

# *A Brief Summary of the Amendments to* **The Personal Health Information Act**

## **INTRODUCTION**

*The Personal Health Information Act* (PHIA) provides individuals with the right to access their personal health information except in limited circumstances and requires that trustees protect the confidentiality of the personal health information that they maintain.

*The Personal Health Information Amendment Act* includes important changes to PHIA. This document provides a brief summary of those changes. Most of the changes will come into force on May 1, 2010.

For further detail, please refer to PHIA, including the Personal Health Information Regulation and *The Personal Health Information Amendment Act*. Copies are available from Statutory Publications, 200 Vaughan St., Winnipeg, MB R3C 1T5, phone 945-3101.

They can also be accessed online at:

PHIA:  
<http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php>

*The Personal Health Information Amendment Act*:  
<http://web2.gov.mb.ca/laws/statutes/2008/c04108e.php#>

*The Personal Health Information Regulation*:  
<http://web2.gov.mb.ca/law/regs/pdf/p033-5-245.97.pdf>

### ***Notice of right to access information***

The changes to PHIA will require that, in accordance with the regulations, trustees take reasonable steps to inform individuals of their right to examine and receive a copy of their personal health information that a trustee maintains and how to exercise that right.

The Personal Health Information Regulation will set out requirements for this, including that trustees must use a sign, poster, brochure, or similar type of notice.

**A poster for health care facilities and a public brochure to meet these requirements have been developed. Trustees who would like copies to make available to their patients should contact Manitoba Health, Legislative Unit at (204)788-6612.**

### ***Timelines for responding to requests for access to personal health information***

The changes to PHIA include changes to the time frame within which trustees must respond to requests for access to personal health information.

Under the changes, trustees must respond to requests for access as promptly as required in the circumstances but no later than

- 24 hours after receiving a request from an in-patient in a hospital to see information about his or her current care,
- 72 hours after receiving a request from a person who is not a hospital in-patient for information about his or her current care, and
- 30 days after receiving the request for any other requests.

A family member or person with a close personal relationship, who is entitled to information about care that is currently being provided to his or her relative, is to be provided with this information in the timeframes noted above.

### ***Who can exercise a person's rights under PHIA?***

Under PHIA, all rights of an individual may be exercised by a representative of that individual. The Act identifies several representatives, including:

- a person with a written authorization to act on behalf of the individual,
- the individual's proxy appointed in a health care directive,
- the individual's committee appointed under *The Mental Health Act*,
- the individual's parent or guardian if the individual is a child who is too young to make his or her own health care decisions.

*For a complete list of representatives, see current s. 60 of the Act.*

If a person is incapacitated and no representative as described above exists or is available, the changes to the Act will authorize the first adult on the following list who is readily available and willing to exercise the person's rights under PHIA:

- the individual's spouse, or common-law partner, with whom the individual is cohabiting;
- a son or daughter;
- a parent, if the individual is an adult;
- a brother or sister;
- a person with whom the individual is known to have a close personal relationship;
- a grandparent;
- an aunt or uncle;
- a nephew or niece.

The oldest of two or more relatives described in any of the above bullets is to be preferred to another of those relatives (e.g. the older of a son or daughter or brother or sister).

*See new sections. 60(2) & (3)* (which can be found in *The Personal Health Information Amendment Act*).

### ***Using and disclosing personal health information***

Trustees cannot use or disclose personal health information unless:

- it is necessary to accomplish the purpose for which the personal health information was collected; or
- the trustee has the informed consent of the individual it is about.

There are exceptions to this general rule under PHIA in the form of uses and disclosures permitted without consent.

### ***Informed Consent to use and disclose***

The changes to PHIA set out the requirements for informed consent by an individual to the use and disclosure of their personal health information. Informed consent must:

- relate to the purpose for which the information is used or disclosed;
- be knowledgeable;
- be voluntary; and
- not be obtained through misrepresentation.

Consent is knowledgeable if the individual who gives it has been provided with the information that a reasonable person in the same circumstances would need in order to make a decision about the use or disclosure of the information.

Consent may be express or implied except where a trustee makes a disclosure to a person that is not a trustee or to another trustee for a purpose other than providing health care or assisting in providing health care. In these situations, consent must be express.

In addition, consent may be given with conditions. *See new sections 19.1 and 19.2*

### ***Permitted Uses***

With respect to permitted uses of personal health information, the amendments to PHIA will permit the following uses of personal health information without consent:

- Using an individual's demographic information or his or her Personal Health Information Number (PHIN) to confirm eligibility for health care or payment for health care or to verify the accuracy of the demographic information or the PHIN.
- Using an individual's demographic information to collect a debt the individual owes to the trustee or to the government if the trustee is a department.

"Demographic information" is defined to be an individual's name, address, telephone number and e-mail address.

*To see the current permitted uses, see section 21 of PHIA. See the Amendment Act for amendments to this provision.*

### ***Permitted Disclosures***

The amendments to the disclosures that are permitted by PHIA without consent include changes to clarify existing permitted disclosures and to add new ones, including disclosure:

- to another trustee who requires the information to evaluate or monitor the quality of services the other trustee provides;

- of an individual's demographic information for the purpose of determining or verifying an individual's eligibility for a program, service or benefit;
- to another trustee for the purpose of de-identifying the personal health information;
- of an individual's demographic information for the purpose of collecting a debt owed by the individual to the trustee or to the government if the trustee is a department;
- of an individual's demographic information to police if the individual has been reported missing and the information is required by police to help locate the person;
- to a computerized health information network established by a body listed in the Act or specified by regulation and in which personal health information is recorded for specified purposes, including providing health care.

Under the changes, trustees will also be permitted to disclose personal health information to a health research organization designated by regulation under PHIA for specified purposes relating to health system evaluation, monitoring and planning.

Before personal health information is provided, an agreement is required to be completed with the designated health research organization. The agreement must meet the requirements of the Act and the Personal Health Information Regulation made under the Act.

Subject to requirements specified by regulation under the Act, hospitals and personal care homes will also be permitted to disclose personal health information to:

- a religious organization, **unless the patient tells the facility not to**. The only information that can be shared is the individual's name, general health status and location in the facility.
- a charitable fundraising foundation affiliated with the facility, **unless the patient tells the facility not to**. The only information that can be shared is the name and mailing address of patients or residents, or former patients or residents.

*To see the current permitted disclosures, see section 22 of PHIA. See the Amendment Act for the amendments to these provisions.*

*For more information on the requirements for disclosure of information to a religious organization or charitable fundraising foundation, see new sections 23.1 and 23.2*

*See the amendments to the Personal Health Information Regulation respecting health research organizations and disclosure of information to a charitable fundraising foundation.*

### ***The Information and Privacy Adjudicator***

The amendments to the Act respecting the Information and Privacy Adjudicator have not been proclaimed pending appointment of the Adjudicator.