

Personal Health Information Act
State of Readiness Audit
Private Sector Custodians

The *Personal Health Information Act* (PHIA) was passed by the House of Assembly in 2008. The Act establishes rules related to the collection, use and disclosure of personal health information (PHI). It also provides individuals with the right to access and request correction of their own PHI subject to limited and specific exceptions. Personal Health Information (PHI) is defined in subsection 5(1) of the Act as “identifying information in oral or recorded form about an individual that relates to

- (a) the physical or mental health of the individual, including information respecting the individual's health care status and history and the health history of the individual's family;
- (b) the provision of health care to the individual, including information respecting the person providing the health care;
- (c) the donation by an individual of a body part or bodily substance, including information derived from the testing or examination of a body part or bodily substance;
- (d) registration information;
- (e) payments or eligibility for a health care program or service in respect of the individual, including eligibility for coverage under an insurance or payment arrangement with respect to health care;
- (f) an individual's entitlement to benefits under or participation in a health care program or service;
- (g) information about the individual that is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service;
- (h) a drug as defined in the *Pharmacy Act*, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care professional; or
- (i) the identity of a person referred to in section 7.”

The Act applies to both public and private custodians of personal health information. It is available on the Government of Newfoundland & Labrador website at <http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>

Preceding the Proclamation of the *Personal Health Information Act* (PHIA) which is expected before 2010, all custodians of personal health information, employees, agents, volunteers and all regulated professions must be informed about the act and their roles and responsibilities as defined in the act. Custodians of personal health information are listed in the legislation and include all users of personal health information such as public and private health facilities, health care professionals, ambulance services, pharmacies, the Centre for Health Information, Schools of Nursing, Memorial University Schools of Pharmacy, Nursing, and Human Kinetics and Recreation, and Faculty of Medicine, rights advisors under the Mental Health Care & Treatment Act and others.

Note: This readiness audit is designed to assist custodians evaluate their current level of preparedness for compliance with the Act. Completing this readiness audit may help identify deficiencies. It is also an opportunity to identify priorities related to education or policy/standards development that may be needed to ensure compliance with key sections of the Act. It is not meant to be a thorough list of your organization's legal obligations. For a complete statement of the law, refer to the official text of PHIA.

The pronoun 'You', used in the questions, refers to the custodian whether that is an individual or organization.

Name of Organization/Company: _____

Branch/Division: _____

Name(s) of Individual(s) Completing This Form: _____

Contact Person: _____

Title: _____

Telephone: _____

E-mail: _____

Date: _____

Practices to Protect Personal Health Information

The *Personal Health Information Act* requires custodians to have policies in place that protect the personal health information in their custody or control and stipulates that information is used only for the purpose it was collected. (Section 13)

Policies & Procedures

1. Do you have policies/procedures related to the **collection, storage, transfer, copying/ modification, use, retention and disposal** of personal health information?

2. Do these policies and procedures encompass the scope of services you provide?

3. What challenges, if any, do you anticipate related to ensuring that personal health information is used only for the purpose it was collected?

Question: What are your challenges concerning PHIA related policies and procedures? What are possible solutions?

The *Personal Health Information Act* requires that custodians provide education to all individuals involved in their company from employees to contractors and volunteers. (Section 14)

Obligations of Employees, et al

4. Do your employees, agents, contractors and volunteers take an oath or affirmation of confidentiality?

5. What challenges, if any, do you anticipate in meeting the PHIA requirement that all employees, agents, contractors and volunteers have awareness of their responsibilities under the *Personal Health Information Act*?

6. What challenges, if any, do you anticipate related to ensuring that the vendor(s) supporting your electronic records are aware of their responsibilities under the *Personal Health Information Act* and are compliant with the regulations?

Question: What are your challenges related to providing PHIA education? What are possible solutions?

The *Personal Health Information Act* requires custodians to provide security related to personal health information. This security is required for all forms of personal health information. (Section 15)

Security

7. What security provisions do you have in place, administrative, physical and technical, to protect personal health information against theft, damage, loss, unauthorized access, use or disclosure?

8. What security provisions do you have in place to ensure personal health information is retained, transferred and disposed/deleted in a secure manner?

9. How do you document that personal health information has been destroyed and/or deleted?

10. Have you identified all the personal health information under your custody or control that you need to protect including electronic, hardcopy and biologics?

11. Do you provide information to staff relating to security procedures and their security responsibilities?

12. Do you inform an individual, who is the subject of personal health information, of a breach that resulted in their information being stolen, damaged, lost, disposed of inappropriately or disclosed to an unauthorized person?

Question: What are your challenges related to providing security? What are possible solutions?

Under the *Personal Health Information Act* custodians have a responsibility to provide personal health information that is accurate and up to date. (Section 16)

Accuracy of Information

13. Do you have policies/procedures related to the appropriate sharing of personal health information?

14. What process do you have in place to ensure the accuracy, completeness and up to date nature of the information you are disclosing and that disclosure is provided to the intended and authorized recipient?

15. The option of limited consent is available in PHIA. (Section 27(1). What challenges, if any, do you anticipate concerning the practice of informing the recipient of any limitations related to the information you are disclosing?

Question: What are your challenges related to ensuring accuracy of information? What are possible solutions?

The *Personal Health Information Act* requires custodians to identify a person or persons to take responsibility for compliance, education, public inquiries and access or correction requests. (Section 17 & 18)

Designate/Contact

16. What responsibilities would you assign to the designate and/or contact person and what accountability mechanisms would you utilize to ensure the designate and/or contact person is fulfilling their obligations?

Question: What are your challenges related to identifying designates and/or contacts?

Written Public Statement (Section 19)

17. What type of accessible information do you provide individuals concerning your personal health information policies and procedures?

18. Are you currently informing individuals of the purpose for the collection, use and disclosure of the personal health information they are providing? If so, what process do you utilize?

Question: What are your challenges related to public statements? What are possible solutions?

The *Personal Health Information Act* requires custodians to obtain consent for the collection, use or disclosure of personal health information. This consent may be implied or express. (Part III)

Consent

19. Do you have policies/procedures related to consent for collection, use and disclosure of personal health information?

Question: What are your challenges related to PHI consent? What are possible solutions?

The *Personal Health Information Act* provides individuals with the right to access and request correction of their own PHI subject to limited and specific exceptions. (Part V)

Access & Correction

20. Do you have processes in place to facilitate an individuals' right of access to personal health information in your custody or control?

21. Do you have processes in place to determine the outcome of a request for correction to personal health information in your custody or control?

22. Do you have processes in place to inform those to whom you have disclosed the information that a requested correction to personal health information has occurred?

Question: What are your challenges related to providing access or correction? What are possible solutions?

Question: The Personal Health Information Act Steering Committee represents public and private stakeholders including the Regional Health Authorities, professional associations, professional regulatory bodies, research, and others. We are interested in what you think and are inviting you to fax your response to the questions below Legislative & Regulatory Affairs, Department of Health & Community Services at 729-5824.

What role should the Department of Health & Community Services provide to the private sector to help facilitate compliance with the *Personal Health Information Act*?

What role should your regulatory body provide to the private sector to help facilitate compliance with the *Personal Health Information Act*?
