

MANITOBA OMBUDSMAN PRACTICE NOTE

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COLLECTION AND PROVIDING NOTICE OF COLLECTION OF PERSONAL HEALTH INFORMATION UNDER PHIA

OVERVIEW

Collection is the initial consideration in handling personal health information. Once a trustee collects personal health information the privacy considerations and responsibilities under PHIA relating to use, disclosure, retention, security and destruction will apply.

Under PHIA, the collection of personal health information requires consideration of the following factors:

- purpose of collection
- limit on amount of collection
- source of information (distinguishing between “direct” and “indirect” collection)
- notice of collection (in the situation of “direct collection” only)

Although the terms “direct collection” and “indirect collection” are not found in PHIA, they are used by the access and privacy community for collection concepts described in the Act. Direct collection refers to collecting personal health information directly from the individual the information is about. Indirect collection refers to collecting personal health information from a source other than the individual it is about, as listed in subsection 14(2) of PHIA. The distinction between direct and indirect collection is relevant to the source of information and notice of collection.

PURPOSE OF COLLECTION

Under subsection 13(1) a trustee can only collect personal health information when:

- the information is collected for a lawful purpose connected with a function or activity of the trustee; and
- the collection of the information is necessary for that purpose.

Both of these requirements must be met for a collection of personal health information to be compliant with PHIA.

LIMIT ON AMOUNT OF COLLECTION

When a trustee collects personal health information, it must only collect as much information about an individual as is reasonably necessary to accomplish the purpose for which the information is being collected (subsection 13(2)). The collection of more personal health information than is necessary for the purpose (commonly referred to as “over collection”) would not be compliant with PHIA.

SOURCE OF INFORMATION

PHIA requires the collection of personal health information to be made directly from the individual (subsection 14(1)) unless the indirect collection from another source is permitted under subsection 14(2). Subsection 14(2) includes six situations where an indirect collection of personal health information can be made.

NOTICE OF COLLECTION

Before a trustee collects personal health information directly from the individual the information is about, or as soon as practicable afterwards, the trustee must take reasonable steps to inform the individual:

- of the purpose for which the information is being collected; and
- 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 (subsection 15(1))

While PHIA sets out the contents of the notice for direct collection, it does not require that the notice be in a particular form. The form of notice should be appropriate to the situation. It is a good practice to provide notice in writing. The notice could, for example, be on a public sign or be contained in an information brochure handed to the individual or be set out on an application form where personal health information is being collected directly from the individual. If notice is given verbally, it is suggested that the trustee document its providing of notice to the individual and consider having the individual initial the file entry.

Notice is not required if the trustee has recently provided the individual with notice concerning the collection of the same or similar personal health information for the same or a related purpose (subsection 15(2)).

SAMPLE NOTICE OF COLLECTION

A sample notification statement, consistent with the provisions set out in subsection 15(1), could be:

*Your personal health information is being collected for the purpose of **[identify the lawful purpose related to a specific function or activity of the trustee]**. This collection of information is necessary because **[state why the collection of information is necessary for the purpose]**.*

Required if the trustee is not a health professional: *If you have any questions about this collection of your personal health information, contact **[provide title and business contact information of the responsible official or employee, including the address and telephone number]**.*

Optional: *Your personal health information is protected by the Protection of Privacy provisions of The Personal Health Information Act (PHIA).*