

Health Information Act Review

Department of Medicine
University of Alberta
June 23, 2008

Brian Hamilton
Portfolio Officer
Office of the Information and
Privacy Commissioner



About me...



Brian Hamilton

- Portfolio Officer, OIPC
 - Investigate and mediate access and privacy complaints
 - Review Privacy Impact Assessments
 - Provide advice and education on access and privacy issues in health sector

2

Agenda



- Introduction
- Purpose of the Act
- Scope of the Act
 - Who's In / Who's Out
- Health Information
 - What's In / What's Out

3

Agenda continued



- Guiding rules for:
 - Access
 - Collection
 - Use
 - Disclosure
- How the Act works
- OIPC & the Commissioner's role
- Recent changes to the HIA

4

Purposes of the Health Information Act



Health Information Act



- Proclaimed April 25, 2001
 - Amended February 2003
 - Recently amended October 2006

6

Purpose of the Act



Seven key purposes:

- protect privacy & confidentiality
- access and share health information to provide health services & to manage the health system
- rules governing collection, use and disclosure (least amount and highest degree of anonymity)

7

Purpose of the Act continued...



- Right of individuals to access health information about themselves
- Right to request correction or amendment
- Strong and effective remedies for contravention of the Act
- Independent reviews of decisions and resolution of complaints

8

Scope of the HIA



Scope of the Act



Who's In?

A. Custodians

- Pharmacies/Pharmacists
- Regulated Health Professionals paid by AHCIP
- Minister and Department
- RHA's and Provincial Boards

10

Scope of the Act



Who's In?

A. Custodians continued ...

- Other Hospitals and Nursing Homes
- Other Boards, Agencies, Committees, etc.

- New custodian: Health Quality Council of Alberta

11

Scope of the Act



Who's In?

B. Affiliates

- employees, agents, volunteers, students and physicians paid by a custodian or having privileges with a custodian

12

Scope of the Act



Who's Out?

- Provincial Government Departments
 - Except Alberta Health & Wellness
- AADAC
- PPDD Boards
- Ambulance attendants

13

Scope of the Act



Who's Out?

- Non publicly funded (i.e. non AHCIP)
 - Private insurance
 - Workers' Compensation Board
- Non custodians and affiliates

14

Health Information



What's In?

- Diagnostic, treatment and care information
- Registration information
- Health services provider information

15

Health Information



What's Out?

- Services by ambulance attendants
- Non recorded information
 - Use of non-recorded information is mentioned in s. 29 (consistent purpose provision)
- Non identifiable information
- Non health information

16

HIA Rules and Duties



Rules



For the access, collection, use and disclosure of health information:

- Custodian as "gatekeeper"
- Consent
- Least amount of information necessary
- Highest degree of anonymity
- Need to know

18

Rules



- Duty to assist
- Duty to disclose to authorized intended person
- Duty to identify responsible affiliate
- Duty to establish or adopt policies and procedures
- Privacy impact assessments (PIA's)

19

What is a PIA?



- A Privacy Impact Assessment evaluates how a project will affect privacy
- A PIA is an exercise in due diligence
- A written report that was:
 - Submitted to OIPC for review
 - Used as an internal reference

20

Rules



- Duty to ensure accuracy
- Duty to protect
 - Electronic records given special attention
- Notation of disclosure
- Disclosure by electronic means
 - Bill 10 - repeal of s.59
- Information Manager Agreements

21

Rules



- Power to transform health information
- Data matching
- Power to charge fees
- Offenses and fines

22

How the HIA works



How the Act works - Access



Custodians are mandated to perform a role

- Individuals right of access
 - information in custody/control of custodian
 - duty to assist
 - discretionary refusal to disclose
 - immediate and grave harm to mental or physical health or safety of individual
 - threaten the mental or physical health or safety of another
 - to pose a threat to public safety

24

How the Act works - Access



- Individuals right of access
 - mandatory refusal to disclose
 - health information is about an individual other than the applicant unless provided by the applicant
 - health information sets out procedures or contains results of an investigation, discipline proceeding, practice review or inspection of health service provider
 - reveal deliberations of Executive Council
 - prohibited by another enactment

25

How the Act works - Access



- Correction/Amendment of Health Information
 - discretion not to correct professional opinions or observations
 - if not corrected, individual can ask for:
 - statement of disagreement on file (500 words) OR
 - ask Commissioner to review decision

26

How the Act works - Fees



- Custodian may charge fees for access requests
 - basic \$25.00 application fee
 - includes 20 copies
 - >20 copies at 25 cents/page

27

How the Act works- Collection



- Authorized collection of health information:
- by an enactment of Alberta or Canada
 - relates directly to and necessary for an authorized use
- Authorized collection of PHN
 - custodians
 - authorized individuals listed in the regulations

28

How the Act works- Collection



Authorized collection of health information:

- collect directly from individual
- may collect indirectly if:
 - individual authorized collection from someone else
 - individual is unable to provide information
 - collection from individual not in best interest of individual or would be inaccurate
 - not reasonably practical

29

How the Act works- Collection



Authorized collection of health information:

- may collect indirectly for the following purposes:
 - assembling family or genetic history
 - determining eligibility for program or service
 - verifying eligibility for program or service
 - informing Public Trustee or Public Guardian about clients or potential clients
 - public information
 - disclosure authorized by HIA

30

How the Act works- Collection



Custodian must take reasonable steps to inform the individual of :

- the purpose for collection
- specific legal authority for the collection
- contact information for an affiliate who can answer any questions

31

How the Act works - Use



Custodians are mandated to perform a role

- Authorized uses of health information:
 - provide health services
 - determine eligibility for health services
 - investigations of health providers
 - conducting research
 - provide education
 - in an enactment
 - internal management
 - health system management

32

How the Act works Disclosure with Consent



- Informed consent - no implied consent
- Criteria:
 - written OR electronically
 - authorization to disclose
 - the purpose for which the health info is disclosed
 - identity of the person who will receive it
 - an acknowledgment by the individual of the risks &/or benefits of consenting or refusing
 - date the consent is effective and if it expires
 - statement allowing revocation

33

How the Act works Disclosure without Consent



Diagnostic, treatment and care information

- Limited disclosure *by custodians* allowed
 - other custodians for S. 27(1)(2) uses
 - Family members, those with a close personal relationship and/or relates to circumstances surrounding death, or health services the person received before death *

34

How the Act works Disclosure without Consent



- Disclosure if:
 - to persons providing continuing care and treatment
 - an individual's legal or personal representative
 - health professional body
 - auditors
 - quality assurance committees
 - required by legislation

35

How the Act works Disclosure without Consent



- Disclosure if:
 - courts/subpoena, warrant or order
 - descendant of a deceased individual for provision of health services
 - Officer of the Legislature
 - Imminent danger
 - "Best interests" scenario
 - police injury investigation *

36

How the Act works Disclosure without Consent



- Disclosure if:
 - to official of a penal or other custodial institution (lawful detainment) for provision of health services
 - to other custodians to prevent fraud, limit abuse
 - transfer of records to a custodian successor

37

How the Act works Disclosure without Consent



Registration Information

- Limited Disclosure:
 - for any purposes for which diagnostic, treatment and care information may be disclosed
 - for purpose of collecting or processing a fine or debt owed to Government of AB or to a custodian
 - to non-custodians as set out by Regulation

38

How the Act works Disclosure without Consent



Health Service Provider Information

- Limited Disclosure:
 - to health professional body
 - required by legislation
 - "business card" information

39

How the Act works Disclosure without Consent



Health Information

- Limited Disclosure:
 - for purposes of storage or research to the Provincial Archives of AB or other archives subject to FOIP
 - to Minister of Health to carry out duties of the Minister

40

How the Act works - Disclosure



- Notations of Disclosure
 - Required for all disclosures of diagnostic, treatment and care information under s.35(1) or (4)
 - name of recipient
 - date and purpose of disclosure
 - description of information disclosed
 - retained for 10 years following disclosure

41


How the Act works - Disclosure



- Notification of purpose and authority for disclosure
 - must inform recipient in writing of purpose and authority
 - does not apply if disclosure is:
 - to individual
 - to another custodian
 - purpose of treatment or care
 - purpose of health system management
 - to Minister or Department


42

Role of the OIPC



OIPC


Office of the Information & Privacy Commissioner



- Commissioner - Frank Work
 - an officer of the Legislative Assembly
 - independent of government
- Has a broad range of responsibilities and powers, including
 - protecting the integrity of:
 - Freedom of Information and Protection of Privacy Act
 - Personal Information Protection Act
 - HIA

44

Commissioner's Role under HIA




Powers of the Commissioner

- Disputes between custodians subject to Commissioner's review
- power to investigate
- inform the public
- requirement to review and comment on PIA submissions

45

Commissioner's Role




Powers of the Commissioner

- give advice and recommendations
- issue binding orders
- ability to recommend fines


46

Changes to the HIA

Proclaimed October 31, 2006



Disclosures to police



- Custodians may disclose;
 - To limit fraud or abuse of health services by individuals
 - To limit fraud or abuse of health services by providers
 - To protect public health and safety
- Limited information may be released
- Important to establish a policy to guide staff
- Existing ways to disclose to police remain unchanged
 - Subpoena, warrant, court order
 - Imminent danger

48

Other changes



- Mandatory disclosure to Minister and Department of Health and Wellness
- Patriot Act
 - Health information can only be disclosed to a court or tribunal with jurisdiction in Canada
 - New fine of up to \$500,000
- Clarifications
 - Provincial provider identifiers
 - Power to authorize custodians to disregard access requests
 - Power to publish Research Ethics Board Responses

49

References



www.oipc.ab.ca

- Guide book: Health Information: A Personal Matter
- Custodian Implementation checklist
- Brochures for Custodians & Individuals
- Investigation Reports and Orders
- PIA summaries

50