

COMMENT TO ALL REGIONAL HEALTH AUTHORITIES IN MANITOBA

August 12, 2004

Our office is pleased to provide this comment under *The Personal Health Information Act* (PHIA) regarding privacy issues surrounding the provision of spiritual care to patients in health care facilities (trustees under the Act). This comment is made further to the Ombudsman's comment on the subject, dated November 1, 2001 and gives consideration to the passage of *The Personal Health Information Amendment Act (Spiritual Health)* on June 10, 2004 .

Background

In 2000, our office was asked to comment under PHIA on privacy issues concerning the provision of spiritual care to individuals in health care facilities. This related to the situation where, on a daily basis, health care facilities would provide a list of patients -- including name, location in the facility, religious affiliation and sometimes diagnosis -- to staff chaplains within the facility and to spiritual care visitors and community clergy/visitors attending from outside the facility.

We are aware that our comment on privacy and spiritual care services in health care facilities was widely circulated within Manitoba and also outside of the province, mostly to regional health authorities.

In our original comment, our office was of the view that respecting the intent of PHIA would not impede the services of spiritual care providers. Our office suggested how the utilization of such privacy practices as notice and consent could ensure that individuals would clearly be aware of why personal information relating to spiritual care needs was being collected, how it would be used and disclosed and that individuals should have the opportunity to give consent.

While PHIA does not require consent for the collection of personal health information, it was felt that best practice would be to provide clear notification related to the collection and then to obtain consent . It was our feeling at that time that individuals were not aware of the reasons for collection of personal information relating to religious affiliation and what uses and disclosures would be made of this information.

On June 10, 2004 , *The Personal Health Information Amendment Act (Spiritual Health)* came into force. The new Act amended the definition of "health care" in PHIA by striking out, in clause 1(1)(a), the phrase "physical or mental condition" and substituting the word "health". A definition of "health" has also been added to PHIA to mean "the condition of being sound in mind, body and spirit".

With these amendments, "health care" now expressly includes spiritual care. Spiritual care services, as with any other health care service provided by a health care facility, are clearly subject to the provisions of the Act, the Regulation, and the information privacy policies and procedures required by the Act.

Given these recent amendments to PHIA, this comment identifies various notice, collection, use, and disclosure issues relating to the provision of spiritual care which, in our opinion, should be considered by health care facilities in Manitoba .

Notice

When a trustee collects personal health information directly from an individual, section 15 of the Act requires that the trustee take reasonable steps to inform the individual of the purpose for the collection and advise how the individual's questions about the collection can be answered. Section 13(2) of the Act also requires that the trustee only collect as much personal health information about the individual as is reasonably necessary to accomplish the purpose for which it is collected.

Collection by the Trustee

With the recent amendments to the Act, there would appear to be no question that collection of information relating to spiritual care is for a lawful purpose connected with a function or activity of the trustee, as required by the Act. In addition, the collection of the information is necessary for that purpose (section 13(1) of PHIA).

Various spiritual care providers and others have advised our office that spiritual care is broader than an individual's religious affiliation. It is therefore our understanding that trustees will need to determine if collecting the individual's religious affiliation is necessary for the provision of spiritual care to individuals.

As the Act requires that trustees collect only as much personal health information about the individual as is reasonably necessary to accomplish the purpose for which it is collected, it would seem reasonable for trustees to ask an individual upon admission if he or she wishes to receive spiritual care services. Should the individual indicate "yes", it would then seem appropriate to request the individual's religious affiliation or similar information, if the person would prefer to receive service from someone of his or her own spiritual persuasion. It is our understanding that a parallel situation now occurs in health care facilities when, upon admission, an individual is asked if he or she has any medication allergies and, if so, the individual is then asked to specify which medications. This sequence of collection of information for spiritual care services would be in keeping with the minimum amount required to fulfill the purpose as required by the Act.

We understand that the normal course of practice within health care settings is to have referrals made for various health care services where it is felt the service is needed, for example, social work, physiotherapy and occupational therapy. Since spiritual care services are now clearly included in "health care", we also understand that this health care service would be provided if a referral were made. If information for the purpose of spiritual care has not already been collected, the information could be collected at this time. Of course, a patient or the patient's representative could request spiritual care services upon admission or at any time during the patient's stay in the health care facility and a collection for that purpose would be made then.

Use by the Trustee

"Use" is an activity that relates to spiritual care providers who are employees of the trustee. Section 21 of PHIA identifies when trustees are permitted to use personal health information. Use of personal health information for the purpose of spiritual care services is permitted albeit, as with any other health care service, limited to the minimum amount necessary to accomplish the purpose.

Section 20(2) of the Act requires that a trustee use only the minimum amount of information necessary to accomplish the purpose for which it was collected, in this case spiritual care. Section 20(3) further requires that the trustee limit the use of the personal health information it maintains to those of its employees who need to know the information to carry out the purpose for which the information was collected. It would seem reasonable that information related to spiritual care be provided to the spiritual care department only if the individual has requested the service or if a referral for the service has been made.

Disclosure to Visiting Clergy

"Disclosure" is an activity that relates to visiting clergy. Section 22(1) of PHIA sets out that the individual the information is about may consent to the disclosure by the trustee of his or her personal health information. This includes disclosure to visiting clergy.

Section 22(2) of PHIA identifies a number of specific situations where disclosure by the trustee may be authorized without the consent of the individual the information is about. As with use, section 20(2) of

PHIA sets out that disclosure of personal health information by a trustee must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

Conclusion

Spiritual care is now expressly recognized by PHIA.

We have considered the "spiritual health" amendments to PHIA and the process by which personal health information can be collected, used and disclosed for the purpose of the provision of spiritual care in health care facilities.

In our opinion, the information privacy practices of health care facilities relating to the provision of spiritual care should be consistent with the information privacy practices in the provision of other health care services in the facility. It is our understanding that, as with any other health care service offered by a health care facility, spiritual care would be provided pursuant to a referral or request. As with any other health care service, any collection, use or disclosure of personal health information in the context of spiritual care would have to be limited to the minimum amount necessary to accomplish the purpose.