

The Personal Health Information Act

The Personal Health Information Act (PHIA) provides individuals with the right to access their personal health information except in certain limited circumstances. The Act also requires that trustees such as the WRHA protect the confidentiality of all personal health information that they maintain.

PHIA has been amended and the changes come into force in May 2010. This document provides a brief summary of those changes.

Notice of right to access information

PHIA requires that WRHA take reasonable steps to inform individuals of their right to examine and receive a copy of their personal health information and how they can exercise that right.

So that individuals are aware of their rights, a poster and a public booklet have been developed by Manitoba Health and the Manitoba Ombudsman's Office.

Timelines for responding to requests for access to personal health information.

There are now specific time frames that WRHA is required to respond to requests for access to personal health information about *care currently being provided*.

WRHA must respond to requests for access to information as promptly as required in the circumstances but no later than

- 24 hours after receiving a request from an *in-patient in a hospital* to see information about care currently being provided,
- 72 hours after receiving a request from a person who is not a hospital in-patient for information about care currently being provided, and

- 30 days after receiving the request for any other requests.

If an individual is a patient or resident in a health care facility or who is receiving services in their home; a trustee may disclose personal health information about the care the individual is currently being provided to an immediate family member or a person known to have a close personal relationship. Information provided to these persons must be done in the time frames set out above.

Care currently being provided is...

If the individual is admitted as an in-patient to a hospital, WRHA has defined this information about care currently being provided to mean that information maintained on the *hospital in-patient chart*.

If the individual is not a hospital in-patient, WRHA has defined this information about care currently being provided to mean:

- **ER, Outpatients, Day Surgery or Facility based Clinics** – includes information readily available during a visit and may include information from the previous visit.
- **Community Health Services (primary care, home care, population and public health, mental health, midwifery)** - includes information readily available during a visit and may include information from the previous visit.
- **Personal care home residents** – this may be the Quarterly medication, team review, care plan, MARS or information that would describe or explain an incident, injury or new health issue.

Persons permitted to exercise the rights of the individual.

PHIA permits all rights of an individual to be exercised by a representative of that individual. The Act identifies several representatives, including:

- a person with written authorization from the individual to act on behalf of the individual,
- a proxy appointed by the individual under *The Health Care Directives Act* (in a health care directive),
- a committee appointed for the individual under *The Mental Health Act* (if the committee has the power to make health care decisions),
- a substitute decision maker appointed for the individual under *the Vulnerable Persons Living with a Mental Disability Act*,
- the parent or guardian of a minor, if the minor does not have the capacity to make their own health care decisions,
- if the individual is deceased, by his or her personal representative (executor or administrator of the individual's estate).

If a person is incapacitated and no representative as described above exists or is available, the Act permits the first adult on the following list that is readily available and willing, to exercise the individual's rights under PHIA:

- the individual's spouse, or common-law partner, with whom the individual is cohabiting;
- a son or daughter;
- a parent, if the individual is an adult;
- a brother or sister;
- a person with whom the individual is known to have a close personal relationship;
- a grandparent;
- an aunt or uncle;
- a nephew or niece.

The oldest of two or more relatives described in any of the above bullets is to be preferred to another of those relatives (e.g. the older of a son or daughter or brother or sister).

Using and disclosing personal health information.

As a reminder:

Use – involves revealing personal health information to someone within the trustee's own organization who needs to know the information to do their job. (e.g. from diagnostic imaging to the unit).

Disclosure – involves revealing personal health information outside the trustee (e.g. from one trustee to another, to family/friends of the individual).

As a rule, WRHA cannot use or disclose personal health information unless:

- the Use is necessary to accomplish the purpose for which the personal health information was collected;
- the Disclosure is to the individual the information is about; or
- the individual the information is about has consented to the use or disclosure.

There are certain limited exceptions for when personal health information can be used or disclosed without consent from the individual.

Informed Consent to Use and Disclose

PHIA sets out the requirements for an informed consent to use or disclosure personal health information. Informed consent must:

- relate to the purpose for which the information is used or disclosed;
- be knowledgeable;
- be voluntary; and
- not be obtained through misrepresentation.

Consent is knowledgeable if the individual who gives it has been provided with the information that a reasonable person in the same circumstances would need in order to make a decision about the use or disclosure of the information.

Consent may be express or implied which means the following:

- Express Consent is a voluntary agreement given directly by voice or in writing.
- Implied Consent is inferred from signs, actions, or facts, or by inaction or silence.

Consent must be express consent if a trustee makes a disclosure to a person that is not a trustee or to another trustee for a purpose other than providing health care or assisting in providing health care.

The individual providing the consent may place certain conditions on the consent. But a condition that has the effect of restricting or prohibiting a trustee from recording personal health information is not effective if the recording is required by law or established standards of professional or institutional practice.

Permitted Uses

PHIA permits certain uses of personal health information without consent, the amendment have added the following permissions:

- Using an individual's demographic information or his or her Personal Health Information Number (PHIN) to confirm eligibility for health care or payment for health care or to verify the accuracy of the demographic information or the PHIN.
- Using an individual's demographic information to collect a debt the individual owes to the trustee.

Demographic information is defined to be an individual's name, address, telephone number and e-mail address.

Permitted Disclosures

PHIA permits certain limited disclosures without the consent of the individual the information is about. The amendments clarify existing permitted disclosures and add new ones, including disclosure:

- to another trustee who requires the information to evaluate or monitor the quality of services the other trustee provides;
- of demographic information for the purpose of determining or verifying an individual's eligibility for a program, service or benefit;
- of demographic information for the purpose of collecting a debt owed by the individual to the trustee or to the government if the trustee is a department;
- of demographic information to police if the individual has been reported missing and the information is required by police to help locate the person.

Trustees are also permitted to disclose personal health information to a health care organization designated by regulation made under PHIA for specified purposes relating to health system evaluation, monitoring and planning.

Before personal health information can be disclosed, an agreement is required to be completed with the designated research organization.

Subject to certain limited requirements, hospitals and personal care homes are permitted to disclose personal health information to:

Religious organization - *unless the individual tells the facility not to.* The only information that can be shared is the individual's name, general health status and location in the facility.

Charitable fundraising foundation (affiliated with the facility) - *unless the individual tells the facility not to*. The only information that can be shared is the name and mailing address of patients or residents, or former patients or residents.

Where to find information about the Act and WRHA PHIA policies

If you are interested in seeing a copy of PHIA, including the Personal Health Information Regulation and *The Personal Health Information Amendment Act*. Copies can be accessed online at:

PHIA:

<http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php>

The Personal Health Information Amendment Act:

<http://web2.gov.mb.ca/laws/statutes/2008/c04108e.php#>

If you are interested in knowing more about the WRHA PHIA policies, they are maintained in hospitals and personal care homes with other Corporate Policies, in WRHA Community Health Services Offices and with site Privacy Officers or the Office of the WRHA Chief Privacy Officer. They can also be accessed online at:

www.wrha.mb.ca/abouttheWRHA/Policies

WRHA also has a webpage dedicated to Access and Privacy of personal health information, that can be accessed at:

Intranet:

home.wrha.mb.ca/privacy

Internet:

www.wrha.mb.ca/privacy