

Personal Health Information Act

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Purpose

- “The purpose of this act is to govern the **collection, use, disclosure, retention, disposal and destruction of personal health information** in a manner that recognizes both the **right of individuals** to protect their personal health information and the **need of custodians** to collect, use or disclose personal health information to provide, support or manage health care”



Personal Health Information

- Identifying information about an individual, whether living or deceased, and in both recorded and unrecorded forms, if the information pertains to providing health care services



Custodian vs. Agent

CUSTODIAN

- Individual or organization who has control or custody of personal health information as a result of or in connection with performing their powers or duties

AGENT

- A person who, with the authorization of the custodian, acts for or behalf of the custodian in respect of the personal health information for the purpose of the custodian



Custodian vs. Agent

CUSTODIAN

- A regulated health professional or group practice
- District Health Authority
- IWK Health Centre
- Licensed continuing-care facility
- Approved home-care agency

AGENT

- Employee
- Volunteer
- Custodian's insurer
- Lawyer for custodian's insurer
- Shredding company for the custodian



Custodian vs. Agent

- Samantha works for LifeMark providing occupational therapy to individuals with workplace injuries
- Martha works for Capital Health Authority
- Jason is a private practice OT who provides services to individuals with brain injuries and occasionally is contracted by Veterans Affairs

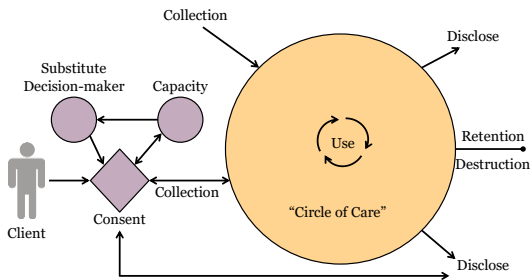


Duties of a Custodian

- Notice of purposes
- Retention and destruction schedule
- Information practices
- Complaints policy
- Record of user activity
- Contact person(s)
- Written privacy statement
- Report privacy breach



Process





Consent

- Consent for collection, use, or disclosure must be:
 - Expressed consent; or
 - Knowledgeable implied consent
- Consent must be:
 - Given by the individual
 - Must be knowledgeable
 - Relate to the specific information at issue
 - Be voluntary
- Act contains provisions whereby consent is not required



Knowledgeable Consent

- It is reasonable in the circumstances for the custodian or agent to believe the individual knows:
 - The purpose for the collection, use, or disclosure
 - That they may give or withdraw consent
- Consent may be implied if the person is knowledgeable and continues to pursue services, unless expressed consent required



Expressed Consent

- Agreement that does not require any inference on the part of the organization seeking consent
- Written or oral



Expressed Consent

- Required for:
 - Research and fundraising purposes
 - Disclosure to a non-custodian
 - Disclosure to a custodian for purposes other than health-care
 - Disclosure to the media

COTNS

Capacity

- Test of Capacity
 - Ability to understand information
 - Able to communicate a decision
 - Able to appreciate reasonable, foreseeable consequences
- Capacity is regardless of age
- Capacity is contextual and domain-specific
- Capacity is assumed until evidence suggests otherwise

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Substitute Decision-Maker

- Required when the individual lacks capacity
- Chosen from a list provided in the Act
- Criteria:
 - Been in contact throughout the preceding 12 months
 - Willing to accept responsibility
 - Knows of no person of a higher category
 - Certifies in writing

COTNS

LockBox

- An individual may limit or revoke consent
- Not retroactive
- Review consequences of limiting or revoking consent
- Inform the recipient that information is not complete

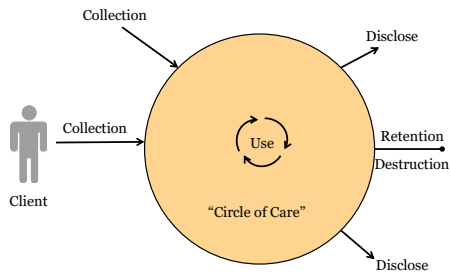
COINS

Example

- You are treating 67 year-old Joe for a left-sided stroke. Joe has demonstrated right-sided weakness and cognitive and perceptual deficits. Joe informs you that he will return to driving, but then asks you not to tell anyone.
- You are seeing 15 year-old Sally for bipolar disorder. Sally advises you she no longer takes her medication as she does not like the side effects. She asks you not to tell her doctor or her parents.

COINS

Collection, Use, and Disclosure



COINS

Collection, Use, and Disclosure

- Guiding Principles:
 - Only collect, use, or disclose where other information is not available or appropriate
 - Only collect, use, or disclose the minimum amount necessary
 - Consent
 - Collection, use, or disclose permitted by the Act

COINS

Collection

- Must be directly from the individual
- May be indirect if:
 - The individual consents;
 - From a substitute decision-maker;
 - Information is reasonably necessary and cannot be obtained reliably or in a timely manner from the individual;
 - The collection will prejudice the safety of any individual;
 - Assembling a history of family-health issues potentially affecting the individual
 - Required for payment of health care services

COINS

Use

- May be used with consent for:
 - the purposes for which it was collected;
 - Purposes permitted by legislation;
 - Education
- Consent not required for:
 - A proceeding or contemplated proceeding;
 - Obtaining payment or processing claims for payment;
 - Risk management or patient safety

COINS

Disclosure

- May disclose within the “Circle of Care” if:
 - Reasonably necessary for the provision of health care;
 - Has not been limited or revoked.
- May disclose to a family member or close friend:
 - The presence, location, and general condition
 - Disclosure is not contrary to the expressed request of the individual

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Example

- Joes is transferred from acute stroke to a rehabilitation unit in Halifax. His family calls to inquire about his status.
- Sally’s parents call to inquire about her treatment plan and progress.

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Disclosure

- Without Consent:
 - Person acting on behalf of the individual:
 - Legally entitled to make decisions;
 - Legal guardian;
 - Administrator of an estate for the purpose of the estate.
 - Regulatory health profession body (i.e. COTNS)
 - Any persons to advert or minimize an imminent and significant danger to the health or safety of any person

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Disclosure

- Without Consent:
 - Official of a correction facility for the provision of health care
 - Another custodian to determine eligibility for insured services
 - Litigation or legal representative
 - Administration of payments for health care
 - Proceeding or contemplated proceeding
 - Risk management or patient safety

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Example

- Joe is involved in a car accident after leaving the hospital. Joe is incarcerated for impaired driving. Joe's lawyer contacts you for records.
- Sally's parents find out that you withheld information from them and her physician. They have filed a complaint against you with the College.

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Documentation

- Disclosure without consent requires documentation of:
 - Description or copy of information disclosed;
 - Name of person or organization;
 - Date of disclosure;
 - Authority

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Access

- Individuals have a right of access to records
- Access may be refused if:
 - Legal privilege or law prohibits disclosure;
 - Information was created for use in a proceeding and the proceeding have not been concluded;
 - Access could result in serious harm to the mental or physical health of the individual or another individual;
 - Access could lead to identification of a person where confidentiality was expected;
 - Access could result in the release of another individual's health information
 - Frivolous, vexatious, or abuse of right of access



Request for Access

- Be made in writing
- Must specify subject matter
- Pay required fees*
- Custodians must respond within 30 days



Correction

- An individual may request a correction of the record
- The request may be refused if:
 - Record was not created by the custodian;
 - Professional opinion or observation made in good faith
- Custodian must provide a written notice of refusal with reason for refusal and the individual's right to have a statement of disagreement attached to the record



Example

- Joe disagrees with you clinical assessment and demands access to his records and that you make corrections. You feel that your assessment is accurate and reflects Joe's abilities.



Destruction and Disposal

- Documents may be destroyed or disposed of at end of the retention period
- Securely destroyed: destroyed in such a manner that reconstruction is not reasonably foreseeable in the circumstances
- Information may be de-identified and used for other purposes



Resources

- Personal Health Information Act
 - <http://nsllegislature.ca/legc/statutes/personal%20health%20information.pdf>
- PHIA: Toolkit for Custodians
 - <https://novascotia.ca/dhw/phia/custodians.asp>

Questions

Thank You
