



Disclosure of the Personal Health Information of Minors to Parents/Legal Custodians

Disclaimer

Trustees are responsible to ensure that processes are in place for disclosure of their minor patient's PHI. The trustee or pharmacy professional **must use their own reasonable judgment to determine whether PHI should be disclosed**. This document is not legal advice and is not an exhaustive list of all the considerations regarding the PHI of minors.

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 disclosing personal health information to ensure compliance.**

DEFINITIONS

In this document:

"Legal Custodian" is synonymous with "legal decision-maker" as that term is used in *The Children's Law Act, 2020*.

"Minor" means an individual who is under 18 years of age.

"Pharmacy Professional" means licensed pharmacists, licensed pharmacy technicians and pharmacy interns (extended and student).

GLOSSARY OF ACRONYMS

HIPA - *The Health Information Protection Act*.

OPIC - The Office of the Saskatchewan Information and Privacy Commissioner

PHI - personal health information

SCPP - Saskatchewan College of Pharmacy Professionals

BACKGROUND

These guidelines are intended to supplement [Patient Confidentiality and the Collection, Use and Disclosure of Confidential Records](#). Please review that document for general guidance on disclosing PHI.

Maintaining confidentiality is a vital part of the relationship between pharmacy professionals and their patients. All pharmacy professionals have a legal, professional and ethical obligation to protect the privacy of all their patients. In Saskatchewan, HIPA establishes the rights of individuals regarding the privacy of their PHI and the obligations of trustees with respect to the collection, storage, use, and disclosure of PHI.

Subsection 56(c) of HIPA states that **a minor can exercise their own rights** or powers under HIPA **where**, in the opinion of the trustee, **the minor understands the nature of the right or power and the consequences of exercising such right or power**.

Further, Subsection 56(d) of HIPA states that the legal custodian of a minor can exercise the minor's HIPA rights and powers in situations where, in the opinion of the trustee, **it would not constitute an unreasonable invasion of the minor's privacy**.

The purpose of this document is to provide general guidance on the interplay between these two sections of HIPA.

1. GENERAL GUIDANCE

Pharmacies should develop and follow a consistent policy outlining how privacy issues related to minors will be handled. An ad-hoc approach to such matters may lead to errors and inconsistency. As with all disclosures of PHI, the minimum amount of information needed for the purpose should be disclosed and the rationale for the disclosure should be documented.

Disclosure of PHI to a minor's parent/ legal guardian requires consideration of the following questions:

- 1.1. Does the minor understand the nature of their right to privacy and the consequences of disclosing or not disclosing their PHI and, therefore, has the right to control their PHI? In other words, **are they a mature minor** in for the purpose of disclosure?
- 1.2. If the patient is a mature minor, **does an exception under HIPA apply** that would permit disclosure without their express consent?
- 1.3. If the patient is **not a mature minor**, under what circumstances might **additional proof of legal custody** (now known as "legal decision-making" under *The Children's Law Act*, 2020) be required from someone claiming to be the legal custodian/decision-maker of a minor?

2. MATURE MINORS

A minor is “mature” if they are capable of understanding the nature, consequences and reasonably foreseeable benefits and risks of making a particular health care decision, including consenting to disclosure of their PHI. In Saskatchewan, there is no set age at which a child becomes a mature minor. Whether a minor could be considered a mature minor depends on a number of factors such as:

- a) the physical, intellectual, emotional and psychological maturity of the minor;
- b) the nature and extent of the minor’s dependency on their parents/guardians;
- c) the nature of the health care decision, including the complexity and level of risk involved.

Assessing a mature minor

Generally speaking, a minor may be capable of making some health care decisions (such as whether to receive a vaccine) and not capable of making other health care decisions (such as whether to undergo an organ transplant). Therefore, trustees and pharmacy professionals must conduct an assessment for each health care decision to determine whether the minor in question has the required maturity to make that decision. SCPP suggests that it would be prudent to conduct an assessment of maturity for all patients 12 years of age and older.

2.2 Does the minor understand the nature of their right to privacy and the consequences of disclosing or not disclosing their PHI?

When it comes to privacy matters, the minor should be assessed to determine whether they are capable of understanding the nature of their rights under HIPA and the consequences of exercising those rights. The OIPC has interpreted s. 56(c) of HIPA to mean that, once it is determined that the minor is capable of making their own decisions with respect to privacy, the minor’s consent is required to disclose their PHI (unless an exception exists – see below). Disclosing PHI without a mature minor’s consent to their parent/legal custodian would be an unreasonable invasion of their privacy, as contemplated by s. 56(d) of HIPA.

See the 2023 OIPC Report on this topic [175-2022](#).

See also: the [College of Physicians and Surgeons of Saskatchewan article on privacy and mature minors](#).

2.3 Is there an exception under HIPA to seeking the mature minor’s consent?

Consent to disclosure of PHI from a mature minor may not be required if an exception under HIPA applies. There are a number of HIPA provisions that could apply (see [Use and Disclosure of Personal Health Information for Secondary Purposes](#)), but the following two provisions are the most likely that might apply to disclosure to a minor’s parent/legal custodian:

2.3.1 Section 27(2)(c) of HIPA states that a person is *deemed* to consent to disclosure of their PHI to their next of kin or someone else with whom they have a close personal relationship but *only with respect to health services currently being provided* and *only if the person has not indicated that their PHI should not be shared* in that manner. Factors to consider when determining whether this deemed consent exists:

- a) Past experience with the minor and the parent/legal custodian. For example, the parent/legal custodian was present with the minor when the prescription was filled and, therefore, is aware of the prescription.
- b) Nature of the services or prescription involved. Generally, the more sensitive the nature of the services or the prescribed drug, the more likely that the minor would expect the information to be kept confidential from everyone, including their parent/legal custodian.
- c) The reason for the parent/legal custodian requesting the PHI. If the information is being requested for a purpose related to health services for the minor, or for another purpose that will clearly benefit the minor, it is more likely that the minor would be deemed to consent to the disclosure. If the request is for another purpose, be much more cautious. A request for duplicate receipts for income tax purposes, for example, would not be for a purpose relating to health services nor to a service currently being provided.
- d) When in doubt, it is most prudent to obtain express consent from the mature minor before disclosing PHI to their parent/legal custodian, any next of kin or anyone else with whom they have a close personal relationship.
- e) If the mature minor has expressly stated that their PHI is not to be shared, this exception in HIPA **does not apply**.

2.3.2 Section 27(4)(a) of HIPA permits disclosure 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 OIPC has determined that the following test must be applied to disclose PHI based on this provision of HIPA:

- a) there must be a reasonable expectation of **likely** harm to the minor or someone else;
- b) there must be a real danger and **not just an inconvenience** (disclosing to avoid dealing with upset or unreasonable people is not a sufficient reason); and
- c) there must be a connection between disclosing the PHI and avoiding or minimizing the anticipated harm.

Before the PHI is released, the trustee or pharmacy professional should be able to describe (and document) the danger and articulate (and document) how releasing the PHI will reduce the risk of harm.

3 MINORS WHO ARE NOT MATURE MINORS

If the patient is not a mature minor, trustees are permitted by s. 56(d) of HIPA to disclose PHI to the minor's legal custodian without their consent. The legal custodian will most commonly be the minor's parent(s), but they could instead be another legally appointed person who is entitled to make the child's decisions (such as child's grandparent or other relative who has been granted an order by the Court). Before disclosing the PHI of a minor, the trustee should take reasonable steps to ensure the person requesting the PHI is the legal custodian of the minor.

Under what circumstances might additional proof of legal custody (decision-making) be required?

Only the trustee, as the custodian of the PHI and the one ultimately responsible for protecting the information, can answer the above question. However, SSCP offers the following for consideration:

- 3.1 The general rule under Saskatchewan law is that a minor's parents are the joint legal custodians of the minor (or legal decision-makers as it is now known). This general rule is subject to situations where:
 - 3.1.1 a court orders otherwise;
 - 3.1.2 the parents have entered into a valid agreement altering custody/decision-making; or
 - 3.1.3 the parents of the minor have never cohabited, in which case only the parent with whom the minor is living is the legal custodian.
- 3.2 It may not be reasonable to expect a pharmacy professional to make inquiries about the legal status of a parent each time they provide pharmacy services to a minor, or disclose the minor's PHI to a parent.
- 3.3 However, if there is reason to suspect that a parent's status as legal custodian has been altered by a court order or agreement, or that the parent has never cohabited with the minor, steps to confirm the parent's authority to receive the PHI **before** it is released might include:
 - 3.3.1 Copies of court orders;
 - 3.3.2 Copies of agreements (may be called a Separation Agreement, Parenting Agreement, Parenting Plan, etc.);
 - 3.3.3 Written confirmation from the other parent, a lawyer, or some other non-interested person, that there are no court orders or agreements in place that have altered the parent's status as legal custodian;
 - 3.3.4 Written confirmation from the other parent, a lawyer, or some other non-interested person, that the parents cohabited after the minor was born; or
 - 3.3.5 In a situation where the parents never cohabited, written confirmation from the other parent, a lawyer, or some other non-interested person, that the minor is living with the parent making the request for PHI.

SUMMARY

The first step when contemplating whether to disclose the PHI of a minor to their parent/legal custodian is to determine whether the minor is a mature minor. If they are a mature minor, they control their PHI and disclosure requires their consent unless an exception in HIPA (or under other legislation) applies.

A mature minor may be deemed to consent to disclosing PHI to their parent if it relates to services they are currently receiving. However, the nature of the information and the purpose for which it is being requested are important considerations. Most importantly, if the mature minor has stated that they do not want their PHI shared with their parents, the trustee must not disclose it.

If the minor is not a mature minor, then the trustee may disclose PHI to the minor's legal custodian without consent. Generally, both parents will be joint legal custodians unless there is a court order or agreement in place which has changed their status. If in doubt, confirmation of the parent's status as a legal custodian/ decision-maker should be requested.