

Faculty of Medicine HIA Training Day 2009

## Health Information Act & Bill 52

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## Agenda

- Review HIA
  - Bill 52
  - Recent cases
  - PIA developments
  - Q & A
- **Feel free to ask questions any time!**



## Health Information Act

- Alberta's access and privacy law
  - Proclaimed 2001
- Enables electronic health records
- Regulates Albertans' rights:
  - to access their own health information and
  - to request corrections
- Regulates collection, use and disclosure of health information whenever a health service is provided
  - Confidentiality of health information
  - Reasonable measures to protect health information



## What is health information?

- 3 kinds:
  - Registration information (contact info, PHN, payment)
  - Diagnostic treatment and care information
  - Provider information
- HIA applies to recorded information in any form or medium:
  - Paper records
  - Films, recordings
  - Provincial electronic health record
  - Clinic/hospital electronic health records
- HIA only applies to health services



## Health services are...

- Services paid under Alberta Health Care Insurance Plan
- Services paid for by Alberta Health and Wellness
  - Includes Alberta Health Services (former health regions)
- Pharmacy services, no matter who pays
  - Services provided in practice of pharmacy as defined in Pharmacy and Drug Act
- This will change under Bill 52
  - More on this later...



## Who is a custodian?

- HIA applies to health information in custody or control of "custodians"
  - Physicians
  - Pharmacists
  - Alberta Health Services
  - Nursing Homes
  - Health Quality Council of Alberta
  - Others, if named by Minister of Health & Wellness
- University of Alberta is not a custodian



## Access to health information

- Individuals have right to ask for access to their own health information
- Right of access not absolute – exceptions:
  - Release of information causes harm
  - Information contains health data about other individuals
  - Threats to public safety
  - Confidential audit/diagnosis techniques
  - Other laws prohibiting disclosure

## Correction requests

- Individuals may request corrections of errors or omissions in their health records
- Health care providers not obligated to correct professional opinions
- If provider refuses to make change, individual may submit 500-word statement of disagreement or ask for review by Commissioner

## Responding to requests

- Health care providers must respond to access or correction requests within 30 days
- If individual is not satisfied with response, he/she may ask Information and Privacy Commissioner to review decision
  - 90% of reviews resolved in mediation
  - Commissioner may hold formal Inquiry and issue binding Order

## Privacy under HIA

- Custodians must implement reasonable safeguards to protect against threats to:
  - Confidentiality
  - Integrity (errors, data corruption)
  - Availability (loss, destruction)
- Emphasis on electronic health records
- Main duties of custodian
  - Name privacy lead
  - Write and implement HIA policies
  - Make staff aware of policies (training)
  - Prepare privacy impact assessments

## What does this mean to you?

- You may be an affiliate to a custodian
  - AHS
  - Physician
- You need to follow custodian's HIA policies
  - Access requests from patients
  - Correction requests from patients
  - Collection
  - Use
  - Disclosure
  - Information security
- Only collect, use and disclose the amount of health information needed to do your job
- Custodian may delegate some HIA responsibilities to you
- Custodian is ultimately responsible for HIA compliance
  - Must ensure policies are in place
  - Must ensure affiliates are aware of and comply with HIA and policies

## 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 enforcing:
  - Freedom of Information and Protection of Privacy Act (FOIP)
  - Personal Information Protection Act (PIPA)
  - Health Information Act (HIA)
- Commissioner does not make the 3 laws
- Government is responsible for legislation
  - PIPA & FOIP – Alberta Government Services
  - HIA – Alberta Health & Wellness

## OIPC Portfolio Officers



- You are most likely to encounter portfolio officers in your job as we:
  - Investigate and mediate access, correction and privacy complaints
  - Review Privacy Impact Assessments
  - Provide advice and education on access and privacy issues in health sector

## Bill 52



## Bill 52 status



- Public consultation finished
  - Standing Committee on Health met in fall 2008
  - Bill 52 was amended as a result
- Passed June 4, 2009, but not in force yet
- Awaiting regulations

## Bill 52 – Health Services



- All health services included – not just public health sector
- Ambulance, EMT services now under HIA
  - As of April 1, 2009.
- Staged approach
  - Scope (except ambulance) remains the same at first
  - Stay tuned...

## Bill 52 – New custodians



- New classes of custodians to be named by Minister
  - Based on professions in Health Professions Act
- Staged approach
  - AHW will determine when each new health profession is added

## Bill 52 - Netcare



- New provisions for Netcare
  - Flow of information in Netcare to be considered use, rather than disclosure
  - Audit requirements will be specified in regulation
  - Masking of records protected
  - Albertans' right to see who accessed their record protected
- Minister can compel information to be included in Netcare
  - Consultation with professional colleges before compelling info

## Bill 52 - Health Information Repositories



- Not much is known so far...

“means an agency, corporation or other entity designated by the Minister to act as a health information repository”

“A health information repository has the powers, duties and functions given to it by this Act and the regulations.”

## Bill 52



- Awaiting regulations on...
  - Which new health professions will be added
  - Auditing electronic health records
  - Health Information Repositories

## Bill 52 - Commissioner's response



- Pleased with Bill 52, as amended:

Amendments to Bill 52 "...return a measure of privacy control for Albertans over their health information. In particular the amendments ensure Albertans can ask that their health information be masked in Netcare and allows them to get a copy of a log that shows who has accessed their record."

## Recent Investigations



- Consider masking requests
  - H2008-IR-001
- Be aware of what your contractors are doing
  - H2008-IR-02
- Properly encrypted data = no notice when data goes missing
  - H2008-IR-003
- Don't disclose health information to foreign courts unless order has been recognized in Canada
  - H2009-IR-002
- Netcare is for healthcare, not personnel management
  - H2009-IR-003

## New developments in PIAs



- A Privacy Impact Assessment (PIA)...
  - Confirms legal authority to collect, use and disclose health information
  - Analyses flows of health information between organisations
  - Identifies privacy risks and mitigation plans
  - Documents audit plan
- OIPC will release new PIA requirements in new year
  - Current PIA form is generally OK, but doesn't provide much guidance
  - New model: very specific requirements, PIA tutorial built-in

## Questions and Answers



- Thank you!

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