

C.C.S.M. c. P33.5

The Personal Health Information Act

"health care facility" means

- (a) a hospital,
- (b) a personal care home,
- (c) a psychiatric facility,
- (d) a medical clinic,
- (e) a laboratory,
- (f) CancerCare Manitoba, and
- (g) a community health centre or other facility in which health care is provided and that is designated in the regulations; (« établissement de soins de santé »)

"health professional" means a person who is licensed or registered to provide health care under an Act of the Legislature or who is a member of a class of persons designated as health professionals in the regulations; (« professionnel de la santé »)

"health services agency" means an organization that provides health care such as community or home-based health care pursuant to an agreement with another trustee; (« organisme de services de santé »)

"information manager" means a person or body that

- (a) processes, stores or destroys personal health information for a trustee, or
- (b) provides information management or information technology services to a trustee; (« gestionnaire de l'information »)

"personal health information" means recorded information about an identifiable individual that relates to

- (a) the individual's health, or health care history, including genetic information about the individual,
- (b) **the provision of health care to the individual**, or
- (c) payment for health care provided to the individual,

and includes

(d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and

(e) **any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care;** (« renseignements médicaux personnels »)

"public body" means a public body as defined in **The Freedom of Information and Protection of Privacy Act**, and for the purpose of this definition, the definitions of "department", "educational body", "government agency", "health care body", "local government body" and "local public body" in that Act apply; (« organisme public »)

"trustee" means a health professional, health care facility, public body, or health services agency that collects or maintains personal health information. (« dépositaire »)

RESTRICTIONS ON USE OF INFORMATION

Restrictions on use of information

21 A trustee may use personal health information only for the purpose for which it was collected or received, and shall not use it for any other purpose, unless

- (a) the other purpose is directly related to the purpose for which the personal health information was collected or received;
- (b) the individual the personal health information is about has consented to the use;
- (c) **use of the information is necessary to prevent or lessen a serious and immediate threat to**
 - (i) the health or safety of the individual the information is about or another individual, or**
 - (ii) public health or public safety;**
- (d) the trustee is a public body or a health care facility and the personal health information is used
 - (i) to deliver, monitor or evaluate a program that relates to the provision of health care or payment for health care by the trustee, or
 - (ii) for research and planning that relates to the provision of health care or payment for health care by the trustee;
- (e) the purpose is one for which the information may be disclosed to the trustee under section 22; or
- (f) use of the information is authorized by an enactment of Manitoba or Canada.

S.M. 2004, c. 36, s. 3.

RESTRICTIONS ON DISCLOSURE OF INFORMATION

Individual's consent to disclosure

22(1) Except as permitted by subsection (2), a trustee may disclose personal health information only if

- (a) the disclosure is to the individual the personal health information is about or his or her representative; or
- (b) the individual the information is about has consented to the disclosure.

Disclosure without individual's consent

22(2) A trustee may disclose personal health information without the consent of the individual the information is about if the disclosure is

- (a) to a person who is providing or has provided health care to the individual, to the extent necessary to provide health care to the individual, unless the individual has instructed the trustee not to make the disclosure;
- (b) to any person if the trustee reasonably believes that the disclosure is necessary to prevent or lessen a serious and immediate threat to**
 - (i) the health or safety of the individual the information is about or another individual, or**
 - (ii) public health or public safety;**
- (c) for the purpose of
 - (i) contacting a relative or friend of an individual who is injured, incapacitated or ill,
 - (ii) assisting in identifying a deceased individual, or
 - (iii) informing the representative or a relative of a deceased individual, or any other person it is reasonable to inform in the circumstances, of the individual's death;
- (d) to a relative of a deceased individual if the trustee reasonably believes that disclosure is not an unreasonable invasion of the deceased's privacy;
- (e) required for
 - (i) the purpose of peer review by health professionals,
 - (ii) the purpose of review by a standards committee established to study or evaluate health care practice in a health care facility or health services agency,
 - (iii) the purpose of a body with statutory responsibility for the discipline of health professionals or for the quality or standards of professional services provided by health professionals, or
 - (iv) the purpose of risk management assessment;
- (f) in accordance with section 23 (disclosure to patient's family), 24 (disclosure for health research) or 25 (disclosure to an information manager);
- (g) for the purpose of
 - (i) delivering, evaluating or monitoring a program of the trustee that relates to the provision of health care or payment for health care, or
 - (ii) for research and planning that relates to the provision of health care or payment for health care by the trustee;
- (h) to a computerized health information network and database, established by the government or another trustee that is a public body specified in the regulations, in which personal health information is recorded for the purpose of facilitating
 - (i) the delivery, evaluation or monitoring of a program that relates to the provision of health care or payment for health care, or
 - (ii) research and planning that relates to the provision of health care or payment for health care;
- (i) to the government, another public body, or the government of another jurisdiction or an agency of such a government, to the extent necessary to obtain payment for health care provided to the individual the personal health information is about;
- (j) to a person who requires the personal health information to carry out an audit for or provide legal services to a trustee, if the trustee reasonably believes that the person will not use or disclose the personal health information for any other purpose and will take appropriate steps to protect it;
- (k) required in anticipation of or for use in a civil or quasi-judicial proceeding to which the trustee is a party, or the prosecution of an offence;
- (l) required to comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the personal health information, or with a rule of court concerning the production of the personal health information;
- (m) for the purpose of
 - (i) an investigation under or the enforcement of an enactment of Manitoba respecting payment for health care, or
 - (ii) an investigation or enforcement respecting a fraud relating to payment for health care;
- (n) for the purpose of complying with an arrangement or agreement entered into under an enactment of Manitoba or Canada; or
- (o) authorized or required by an enactment of Manitoba or Canada.

Limit on disclosure

22(3) A trustee may disclose information under subsection (2) only to the extent the recipient needs to know the information.

PART 6 GENERAL PROVISIONS

Privacy officer for facility and agency

57 A health care facility and a health services agency shall designate one or more of its employees as a privacy officer whose responsibilities include

- (a) dealing with requests from individuals who wish to examine and copy or to correct personal health information under this Act; and
- (b) generally facilitating the trustee's compliance with this Act.

Protection from liability

62 No action lies and no proceeding may be brought against the government or a trustee or any person acting for or under the direction of the government or a trustee for damages resulting from the use or disclosure of personal health information in circumstances where the government or the trustee or other person reasonably believed that the use or disclosure was authorized under this Act.

Offences

Offence by employee

63(2) Despite subsection 61(2), a person who is an employee of a trustee or information manager who, without the authorization of the trustee or information manager, wilfully discloses personal health information in circumstances where the trustee or information manager would not be permitted to disclose the information under this Act, is guilty of an offence.

Offences by trustees and information managers

63(3) A trustee or information manager who

- (a) collects, uses, sells or discloses personal health information contrary to this Act;
- (b) fails to protect personal health information in a secure manner as required by this Act; or
- (c) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on a trustee or other person;

is guilty of an offence.

Due diligence defence

63(4) No trustee or information manager shall be found to have contravened clause (3)(a) or (b) if the trustee or information manager can establish that he or she took all reasonable steps to prevent the contravention.

Continuing offence

63(5) When a contravention of this Act continues for more than one day, the person is guilty of a separate offence for each day the contravention continues.

Prosecution within two years

63(6) A prosecution under this Act may be commenced not later than two years after the commission of the alleged offence.

Penalty

64(1) A person who is guilty of an offence under section 63 is liable on summary conviction to a fine of not more than \$50,000.

Directors and officers of corporations

64(2) When a corporation is guilty of an offence, a director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000.