)
  - Not limited to within Health PEI
  - Limitations: minimum amount + need to know basis

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This is perhaps one of the most significant features of the HIA to support the necessary flow of PHI in delivering person-centred, team-based care. The HIA permits disclosure (or sharing) of PHI between health care providers for the purposes of care, often referred to as the individual’s “circle of care”. HPEI has done a lot of work on sharing PHI between programs and within the walls of HPEI, but this new feature of the HIA will allow the circle of care to include all custodians involved in the individual’s care. HPEI can rely on implied consent for this sharing, unless the patient has expressly asked us not to disclose their PHI.

There are limitations and restrictions to sharing information in the circle of care, mainly that the minimum amount of PHI is shared and on a need to know basis. For example – a physiotherapist providing care to a patient for an injury would not have a need to know about the patient’s mental health care.

FOR MORE INFO: Health PEI Privacy and Protection of PHI Policy (Coming soon)

## *What's new in the Health Information Act?*

- Consent – definitions
  - Implied consent – we assume the individual consents
  
  - Express consent – we actively ask the individual if they consent
    - Can be verbal or written, but must be documented

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Consent is a critical component of privacy and the HIA will give us much clearer guidance on this issue. First, let's review definitions for two types of consent.

With implied consent, we assume that the individual consents based on their actions (i.e. showing up for an appointment, presenting to ED).

Express consent involves an active question to the person to ask if they consent to a proposed action. Express consent doesn't necessarily need to be a signed form and can be obtained verbally but must always be documented in the person's chart or record.

## *What's new in the Health Information Act?*

- Implied consent can be relied on for collection, use, or disclosure of personal health information for the purposes of care, in most circumstances
  - We have an obligation to make the public aware of our privacy practices
- Express consent is required for:
  - disclosure of personal health information to someone other than a health care provider, or
  - disclosure of personal health information for a non-health related purpose

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We will be able to rely on implied consent for the collection, use and disclosure of PHI in most cases. In order to rely on implied consent, Health PEI must ensure that the public is given notice that their PHI will be collected, used and disclosed for the purposes of their care. We will be updating the posters that you may have in your facility and posting information on the Health PEI website.

There are 2 specific instances when express consent is required in the HIA: for disclosure to a non-custodian or for a non-health related purpose (examples – sending copy of an individual's chart to an insurance company or providing medical information to an individual's employer).

FOR MORE INFO: Health PEI Privacy and Protection of PHI Policy (Coming soon)



## *What's new in the Health Information Act?*

- Consenting on behalf of others
  - Substitute decision makers can consent to the collection, use or disclosure of personal health information if the individual is unable to consent
  - Family members or personal representative can consent to the collection, use or disclosure of personal health information on behalf of a deceased individual

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The HIA also gives guidance on who can consent on behalf of someone who is unable to consent for themselves. We know this is a common concern in health, whether in terms of a patient at ED who is not conscious or a long term care resident with advanced dementia. The Act allows a substitute decision maker (SDM) to consent regarding PHI in these instances. SDMs have always been able to consent to treatment under the Consent to Treatment and Health Care Directive Act, but this did not extend to consenting in regards to PHI. HIA outlines who can act as a SDM when it comes to consenting in regards to PHI, in order of priority (personal representative, guardian, spouse, adult child, parent).

Similarly, the HIA authorizes certain individuals to consent on behalf of a deceased individual. An example of when this could be useful is consenting to disclosure of PHI to an insurance company for the purposes of a life insurance claim.

FOR MORE INFO: Health PEI Privacy and Protection of PHI Policy (Coming soon)  
Consent to Treatment and Health Care Directive Act

## *What's new in the Health Information Act?*

- **Mandatory breach reporting**
  - **What is a privacy breach?**
    - If personal health information is lost, stolen, accessed inappropriately or disclosed without proper authorization
  - **What to do if you discover a breach?**
    - Notify your Supervisor and create Privacy Breach incident in PSMS
  - **With some exceptions, breaches must be disclosed to the individual and reported to the Commissioner**

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The HIA will introduce mandatory disclosure and reporting of privacy breaches. HPEI already has the foundation in place for this new requirement – we report breaches in PSMS, follow the Disclosure of Patient Safety Events Policy in informing the affected individual and voluntarily report significant breaches to the Commissioner.

All Health PEI staff have a responsibility to report breaches that they discover or are made aware of.

In some cases, breaches may not result in any impact to the care or wellbeing of the individual, and disclosure to the individual and reporting to the Commissioner are not required. An example of a breach with little to no adverse impact on the individual could be blood work results faxed to the incorrect physician, where lab staff immediately catch the error and contact the recipient, who then securely destroys the PHI.

The decision on whether or not disclosure and reporting is required must be made with your Supervisor or Manager, in consultation with the Manager of Privacy & Access and Risk Management.

FOR MORE INFO: Patient Safety Incident Reporting Policy  
Disclosure of Patient Safety Incidents Policy  
Privacy Breach form on PSMS

## ***Health Information Act – Other Topics***

- Research using personal health information
- Privacy Impact Assessments
- PEI Electronic Health Record
- Drug Information System

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For this presentation, we've covered the highlights of the new legislation but the HIA does cover several other topics related to PHI.

FOR MORE INFO: Speak with your Supervisor or email [healthprivacy@ihis.org](mailto:healthprivacy@ihis.org)

# QUESTIONS?

Questions can be submitted to [healthprivacy@ihis.org](mailto:healthprivacy@ihis.org)

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