

Health Links and Health Information Privacy – December 2012

Objective: To support the successful implementation of Health Links by flagging general privacy considerations and providing a brief refresher on health information privacy concepts, including: collection / use / disclosure of personal health information, patient consent, and the circle of care.ⁱ This summary does not constitute legal advice. The Early Adopter Day in the new year will provide an opportunity to discuss ways to enable Health Links – consistent with the *Personal Health Information Protection Act, 2004* (PHIPA) and the Information and Privacy Commissioner's *Privacy by Design*.ⁱⁱ

1. **Key considerations:** If / when assessing any need for the sharing of personal health information across their networks, Health Links organizations should consider applicable requirements and authorities under the *Personal Health Information Protection Act, 2004* (PHIPA).ⁱⁱⁱ For example:
 - **PHIPA limiting principle:** Only the minimum required identifiable information should be collected and shared (PHIPA, s. 30(2)). Whenever possible, de-identified information should be used instead (s. 30(1)).
 - **Consent:** Consideration should be given to processes that would enable individuals to withhold or withdraw and reinstate consent to the sharing of their personal health information for Health Links purposes.
 - **Safeguards:** Privacy and security of personal health information should be ensured through appropriate safeguards and information practices (e.g. administrative, physical and technical) (s. 12).

2. Key privacy concepts

Consent: Three types of consent exist under PHIPA: Express, Implied and Assumed Implied (s. 20(2)). Assumed Implied Consent is most frequently relied upon by health care providers as it allows certain types of Health Information Custodians (HICs) (e.g. physicians, hospitals, community care access centres, long-term care homes, etc.) to assume the individual's implied consent to collect, use and disclose his / her personal health information for the purpose of providing health care.

Collection, Use & Disclosure: HICs may disclose personal health information to each other for the purpose of providing health care, assisting in the provision of health care, and / or improving the quality of care provided to individuals if: (i) the HIC has the individual's consent under PHIPA to do so and the collection, use or disclosure is necessary for a lawful purpose; or (ii) collection, use or disclosure without consent is permitted or required under PHIPA (s. 29).

Circle of Care: While not defined in PHIPA, this term is used to describe providers that may assume an individual's implied consent to collect, use or disclose his / her personal health information for the purpose of providing or assisting in the provision of health care. A HIC may assume an individual's implied consent if all six conditions are satisfied:

1. The HIC falls within a category of HICs that are entitled to rely on assumed implied consent.
2. The personal health information to be collected, used or disclosed by the HIC has been received from the individual, his or her substitute decision-maker or another HIC.
3. The HIC has received the personal health information that is being collected, used or disclosed for the purpose of providing or assisting in the provision of health care to the individual.
4. The collection, use or disclosure of personal health information by the HIC is for providing or assisting in the provision of health care to the individual.
5. The disclosure of personal health information by the HIC is to another HIC.
6. The HIC that receives the personal health information is not aware that the individual has expressly withheld or withdrawn his or her consent to the collection, use or disclosure.

ⁱ Resources include: "A Guide to the *Personal Health Information Protection Act*", <http://www.ipc.on.ca/images/Resources/hguide-e.pdf>; "Circle of Care: Sharing Personal Health Information for Health Care Purposes", <http://www.ipc.on.ca/images/Resources/circle-care.pdf>

ⁱⁱ Information and Privacy Commissioner of Ontario, *Privacy by Design*. <http://privacybydesign.ca/>

ⁱⁱⁱ The Ministry assumes that Health Links organizations are HICs within the "circle of care" and can share personal health information about high needs individuals within and potentially across their organizations in order to coordinate care and improve outcomes.