
Alberta's
Health
INFORMATION
Act

Online Training

Right to Access

Department of Medicine
University of Alberta

Right of Access

- ***Right of Access*** refers to an individual (or their authorized representative) accessing their *own* health information.
- An individual has the right under the Act to request access to their own health information.
- This is different than requesting access to their own ***personal information***, which is subject to FOIP.

HIA v. FOIP

- Remember that **“health information”** is diagnostic, treatment, care information, and registration information, while **“personal information”** is non-health information like address, telephone number, age, sex, etc.
- Requests for personal information must be made separately under FOIP from requests for health information under the HIA.

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- E.g.: If a hospital visitor gets in a scuffle with hospital security and is treated at the hospital, the person's health information as a patient is subject to HIA access rules. Any other personal information collected by security is subject to FOIP access rules.
 - It is important to note that the right of access does not extend to someone other than the person than the individual or their authorized representative.

Authorized Representatives

- An individual may appoint someone as their representative, like a guardian, trustee, a person given a Power of Attorney, or another person with the individual's written authorization.
- They can choose to have the representative exercise some or all of their rights under the Act.

Right of Access vs. Disclosure

- If an individual wants their records sent to a third party, that is a ***disclosure***.
- This differs from a ***Right of Access***, where an individual (or their authorized representative) accessing their own health information.

Mature Minors

- Remember, individuals who are under 18, but who understand the nature of a right or power, and the consequences of exercising that right or power are known as *mature minors*.
- Parents do not have automatic access to their child's health information. Custodians must use their discretion when dealing with mature minors.

Discretionary Exceptions

- There are some cases that if a request is made, the custodian *may* refuse to disclose all or part of the health information, if the disclosure could be reasonably expected to:
 - Harm the mental or physical health or safety of the applicant, another individual, or the public safety
 - There must be a reasonable expectation of probable harm;
 - The harm must constitute damage or detriment, not a mere convenience;
 - There must be a causal connection between disclosure and the anticipated harm;

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- There must be evidence of a direct and specific threat to a person and specific harm from disclosing the information; and
 - There must be detail evidence linking the disclosure and the threat and there is probability that the threat will occur with disclosure.
 - Reveal the identity of a confidential source of health information.
 - Reveal advice developed for or consultations involving a member of Executive Council.
 - Reveal advice, proposals, recommendations, analyses, or policy options development by or for a custodian.
 - Prejudice the use or results of audits or tests.

Mandatory Exceptions

- A custodian must refuse to disclose the information:
 - ❑ If the health information is about anybody other than the individual;
 - ❑ If the health information sets out procedures or contains results of an investigation of a health services provider;
 - ❑ If the information would reveal information about the Executive Council, the Treasury Board and/or any of their committees; and
 - ❑ If the disclosure is prohibited by another enactment of Alberta.
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Dealing with a Request for Information

- If the patient requests a lot of information, then the formal steps for a request for access under the Act need to be followed.
- The request should be in writing.

Deadlines

- Be sure to date stamp the request as soon as it is received, because the custodian has **30 calendar days** to comply from the date of receiving the request.
- Estimate how long it will take to find and prepare information.
 - Custodians may grant themselves a 30 day extension if necessary, but the reason(s) for the extension need to be documented. E.g. “need to consult with other custodians”. If they do not agree with the extension, the patient can ask the Commissioner to review the extension.

Fee Estimates

- Acknowledge the request and provide details of the fee estimate.
 - Custodians can request the basic fee of \$25 prior to processing the request
 - The basic fee can be waived or reduced if the applicant cannot afford to pay it, or when it is fair to excuse payment (e.g. where access to his or her own health information is vital to exercise of his or her rights).
 - The Applicant must agree to the fees before request is processed.

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- ❑ Custodians can request a deposit on the fees prior to processing the request.
 - ❑ In addition to the basic fee, Custodians can charge for additional costs associated with copying the record, like photocopying.
 - ❑ Patients can request to have the fee(s) reduced or waived. If a custodian denies this, or if the applicant feels the fees are unreasonable they can appeal to the Privacy Commissioner to review the decision.
 - ❑ The \$25 basic fee covers 20 pages of photocopying. Thereafter, the custodian may charge \$0.25 a page.

Duty to Assist

- Custodians have a duty to assist the applicant with any terms and abbreviations that they are unfamiliar with.
- If the patient doesn't know what records may exist or how their chart is organized, the custodian must assist them.

Severing Information

- If there are records that contain both information that can be released and information that may/must be withheld, the information can be **severed** (block out information to be withheld) to allow partial access.
- This is done by using correction tape, white-out, or blocking out sections when photocopying.

Last Slide in this Set

Congratulations! You can now move on to the next set of slides - ***Correcting Health Information.***