



## Use and Disclosure of Personal Health Information for Secondary Purposes

### Disclaimer

SCPP provides general guidance on privacy matters. If you require more information, we encourage you to speak with your Privacy Officer, to refer to the [Office of the Saskatchewan Information and Privacy Commissioner](#) (OIPC) website, and/or to seek advice from your legal counsel. **Further, it is advisable to always check directly with the applicable legislation before using or disclosing personal health information to ensure compliance.**

## GLOSSARY OF ACRONYMS

HIPA - *The Health Information Protection Act.*

HIPR - *The Health Information Protection Regulations, 2023.*

IMSP - information management service provider

PHI - personal health information

SCPP - Saskatchewan College of Pharmacy Professionals

## BACKGROUND

These guidelines are intended to supplement SCPP's guidelines entitled [Patient Confidentiality and the Collection, Use and Disclosure of Confidential Records](#). Please reference that document for more general information on using and disclosing PHI.

In Saskatchewan, HIPA establishes the rights of individuals regarding the privacy of their PHI and the obligations of trustees with respect to the collection, use, and disclosure of PHI. HIPR are HIPA's regulations that provide more details of the rules and requirements relating to PHI.

Under HIPA and HIPR, the primary purpose for using and disclosing PHI is to provide health services to the subject individual. All other purposes for the use and disclosure of PHI are considered to be **secondary purposes**.

This document sets out some examples where HIPA allows PHI to be used (accessing or sharing the PHI within your organization) and/or disclosed (sharing the information outside your organization) for secondary purposes without patient consent.

## Initial Considerations

PHI may be used or disclosed for **any purpose** where the patient **has consented** to the use or disclosure **for that purpose**. Whenever possible, the patient's informed consent should be obtained before using or disclosing PHI.

Further, consider whether de-identified PHI can be used or disclosed instead.

If patient consent is not possible or practical and the purpose cannot be achieved by de-identifying the PHI, HIPA allows disclosure of PHI for secondary purposes in limited circumstances.

## 1. GENERAL DUTIES

1.1. In order to rely on HIPA's provisions to support the use or disclosure of PHI for secondary purposes, a trustee is required to satisfy the following general duties:

- to inform patients of anticipated uses and disclosures in advance;
- to notify patients when they have disclosed PHI without their consent;
- to have in place appropriate policies, procedures and other safeguards to protect PHI; and
- to take reasonable steps to ensure that PHI is accurate and complete.

See the [Privacy Toolkit for Community Pharmacies](#) for more guidance on ensuring your pharmacy is compliant with its general privacy responsibilities.

1.2. Before using or disclosing PHI for any secondary purpose:

- determine that the use or disclosure is actually required to meet the secondary purpose and minimize the amount of PHI used or disclosed; and
- in the case of a use or disclosure that is merely authorized, rather than required by law, exercise professional judgment as to whether or not the use or disclosure should be made.

1.3. Document every time PHI is disclosed:

- the nature of the request and the reason the PHI is required;
- a description of the PHI that has been disclosed;
- the authority for the disclosure for a secondary purpose (eg. the HIPA provision or court order which permits or requires the disclosure); and
- the name of the person requesting the PHI and confirmation of their identity (in the case of disclosure to a non-trustee, the steps taken to inform the recipient that the PHI is not to be used or disclosed for any further purpose as required by s. 21 of HIPA).

## 2. VALID SECONDARY PURPOSES

The following is a list of common permissible uses and disclosures for secondary purposes without patient consent. This list is **NOT EXHAUSTIVE**. Please consult HIPA and HIPR directly for additional situations where use or disclosure may be permitted.

### 2.1. Information Management Services [s. 18 of HIPA and s. 7 of HIPR]

- 2.1.1. PHI may be provided to an IMSP for the purpose of having the information processed, stored, archived or destroyed, or for other purposes related to information management or information technology services.
- 2.1.2. **The information provided to the IMSP must remain under the pharmacy's control**, and the IMSP is under a duty not to use or disclose the PHI for any purpose other than the one for which it was provided.
- 2.1.3. Before disclosing PHI, the pharmacy must have a written agreement in place with the IMSP which confirms the pharmacy's continued control over the information, and includes:
  - a description of the specific services the IMSP will provide;
  - the obligations of the IMSP respecting the security and safeguarding of the PHI;
  - provisions for the destruction of the PHI, if applicable;
  - a requirement that the IMSP not use, disclose, obtain access to, process, store, archive, modify or destroy PHI except for the purposes permitted by section 18(1) of HIPA and as set out in the agreement;
  - a requirement that the IMSP comply with the terms of the agreement entered into with the pharmacy; and
  - a requirement that the IMSP notify the pharmacy at the first reasonable opportunity of any breach of the agreement.

For further information, see the Office of the Saskatchewan Information and Privacy Commissioner's [Best Practices for Information Sharing Agreements](#).

### 2.2. Safety [s. 27(4)(a) of HIPA]

PHI may be disclosed where the trustee believes, on reasonable grounds, that the disclosure will avoid or minimize a danger to the health or safety of any person. The danger must be to an identifiable individual or group and the harm must be specific. For example, a general concern for public safety and reducing crime is not sufficient to justify disclosure of PHI without consent of the patient.

Ensure the following before disclosing under this provision of HIPA:

- there is a reasonable expectation of probable harm;
- the harm constitutes damage or detriment and not mere inconvenience; and
- there is a causal connection between disclosure and avoiding or minimizing the anticipated harm.

The basis for concluding that a real danger exists to an identifiable individual or individuals should be clearly documented, as well as the reason the disclosure is necessary to avoid or minimize the danger. See [Disclosure of Personal Health Information to Police](#).

### **2.3. Prevention of Fraud** [s. 27(4)(b) of HIPA]

PHI may be disclosed where, in the opinion of the trustee, the disclosure is necessary for monitoring, preventing or revealing fraudulent, abusive or dangerous use of publicly funded health services. In these circumstances, reasonable grounds must exist to support a conclusion that some fraudulent, abusive, or dangerous use of public health services is taking place. This type of disclosure would usually be made to the Minister of Health, the Minister of Justice, to police or to the Attorney General.

It is not permitted to invade the privacy of an individual to determine if reasonable grounds exist. Do not seek out information beyond those questions which would normally be raised in the course of interacting with a patient.

The evidence that leads to the opinion that fraudulent, abusive or dangerous use of health services is taking place should be documented, as well as the reason that disclosing the PHI is necessary to address the concern.

### **2.4. Billing / Payment for Services** [s. 27(4)(k)(i) of HIPA]

PHI may be used or disclosed for the purpose of obtaining payment for the provision of services to the patient. For example, disclosure to the Drug Plan and Extended Benefits Branch (DPEBB) or disclosure to the patient's private insurer would be permissible under this section.

### **2.5. Evaluation and Quality Control** [s. 27(4)(k)(ii) of HIPA]

PHI may be used or disclosed for the purpose of planning, delivering, evaluating or monitoring a program of a pharmacy. Pharmacies should have robust data sharing agreements in place if sharing PHI for these purposes and the program should be communicated to patients through pharmacy privacy policies. Further, the reason that using de-identified information would not be sufficient to meet the purpose should be well documented.

## **2.6. Health Professional Bodies** [s. 27(4)(h), 27(5) of HIPA and s. 17 of HIPR]

PHI may be disclosed to a health professional regulatory body (eg: SCPP or the College of Physicians and Surgeons of Saskatchewan):

- 2.6.1. where requested by the health professional regulatory body, if there are reasonable grounds to believe that the PHI is required by the health professional body to carry out its duties of regulating the profession;
- 2.6.2. where the professional regulatory body requests the PHI of a member of the profession they regulate, disclosure may be made if there are reasonable grounds to believe that the PHI is relevant to the ability of the member to practise their profession; or
- 2.6.3. where the disclosure is made for the purposes of a program to monitor the prescribing, dispensing or use of drugs (eg. the Prescription Review Program “PRP”).

## **2.7. Court Proceedings** [s. 27(4)(i) of HIPA]

PHI may be used or disclosed:

- 2.7.1. for the purpose of commencing or conducting a proceeding before a court or tribunal;
- 2.7.2. in response to an order, demand, subpoena or warrant issued by a court or anyone else with the authority to compel production of the information. For disclosure to police, see [Disclosure of Personal Health Information to Police](#); or
- 2.7.3. for the purpose of complying with rules of court related to the production of information.

## **2.8. Legal Services** [s. 27(4)(m) of HIPA]

PHI may be disclosed to the trustee’s/pharmacy’s legal counsel for the purpose of having legal services provided to the trustee/pharmacy.

## **2.9. Deceased Individuals** [s. 27(4)(e) of HIPA and s. 13(1)(h) of HIPR]

Where the subject individual is deceased:

- 2.9.1. PHI may be disclosed to the personal representative of the subject individual (eg. executor under a will or administrator appointed by a court) for a purpose related to the administration of the individual’s estate. Confirmation of their authority as personal representative should be obtained and the reason the PHI is required should be documented. See [Health Care Directives, Substitute Decision Making, and Powers of Attorney](#).
- 2.9.2. PHI related to the circumstances of the patient’s death or services recently received by the patient may be disclosed to a member of the patient’s immediate family or to another person with whom the patient had a close personal

relationship. The basis for believing that the recipient had a close personal relationship with the deceased individual should be documented.

2.9.3. PHI may be disclosed for the purpose of identifying the deceased individual. The member should document the request and the basis for believing the PHI will assist with identification.

2.9.4. PHI may be disclosed to the individual's next-of-kin if the recipient reasonably requires the PHI to make a decision respecting their own health care or the health care of their child; or if the PHI is necessary to provide health services to the next-of-kin.

## **2.10. Coroner's Investigation [s. 11(2) of HIPR]**

PHI may be disclosed where required for the purposes of an investigation or inquest pursuant to *The Coroners Act, 1999*. The coroner's request should be made in writing and clearly identify the information required for the investigation/inquest.