

**THE PERSONAL HEALTH INFORMATION ACT**  
**SPREADSHEET CONTAINING OMBUDSMAN MANITOBA COMMENTS**  
**FIPPA REVIEW**  
 June 9, 2004

<b>THE PERSONAL HEALTH INFORMATION ACT</b>	<b>COMMENTS</b>
WHEREAS health information is personal and sensitive and its confidentiality must be protected so that individuals are not afraid to seek health care or to disclose sensitive information to health professionals;	
AND WHEREAS individuals need access to their own health information as a matter of fairness, to enable them to make informed decisions about health care and to correct inaccurate or incomplete information about themselves;	
	It is important that individuals know they have to take responsibility for their personal health information, therefore, I would suggest the following be added:  AND WHEREAS individuals have the right to control the collection, use and disclosure of their personal health information, subject to limited and narrowly interpreted exceptions;
AND WHEREAS a consistent approach to personal health information is necessary because many persons other than health professionals now obtain, use and disclose personal health information in different contexts and for different purposes;	
AND WHEREAS clear and certain rules for the collection, use and disclosure of personal health information are an essential support for electronic health information systems that can improve both the quality of patient care and the management of health care resources;	
THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:	
<b>PART 1</b> <b>INTRODUCTORY PROVISIONS</b>	
<b>Definitions</b> <b>1(1)</b> In this Act,	
“ <b>court</b> ”, for the purpose of an appeal under section 49 or 50, means the Court of Queen’s Bench;	
“ <b>enactment</b> ” means an Act or regulation;	
“ <b>health care</b> ” means any care, service or procedure	

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(a) provided to diagnose, treat or maintain an individual's physical or mental condition,	
(b) provided to prevent disease or injury or promote health, or	
(c) that affects the structure or a function of the body,	
and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription;	
<b>“health care facility”</b> means	
(a) a hospital,	
(b) a personal care home,	
(c) a psychiatric facility,	
(d) a medical clinic,	
(e) a laboratory,	
(f) CancerCare Manitoba, and	
(g) a community health centre or other facility in which health care is provided and that is designated in the regulations;	
<b>“health professional”</b> means a person who is licensed or registered to provide health care under an Act of the Legislature or who is a member of a class of persons designated as health professionals in the regulations;	
<b>“health services agency”</b> means an organization that provides health care such as community or home-based health care pursuant to an agreement with another trustee;	
<b>“information manager”</b> means a person or body that	
(a) processes, stores or destroys personal health information for a trustee, or	
(b) provides information management or information technology services to a trustee;	
<b>“institutional research review committee”</b> means a committee formally established by a health care facility, university or similar body	
(a) to review the efficacy and scientific and ethical value of a research proposal involving human subjects or involving the review of records containing personal health information, and	
(b) to ensure that the person proposing the research has adequate safeguards in place to protect the confidentiality of personal health information;	
<b>“maintain”</b> , in relation to personal health information, means to have custody or control of the information;	
<b>“minister”</b> means the member of the Executive Council charged	

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by the Lieutenant Governor in Council with the administration of this Act;	
“ <b>Ombudsman</b> ” means the Ombudsman appointed under <i>The Ombudsman Act</i> ;	
“ <b>personal health information</b> ” means recorded information about an identifiable individual that relates to	
(a) the individual’s health, or health care history, including genetic information about the individual,	
(b) the provision of health care to the individual, or	
(c) payment for health care provided to the individual,	
and includes	
(d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and	
(e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care;	
“ <b>PHIN</b> ” means the personal health identification number assigned to an individual by the minister to uniquely identify the individual for health care purposes;	
“ <b>public body</b> ” means a public body as defined in <i>The Freedom of Information and Protection of Privacy Act</i> , and for the purpose of this definition, the definitions of “department”, “educational body”, “government agency”, “health care body”, “local government body” and “local public body” in that Act apply;	
“ <b>record</b> ” or “ <b>recorded information</b> ” means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records;	
“ <b>representative</b> ”, in relation to an individual, means a person referred to in section 60;	
“ <b>trustee</b> ” means a health professional, health care facility, public body, or health services agency that collects or maintains personal health information.	

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<p><b>Reference to "Act" includes regulations</b>  <b>1(2)</b> A reference to "this Act" includes the regulations made under this Act.</p>	
<p><b>Purposes of this Act</b>  <b>2</b> The purposes of this Act are</p>	
<p>(a) to provide individuals with a right to examine and receive a copy of personal health information about themselves maintained by a trustee, subject to the limited and specific exceptions set out in this Act;</p>	
<p>(b) to provide individuals with a right to request corrections to personal health information about themselves maintained by a trustee;</p>	
<p>(c) to control the manner in which trustees may collect personal health information;</p>	
<p>(d) to protect individuals against the unauthorized use, disclosure or destruction of personal health information by trustees;</p>	
<p>(e) to control the collection, use and disclosure of an individual's PHIN; and</p>	
<p>(f) to provide for an independent review of the decisions of trustees under this Act.</p>	
<p><b>Application of this Act</b>  <b>3</b> This Act does not apply to anonymous or statistical health information that does not, either by itself or when combined with other information available to the holder, permit individuals to be identified.</p>	
<p><b>Relationship to other Acts</b>  <b>4(1)</b> A trustee shall refuse to permit personal health information to be examined or copied under Part 2 of this Act to the extent that disclosure of the information is prohibited or restricted by another enactment of Manitoba.</p>	
<p><b>Conflict with another Act</b>  <b>4(2)</b> If a provision of Part 3 of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless the other enactment more completely protects the confidentiality of personal health information.</p>	
<p><b>Mental Health Act prevails</b>  <b>4(3)</b> For greater certainty, the provisions of <i>The Mental Health Act</i> prevail over this Act.</p>	

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<b>PART 2</b>	
<b>ACCESS TO PERSONAL HEALTH INFORMATION</b>	
<b>RIGHT TO EXAMINE AND COPY PERSONAL HEALTH INFORMATION</b>	
<b>Right to examine and copy information</b> <b>5(1)</b> Subject to this Act, an individual has a right, on request, to examine and receive a copy of his or her personal health information maintained by a trustee.	
<b>How to make a request</b> <b>5(2)</b> A request must be made to the trustee who the individual believes maintains the personal health information.	
<b>Trustee may require written request</b> <b>5(3)</b> A trustee may require a request to be in writing.	
<b>Trustee must respond promptly</b> <b>6(1)</b> A trustee shall respond to a request as promptly as required in the circumstances but no later than 30 days after receiving it, unless the request is transferred to another trustee under section 8.	
<b>Duty to assist an individual</b> <b>6(2)</b> A trustee shall make every reasonable effort to assist an individual making a request and to respond without delay, openly, accurately and completely.	
<b>Failure to respond</b> <b>6(3)</b> The failure of a trustee to respond to a request within the 30-day period is to be treated as a decision to refuse to permit the personal health information to be examined or copied.	
<b>Trustee's response</b> <b>7(1)</b> In responding to a request, a trustee shall do one of the following:	<p>Under PHIA there is no provision to decline a request for access on the basis that it is repetitive, incomprehensible or an abuse of process. We would suggest that an amendment be considered to provide for the above.</p> <p><b>Repetitive or incomprehensible request</b>  <b>13(1)</b> A <del>head of a public body</del> trustee may refuse to give access to a record or part of a record if the request is repetitive, <del>or</del> incomprehensible, <b>an abuse of process</b> or is for information already provided to the <b>individual</b>. <del>applicant or that is publicly available.</del></p>
(a) make the personal health information available for examination and provide a copy, if requested, to the individual;	
(b) inform the individual in writing if the information does not exist or cannot be found; or	
(c) inform the individual in writing that the request is refused, in whole or in part, for a specified reason described in section 11, and	

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advise the individual of the right to make a complaint about the refusal under Part 5.	
<b>Duty to provide an explanation</b> <b>7(2)</b> On request, a trustee shall provide an explanation of any term, code or abbreviation used in the personal health information.	
<b>Information in electronic form</b> <b>7(3)</b> When a request is made for personal health information that a trustee maintains in electronic form, the trustee shall produce a record of the information for the individual in a form usable by the individual, if it can be produced using the trustee's normal computer hardware and software and technical expertise.	
<b>Transferring a request to another trustee</b> <b>8(1)</b> Within seven days after receiving a request, a trustee may transfer it to another trustee if	
(a) the personal health information is maintained by the other trustee; or	
(b) the other trustee was the first to collect the personal health information.	
<b>Response within 30 days after transfer</b> <b>8(2)</b> A trustee who transfers a request under subsection (1) shall notify the individual of the transfer as soon as possible, and the trustee to whom the request is transferred shall respond to it as promptly as required in the circumstances but no later than 30 days after receiving it.	
<b>Trustee must take precautions about release</b> <b>9</b> A trustee	
(a) shall not permit personal health information to be examined or copied without being satisfied as to the identity of the individual making the request; and	
(b) shall take reasonable steps to ensure that any personal health information intended for an individual is received only by that individual.	
<b>Fees</b> <b>10</b> A trustee may charge a reasonable fee for permitting examination of personal health information and providing a copy, but the fee must not exceed the amount provided for in the regulations.	There is no regulation related to fees as in FIPPA. We would suggest that a regulation on fees with a provision for fee waiver be considered for consistency and fairness.

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<b>REASONS FOR REFUSING ACCESS</b>	
<b>Reasons for refusing access</b> <b>11(1)</b> A trustee is not required to permit an individual to examine or copy his or her personal health information under this Part if	
(a) knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the individual or another person;	
(b) disclosure of the information would reveal personal health information about another person who has not consented to the disclosure;	
(c) disclosure of the information could reasonably be expected to identify a third party, other than another trustee, who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;	
(d) the information was compiled and is used solely	
(i) for the purpose of peer review by health professionals,	
(ii) for the purpose of review by a standards committee established to study or evaluate health care practice in a health care facility or health services agency,	
(iii) for the purpose of a body with statutory responsibility for the discipline of health professionals or for the quality or standards of professional services provided by health professionals, or	
(iv) for the purpose of risk management assessment; or	
(e) the information was compiled principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding.	
<b>Severance of information</b> <b>11(2)</b> A trustee who refuses to permit personal health information to be examined or copied under subsection (1) shall, to the extent possible, sever the personal health information that cannot be examined or copied and permit the individual to examine and receive a copy of the remainder of the information.	
<b>CORRECTION OF HEALTH INFORMATION</b>	
<b>Right to request a correction</b>	
<b>12(1)</b> For purposes of accuracy or completeness, an individual may request a trustee to correct any personal health information that the individual may examine and copy under this Part.	

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<p><b>Written request</b>  <b>12(2)</b> A request must be in writing.</p>	
<p><b>Trustee's response</b>  <b>12(3)</b> As promptly as required in the circumstances but no later than 30 days after receiving a request, the trustee shall do one of the following:</p>	
<p>(a) make the requested correction by adding the correcting information to the record of the personal health information in such a manner that it will be read with and form part of the record or be adequately cross-referenced to it;</p>	
<p>(b) inform the individual if the personal health information no longer exists or cannot be found;</p>	
<p>(c) if the trustee does not maintain the personal health information, so inform the individual and provide him or her with the name and address, if known, of the trustee who maintains it; or</p>	
<p>(d) inform the individual in writing of the trustee's refusal to correct the record as requested, the reason for the refusal, and the individual's right to add a statement of disagreement to the record and to make a complaint about the refusal under Part 5.</p>	
<p><b>When a trustee refuses to make a correction</b>  <b>12(4)</b> A trustee who refuses to make a correction that is requested under this section shall</p>	
<p>(a) permit the individual to file a concise statement of disagreement stating the correction requested and the reason for the correction; and</p>	
<p>(b) add the statement of disagreement to the record in such a manner that it will be read with and form part of the record or be adequately cross-referenced to it.</p>	
<p><b>Notifying others of a correction or statement of disagreement</b>  <b>12(5)</b> When a trustee makes a correction or adds a statement of disagreement under this section, the trustee shall, when practicable, notify any other trustee or person to whom the personal health information has been disclosed during the year before the correction was requested about the correction or statement of disagreement. A trustee who receives such a notice shall make the correction or add the statement of disagreement to any record of that personal health information that the trustee maintains.</p>	

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<p><b>No fee</b>  <b>12(6)</b> A trustee shall not charge a fee in connection with a request for a correction made under this section.</p>	
<b>PART 3</b>	
<b>PROTECTION OF PRIVACY</b>	
<b>DIVISION 1</b>	
<b>RESTRICTIONS ON COLLECTION AND RETENTION OF INFORMATION</b>	
<b>COLLECTION OF INFORMATION</b>	
<p><b>Restrictions on collection</b>  <b>13(1)</b> A trustee shall not collect personal health information about an individual unless</p>	
<p>(a) the information is collected for a lawful purpose connected with a function or activity of the trustee; and</p>	
<p>(b) the collection of the information is necessary for that purpose.</p>	
<p><b>Limit on amount of information collected</b>  <b>13(2)</b> A trustee shall collect only as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.</p>	
<p><b>Source of information</b>  <b>14(1)</b> Whenever possible, a trustee shall collect personal health information directly from the individual the information is about.</p>	
<p><b>Exceptions</b>  <b>14(2)</b> Subsection (1) does not apply if</p>	
<p>(a) the individual has authorized another method of collection;</p>	
<p>(b) collection of the information directly from the individual could reasonably be expected to endanger the mental or physical health or the safety of the individual or another person;</p>	
<p>(c) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual;</p>	
<p>(d) collection of the information directly from the individual could reasonably be expected to result in inaccurate information being collected; or</p>	
<p>(e) another method of collection is authorized or required by a court order or an enactment of Manitoba or Canada.</p>	

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<p><b>Notice of collection practices</b>  <b>15(1)</b> A trustee who collects personal health information directly from the individual the information is about shall, before it is collected or as soon as practicable afterwards, take reasonable steps to inform the individual</p>	
<p>(a) of the purpose for which the information is being collected; and</p>	
<p>(b) if the trustee is not a health professional, how to contact an officer or employee of the trustee who can answer the individual's questions about the collection.</p>	
<p><b>Exception if information already provided</b>  <b>15(2)</b> A trustee need not comply with subsection (1) if the trustee has recently provided the individual with the information referred to in that subsection about the collection of the same or similar personal health information for the same or a related purpose.</p>	
<p><b>ACCURACY OF INFORMATION</b></p>	
<p><b>Duty to ensure accuracy of information</b>  <b>16</b> Before using or disclosing personal health information, a trustee shall take reasonable steps to ensure that the information is accurate, up to date, complete and not misleading.</p>	
<p><b>RETENTION AND DESTRUCTION OF INFORMATION</b></p>	
<p><b>Retention and destruction policy</b>  <b>17(1)</b> A trustee shall establish a written policy concerning the retention and destruction of personal health information and shall comply with that policy.</p>	
<p><b>Compliance with regulations</b>  <b>17(2)</b> A policy under subsection (1) must conform with any requirements of the regulations.</p>	
<p><b>Method of destruction must protect privacy</b>  <b>17(3)</b> In accordance with any requirements of the regulations, a trustee shall ensure that personal health information is destroyed in a manner that protects the privacy of the individual the information is about.</p>	
<p><b>Record of destruction</b>  <b>17(4)</b> A trustee who destroys personal health information shall keep a record of</p>	
<p>(a) the individual whose personal health information is destroyed and the time period to which the information relates; and</p>	
<p>(b) the method of destruction and the person responsible for supervising the destruction.</p>	

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<p><b>Application of this section</b>  <b>17(5)</b> This section does not override or modify any requirement in an enactment of Manitoba or Canada concerning the retention or destruction of records maintained by public bodies.</p>	
<p align="center"><b>DIVISION 2</b></p>	
<p align="center"><b>SECURITY SAFEGUARDS</b></p>	
<p><b>Duty to adopt security safeguards</b>  <b>18(1)</b> In accordance with any requirements of the regulations, a trustee shall protect personal health information by adopting reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information.</p>	
<p><b>Specific safeguards</b>  <b>18(2)</b> Without limiting subsection (1), a trustee shall</p>	
<p>(a) implement controls that limit the persons who may use personal health information maintained by the trustee to those specifically authorized by the trustee to do so;</p>	
<p>(b) implement controls to ensure that personal health information maintained by the trustee cannot be used unless</p>	
<p>(i) the identity of the person seeking to use the information is verified as a person the trustee has authorized to use it, and</p>	
<p>(ii) the proposed use is verified as being authorized under this Act;</p>	
<p>(c) if the trustee uses electronic means to request disclosure of personal health information or to respond to requests for disclosure, implement procedures to prevent the interception of the information by unauthorized persons; and</p>	
<p>(d) when responding to requests for disclosure of personal health information, ensure that the request contains sufficient detail to uniquely identify the individual the information is about.</p>	
<p><b>Additional safeguards for information in electronic form</b>  <b>18(3)</b> A trustee who maintains personal health information in electronic form shall implement any additional safeguards for such information required by the regulations.</p>	
<p><b>Safeguards for sensitive information</b>  <b>19</b> In determining the reasonableness of security safeguards required under section 18, a trustee shall take into account the degree of sensitivity of the personal health information to be protected.</p>	

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<b>DIVISION 3</b>	
<b>RESTRICTIONS ON USE AND DISCLOSURE OF INFORMATION</b>	
<b>GENERAL DUTIES OF TRUSTEES</b>	
<b>General duty of trustees re use and disclosure</b> <b>20(1)</b> A trustee shall not use or disclose personal health information except as authorized under this Division.	
<b>Limit on amount of information used or disclosed</b> <b>20(2)</b> Every use and disclosure by a trustee of personal health information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.	
<b>Limit on the trustee's employees</b> <b>20(3)</b> A trustee shall limit the use and disclosure of personal health information it maintains to those of its employees and agents who need to know the information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under section 21.	
<b>RESTRICTIONS ON USE OF INFORMATION</b>	
<b>Restrictions on use of information</b> <b>21</b> A trustee may use personal health information only for the purpose for which it was collected or received, and shall not use it for any other purpose, unless	
(a) the other purpose is directly related to the purpose for which the personal health information was collected or received;	
(b) the individual the personal health information is about has consented to the use;	
(c) use of the information is necessary to prevent or lessen a serious and immediate threat to	
(i) the mental or physical health or the safety of the individual the information is about or another individual, or	
(ii) public health or public safety;	
(d) the trustee is a public body or a health care facility and the personal health information is used	
(i) to deliver, monitor or evaluate a program that relates to the provision of health care or payment for health care by the trustee, or	
(ii) for research and planning that relates to the provision of health care or payment for health care by the trustee;	
(e) the purpose is one for which the information may be disclosed	

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to the trustee under section 22; or	
(f) use of the information is authorized by an enactment of Manitoba or Canada.	
<b>RESTRICTIONS ON DISCLOSURE OF INFORMATION</b>	
<b>Individual's consent to disclosure</b>	
<b>22(1)</b> Except as permitted by subsection (2), a trustee may disclose personal health information only if	
(a) the disclosure is to the individual the personal health information is about or his or her representative; or	
(b) the individual the information is about has consented to the disclosure.	
<b>Disclosure without individual's consent</b>	
<b>22(2)</b> A trustee may disclose personal health information without the consent of the individual the information is about if the disclosure is	
(a) to a person who is providing or has provided health care to the individual, to the extent necessary to provide health care to the individual, unless the individual has instructed the trustee not to make the disclosure;	
(b) to any person if the trustee reasonably believes that the disclosure is necessary to prevent or lessen a serious and immediate threat to	
(i) the mental or physical health or the safety of the individual the information is about or another individual, or	
(ii) public health or public safety;	
(c) for the purpose of	
(i) contacting a relative or friend of an individual who is injured, incapacitated or ill,	
(ii) assisting in identifying a deceased individual, or	
(iii) informing the representative or a relative of a deceased individual, or any other person it is reasonable to inform in the circumstances, of the individual's death;	
(d) to a relative of a deceased individual if the trustee reasonably believes that disclosure is not an unreasonable invasion of the deceased's privacy;	
(e) required for	
(i) the purpose of peer review by health professionals,	
(ii) the purpose of review by a standards committee established to study or evaluate health care practice in a health care facility or	

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health services agency,	
(iii) the purpose of a body with statutory responsibility for the discipline of health professionals or for the quality or standards of professional services provided by health professionals, or	
(iv) the purpose of risk management assessment;	
(f) in accordance with section 23(disclosure to patient's family), 24 (disclosure for health research) or 25 (disclosure to an information manager);	
(g) for the purpose of	
(i) delivering, evaluating or monitoring a program of the trustee that relates to the provision of health care or payment for health care, or	
(ii) for research and planning that relates to the provision of health care or payment for health care by the trustee;	
(h) to a computerized health information network and database, established by the government or another trustee that is a public body specified in the regulations, in which personal health information is recorded for the purpose of facilitating	
(i) the delivery, evaluation or monitoring of a program that relates to the provision of health care or payment for health care, or	
(ii) research and planning that relates to the provision of health care or payment for health care;	
(i) to the government, another public body, or the government of another jurisdiction or an agency of such a government, to the extent necessary to obtain payment for health care provided to the individual the personal health information is about;	
(j) to a person who requires the personal health information to carry out an audit for or provide legal services to a trustee, if the trustee reasonably believes that the person will not use or disclose the personal health information for any other purpose and will take appropriate steps to protect it;	
(k) required in anticipation of or for use in a civil or quasi-judicial proceeding to which the trustee is a party, or the prosecution of an offence;	
(l) required to comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the personal health information, or with a rule of court concerning the production of the personal health information;	
(m) for the purpose of	
(i) an investigation under or the enforcement of an enactment of	

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Manitoba respecting payment for health care, or	
(ii) an investigation or enforcement respecting a fraud relating to payment for health care;	
(n) for the purpose of complying with an arrangement or agreement entered into under an enactment of Manitoba or Canada; or	
(o) authorized or required by an enactment of Manitoba or Canada.	
<b>Limit on disclosure</b> <b>22(3)</b> A trustee may disclose information under subsection (2) only to the extent the recipient needs to know the information.	
<b>Disclosure to family about patient's health care</b> <b>23(1)</b> If an individual is a patient or resident in a health care facility, the trustee may disclose personal health information about the individual to an immediate family member, or to anyone else with whom the individual is known to have a close personal relationship, if	
(a) the disclosure is about health care currently being provided;	
(b) the disclosure is made in accordance with good medical or other professional practice; and	
(c) the trustee reasonably believes the disclosure to be acceptable to the individual or his or her representative.	
<b>Disclosure about patient's condition</b> <b>23(2)</b> As long as disclosure is not contrary to the express request of the individual or his or her representative, a trustee may disclose to any person the following information about an individual who is a patient or resident of a health care facility:	
(a) the individual's name;	
(b) the individual's general health status, described as critical, poor, fair, stable or satisfactory, or in terms indicating similar conditions;	
(c) the individual's location, unless disclosure of the location would reveal specific information about the physical or mental condition of the individual.	

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<p><b>No disclosure if possible harm</b>  <b>23(3)</b> A trustee shall not disclose personal health information under this section if the trustee has reason to believe that the disclosure might lead to physical or mental harm to the individual the personal health information is about.</p>	
<b>HEALTH RESEARCH</b>	
<p><b>Approval for health research</b>  <b>24(1)</b> A trustee may disclose personal health information to a person conducting a health research project only if the project has been approved under this section.</p>	
<p><b>Who may give an approval</b>  <b>24(2)</b> An approval may be given by</p>	
<p>(a) the health information privacy committee established under section 59, if the personal health information is maintained by the government or a government agency; and</p>	<p>For openness and transparency, we believe that all projects approved by the health information privacy committee should be made public. This could be accomplished by having the "approved projects" published in an annual report.</p>
<p>(b) an institutional research review committee, if the personal health information is maintained by a trustee other than the government or a government agency.</p>	
<p><b>Conditions for approval</b>  <b>24(3)</b> An approval may be given under this section only if the health information privacy committee or the institutional research review committee, as the case may be, has determined that</p>	
<p>(a) the research is of sufficient importance to outweigh the intrusion into privacy that would result from the disclosure of personal health information;</p>	
<p>(b) the research purpose cannot reasonably be accomplished unless the personal health information is provided in a form that identifies or may identify individuals;</p>	
<p>(c) it is unreasonable or impractical for the person proposing the research to obtain consent from the individuals the personal health information is about; and</p>	
<p>(d) the research project contains</p>	
<p>(i) reasonable safeguards to protect the confidentiality and security of the personal health information, and</p>	
<p>(ii) procedures to destroy the information or remove all identifying information at the earliest opportunity consistent with the purposes of the project.</p>	

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<p><b>Agreement required</b>  <b>24(4)</b> An approval under this section is conditional on the person proposing the research project entering into an agreement with the trustee, in accordance with the regulations, in which the person agrees</p>	
<p>(a) not to publish the personal health information requested in a form that could reasonably be expected to identify the individuals concerned;</p>	
<p>(b) to use the personal health information requested solely for the purposes of the approved research project; and</p>	
<p>(c) to ensure that the research project complies with the safeguards and procedures described in clause (3)(d).</p>	
<p><b>Limitation for projects requiring direct contact with individuals</b>  <b>24(5)</b> If a research project will require direct contact with individuals, a trustee shall not disclose personal health information about those individuals under this section without first obtaining their consent. However, the trustee need not obtain their consent if the information consists only of the individuals' names and addresses.</p>	
<p><b>DIVISION 4</b></p>	
<p><b>MISCELLANEOUS REQUIREMENTS</b></p>	
<p><b>INFORMATION MANAGERS</b></p>	
<p><b>Trustee may provide information to an information manager</b>  <b>25(1)</b> A trustee may provide personal health information to an information manager for the purpose of processing, storing or destroying it or providing the trustee with information management or information technology services.</p>	
<p><b>Restrictions on use</b>  <b>25(2)</b> An information manager may use personal health information provided to it under this section only for the purposes and activities mentioned in subsection (1), which must be purposes and activities that the trustee itself may undertake.</p>	
<p><b>Agreement required</b>  <b>25(3)</b> A trustee who wishes to provide personal health information to an information manager under this section must enter into a written agreement with the information manager that provides for the protection of the personal health information against such risks as unauthorized access, use, disclosure, destruction or alteration, in accordance with the regulations.</p>	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<p><b>Information manager must comply with Act</b>  <b>25(4)</b> An information manager shall comply with</p>	
<p>(a) the same requirements concerning the protection, retention and destruction of personal health information that the trustee is required to comply with under this Act; and</p>	
<p>(b) the duties imposed on the information manager under the agreement entered into under subsection (3).</p>	
<p><b>Information deemed to be maintained by the trustee</b>  <b>25(5)</b> Personal health information that has been provided to an information manager under an agreement described in subsection (3) is deemed to be maintained by the trustee for the purposes of this Act.</p>	
<p><b>PHIN</b></p>	
<p><b>Production and use of PHIN</b>  <b>26(1)</b> No person other than a trustee may require the production of another person's PHIN or collect or use another person's PHIN.</p>	
<p><b>Exceptions</b>  <b>26(2)</b> Despite subsection (1), a person may collect or use another person's PHIN</p>	
<p>(a) for purposes related to the provision of publicly funded health care to the other person;</p>	
<p>(b) for purposes of a health research project approved under section 24; or</p>	
<p>(c) in circumstances permitted by the regulations.</p>	
<p><b>PROHIBITION ON SALE OF INFORMATION</b></p>	
<p><b>Prohibition on sale of personal health information</b>  <b>27(1)</b> No trustee shall sell or otherwise dispose of or disclose for consideration personal health information unless</p>	
<p>(a) it is essential to facilitate the sale or disposition of the practice of a health professional or the business of a health care facility or health services agency as a going concern; and</p>	<p>There is no requirement that notice be provided when a trustee sells her or his practice to another trustee. Consideration should be given, and a reasonable effort made to notify patients when their personal health information forms part of the sale of a practice.</p>
<p>(b) subject to subsection (2), the sale or disposition is to another trustee.</p>	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<p><b>Exception for pharmacies</b>  <b>27(2)</b> Clause(1)(b) does not apply to a change in ownership of a pharmacy in compliance with <i>The Pharmaceutical Act</i>.</p>	
<p><b>PART 4</b></p>	
<p><b>POWERS AND DUTIES OF THE OMBUDSMAN</b></p>	
<p><b>General powers and duties</b>  <b>28</b> In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may</p>	
(a) conduct investigations and audits and make recommendations to monitor and ensure compliance with this Act;	
(b) inform the public about this Act;	
(c) receive comments from the public about matters concerning the confidentiality of personal health information or access to that information;	<p>We note that FIPPA uses the term “protection of privacy” rather than “confidentiality.” We are not aware of the reason for the difference between the Acts.</p>
(d) comment on the implications for access to or confidentiality of personal health information of proposed legislative schemes or programs or practices of trustees;	<p><b>COMMENT 1</b>  As above.</p> <p><b>COMMENT 2</b>  The Ombudsman’s Office reviews current legislation and programs under section 28(d). Consideration should be given to requiring that trustees complete a Privacy Impact Assessment (PIA) for proposed legislative schemes, programs or practices. Upon completion, the PIAs would be submitted to the Ombudsman where they would be placed in a registry similar to the practice in Alberta.</p>
(e) comment on the implications for the confidentiality of personal health information of	<p>We note that FIPPA uses the term “protection of privacy” rather than “confidentiality.” We are not aware of the reason for the difference between the Acts.</p>
(i) using or disclosing personal health information for record linkage, or	
(ii) using information technology in the collection, storage, use or transfer of personal health information;	
(f) consult with any person with experience or expertise in any matter related to the purposes of this Act; and	
(g) engage in or commission research into any matter related to the purposes of this Act.	
<p><b>Evidence Act powers</b>  <b>29(1)</b> The Ombudsman has all the powers and protections of a commissioner under Part V of <i>The Manitoba Evidence Act</i> when conducting an investigation under this Act.</p>	

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<p><b>Production of records</b>  <b>29(2)</b> The Ombudsman may require any record maintained by a trustee that the Ombudsman considers relevant to an investigation to be produced to the Ombudsman and may examine any information in a record, including personal health information.</p>	<p>There have been circumstances where our office required evidence from individuals/organizations who were not trustees. This section should be broadened so that it would be similar to section 30(1) of <i>The Ombudsman Act</i> (OA) so that we could request records from non-trustees.</p> <p><b>Evidence</b>  <b>30(1)</b> <del>Subject to section 34,</del> the Ombudsman may require any person who, in his or her opinion, is able to give any information relating to any matter being investigated by him or her:  (a) to furnish the information to him or her; and  (b) to produce any <b>record, document, paper or thing</b> that in his or her opinion relates to the matter being investigated and that may be in the possession or under the control of that person. <del>whether or not that person is an officer, employee or member of the department, agency of the government or municipality and whether or not the document, paper or thing is in the custody or under the control of a department, agency of the government or municipality.</del></p>
<p><b>Records produced within 14 days</b>  <b>29(3)</b> A trustee shall produce to the Ombudsman within 14 days any record or a copy of a record required to be produced under this section.</p>	<p>For consistency with revised section 29(2)  <b>Records produced within 14 days</b>  <b>29(3)</b> <del>A trustee</del> <b>Any person</b> shall produce to the Ombudsman within 14 days any record or a copy of a record required to be produced under this section.</p>
<p><b>Examination of record on site</b>  <b>29(4)</b> If a trustee is required to produce a record under this section and it is not practicable to make a copy of it, the trustee may require the Ombudsman to examine the original at its site.</p>	<p>For consistency with revised section 29(2)  <b>Examination of record on site</b>  <b>29(4)</b> If a <del>trustee</del> <b>person</b> is required to produce a record under this section and it is not practicable to make a copy of it, the <del>trustee</del> <b>person</b> may require the Ombudsman to examine the original at its site.</p>
<p><b>Production required despite other laws</b>  <b>29(5)</b> No person who is required by the Ombudsman to give information or evidence or to produce a record may refuse to do so on the basis of</p>	
<p>(a) an enactment that requires or permits a person to refuse to disclose information; or</p>	
<p>(b) any privilege of the law of evidence.</p>	
<p><b>Right of entry</b>  <b>30</b> Despite any other enactment or any privilege of the law of evidence, in exercising powers or performing duties under this Act, the Ombudsman has the right,</p>	
<p>(a) during regular business hours, to enter any premises of a trustee in which the Ombudsman believes on reasonable grounds there are records relevant to an investigation and examine and make copies of them; and</p>	

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(b) to converse in private with any officer, employee or agent of the trustee.	
<b>Investigation in private</b> <b>31</b> The Ombudsman shall conduct every investigation in private.	
<b>Statements and reports not admissible in evidence</b> <b>32(1)</b> Any statement or report made or opinion given by a person during an investigation by the Ombudsman, and any report or recommendation of the Ombudsman, is inadmissible as evidence in a court or in any other proceeding, except	
(a) in a prosecution for perjury in respect of sworn testimony;	
(b) in a prosecution for an offence under this Act; or	
(c) in an appeal to the court under this Act, when the Ombudsman is a party.	
<b>Not compellable as witness</b> <b>32(2)</b> The Ombudsman, and anyone acting for or under the direction of the Ombudsman, shall not be required to give evidence in a court or in any other proceeding about information that comes to the knowledge of the Ombudsman in performing duties or exercising powers under this Act.	
<b>Information provided under qualified privilege</b> <b>33</b> Anything said, any information supplied, and any record produced by a person during an investigation by the Ombudsman under this Act is privileged in the same manner as if it were said, supplied or produced in a proceeding in a court.	
<b>Ombudsman restricted as to disclosure of information</b> <b>34(1)</b> The Ombudsman, and anyone acting for or under the direction of the Ombudsman, shall not disclose information obtained in performing duties or exercising powers under this Act, except as provided in subsections (2) to (4).	
<b>When disclosure permitted</b> <b>34(2)</b> The Ombudsman may disclose, or may authorize anyone acting for or under the direction of the Ombudsman to disclose, information that is necessary to	
(a) perform a duty or exercise a power of the Ombudsman under this Act; or	
(b) establish the grounds for findings and recommendations contained in a report under this Act.	
However, the Ombudsman, and anyone acting for or under the direction of the Ombudsman, shall not disclose personal health	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
information that a trustee is authorized to refuse to disclose in response to a request made under Part 2.	
<p><b>Information about offences</b>  <b>34(3)</b> The Ombudsman may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under this or any other enactment of Manitoba or Canada if the Ombudsman considers there is reason to believe an offence has been committed, except that personal health information must not be disclosed without the consent of the individual the information is about.</p>	
<p><b>Information relating to a prosecution or appeal</b>  <b>34(4)</b> The Ombudsman may disclose, or may authorize anyone acting for or under the direction of the Ombudsman to disclose, information in the course of a prosecution or an appeal referred to in subsection 32(1), except that personal health information must not be disclosed without the consent of the individual the information is about.</p>	
<p><b>Delegation</b>  <b>35</b> The Ombudsman may delegate to any person on his or her staff any duty or power under this Act.</p>	
<p><b>Protection from liability</b>  <b>36</b> No proceedings lie against the Ombudsman, or against any person acting for or under the direction of the Ombudsman, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty or power under this Act.</p>	
<p><b>Annual report</b>  <b>37(1)</b> The Ombudsman shall make an annual report to the Legislative Assembly on the work of the Ombudsman's office in relation to this Act, including the following:</p>	
(a) the kinds of complaints received and investigations conducted under Part 5;	
(b) the Ombudsman's recommendations and whether trustees have complied with the recommendations; and	
(c) any other matters about access to and confidentiality of personal health information that the Ombudsman considers appropriate.	We are not certain as to why "confidentiality" is used here rather than "privacy."

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<p><b>Report to be laid before Legislative Assembly</b>  <b>37(2)</b> The report shall be given to the Speaker who shall lay it before the Legislative Assembly if it is in session and if it is not in session, then within 15 days after the beginning of the next session.</p>	
<p><b>Special report</b>  <b>37(3)</b> In the public interest, the Ombudsman may publish a special report relating to any matter within the scope of the powers and duties of the Ombudsman under this Act, including a report referring to and commenting on any particular matter investigated by the Ombudsman.</p>	
<p><b>PART 5</b>  <b>COMPLAINTS</b></p>	
<p><b>Definitions</b>  <b>38</b> In this Part,</p>	
<p>"<b>complaint about access</b>" means a complaint made under subsection 39(1).</p>	
<p>"<b>complaint about privacy</b>" means a complaint made under subsection 39(2).</p>	
<p><b>MAKING A COMPLAINT</b></p>	
<p><b>Right to make a complaint about access</b>  <b>39(1)</b> An individual who has made a request to examine or receive a copy of his or her personal health information in accordance with Part 2 may make a complaint to the Ombudsman about any decision, act or failure to act of the trustee that relates to the request, including but not limited to the following:</p>	
<p>(a) a refusal by the trustee to permit the individual to examine or receive a copy of the information;</p>	
<p>(b) a refusal by the trustee to correct personal health information;</p>	
<p>(c) an unreasonable delay by the trustee in responding to the request;</p>	
<p>(d) an unreasonable or unauthorized fee charged by the trustee.</p>	
<p><b>Right to make a complaint about privacy</b>  <b>39(2)</b> An individual may make a complaint to the Ombudsman alleging that a trustee</p>	
<p>(a) has collected, used or disclosed his or her personal health information contrary to this Act; or</p>	
<p>(b) has failed to protect his or her personal health information in a secure manner as required by this Act.</p>	

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<p><b>Complaint in writing</b>  <b>39(3)</b> A complaint must be in writing in a form acceptable to the Ombudsman.</p>	
<p><b>Ombudsman may initiate a complaint</b>  <b>39(4)</b> The Ombudsman may initiate a complaint respecting any matter about which the Ombudsman is satisfied there are reasonable grounds to investigate under this Act.</p>	
<b>INVESTIGATION</b>	
<p><b>Investigation</b>  <b>40(1)</b> Subject to section 41, on receiving a complaint the Ombudsman shall investigate it.</p>	
<p><b>Informal resolution</b>  <b>40(2)</b> The Ombudsman may take any steps the Ombudsman considers appropriate to resolve a complaint informally to the satisfaction of the parties and in a manner consistent with the purposes of this Act.</p>	
<p><b>Decision to not deal with a complaint</b>  <b>41(1)</b> The Ombudsman may decide not to investigate a complaint if the Ombudsman is of the opinion that</p>	
<p>(a) the length of time that has elapsed since the date the subject matter of the complaint arose makes an investigation no longer practicable or desirable;</p>	
<p>(b) the subject matter of the complaint is trivial or the complaint is not made in good faith or is frivolous or vexatious; or</p>	Consideration should be given to adding “abuse of process” to this section.
<p>(c) the circumstances of the complaint do not require investigation.</p>	
<p><b>Ombudsman may defer complaint about access</b>  <b>41(2)</b> The Ombudsman may decide not to investigate a complaint about access or may defer investigating it if</p>	
<p>(a) the complaint concerns a health care facility or health services agency and there is an internal appeal procedure that the complainant has not used; or</p>	
<p>(b) the complaint concerns a health professional and there is an expeditious and informal procedure for addressing such complaints available through a body that has statutory responsibility for regulating the practice of the health professional, which the complainant has not used.</p>	

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<p><b>Notifying the complainant</b>  <b>41(3)</b> The Ombudsman shall inform the complainant in writing if he or she decides not to investigate a complaint or defers investigating it, and give reasons for the decision.</p>	
<p><b>Notifying trustee and others of complaint</b>  <b>42</b> As soon as practicable after deciding to investigate a complaint, the Ombudsman shall notify the following persons about the complaint:</p>	
<p>(a) the trustee concerned; and</p>	
<p>(b) any other person who the Ombudsman considers should be notified, having regard to the nature of the complaint and the need to protect the complainant's privacy.</p>	
<p><b>Representations to the Ombudsman</b>  <b>43(1)</b> During an investigation, the Ombudsman shall give the complainant and the trustee concerned an opportunity to make representations to the Ombudsman. The Ombudsman may also give any other person who has been notified of the complaint under clause 42(b) an opportunity to make representations. However, no one is entitled to be present during an investigation or to have access to or to comment on representations made to the Ombudsman by another person.</p>	
<p><b>Written or oral representations</b>  <b>43(2)</b> The Ombudsman may decide whether representations are to be made orally or in writing.</p>	
<p><b>Representations by counsel</b>  <b>43(3)</b> Representations may be made to the Ombudsman through counsel or an agent.</p>	
<p><b>Obtaining opinion of physician or other expert</b>  <b>44</b> If a complaint about access relates to a trustee's refusal to permit personal health information to be examined or copied under clause 11(1)(a) (endangering health or safety), the Ombudsman may arrange for a physician or other expert chosen by the Ombudsman to provide an opinion on the matter.</p>	
<p><b>Duty to cooperate</b>  <b>45</b> A trustee and every officer, employee and agent of a trustee shall cooperate with the Ombudsman in an investigation.</p>	<p>Should be consistent with other provisions within the Act. Proposed change would make this section consistent with revised sections 29(2), 29(3) and 29(4).</p> <p><b>Duty to cooperate</b>  <del>45 A trustee and every officer, employee and agent of a trustee</del> <b>Any person</b> shall cooperate with the Ombudsman in an investigation.</p>
<p><b>Time limit for investigation</b></p>	<p>The time limit for investigating access complaints for personal health information (PHIA)</p>

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<p><b>46</b> An investigation must be completed and a report made under section 47 within 45 days after the complaint is made if it is about access, and within 90 days if it is about privacy, unless the Ombudsman</p>	<p>and personal information (FIPPA) should be consistent.</p>
<p>(a) notifies the complainant, the trustee and any other person who has made representations to the Ombudsman that the Ombudsman is extending that period; and</p>	
<p>(b) gives an anticipated date for providing the report.</p>	
<p><b>OMBUDSMAN'S REPORT</b></p>	
<p><b>Report</b>  <b>47(1)</b> On completing an investigation, the Ombudsman shall prepare a report containing the Ombudsman's findings and any recommendations the Ombudsman considers appropriate about the complaint.</p>	<p>We considered <i>The Ombudsman Act</i> in our discussion of this provision. It was our thought that making section 47 parallel with the OA would provide our office with the ability to report out on files verbally where appropriate.  <b>Report</b>  <b>47(1)</b> On completing an investigation, the Ombudsman shall <del>prepare a report containing the Ombudsman's</del> <b>his or her</b> findings and any recommendations the Ombudsman considers appropriate about the complaint.</p>
<p><b>Recommendations about access</b>  <b>47(2)</b> In a report concerning a complaint about access, the Ombudsman</p>	<p>It was our view that including "written" in this provision would clarify that reports containing recommendations would be in writing.  <b>Recommendations about access</b>  <b>47(2)</b> In a <b>written</b> report <b>containing recommendations</b> concerning a complaint about access, the Ombudsman</p>
<p>(a) shall indicate whether, in his or her opinion, the refusal is justified in whole or in part and, if not, shall recommend that the trustee permit the complainant to examine and receive a copy of all or part of the personal health information, as the case may require; and</p>	
<p>(b) may recommend that the trustee modify or improve its procedures or practices concerning requests for access.</p>	
<p><b>Recommendations about privacy</b>  <b>47(3)</b> In a report concerning a complaint about privacy, the Ombudsman</p>	<p>It was our view that including "written" in this provision would clarify that reports containing recommendations would be in writing.  <b>Recommendations about access</b>  <b>47(3)</b> In a <b>written</b> report <b>containing recommendations</b> concerning a complaint about privacy, the Ombudsman</p>
<p>(a) shall indicate whether, in his or her opinion, the complaint is well founded; and</p>	
<p>(b) may, as long as the trustee has been given an opportunity to make representations about the matter, recommend that the trustee</p>	
<p>(i) cease or modify a specified practice of collecting, using, disclosing, retaining or destroying personal health information contrary to this Act, or</p>	

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(ii) destroy a collection of personal health information that was collected in a manner contrary to this Act.	
<b>Report given to complainant and others</b> <b>48(1)</b> The Ombudsman	
(a) shall give a copy of the report to the complainant and the trustee concerned; and	For consistency with the revised section 47 (a) shall <del>give a copy of the</del> report to the complainant and the trustee concerned; and
(b) may give a copy of the report to any other person who has been notified of the complaint under clause 42(b) and who has made representations to the Ombudsman.	For consistency with the revised section 47 (b) may <del>give a copy of the</del> report to any other person who has been notified of the complaint under clause 42(b) and who has made representations to the Ombudsman.
<b>Forwarding report to professional regulatory body</b> <b>48(2)</b> Unless the complainant objects, if the Ombudsman is of the opinion that the subject matter of a complaint should be considered by a body with statutory authority to regulate health professionals, the Ombudsman may notify that body and give it a copy of the report.	For consistency with the revised section 47 <b>Forwarding report to professional regulatory body</b> <b>48(2)</b> Unless the complainant objects, if the Ombudsman is of the opinion that the subject matter of a complaint should be considered by a body with statutory authority to regulate health professionals, the Ombudsman may notify that body and give it a copy of the <i>written</i> report.
<b>Notice of right to appeal</b> <b>48(3)</b> If the Ombudsman finds that a complaint about access that relates to a refusal to permit the complainant to examine or receive a copy of personal health information is unjustified, the report must advise the complainant of the right to appeal the decision to the court under section 49, and of the time limit for an appeal.	For consistency with the revised section 47 <b>Notice of right to appeal</b> <b>48(3)</b> If the Ombudsman finds that a complaint about access that relates to a refusal to permit the complainant to examine or receive a copy of personal health information is unjustified, <del>the report</del> <i>he or she</i> must advise the complainant of the right to appeal the decision to the court under section 49, and of the time limit for an appeal.
<b>Trustee's response to the report</b> <b>48(4)</b> If the report contains recommendations, the trustee shall, within 14 days after receiving it, send the Ombudsman a written response indicating	We think that the timelines in PHIA and FIPPA should be consistent with each other.
(a) that the trustee accepts the recommendations and describing any action the trustee has taken or proposes to take to implement them; or	
(b) the reasons why the trustee refuses to take action to implement the recommendations.	Trustees may accept some recommendations and not others. We suggest this section be changed from "the recommendations" to "any recommendation."
<b>Notice to the complainant</b> <b>48(5)</b> The Ombudsman shall notify the complainant of the trustee's response without delay. In the case of a complaint about access relating to a trustee's refusal to permit the complainant to examine or receive a copy of personal health information, the Ombudsman shall also inform the complainant that he or she may appeal the trustee's decision to the court under section 49 and of the time limit for an appeal.	

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<p><b>Compliance with recommendations</b>  <b>48(6)</b> When a trustee accepts the recommendations in a report, the trustee shall comply with the recommendations within 15 days of acceptance, or within such additional period as the Ombudsman considers reasonable.</p>	
<b>APPEAL TO COURT</b>	
<p><b>Appeal to court for access to record</b>  <b>49(1)</b> If a trustee has refused to permit an individual to examine or receive a copy of personal health information following a request made in accordance with Part 2, the individual may appeal the decision to the court.</p>	
<p><b>Appeal only if complaint has been made</b>  <b>49(2)</b> An appeal may be made under subsection (1) only if the person has made a complaint about access to the Ombudsman and the Ombudsman has provided a report under section 48.</p>	<p>For consistency with the revised section 47  <b>Appeal only if complaint has been made</b>  <b>49(2)</b> An appeal may be made under subsection (1) only if the person has made a complaint about access to the Ombudsman and the Ombudsman has <del>provided a</del> <b>reported</b> under section 48.</p>
<p><b>Appeal within 30 days</b>  <b>49(3)</b> An appeal may be made by filing an application with the court within 30 days after the person receives the Ombudsman's report under subsection 48(1) or a notice under subsection 48(5), or within such longer period as the court may allow in special circumstances.</p>	<p>It is our suggestion that our office would be notifying complainants in writing of their right to appeal.  <b>Appeal within 30 days</b>  <b>49(3)</b> An appeal may be made by filing an application with the court within 30 days after <del>person receives the Ombudsman's report</del> <b>provides notice to the person</b> under subsection <del>48(1)</del> <b>48(3)</b> or a notice under subsection 48(5), or within such longer period as the court may allow in special circumstances.</p>
<p><b>Trustee to be named as respondent</b>  <b>49(4)</b> The application must name the trustee involved in the complaint as the respondent.</p>	
<p><b>Appeal served on trustee and Ombudsman</b>  <b>49(5)</b> The person appealing shall, within 15 days after filing the application, serve a copy of it on</p>	
<p>(a) the trustee concerned; and</p>	
<p>(b) the Ombudsman.</p>	
<p><b>Appeal by the Ombudsman</b>  <b>50(1)</b> The Ombudsman may appeal a decision described in subsection 49(1) to the court within the time limit set by subsection 49(3), if the Ombudsman has obtained the consent of the person who has the right of appeal.</p>	
<p><b>Ombudsman may intervene</b>  <b>50(2)</b> The Ombudsman has a right to intervene as a party to an appeal under section 49.</p>	

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<p><b>Appeal served on trustee</b>  <b>50(3)</b> Within 15 days after filing an application for appeal, the Ombudsman shall serve a copy of it on the trustee concerned.</p>	
<p><b>Expeditious appeal</b>  <b>51</b> The court may hear evidence by affidavit and may decide the appeal in an expeditious manner.</p>	
<p><b>Burden of proof</b>  <b>52</b> On an appeal, it is up to the trustee to prove that the refusal to permit the applicant to examine and receive a copy of his or her personal health information is justified.</p>	
<p><b>Court may order production of records</b>  <b>53</b> Despite any other enactment of Manitoba or any privilege of the law of evidence, for the purpose of an appeal, the court may order production of any record maintained by a trustee that is relevant to the appeal for examination by the court.</p>	
<p><b>Court to take precautions against disclosing</b>  <b>54</b> On an appeal, the court shall take every reasonable precaution, including receiving representations ex parte, conducting hearings in private and examining records in private, to avoid disclosure of personal health information.</p>	
<p><b>Powers of court on appeal</b>  <b>55</b> On hearing an appeal, the court may</p>	
<p>(a) dismiss the appeal if it determines that the trustee was justified in refusing to permit the applicant to examine or receive a copy of his or her personal health information under section 11; or</p>	
<p>(b) if it determines that the trustee was not justified in refusing to permit the applicant to examine or copy all or part of his or her personal health information under section 11,</p>	
<p>(i) order the trustee to permit the applicant to examine and copy all or part of the information, and</p>	
<p>(ii) make any other order that the court considers appropriate.</p>	
<p><b>No further appeal except with leave</b>  <b>56</b> Except with leave of The Court of Appeal, a decision of the court under section 55 is final and binding and there is no appeal from it.</p>	
<p><b>PART 6</b></p>	
<p><b>GENERAL PROVISIONS</b></p>	<p>The Act should require an annual report be published related to the administration of the legislation.</p>

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<p><b>Privacy officer for facility and agency</b>  <b>57</b> A health care facility and a health services agency shall designate one or more of its employees as a privacy officer whose responsibilities include</p>	
<p>(a) dealing with requests from individuals who wish to examine and copy or to correct personal health information under this Act; and</p>	
<p>(b) generally facilitating the trustee's compliance with this Act.</p>	
<p><b>Role for head of public body</b>  <b>58(1)</b> Where a trustee is a public body, any decision to be made or opinion formed under this Act by the trustee may be made or formed by the head of the public body as defined in <i>The Freedom of Information and Protection of Privacy Act</i>.</p>	
<p><b>Delegation by head of public body</b>  <b>58(2)</b> The head of a public body may delegate to any person on the staff of the public body any responsibility referred to in subsection (1).</p>	
<p><b>Health information privacy committee</b>  <b>59(1)</b> For the purpose of approving health research projects under section 24, the minister shall establish a health information privacy committee in accordance with the regulations.</p>	
<p><b>Public representation</b>  <b>59(2)</b> At least 1/4 of the persons appointed to the health information privacy committee must be public representatives who are not health professionals or persons who conduct health research or employees of the government.</p>	
<p><b>Responsibilities</b>  <b>59(3)</b> In addition to its responsibilities under section 24, the health information privacy committee may perform any other functions assigned to it by the minister.</p>	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<p><b>Exercising rights of another person</b>  <b>60</b> The rights of an individual under this Act may be exercised</p>	<p>There is a gap in the legislation where an individual becomes incapacitated and there is no one who fits the criteria set out in this section to act on their behalf. We recognize this to be problematic for trustees and would suggest incorporating an expanded nearest relative concept from <i>The Mental Health Act</i> that could also include wording such as that in section 23(1) of PHIA:</p> <ul style="list-style-type: none"> <li>▪ anyone with whom the individual is known to have a close personal relationship [23(1)], and</li> <li>▪ include a statement recognising that so long as the trustee reasonably believes it would “be acceptable to the individual” the information is about. [23(1)(c)]</li> </ul> <p><i>The Mental Health Act</i> defines nearest relative as follows:</p> <p><b>nearest relative</b> means, with respect to a patient or other person,  (a) the adult person listed first in the following clauses, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any clause being preferred to the other of those relatives, regardless of gender:</p> <ul style="list-style-type: none"> <li>(i) spouse or common-law partner,</li> <li>(ii) son or daughter,</li> <li>(iii) father or mother,</li> <li>(iv) brother or sister,</li> <li>(v) grandfather or grandmother,</li> <li>(vi) grandson or granddaughter,</li> <li>(vii) uncle or aunt,</li> <li>(viii) nephew or niece, or</li> </ul> <p>(b) the Public Trustee, if there is no nearest relative within any description in clause (a) who is apparently mentally competent and available</p>
(a) by any person with written authorization from the individual to act on the individual's behalf;	
(b) by a proxy appointed by the individual under <i>The Health Care Directives Act</i> ;	
(c) by a committee appointed for the individual under <i>The Mental Health Act</i> if the committee has the power to make health care decisions on the individual's behalf;	
(d) by a substitute decision maker for personal care appointed for the individual under <i>The Vulnerable Persons Living with a Mental Disability Act</i> if the exercise of the right relates to the powers and duties of the substitute decision maker;	
(e) by the parent or guardian of an individual who is a minor, if the minor does not have the capacity to make health care decisions; or	For greater clarity, we would suggest this section be amended to indicate that a parent of a deceased minor can exercise the rights of the deceased child under PHIA.

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
	(e) by the parent or guardian of an individual who is a minor, if the minor does not have the capacity to make health care decisions <i>or is deceased</i> ; or
(f) if the individual is deceased, by his or her personal representative.	
<p><b>Information deemed to be maintained by trustees</b>  <b>61(1)</b> Information that is maintained by an officer, employee or member of a trustee in that person's capacity as such is deemed to be maintained by the trustee for the purposes of this Act.</p>	
<p><b>Actions by employees</b>  <b>61(2)</b> Any action done by, or information disclosed to, a person employed by or in the service of a trustee in the performance of that person's duties is deemed to have been done by, or disclosed to, the trustee for the purposes of this Act.</p>	
<p><b>Protection from liability</b>  <b>62</b> No action lies and no proceeding may be brought against the government or a trustee or any person acting for or under the direction of the government or a trustee for damages resulting from the use or disclosure of personal health information in circumstances where the government or the trustee or other person reasonably believed that the use or disclosure was authorized under this Act.</p>	
<p><b>Offences</b>  <b>63(1)</b> Any person who</p>	
(a) wilfully makes a false statement to, or misleads or attempts to mislead, the Ombudsman or another person in the performance of the duties and powers of the Ombudsman;	
(b) wilfully obstructs the Ombudsman, or any person acting for or under the direction of the Ombudsman, in any manner;	
(c) wilfully destroys or erases personal health information with the intent to evade an individual's request to examine or copy the information;	
(d) obtains another person's personal health information by falsely representing that he or she is entitled to the information; or	
(e) requires production of or collects or uses another person's PHIN contrary to section 26; is guilty of an offence.	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<p><b>Offence by employee</b>  <b>63(2)</b> Despite subsection 61(2), a person who is an employee of a trustee or information manager who, without the authorization of the trustee or information manager, willfully discloses personal health information in circumstances where the trustee or information manager would not be permitted to disclose the information under this Act, is guilty of an offence.</p>	<p>We are aware that there is a unique employment relationship between physicians, the Regional Health Authorities and various health care facilities. We understand that doctors are “employed” with the Regional Health Authorities (RHA) and provided admitting privileges to various hospitals. It would appear that they are “employees” of the RHA and “agents” of the health care facilities. Accordingly, we would suggest expanding section 63(2) to include “agents” of the trustee.</p>
<p><b>Offences by trustees and information managers</b>  <b>63(3)</b> A trustee or information manager who</p>	
<p>(a) collects, uses, sells or discloses personal health information contrary to this Act;</p>	
<p>(b) fails to protect personal health information in a secure manner as required by this Act; or</p>	
<p>(c) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on a trustee or other person;</p>	
<p>is guilty of an offence.</p>	
<p><b>Due diligence defence</b>  <b>63(4)</b> No trustee or information manager shall be found to have contravened clause (3)(a) or (b) if the trustee or information manager can establish that he or she took all reasonable steps to prevent the contravention.</p>	
<p><b>Continuing offence</b>  <b>63(5)</b> When a contravention of this Act continues for more than one day, the person is guilty of a separate offence for each day the contravention continues.</p>	
<p><b>Prosecution within two years</b>  <b>63(6)</b> A prosecution under this Act may be commenced not later than two years after the commission of the alleged offence.</p>	<p>It may take some time before an individual or our office becomes aware of an alleged offence. This being the case, we suggest the following amendment.</p> <p><b>Prosecution within two years</b>  <b>63(6)</b> A prosecution under this Act may be commenced not later than two years after <i>discovery that</i> the commission of the alleged offence <i>was committed</i>.</p>
<p><b>Penalty</b>  <b>64(1)</b> A person who is guilty of an offence under section 63 is liable on summary conviction to a fine of not more than \$50,000.</p>	
<p><b>Directors and officers of corporations</b>  <b>64(2)</b> When a corporation is guilty of an offence, a director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary</p>	

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conviction to a fine of not more than \$50,000.	
<p><b>Defence under other enactments</b>  <b>65(1)</b> No person is guilty of an offence or subject to disciplinary action of any kind under any other enactment by reason of complying with a request or requirement to produce a record or provide information or evidence to the Ombudsman, or a person acting for or under the direction of the Ombudsman, under this Act.</p>	
<p><b>No adverse employment action</b>  <b>65(2)</b> No trustee or person acting on behalf of a trustee shall take any adverse employment action against an employee because the employee has complied with a request or requirement to produce a record or provide information or evidence to the Ombudsman, or a person acting for or under the direction of the Ombudsman, under this Act.</p>	<p>For consistency with revised section 29(2)</p> <p><b>No adverse employment action</b>  <b>65(2)</b> <del>No trustee or person acting on behalf of a trustee shall take any</del> adverse employment action <b>shall be taken</b> against an <del>employee</del> <b>individual</b> because the <del>employee</del> <b>individual</b> has complied with a request or requirement to produce a record or provide information or evidence to the Ombudsman, or a person acting for or under the direction of the Ombudsman, under this Act.</p>
<p><b>Regulations</b>  <b>66(1)</b> The Lieutenant Governor in Council may make regulations</p>	
(a) designating facilities for the purpose of the definition "health care facility" in section 1;	
(b) designating classes of persons as health professionals for the purpose of the definition "health professional" in section 1;	
(c) respecting the maximum fees that trustees may charge for the examination and copying of personal health information, including providing for circumstances in which fees may be waived;	For greater certainty, this regulation should be enacted. The regulation should either permit a reasonable fee with a provision to allow for a waiver of the fee, or replicate the scheme set out under FIPPA related to fees.
(d) requiring trustees to provide notice to individuals about	Individuals are not always sure of <u>all</u> information practices of trustees. For transparency, this regulation should be enacted.
(i) the right to examine and copy and to correct personal health information, and	
(ii) the practices of the trustee respecting the collection, use, retention and disclosure of personal health information,	
and providing for the form and content of such notices;	
(e) respecting the giving of authorizations and consents by individuals under this Act;	
(f) for the purpose of section 17, governing policies of trustees concerning retention periods for personal health information and respecting the destruction of that information, and requiring the	For greater guidance, consideration should be given to enacting a regulation related to retention and destruction. We would suggest that this regulation include the transferring of health information from one medium to another.

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
policies to be made available to the public;	
(g) requiring trustees to maintain a record of disclosures of personal health information made under this Act;	
(h) respecting security safeguards for personal health information that trustees must establish, including requirements for information held in electronic form;	
(i) specifying public bodies for the purpose of clause 22(2)(h);	
(j) respecting agreements for the purposes of subsections 24(4) and 25(3);	
(k) for the purpose of clause 26(2)(c), permitting the collection and use of a person's PHIN number for specified purposes or by specified persons or bodies;	
(l) governing the disclosure of personal health information to persons or bodies outside Manitoba;	Personal health information is currently disclosed outside of Manitoba for the purposes of providing health care and conducting health research. Consideration should be given to enacting a regulation governing these disclosures of personal health information.
(m) respecting the appointment of members of the health information privacy committee established under section 59 and governing the duties and functions of the committee and all related matters;	
(n) defining any word or expression used but not specifically defined in this Act;	
(o) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Act.	
<b>Application of regulations</b> <b>66(2)</b> A regulation under subsection (1) may be made to apply to particular classes of trustees or persons or to particular classes of personal health information.	
<b>PART 7</b>	
<b>REVIEW AND COMING INTO FORCE</b>	
<b>Review of this Act</b> <b>67</b> Within five years after this Act comes into force, the minister shall undertake a comprehensive review of the operation of the Act that involves public representations and shall, within one year after the review is undertaken or within such further time as the Legislative Assembly may allow, submit a report on the review to the Assembly.	Consideration should be given to periodically reviewing the Act.
<b>C.C.S.M. reference</b> <b>68</b> This Act may be referred to as chapter P33.5 of the Continuing Consolidation of the Statutes of Manitoba.	

THE PERSONAL HEALTH INFORMATION ACT	COMMENTS
<b>Coming into force</b> 69 This Act comes into force on a day fixed by proclamation.	
<b>NOTE:</b> S.M. 1997, c. 51 was proclaimed in force December 11, 1997.	

PERSONAL HEALTH INFORMATION Act -- REGULATION	COMMENTS
Regulation 245/97	
Registered December 11, 1997	
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8.1 Functions of the health information privacy committee	
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9 Coming into force	
SCHEDULE	
<b>Definitions</b>	
1 In this regulation,	
<b>Act</b> means <i>The Personal Health Information Act</i> ;	
<b>agent</b> , in relation to a trustee, includes,	
(a) if the trustee is a corporation, an officer or director of the corporation,	
and	
(b) a student or volunteer;	
<b>removable electronic storage media</b> includes diskettes, magnetic	
tape, CD ROMs, disk drives and laser disks;	
<b>use</b> , in relation to personal health information, includes processing,	
reproduction, transmission and transportation of information.	

PERSONAL HEALTH INFORMATION Act -- REGULATION	COMMENTS
<p><b>Regional health authorities are specified public bodies</b>  <b>1.1</b> Every regional health authority established or continued under <i>The Regional Health Authorities Act</i> is a specified public body for the purpose of clause 22(2)(h) of the Act.</p>	
<p><b>Designation of health professionals</b>  <b>1.2</b> The following classes of persons are designated as health professionals for the purpose of the Act:</p>	
<p>(a) persons registered or eligible for registration under <i>The Manitoba Institute of Registered Social Workers Incorporation Act</i>;</p>	
<p>(b) persons registered or eligible for registration under <i>The Manitoba Speech and Hearing Association Act</i>;</p>	
<p>(c) persons licensed to operate a business as a massage therapist under the City of Winnipeg Licence By-law No. 6551/95 or any other municipal by-law of similar intent;</p>	
<p>(d) persons certified or eligible for certification as orthotists by the Canadian Board of Certification of Prosthetists and Orthotists;</p>	
<p>(e) persons certified or eligible for certification as prosthetists by the Canadian Board of Certification of Prosthetists and Orthotists.</p>	
<p><b>Designation of health care facilities</b>  <b>1.3</b> The facilities set out in the Schedule are designated as health care facilities for the purpose of the Act.</p>	
<p><b>Written security policy and procedures</b>  <b>2</b> A trustee shall establish and comply with a written policy and procedures containing the following:</p>	
<p>(a) provisions for the security of personal health information during its collection, use, disclosure, storage, and destruction, including measures</p>	
<p>(i) to ensure the security of the personal health information when a record of the information is removed from a secure designated area, and</p>	
<p>(ii) to ensure the security of personal health information in electronic form when the computer hardware or removable electronic storage media on which it has been recorded is being disposed of or used for another purpose;</p>	
<p>(b) provisions for the recording of security breaches;</p>	
<p>(c) corrective procedures to address security breaches.</p>	
<p><b>Access restrictions and other precautions</b>  <b>3</b> A trustee shall</p>	

PERSONAL HEALTH INFORMATION Act -- REGULATION	COMMENTS
(a) ensure that personal health information is maintained in a designated area or areas and is subject to appropriate security safeguards;	
(b) limit physical access to designated areas containing personal health information to authorized persons;	
(c) take reasonable precautions to protect personal health information from fire, theft, vandalism, deterioration, accidental destruction or loss and other hazards; and	
(d) ensure that removable media used to record personal health information is stored securely when not in use.	
<b>Additional safeguards for electronic health information systems</b> <b>4(1)</b> A trustee shall ensure every electronic information system that the trustee designs or acquires after December 11, 2000	
(a) produces an electronic record of every successful or unsuccessful attempt to	
(i) gain access to the personal health information maintained on the system, (ii) add to, delete or modify the personal health information maintained on the system; and	
(b) records every transmission of personal health information maintained on the system.	
<b>4(2)</b> A trustee shall regularly review the electronic records produced under subsection (1) to detect any security breaches.	
<b>4(3)</b> The requirements of this section only apply to an electronic information system used by a trustee to maintain personal health information.	
<b>Authorized access for employees and agents</b> <b>5</b> A trustee shall, for each of its employees and agents, determine the personal health information that he or she is authorized to access.	
<b>Orientation and training for employees</b> <b>6</b> A trustee shall provide orientation and ongoing training for its employees and agents, about the trustee's policies and procedures referred to in section 2.	
<b>Pledge of confidentiality for employees</b> <b>7</b> A trustee shall ensure that each employee and agent signs a pledge of confidentiality that includes an acknowledgment that he or she is bound by the policy and procedures referred to in section 2 and is aware of the consequences of breaching them.	

PERSONAL HEALTH INFORMATION Act -- REGULATION	COMMENTS
<b>Audit</b> <b>8.1(1)</b> A trustee shall conduct an audit of its security safeguards at least every two years.	
<b>8(2)</b> If an audit identifies deficiencies in the trustee's security safeguards, the trustee shall take steps to correct the deficiencies as soon as practicable.	
<b>Functions of the health information privacy committee</b> <b>8.1(1)</b> The health information privacy committee shall ensure that each request for approval of a health research project under section 24 of the Act includes the following information:	
(a) the purpose of the health research;	
(b) the name of the principal researcher or researchers responsible for the project, including any collaborating researchers if the project is multi-centre in scope;	
(c) the duration of the project, the date of commencement and the projected date it will conclude;	
(d) a detailed description of the personal health information required for the research;	
(e) a description of any possible linkage or merging of the personal health information with other information and the rationale for that linkage or merger;	
(f) whether the research project will require direct contact with individuals;	
(g) a description of the methods to be employed to maintain security of the personal health information, including disposal of the information;	
(h) the names of persons who will receive the project results, including any proposed submissions for publication;	
(i) identification of the sources and duration of publication; funding for the research project;	
(j) confirmation satisfactory to the committee that the research project has been approved by an institutional research review committee;	
(k) any additional information the committee considers necessary.	
<b>8.1(2)</b> After making a decision to grant or refuse to grant an approval, the committee shall advise the research applicant in writing of its decision.	
<b>8.1(3)</b> The committee may determine its own practice and procedure.	

PERSONAL HEALTH INFORMATION Act -- REGULATION	COMMENTS
<b>8.1(4)</b> The minister shall provide the committee with clerical and administrative support, including the engaging of assistance for the committee, that the minister considers appropriate.	
<b>8.1(5)</b> The committee shall provide the minister with an annual report of its activities.	
<b>Members of the health information privacy committee</b>	
<b>8.2(1)</b> The health information privacy committee is to consist of not less than eight and not more than 12 members appointed by the minister.	
<b>8.2(2)</b> The minister shall appoint at least one representative from nominations received from each of the following:	
(a) the council of chairs of the regional health authorities;	
(b) The College of Physicians and Surgeons of Manitoba;	
(c) the College of Registered Nurses of Manitoba;	
(d) the Manitoba Pharmaceutical Association;	
(e) the Manitoba Health Records Association;	
(f) The University of Manitoba.	
<b>8.2(3)</b> Each committee member may sit for a period of no more than six years.	
<b>8.2(4)</b> The committee shall elect a chairperson from among its members.	
<b>Research agreements</b>	
<b>8.3</b> An agreement between a trustee and a researcher under subsection 24(4) of the Act must be in writing and must adequately identify the research project for which approval is given.	
<b>Coming into force</b>	
<b>9(1)</b> This regulation comes into force on December 11, 1997.	
<b>Time to comply: one year</b>	
<b>9(2)</b> Notwithstanding subsection (1), a trustee shall comply with this regulation, except section 4, as soon as reasonably possible but not later than December 11, 1998.	
<b>9(3)</b> Repealed.	
<b>SCHEDULE</b>	
<b>(Section 1.3)</b>	

**DESIGNATED HEALTH CARE FACILITIES**

Aboriginal Health and Wellness Centre of Winnipeg, Inc.  
 Beaver Air Services L.P.  
 Behavioural Health Foundation Inc.  
 Brandon Cardiac Reh-Fit — YMCA  
 CFB Shilo Emergency Services  
 Canadian Blood Services  
 Centre de Santé  
 Chemawawin First Nation Ambulance Service  
 Clinique Youville Clinic Inc.  
 Community Therapy Services Inc.  
 Eden Residential Care Services Inc.  
 Emerson Volunteer Ambulance Service  
 Fisher Ambulance Service Ltd.  
 Gilbert Plains Ambulance Service  
 Hope Centre Health Care Incorporated  
 Jocelyn House Inc.  
 Keewatin Air  
 Klinik, Inc.  
 Laurel Centre Inc.  
 MFL Occupational Health and Safety Centre Inc.  
 Main Street Project Inc.  
 Manitoba Cardiac Institute (Reh-Fit) Inc.  
 Melita Ambulance Service  
 Mount Carmel Clinic  
 Native Addictions Council of Manitoba  
 Neepawa & District Ambulance Service Ltd.  
 Nine Circles Community Health Centre  
 Norway House Cree Nation EMS  
 Nor'West Co-op Health & Social Services Centre Inc.  
 Perimeter AeroMed  
 Pimichikimac Air Ltd.  
 Pine Falls Ambulance Service  
 Portage Emergency Medical Care Services  
 Riverton Ambulance Service  
 Rosaire House — The Pas  
 St. Amant Centre Inc.  
 Ste. Rose and District Ambulance Service  
 Salvation Army Inc. — Anchorage Program  
 Salvation Army Inc. — Brandon Crisis Stabilization/Mobile Crisis Unit  
 Salvation Army Inc. — Interlake Crisis  
 Stabilization/Mobile Crisis Unit  
 Salvation Army Inc. — Winnipeg Crisis Stabilization Unit  
 Salvation Army Inc. — Winnipeg Mobile Crisis Services  
 Sarah Riel Inc. — Crisis Stabilization Unit  
 SkyCare Air Ambulance

