



Are you a Health Information Custodian?

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A Health Information Custodian (HIC) is responsible for collecting, using and disclosing personal health information on behalf of clients. A HIC is generally the institution, facility or private practice health practitioner that provides health care to an individual.¹

The *Personal Health Information Protection Act, 2004* (PHIPA), sets out the responsibilities of the HIC and the rules for handling health information. Within the various practice situations, RDs need to determine if they are a HIC, as outlined in section 3 of PHIPA. This means that RDs who are in private practice programs and services that provide health care directly to clients are HICs and need to be aware of the rules under PHIPA.

PHIPA defines health care as “any observation, examination, assessment, care, service or procedure that is done for a

health-related purpose and is carried out or provided to diagnose, treat or maintain an individual’s physical or mental condition; to prevent disease or injury or to promote health; or as part of palliative care.” This includes making, dispensing or selling drugs, devices and equipment or other items by prescription, or community services provided under the *Long-Term Care Homes Act, 2007*.

AGENTS OF A HEALTH INFORMATION CUSTODIAN

Persons who are not HICs are often termed “agents” and would be required to meet the obligations of agents under the Act. PHIPA defines an agent as any person who is authorized by a HIC to perform services or activities on the HIC’s behalf and for the purposes of that HIC. An agent may include an individual or company that contracts with, is

employed by, or volunteers for a HIC and, may have access to personal health information. This includes:

- Employees and consultants
- Health-care practitioners (if they are acting on behalf of the HIC)
- Volunteers
- Researchers
- Students
- Independent contractors (including physicians and third-party vendors who provide supplies or services).

PHIPA permits HICs to provide personal health information to their agents only if the HIC is permitted to collect, use, disclose, retain or dispose of the information.

RDS ACTING AS AGENTS

When RDs are contracted to provide services as agents of a facility under PHIPA, the HIC's (or their designated privacy officer) is required to ensure that all agents of the HIC are appropriately informed of their duties under the law, which may also include the signing of confidentiality forms.

Depending on the circumstances, agents are to comply with PHIPA as well as policies in place by the HIC for whom they work.

PERSONAL HEALTH INFORMATION & CONSENT

Both HICs and their authorized agents are permitted to rely on an individual's implied consent when collecting, using, disclosing or handling personal health information for the purpose of providing direct health care.

For example, a staff member of a diabetes education program is an agent of the program under PHIPA. So is the shredding company hired to dispose of files that contain client personal health information. Given that agents collect, use, disclose and dispose of personal health information on behalf of the HIC, and not for their own purposes, agents must:

- collect, use and disclose personal health information with the same care and diligence as the HIC;
- comply with the HIC's obligation to collect as little personal health information as needed in the

circumstances;

- not collect, use or disclose personal health information when other information is available or would serve the purpose;
- protect personal health information from being lost, stolen or inappropriately accessed,
- keep personal health information from unauthorized copying, modification and disposal; and
- inform the HIC as soon as possible if any personal health information they handle on behalf of the HIC is lost or stolen, or if someone has accessed it without authority.

SHARING PERSONAL HEALTH INFORMATION – CIRCLE OF CARE

Under the circle of care concept, a HIC (or their agent) is able to share personal health information with another HIC (or their agent) for the purpose of providing health care, even without expressed consent. Disclosure would be barred only if the client, or the client's substitute decision-maker, had indicated that their information not be shared.

RESPONSIBILITIES OF HICS & THEIR AGENTS

The obligations of RDs will differ in their workplace depending on whether they are the HIC or if they are the agent of a HIC.

HICs are responsible for setting the privacy standards for handling personal health information in their organization and for making sure that their agents understand what is expected of them to protect the privacy of personal client health information. This can be done in a variety of ways:

- providing education on PHIPA, in person, and through notice boards, publications and other written materials;
- reinforcing a privacy culture throughout their agency, and being clear about expectations;
- building a privacy component into annual performance reviews;
- informing all agents of their duties under PHIPA; and
- reviewing existing contracts with third party vendors to ensure that they have adequate safeguards for personal health information.

Above all, both HICs and agents of HICs are obligated to consider CASP (Consent, Access, Security, and Privacy) to protect personal health information.

Visit the website of the Office of the Information and Privacy Commissioner of Ontario to learn more about the roles and responsibilities of HICs and agents at: www.ipc.on.ca

QUESTIONS AND ANSWERS

What about grocery and drug stores where some RDs work?

Grocery and drug stores would have to say “Yes” to all of the following criteria in order to be HICs:

- They collect, use and disclose personal health information;
- They are a program or service for community health or mental health; and
- Their primary purpose is providing health care.

While pharmacies certainly do provide healthcare, typically, the primary purpose of grocery and drug stores is not health care under the definition of PHIPA. While some groceries and drug stores provide job opportunities for RDs and other regulated health care professionals, they typically do not provide primary health care. However, they still have a legal obligation to protect the personal information of their customers. As commercial organizations, grocery stores are governed by the *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA is a federal law that applies to commercial organizations in Ontario that collect, use or disclose personal information while conducting their business.

What is the responsibility of a HIC who works for a non-HIC?

A health care practitioner, who has custody or control over personal health information but who contracts with, is employed by or volunteers for an organization that is not defined as a HIC under PHIPA, is not an agent. In such a circumstance, the individual would fall within the definition of a HIC and must ensure compliance with PHIPA. Examples of

HIC who work for non-HICs include:

- an RD directly employed by a school board to provide nutrition education to students;
- an RD employed by a professional sports team to develop individualized meal plans for the players;
- an RD providing nutrition care services to clients of a spa or fitness center; and
- an RD providing nutrition counselling to employees of a large corporation through their employee assistance program.

Who are recipients and are they agents of HICs?

Recipients are institutions that may contract out health care services, such as those of an RD. Recipients are not agents of the HIC because they do not collect, use or disclose personal health information on the HIC’s behalf. Typically, a recipient’s activities are very separate from the HIC’s.

Examples of recipients include:

- schools;
- insurance companies;
- employers;
- family members (unless they have legal authority to act on behalf of the client, such as acting as the client’s substitute decision-maker); and
- courts or tribunals such as the Consent and Capacity Board.

Are HICs able to give information to a recipient without client consent?

In some cases, a HIC will be able to give information to a recipient (see above) without client consent, such as where the PHIPA or another law allows or requires this disclosure.

HICs are not “recipients,” even when they receive personal health information from other HICs.

When are RDs required to invoke the “lock-box” provision?

If RDs are HICs, they must invoke the lock-box provision, when a client asks that part or all of their information not be

shared with other health professionals, agents or HICs. Agents of HICs may also be required to invoke the lock-box provision if the HICs privacy policy dictates as such. The request from a client may be:

- not to collect or use or disclose a particular item of information contained in the record;
- not to collect or use or disclose the contents of the entire record;
- not to disclose their personal health information to a particular HIC, an agent of a HIC, or a class of health information custodians or agents, e.g. physicians, nurses, social workers;
- not to enable a HIC or their agent or a class of HICs or agents to use their personal health information.²

The College wrote an article regarding the lock-box provision in *résumé* Spring 2006. Please refer to the following link to access the article:
<http://www.cdo.on.ca/en/pdf/What%20is%20the%20Lock-Box%20Provision.pdf>

Does PHIPA apply to agents of HICs?

PHIPA applies to a wide variety of individuals and organizations defined as HICs. PHIPA also applies to “agents” if they collect, use or disclose personal health information on behalf of a HIC.

What are the responsibilities of private practice RDs who are HICs?

In almost every instance, private practice RDs are the HICs responsible for the privacy, confidentiality, retention and destruction of client health records. In addition, RDs acting as HICs must have plans in place in the event of their sudden incapacity or death. They are encouraged to have a business plan and designate in their will who will be responsible for their client health records and how the

records should be managed. (See *résumé*, summer 2011, <http://www.cdo.on.ca/en/pdf/Do%20you%20have%20plans%20to%20manage%20records.pdf>)

What is the role of the HIC and agent of a HIC in a situation where there is a security breach of personal health information?

In the event of a breach, the HIC, or their designate, must notify the individual as soon as possible that the privacy of their personal health information has been compromised. To act effectively when there is a breach, it is important for RDs who act as HICs to understand and/or develop privacy breach protocols. They must also ensure that their agents know that they must notify the HIC or the HIC’s designated contact person within the organization as soon as possible (e.g., an organization’s Information Officer).

I am engaged in telepractice dietetic services involving the collection, use or disclosure of personal information outside of Ontario; do I need to follow PHIPA?

RDs engaged in telepractice dietetic services involving the collection, use or disclosure of personal information outside of Ontario will need to follow PHIPA as well as comply with the federal *Personal Information Protection and Electronic Documents Act* available at: <http://laws-lois.justice.gc.ca/eng/acts/P-8.6/index.html>.

1. *Personal Health Information Protection Act*. (2004). Available from: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04p03_e.htm
2. Ann Cavoukian, PH.D. Information and Privacy Commissioner of Ontario. *Lock-Box Fact Sheet*, Number 8, July 2005.