

# The *Personal Health Information Privacy and Access Act (PHIPAA)*

## Important facts for custodians



The *Personal Health Information Privacy and Access Act (PHIPAA)* provides a set of rules that protects the confidentiality of personal health information and the privacy of the individual to whom that information relates. The Act also ensures that information is available, as needed, to provide health services to those in need and to monitor, evaluate and improve the health system in New Brunswick.

The Act applies generally to personal health information collected, used, stored, disclosed and maintained in the health system by a group of stakeholders in government and the health system referred to as “custodians”. Examples of custodians include: the regional health authorities; ambulance operators; hospitals; nursing homes; health professionals such as physicians, dentists and pharmacists; as well as public bodies (including but not limited to government departments and Crown corporations).

## ***Custodians’ obligations***

- The Act applies to personal health information held by any custodian regardless of form, including information that is oral, written or photographed. It applies to information in media including paper, microfilm, X-rays and electronic records.
- Personal health information is defined, in part, as identifying information about an individual pertaining to that person’s mental or physical health or health services provided to the individual. It does not include anonymous or statistical data that cannot be used to identify individuals.
- The Act sets out specific rules for custodians including requirements to:
  - ensure personal health information is only used by or disclosed to those employees or agents who need to know the information to carry out the original purpose for which the information was collected;
  - collect, use and disclose only the minimum amount of information necessary to provide the service or benefit being offered;
  - protect personal health information by implementing policies for security, retention and secure destruction of personal health information;
  - enter into a formal written agreement with any information manager that processes, stores or destroys personal health information or provides information management or information technology services for the custodian describing how the personal health information will be protected. Information managers are also required to comply with the Act by virtue of their role as custodians;
  - notify individuals and the Information and Privacy Commissioner if identifiable personal health information is stolen, lost, or otherwise inappropriately destroyed, disclosed, or accessed contrary to the Act; and

- enter into a written agreement with any agent (including an employee or contractor) who collects, uses or discloses personal health information on the custodian's behalf requiring the agent to comply with the Act.
- The Act generally requires consent for the collection, use, and disclosure of personal health information, except in specific circumstances provided for in the Act.
- For the specific purposes of providing health care to an individual, a patient-centred, circle of care is created where information is appropriately shared for the provision of health services to the individual. The Act permits health-care providers to collect or use the individual's personal health information or to disclose that information to another custodian or person within this circle of care for providing health care to that individual if they have posted and made readily available a notice that explains in lay terminology the purposes and possible consequences of collecting, using and disclosing a patient's personal health information, within and outside the circle of care. This enables health providers who need to know pertinent information about a particular individual to use and share that information for those purposes with the individual's implied knowledgeable consent.
- The Act provides for other circumstances where personal health information can be disclosed without consent. For example, when a custodian receives a subpoena to disclose personal health information to a court.
- For other purposes not provided for in the Act or by law, the Act clearly states that express consent of the individual must be obtained.

## Individuals' rights

The Act provides specific rights for individuals with respect to their personal health information. Custodians must be aware of these rights and ensure that they:

- inform individuals about the purpose for the collection and the anticipated uses and disclosures of their personal health information. This can be accomplished through development of a privacy notice made available to individuals by way of the web and in posters and handouts, etc.;
- implement procedures to honour an individual's consent directives where that person's implied knowledgeable consent has been obtained for the provision of health services or where their express consent has been obtained;
- establish procedures for individuals to request to examine or receive a copy of their personal health information and to request correction of that information;
- designate an individual to assist in ensuring compliance with the Act and to respond to individuals' inquiries or concerns about the organization's information practices.

## How can I find out more?

For more information about the *Personal Health Information Privacy and Access Act*, [please consult the Act online](#) or you may contact the Office of the Access to Information and Privacy Commissioner:

Access to Information and Privacy Commissioner,  
P.O. Box 6000,  
Fredericton, NB  
E3B 5H1

Toll-free number: 1-888-465-1100

Custodians may also obtain more information on the application of PHIPAA by visiting the [Department of Health's website](#) or by directing inquiries to the Department's Chief Privacy Officer at:

Email: [Click Here](#)

Telephone: 506-444-3902