


OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Personal Health Information Act (PHIA) Overview

Newfoundland and Labrador Council of Health Professionals
College of Licensed Practical Nurses of Newfoundland and Labrador

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Personal Health Information Act (PHIA)

- Came into force in 2011
- Contains rules for collection, use and disclosure of personal health information (PHI)
- Similar to but expands on the older concept of patient confidentiality
- PHIA is more specific

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Purpose of PHIA

- PHIA creates consistent rules for the protection of PHI in both public and private settings.
- Supports transparency and accountability practices.
- PHIA strikes a balance between:
 - Protecting individuals' privacy; and
 - Using PHI for legitimate health-related purposes.

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Who is a Custodian?

- Custodian (section 4) means a person who has custody or control of PHI as a result of or in connection with the performance of the person's powers or duties.
 - A health care professional - when providing health care to an individual or performing a function necessarily related to the provision of health care to an individual
 - A health care provider - a person, other than a health care professional, who is paid by MCP, another insurer or person, whether directly or indirectly or in whole or in part, to provide health care services to an individual

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Personal Health Information

- Defined in section 5
- Identifying information **in oral or recorded form** about an individual that relates to:
 - Physical and mental health, including their status, history and family history,
 - Identity of the health care provider,
 - Blood and organ donation,
 - Registration information (incl. MCP# or other identifier), payments or eligibility for insurance coverage,
 - Information collected incidental to health care or payment
 - Prescriptions, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care professional,
 - Identity of a representative authorized to act on their behalf.

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PHIA Compliance Essentials for Custodians

- A contact person must be designated (s.18).
- Confidentiality agreements for all employees, agents, contractors and volunteers (s.14).
- Agreements with “information managers” (s.22).
- Detailed privacy and security policies and procedures (ss.13,15).
- Privacy and security training program (s.14).
- Written statement of information practices, available to the public (s.19).
- Notice of purposes for which PHI is collected, used and disclosed for posting or providing to clients (ensures that consent is knowledgeable) (s.20).
- Records/logs of disclosures (s.48).
- Process for managing limited consent/lock box requests (s.27).
- Privacy breach management protocol (s.15).

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Security Obligations

- Custodians must take steps that are reasonable in the circumstances to ensure that:
 - personal health information is protected against theft, loss and unauthorized access, use or disclosure;
 - records are protected against unauthorized copying or modification; and,
 - records are retained, transferred and disposed of in a secure manner.
- Custodians must notify individuals if their personal health information is lost, stolen, disposed of or disclosed in an unauthorized manner, unless there will be no adverse impact on their health care or well-being.
- Custodians must notify the Information and Privacy Commissioner in the event of a material breach.

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Safeguards

Physical:

- Securing physical premises appropriately.
- Retaining records of PHI in a secure area.

Administrative:

- Requiring employees and agents to sign confidentiality agreements.
- Requiring agents to attend privacy and security training.
- Developing, monitoring and enforcing privacy and security policies.

Technical:

- Instituting strong authentication measures.
- Implementing encryption where appropriate.
- Implementing detailed audit monitoring systems.

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Access and Correction

- An individual has the right to access their PHI information.
- There are limited exceptions to this right, which include:
 - risk of serious harm to the individual or another person;
 - where a legal investigation is underway;
 - it is a frivolous or vexatious request; etc.
- PHIA identifies the process and timelines for accessing PHI files and requesting corrections or annotations.
- PHIA identifies the responsibilities of custodians regarding access and correction.

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Collection, Use, and Disclosure

- Custodians may not collect, use, or disclose PHI unless:
 - The individual consents, or
 - It is permitted or required by the Act without consent.
- Custodians may not collect, use, or disclose PHI if other information will serve the purpose.
- Custodians must not collect, use or disclose more PHI than is reasonably necessary (minimum necessary).

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Consent

Where consent is required, consent must:

- Be the consent of the individual the info is about
- Be knowledgeable, which means:
 - They know the identified purpose;
 - They know they can say no; and
 - They know PHIA will be followed.
- Not be obtained through deception or coercion

Within the “circle of care” a custodian is entitled to assume that they have the individual’s continuing implied consent as long as they are providing health care to that individual, unless specifically withdrawn.

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Express Consent

- Express consent is obtained as a result of an individual positively indicating, either verbally or in writing, that they agree to a stated purpose.
- Under PHIA, consent must be express and cannot be implied when:
 - A custodian discloses to a custodian for a purpose other than providing health care.
 - A custodian discloses to a non-custodian for a purpose other than providing health care.
- There are exceptions set out in the Act where no consent is required.

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Implied Consent

- Implied consent is consent that may be reasonably inferred from signs, actions or facts, or by inaction or silence.
- As with express consent, implied consent requires that individual's be notified at the point of collection of the intended uses and disclosures of their PHI:
 - Verbal notification, discussion
 - Pamphlets, posters
- Implied consent ends if individual expressly withdraws consent.

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Disclosure

- Disclosure is discussed in sections 36-50 of PHIA
- Custodians are able to disclose without consent in certain circumstances

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Recording Details of Disclosure

- Section 48 requires custodians to make note of certain disclosure information:
 - the name of the person to whom the custodian discloses the information;
 - the date and purpose of the disclosure; and
 - a description of the information disclosed.
- Limited Exception: The above is not required if the custodians discloses PHI by permitting access to the information through an electronic system with audit capabilities.
 - For example, the provincial health systems have audit capabilities

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OIPC Oversight

- OIPC can investigate any alleged breach of PHIA. This includes complaints about access requests, privacy breaches, or correction requests.
- OIPC can also inform the public about PHIA and make recommendations to ensure compliance.
- For matters involving access to or correction of a record, an individual may make an appeal directly to the Supreme Court, Trial Division or following an OIPC review.

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OIPC Resources

Available on the [OIPC's website](#):

- PHIA Toolkit for Small Custodians
- PHIA Compliance Checklist for Custodians
- Best Practices for Information Management Agreements
- Use of Email for Communicating Personal Health Information
- Privacy Breach Incident Form (for Custodians reporting a breach to OIPC)

Contact Information:

(709)729-6309 (t)

commissioner@oipc.nl.ca

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Resources

Available on the Department of Health and Community Services' website:

- Privacy Statement
- Public Awareness Materials (posters/brochures)
- Frequently Asked Questions
- PHIA Online Education Program
- PHIA Risk Management Toolkit
- PHIA Policy Development Manual

www.gov.nl.ca/hcs/phia/

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Example Scenarios: Request to Audit Client File

- Alex is a self employed Acupuncturist and has a client who submits acupuncture treatment receipts to Insure-U (the client's insurance company) for reimbursement.
- Insure-U periodically conducts audits on client files to make sure the service claimed was provided.
- An Insure-U representative asks Alex to send over the client file so it can be audited and reviewed.
- What things should Alex consider?

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Example Scenarios: Deceased Client

- Robin is a self employed Registered Nurse who has provided treatment to Kelly for 20 years.
- Kelly recently passed away.
- Robin wants to make space in the client filing cabinet and is thinking about getting rid of Kelly's records which are taking up a lot of space.
- What things should Robin consider?

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Example Scenarios: Closing Up My Practice

- Kerry is a self employed Speech Language Pathologist who wants to retire in three months.
- Kerry has 60 client files consisting of a mixture of active and non-active files.
- What things should Kerry consider?

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Questions



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