

Ontario's Personal Health Information Protection Act, 2004 (PHIPA)

PHIPA is Ontario's new health-specific privacy legislation, governing the manner in which personal health information may be collected, used and disclosed within the health care system. PHIPA is very similar to PIPEDA – the federal Personal Information Protection and Electronic Documents Act – except that PHIPA is specific to health information.

The application of PIPEDA to personal health information raised certain concerns as PIPEDA was designed to regulate direct marketing, electronic commerce and other activities that do not specifically address the unique circumstances encountered within the health care system. The federal government is expected to deem the provisions of Ontario's PHIPA to be substantially similar to PIPEDA in order to exempt health care providers that will be covered under PHIPA from also having to comply with the provisions of PIPEDA. However, even if such an exemption is made, PIPEDA will continue to apply to all commercial activities relating to the exchange of personal health information between provinces and territories and to information transfers outside of Canada.

PHIPA came into effect November 1st 2004. If you have your PIPEDA policy in place, the new PHIPA act will require little additional action by you. What it does is to clarify whom the custodian of the information is and who is entitled to information and what type of consent is required before releasing health information.

A *Custodian* is a health practitioner or health organization that has custody of personal health information. Each custodian must appoint an information officer (just like PIPEDA), called a "contact person."

An *Agent* is a person who is authorized by a health information custodian to perform services or activities on the custodian's behalf and for the purposes of that custodian. An agent may include an individual or company that contracts with, is employed by or volunteers for a health information custodian and, as a result, may have access to personal health information. The agent is obliged to comply with PHIPA and to adopt the information practices of the custodian.

Security and privacy are of utmost importance under PHIPA. If there is a breach of privacy, such as theft, loss or unauthorized access, the custodian has an obligation to notify the client. The agent is obliged to notify the custodian if the agent has been involved in a security breach.

Consent: Under PHIPA, consent is considered to be valid if it is knowledgeable, voluntary, related to the information in question, and given by the individual. There are two types of consent: implied consent and express consent. A health information custodian may assume implied consent where information is exchanged between custodians within the circle of care for the purpose of providing direct health care – unless an individual specifies that his/her personal health information may not be

disclosed. Express consent is always required for disclosure of personal health information to an individual or organization that is not a health information custodian and is outside the circle of care. Express consent is required where information is disclosed by one custodian to another for a purpose other than providing or assisting in providing health care. For example, express consent is required to provide personal health information to an insurance company.

PHIPA is enforced by the Ontario Information and Privacy Commissioner. The Commissioner has broad powers of investigation and can directly order a custodian to comply with their PHIPA obligations. There are fines of up to \$50,000 for individuals and \$250,000 for corporations who are found to be in breach of the Personal Health Information Protection Act.

For further information on PHIPA, please visit the website of the Information Privacy Commissioner at ipc.on.ca.