

EXPLANATORY NOTES

B I L L

No. 164

*An Act to amend *The Health Information Protection Act**

Clause of Bill

1 *The Health Information Protection Amendment Act, 2014*

2 *The Health Information Protection Act*

3 Existing Provision

Interpretation

2 In this Act:

(a) “**affiliate**” means an affiliate as defined in *The Regional Health Services Act*;

(b) “**collect**” means to gather, obtain access to, acquire, receive or obtain personal health information from any source by any means;

(c) “**commissioner**” means the Information and Privacy Commissioner appointed pursuant to section 38 of *The Freedom of Information and Protection of Privacy Act*;

(c.1) “**comprehensive health record**” means a comprehensive health record described in subsection 18.1(2);

(d) “**de-identified personal health information**” means personal health information from which any information that may reasonably be expected to identify an individual has been removed;

(e) “**designated archive**” means an archive designated in the regulations for the purposes of section 22;

(f) **Repealed.** 2002, c.R-8.2, s.77.

(g) “**fiscal year**” means the period commencing on April 1 in one year and ending on March 31 in the following year;

(h) “**government institution**” means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;

(h.1) “**health care organization**” means a health care organization as defined in *The Regional Health Services Act*;

(h.2) “**health region**” means a health region as defined in *The Regional Health Services Act*;

(i) “**health services number**” means a unique number assigned to an individual who is or was registered as a beneficiary to receive insured services within the meaning of *The Saskatchewan Medical Care Insurance Act*;

(j) “**information management service provider**” means a person who or body that processes, stores, archives or destroys records of a trustee containing personal health information or that provides information management or information technology services to a trustee with respect to records of the trustee containing personal health information, and includes a trustee that carries out any of those activities on behalf of another trustee, but does not include a trustee that carries out any of those activities on its own behalf;

(k) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(l) **Repealed.** 2003, c.25, s.3.

(m) “**personal health information**” means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;

(n) “**prescribed**” means prescribed in the regulations;

(o) “**primary purpose**” means the purpose for which personal health information was originally collected, and includes any purpose that is consistent with that purpose;

(p) “**record**” means a record of information in any form and includes information that is written, photographed, recorded, digitized or stored in any manner, but does not include computer programs or other mechanisms that produce records;

(p.1) “**regional health authority**” means a regional health authority as defined in *The Regional Health Services Act*;

(q) “**registration information**” means information about an individual that is collected for the purpose of registering the individual for the provision of health services, and includes the individual’s health services number and any other number assigned to the individual as part of a system of unique identifying numbers that is prescribed in the regulations;

(r) “**Saskatchewan Health Information Network**” means the Saskatchewan Health Information Network established as a Crown corporation pursuant to *The Crown Corporations Act, 1993*;

(s) “**subject individual**” means the individual to whom personal health information relates;

(t) “**trustee**” means any of the following that have custody or control of personal health information:

(i) a government institution;

(ii) a regional health authority or a health care organization;

(iii) **Repealed.** 2002, c.R-8.2, s.77.

(iv) a licensee as defined in *The Personal Care Homes Act*;

(v) a person who operates a facility as defined in *The Mental Health Services Act*;

- (vi) a licensee as defined in *The Health Facilities Licensing Act*;
- (vii) an operator as defined in *The Ambulance Act*;
- (viii) a licensee as defined in *The Medical Laboratory Licensing Act, 1994*;
- (ix) a proprietor as defined in *The Pharmacy Act, 1996*;
- (x) a community clinic:
 - (A) as defined in section 263 of *The Co-operatives Act, 1996*;
 - (B) **Repealed.** 2014, c.17, s.7.
 - (C) incorporated or continued pursuant to *The Non-profit Corporations Act, 1995*;
- (xi) the Saskatchewan Cancer Foundation;
- (xii) a person, other than an employee of a trustee, who is:
 - (A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or
 - (B) a member of a class of persons designated as health professionals in the regulations;
- (xiii) a health professional body that regulates members of a health profession pursuant to an Act;
- (xiv) a person, other than an employee of a trustee, who or body that provides a health service pursuant to an agreement with another trustee;
- (xv) any other prescribed person, body or class of persons or bodies;
- (u) **“use”** includes reference to or manipulation of personal health information by the trustee that has custody or control of the information, but does not include disclosure to another person or trustee.

1999, c.H-0.021, s.2; 2002, c.R-8.2, s.77; 2003, c.25, s.3; 2014, c.17, s.7.

Explanation

The section is amended to reflect the creation of eHealth Saskatchewan in place of the Saskatchewan Health Information Network.

4 Existing Provision

Rights re comprehensive health record

8(1) An individual has the right to prevent access to a comprehensive health record of that individual's personal health information.

(2) In the case of a comprehensive health record created and controlled by the Saskatchewan Health Information Network, the subject individual may require that the record not be disclosed to trustees by giving a written direction, in the prescribed form, to the Saskatchewan Health Information Network.

(3) In the case of a comprehensive health record created and controlled by a person prescribed for the purposes of subsection 18.1(1), the subject individual may require that the record not be disclosed to trustees by giving a written direction, in the prescribed form, to the prescribed person.

(4) The Saskatchewan Health Information Network shall comply with every written direction pursuant to subsection (2) that it receives, and each prescribed person shall comply with every written direction pursuant to subsection (3) that the prescribed person receives.

2003, c.25, s.6.

Explanation

The existing terminology in this section refers to the Saskatchewan Health Information Network. This will update the Act to refer to eHealth Saskatchewan in place of the Saskatchewan Health Information Network.

5 Existing Provision

Comprehensive health record

18.1(1) Subject to the terms of any agreements made pursuant to subsection 18(2), the Saskatchewan Health Information Network or a prescribed person may create comprehensive health records with respect to individuals.

(2) A comprehensive health record with respect to an individual:

(a) consists of records containing the individual's personal health information that are provided by two or more trustees;

(b) is created for the purposes of:

(i) compiling a complete health history of the individual; and

(ii) providing access to that history to any trustee; and

(c) is stored and controlled by the Saskatchewan Health Information Network or the prescribed person that created it.

(3) The Saskatchewan Health Information Network or a prescribed person shall provide a trustee with access to a comprehensive health record only if:

(a) access is authorized by each trustee whose records were used to compile the comprehensive health record; and

(b) either:

(i) the subject individual has provided consent in writing authorizing the trustee to have access; or

(ii) one of the purposes or circumstances set out in subsection 27(2) or (4) exists and the subject individual has not made a direction pursuant to subsection 8(2) or (3).

(4) Nothing in this section prevents the combining of records of personal health information where the combination is not for the purpose of creating a comprehensive health record.

2003, c.25, s.10.

Explanation

The existing terminology in various parts of this section refers to the Saskatchewan Health Information Network. This will update the Act to refer to eHealth Saskatchewan in place of the Saskatchewan Health Information Network.

6 Existing Provision

Continuing Duties of Trustees

22(1) Where a trustee ceases to be a trustee with respect to any records containing personal health information, the duties imposed by this Act on a trustee with respect to personal health information in the custody or control of the trustee continue to apply to the former trustee until the former trustee transfers custody and control of the personal health information to another trustee or to an information management service provider that is a designated archive.

(2) Where a former trustee fails to carry out the duties continued pursuant to subsection (1), the minister may appoint a person or body to act in place of the former trustee until custody and control of the personal health information is transferred to another trustee or to an information management service provider that is a designated archive.

(3) Where a trustee dies, the duties imposed by this Act on a trustee with respect to personal health information in the custody or control of the trustee become the duties of the personal representative of the trustee and continue to apply to the personal representative until the personal representative transfers custody and control of the personal health information to another trustee or to an information management service provider that is a designated archive.

1999, c.H-0.021, s.22.

Explanation

A new provision authorising the Minister of Health to appoint a person to take over control and custody of the records where an active trustee abandons records. This amendment extends the existing provision which refers to when a former trustee has abandoned records.

7

Existing Provision

Regulations

63(1) For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of subclause 2(t)(xii), designating classes of persons as health professionals;
- (c) for the purposes of subclause 2(t)(xv), prescribing persons, bodies or classes of persons or bodies as trustees;
- (d) for the purposes of clause 4(4)(i), prescribing Acts or regulations or provisions of Acts or regulations to which Parts II, IV and V of this Act do not apply with respect to personal health information;
- (e) **Repealed.** 2003, c.25, s.18.
- (e.1) for the purposes of section 8, prescribing a form for a written direction;
- (f) for the purposes of subsection 11(1), prescribing other identifying numbers;

(g) for the purposes of clause 11(3)(b), prescribing circumstances in which a person may require the production of another person's health services number;

(h) prescribing and governing administrative, technical and physical safeguards for the protection of personal health information;

(i) prescribing and governing standards for the retention and destruction of personal health information and governing retention and destruction policies;

(j) governing agreements between trustees and information management service providers;

(j.1) for the purposes of subsection 18.1(1), prescribing persons who may create and control comprehensive health records;

(k) for the purposes of section 22, designating information management service providers as archives to which former trustees can transfer custody and control of personal health information and governing access to and use, disclosure, processing, storing, archiving, modification and destruction of personal health information by designated archives;

(l) for the purposes of clause 25(1)(g), prescribing circumstances in which a trustee may collect personal health information other than directly from the subject individual;

(m) prescribing purposes for which a trustee may use personal health information pursuant to clause 26(2)(d);

(n) **Repealed.** 2003, c.25, s.18.

(o) for the purposes of clause 27(4)(p), prescribing circumstances in which personal health information in the custody or control of a trustee may be disclosed without the consent of the subject individual;

(p) for the purposes of clause 27(4)(h), prescribing professional bodies to which personal health information may be disclosed;

(q) prescribing persons with whom or bodies with which the minister may enter into agreements pursuant to clause 28(5)(b);

(r) for the purposes of subsection 28(8), prescribing and governing:

(i) circumstances in which registration information may be disclosed without the consent of the subject individual;

(ii) persons to whom registration information may be disclosed without the consent of the subject individual;

(iii) purposes for which registration information may be disclosed without the consent of the subject individual;

(r.1) for the purposes of subsection 30(1), prescribing persons who may give consent to the use or disclosure of personal health information where the subject individual is deceased;

(s) governing the making of written requests for access to personal health information;

(t) prescribing the maximum amounts that may be charged as fees to recover costs incurred in providing access to personal health information;

(u) governing the making of requests for amendments to personal health information and the amending of personal health information by trustees;

(v) governing applications for review pursuant to section 42;

(w) for the purposes of section 57, governing the use and disclosure of information respecting trustees and their activities;

(x) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(y) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) At least 30 days before the coming into force of a regulation made pursuant to clause (1)(d), (g), (l), (m), (o) or (r), the minister shall provide a copy of the proposed regulation to each of the health professional bodies that regulate members of a health profession pursuant to an Act.

1999, c.H-0.021, s.63; 2003, c.25, s.18.

Explanation

A new provision is proposed, authorising the Minister of Health to appoint a person to take over control and custody of the records where an active trustee abandons records. This amendment extends the existing provision which refers to when a former trustee has abandoned records.

The proposed provides the corresponding amendment to the regulation making power, extending it to active trustees rather than only to former trustees.

8 Existing Provision

Offences

64(1) No person shall:

- (a) knowingly contravene any provision of this Act or the regulations;
- (b) without lawful justification or excuse, wilfully obstruct, hinder or resist the commissioner or any other person in the exercise of the powers, performance of the duties or the carrying out of the functions of the commissioner or other person pursuant to this Act;
- (c) without lawful justification or excuse, refuse or wilfully fail to comply with any lawful requirement of the commissioner or any other person pursuant to this Act;
- (d) wilfully make any false statement to, or mislead or attempt to mislead, the commissioner or any other person in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner or other person pursuant to this Act;
- (e) wilfully destroy any record that is governed by this Act with the intent to evade a request for access to the record; or
- (f) obtain another person's personal health information by falsely representing that he or she is entitled to the information.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction:

- (a) in the case of an individual, to a fine of not more than \$50,000, to imprisonment for not more than one year or to both; and
- (b) in the case of a corporation, to a fine of not more than \$500,000.

(3) Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence, and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the corporation has been prosecuted or convicted.

(4) No prosecution shall be commenced pursuant to this section except with the express consent of the Attorney General for Saskatchewan.

(5) No prosecution shall be commenced pursuant to this section after the expiration of two years after the date of the discovery of the alleged offence.

1999, c.H-0.021, s.64.

Explanation

A new section, strict liability offence provision, is specifically aimed at addressing abandoned records. Sometimes called the “reverse onus” clause, this change will forgo a need to prove the trustee intended to abandon the records. When records are found abandoned, once the abandonment is established and the trustee determined, that trustee will have to show he/she took all reasonable steps to prevent the abandonment from occurring.

The existing offence provisions of HIPA permit a charge to be laid against employees in appropriate circumstances. However, as a matter of general deterrence, it is essential that intentional violations of the spirit and intent of the Act carry with it appropriate sanctions. Accordingly, where a trustee has not authorized disclosure and such disclosure would constitute an offence for the trustee, it should also clearly constitute an offence for that individual.

An offence for snooping is an important issue as it reflects the central policy intent in HIPA that PHI only be accessed and used by a trustee for a purpose expressly permitted by HIPA. These additions would provide for a specific offence for unauthorized use of PHI by employees of trustees who access personal health information without a need for that information.

9 Coming into force

This Act comes into force on proclamation.

Prepared by the Ministry of Health