

MEMORANDUM

TO: Robyn Murphy
Chairperson, Council, PEI College of Physiotherapists

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Registrar, PEI College of Physiotherapists

FROM: Chris Montigny & Emily MacDonald

DATE: July 6, 2017

SUBJECT: New PEI Legislation – Health Information Act

As you may already be aware, the *Health Information Act*, (“HIA”) passed by the Prince Edward Island Legislature in 2014 is coming into force in July, 2017. The purpose of the HIA is to protect personal health information (“PHI”) in the health care system. The HIA establishes rights for individuals to access and correct their PHI and it creates obligations around the collection, use, management and disclosure of PHI which may affect you or your business as a health care provider.

PHI is defined broadly and includes identifying information about one’s physical and mental health, health care history, family health history, personal health number and medications.

The following information should answer some of your questions about the new HIA.

What Members are Included?

Public and private sector health care providers who collect, maintain, use or disclose personal health information for the purpose of providing health care or treatment are considered “Custodians” under the HIA. Employees, contractors or volunteers that act on behalf of a custodian in respect of PHI are considered agents of the custodian.

An example prepared by the Department of Health in its *FAQ’s for Custodians*¹ explains the difference between custodian and agent as follows:

Example: Bob is one of five physiotherapists employed by a private physiotherapy clinic. Each physiotherapist collects PHI from clients which is stored in records of the clinic. The physiotherapy

¹ https://www.princeedwardisland.ca/sites/default/files/publications/dhw_faq_for_custodians_of_health_info.pdf

clinic would be considered the custodian under the Act and the individual physiotherapists would be agents of the custodian.

The HIA defines health care to include any observation, examination, assessment, care, service or procedure including the diagnosis, treatment or maintenance of an individual's physical or mental condition.

What Does This Mean for Members?

The new HIA will likely create some changes for how members collect, use or disclose PHI of their clients or patients. The most significant changes under the HIA that you should be aware of include the following:

- You are required to receive expressed consent when you want to disclose PHI to a person that is not a "Custodian" and it is not for the purpose of providing health care. This includes providing status updates to family physicians and other third parties or responding to requests for information from employers.
- Express consent may be oral or written. Consent may be withdraw anytime.
- Whenever possible, you are required to collect PHI directly from the individual to whom it relates. Exceptions are included for circumstances when that is not possible such as when the individual is unconscious.
- Disclosure of PHI should be limited to the minimum amount of PHI necessary, rather than disclosing the individual's whole file.
- Individuals have the right to view or receive a copy of their PHI subject to limited exceptions. **You have 30 days to respond to a request to view or correct one's PHI or to request an extension from the Information and Privacy Commission.**
- You must implement information practices and controls to ensure that PHI is kept secure including protection from theft, unauthorized access, etc.
- The Department of Health's *Guide to the Health Information Act*², recommends that policies and procedures be adopted to protect the confidentiality of PHI; to restrict access to PHI by employees, volunteers, etc.; and to provide for secure storage and retention of records to minimize risks of unauthorized access.
- You must keep a record when you disclose PHI for health related purposes noting the name of the person to whom the information was disclosed, the date and purpose of the disclosure and a description of the PHI disclosed (unless your information system keeps an electronic log of such information).
- **You must notify the individual and the Commission in writing if PHI is stolen, lost, disposed of in a way not permitted by the HIA or disclosed to or accessed by an unauthorized person, except in limited circumstances including when the loss, disclosure, etc. will not have an adverse impact on the individual.**

² https://www.princeedwardisland.ca/sites/default/files/publications/dhw_guide_to_health_information_act.pdf

- When you undertake new ways to collect, use or disclose PHI or if you make any significant changes to how you do so, you must prepare and submit a privacy impact assessment to the Information and Privacy Commission.
- You are responsible for the PHI until complete custody and control of the record passes to another person who is legally authorized to hold the record.

Risks and New Offences:

There is no obligation for you to retroactively seek consent for PHI collected before the HIA coming into force. However, once the HIA is in force, if you want to use or disclose PHI that was collected at any point, you must comply with the HIA with respect to the use and disclosure of the PHI.

Offences under the HIA include the following:

- Collection, use or disclosure of PHI contrary to the HIA;
- Failing to protect PHI in a secure manner as required by the HIA;
- Disclosing PHI with the intent of obtaining a monetary or other benefit;
- Taking adverse employment action against an employee because the employee complied with a request to provide PHI to the Commissioner.

The penalty for contravention can be as high as **\$15,000** for an individual and as high as **\$50,000** for a corporation. A contravention of the HIA can be found to be of a continuing nature; that means that each day can be a separate offence. You will not be found to be in contravention of the HIA if you can establish that you took all reasonable steps to prevent the contravention.

For More Information:

Below are some useful links that can provide further information for you and your business in relation to the new HIA:

Department's Guide to the Prince Edward Island HIA:

<https://www.princeedwardisland.ca/en/information/health-and-wellness/guide-new-health-information-act>

FAQ's for Custodians:

https://www.princeedwardisland.ca/sites/default/files/publications/dhw_faq_for_custodians_of_health_info.pdf

HIA Brochure:

https://www.princeedwardisland.ca/sites/default/files/publications/dhw_health_information_act_brochure.pdf

The information above provides a brief overview of the changes. Please **contact us at HR Atlantic/MacLeod, Montigny + MacLean** with any questions or compliance concerns you may have.