

HIPAA

A GUIDE FOR PATIENTS

THE HEALTH INFORMATION PROTECTION ACT

The Health Information Protection Act (HIPA) provides patients with the right to access records containing their personal health information held by trustees. It also establishes rules for the collection, use and disclosure of health information by trustees and their colleagues. Ultimately, trustees (see box, next page) are responsible for the information accessed, collected, used and disclosed by their employees, service suppliers and affiliated organizations.



ACCESS

Access to your personal health information

Personal health information is any privately recorded information that identifies you in relation to the delivery of a health service.

Under HIPA, health care providers are allowed routine clinical access to medical records and related personal health information. Some providers will allow you to access your patient records without a formal written request

Paper-based or digital medical and administrative information remains the

property of the trustee. But a patient (or someone who has the legal right or written permission to act on that person's behalf) has the right to access personal health information in the possession of a trustee.

Requesting access

You can:

- make a request to see your personal health information verbally or in writing;
- get a copy of your information, or visit the trustee's office to review their records; and
- challenge a trustee's failure to comply, or their decision to withhold some information.

To submit your request in writing, simply write a letter to the trustee, or use a form posted on the Ministry of Health website www.health.gov.sk.ca/privacy-statement (call 306-787-2137 to have a copy mailed or faxed to you)

and return the filled-in form to the Ministry's Health Information Access and Privacy Office.

Once a trustee receives a written request under HIPA, they generally have 30 calendar days to respond. If they have the information you have requested in their possession or custody, they may choose to release all or part of it. HIPA does not set a time limit for responses to verbal requests.

If the trustee withholds some of the information, they must provide you with a clear explanation as to the reason for not providing the information, and which section of HIPA allows them to withhold this information. The removal of information from a document is referred to as "redacting" or "severing".

If you disagree with a trustee's decision to redact portions of your record, you can contact the trustee for more information and explanation. If you are not satisfied with the response, your options are explained in the Complaint Process section at the end of this document.



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What areas does HIPA not cover?

The *Health Information Protection Act* gives you a right to request access to your health information if it is held by a trustee.

The following are a few examples of health services which are *not* protected under HIPA, (the list is by no means all-inclusive):

- health services provided on Federal Reserve land;
- de-identified personal health information;
- personal health information about an individual who has been dead for more than 30 years;
- records that are more than 120 years old;
- medical exams or treatments paid for by insurance companies or law firms;
- treatments paid for by the Saskatchewan Worker's Compensation Board;
- services provided by a health professional who is an employee of a private sector organization (e.g., nurse or first aid person at a worksite);
- services which are "uninsured" or "delisted" by the Ministry such as some naturopathic treatments;
- adoption records; and
- information in the custody and control of the Ministry of Social Services collected for the purposes of *The Child and Family Services Act*.

If your health service provider is not a trustee under HIPA, you can still make a written or verbal request for information. Even though they are not required to provide the information under HIPA, they may still decide to comply with your request. Some private clinics fall under the federal *Personal Information Protection and Electronic Documents Act*, and some companies with their own medical staff may

have their own policies for release of information.

Fees under HIPA

HIPA allows trustees to charge reasonable fees for providing an individual with access to their medical records. It also allows trustees to charge fees for supervising an "in-person" review of documents or for the time required to redact information from your request.

It is suggested but not mandated that a general application fee of \$20, payable at the time of request, would cover the basics such as clarifying the request, obtaining consent (if necessary), locating and preparing the records and copying the first 20 pages of records.

If fees beyond the \$20 application fee will apply to your request, the trustee must provide you with an itemized breakdown of the costs before the work is begun. Work will not commence again until such time as the fee has been paid.

Trustees are also allowed to grant "fee waivers" under HIPA. This means that trustees can decide not to charge a fee if they believe that it is fair or reasonable to do so. If you believe that a fee waiver would be suitable in your situation, you should ask for a fee waiver and (stating the reasons you feel it would be appropriate) when you make your initial request for access.

Trustees

In HIPA the definition of trustee includes:

- Ministry of Health;
- regional health authorities (health regions);
- Saskatchewan Cancer Agency;
- any health service provider paid in part or in whole under *The Saskatchewan Medical Care Insurance Act*;
- community clinics;
- a licensed health professional (medical doctor, dentist, dietician, nurse, and so forth) or a professional oversight body governed by Saskatchewan health or medical legislation and regulations;
- licensed medical laboratories; and
- licensed nursing home operators. (See section 20(t) for more examples.)

Trustees' colleagues

Colleagues include people or organizations under contract to the trustee:

- employees;
- volunteers;
- contractors;
- eHealth Saskatchewan (SHIN); and
- agencies.

Some examples:

- reception and nursing staff at your doctors' office,
- pharmacy technicians; and
- information desk and food service workers in a hospital.



Requesting changes, or a review

Amendment or correction of a health record

HIPA allows an individual to request correction of errors or omissions of the facts of their medical records/personal health information.

If you believe that there has been an error or omission in your health information, you may request correction of that information by writing to the trustee. Once the trustee receives your written request for correction, they have 30 days to respond to you with their decision.

If the trustee agrees to make the correction, written notification of the corrected information must be sent to any person who has received that information within the past year unless you agree that the trustee does not need to do this.

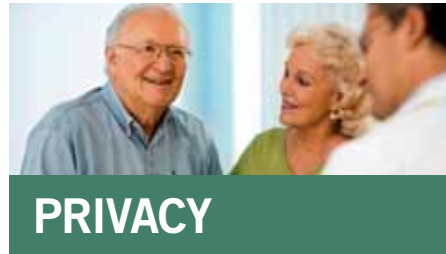
A trustee may refuse to make an amendment or correction to a professional opinion or observation.

If the trustee refuses to make the correction for any reason and you are not satisfied with that decision, you have the right to submit a statement of disagreement to be included on your health record and/or request that the Office of Information and Privacy Commissioner review the decision of the trustee to refuse your request for amendment or correction.

Requesting a review

The Office of the Information and Privacy Commissioner can review any decision, act or failure to act of a trustee as it pertains to an individual's request for access to, or correction of, their health information. Note: the Commissioner will not become involved until after you have made a written request directly to a trustee.

If you have a concern with the way a trustee has processed your request, you may contact the Commissioner's Office, asking for a review of how a trustee has acted, or failed to act.



Collection, use and disclosure

Collection of health information

Trustees should collect only information that is needed to provide care. Information should be collected from the individual who is the subject of the information wherever possible. HIPA spells out some situations in which a trustee can collect information from someone other than the subject individual.

Use of health information

A trustee may use health information without your consent for the following purposes:

- providing and continuing health services;
- determining eligibility for health services;
- for the purpose of de-identifying health information (making it anonymous);

- conducting formal investigations;
- conducting research that has been approved by a research ethics review board;
- conducting health service provider education;
- carrying out a purpose required by a law of Saskatchewan or Canada; and
- managing internal operations such as planning, quality improvement, evaluation of service or obtaining payment.

A trustee, as an employer, cannot use or obtain access to personal health information of an individual who is an employee or prospective employee for any purpose related to the subject individual's employment without express consent.

Disclosure of health information

HIPA gives trustees the ability to disclose information in certain circumstances. While HIPA allows trustees to disclose in these circumstances, it does not require them to do so.

A trustee should balance various factors when deciding whether to disclose health information. They should use their knowledge of the information, professional judgment and, when applicable, information presented to encourage the disclosure.

A trustee may use their judgment to disclose health information without consent for the following purposes:

- to another trustee in order to provide health services to the individual;
- to any person who is a continuing care and treatment provider;
- to family members or others with a close personal relationship (in limited circumstances);
- to health professional bodies for an investigation;

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- to researchers who have obtained approval from a research ethics review board;
- if the disclosure is authorized or required by a law of Saskatchewan or Canada;
- to persons acting in the best interest of an incompetent individual;
- to the person's authorized representative under section 56 of HIPA;
- to police in limited circumstances;
- to any person to avert or minimize a believed risk of imminent danger;
- to a successor trustee when the trustee ceases to practice (another doctor takes over the practice after your doctor moves or retires);
- in response to a court order; and
- to another trustee to prevent fraud or abuse of the health care system.

A trustee may also disclose health information to any person that you have consented to be involved in your care.

Support, or more information

The complaint process

If you feel that your medical records/ personal health information has been accessed, collected, used or disclosed in contravention of HIPA, we encourage you to contact the privacy officer of the organization that controls your personal health information: a private medical clinic or office; a regional health authority (health region) that provides services directly or through affiliated organizations, a company providing services funded by *The*

Saskatchewan Medical Care Insurance Act, or the Ministry of Health. If you are not satisfied with the response, we encourage you to take your concerns to the Office of the Information and Privacy Commissioner.

The Ministry of Health

Not sure who to contact? Overwhelmed? Please call the Ministry of Health. We are here to help. As the administrative oversight body for HIPA legislation, we can provide you with information. We can begin to work with you immediately and facilitate your complaint.

The Information and Privacy Commissioner

You can turn to the Office of the Information and Privacy Commissioner for more information about HIPA, or to ask for a review when you feel a trustee has not adequately responded to a request for information, or your privacy has been breached.

You can ask the Commissioner to:

- review a trustee's decision to withhold personal health information;
- intervene when a trustee fails to respond within 30 days of a written request;
- intervene when you are not satisfied that a trustee has conducted an adequate search for your records; or
- investigate a situation where personal health information has been collected, used or disclosed in contravention of HIPA.

The Commissioner has the power to:

- investigate complaints;
- require that any record be produced for examination; or
- appoint a staff member to conduct an investigation into your complaint.

Following an investigation, the results of the investigation findings may be relayed to the parties in a letter, and may also be published in a formal Investigation Report (with the removal of details that could lead someone to identify a patient or client).

Health Information Access & Privacy Office Saskatchewan Ministry of Health

302-3475 Albert Street
Regina, SK S4S 6X6

P: 306-787-2137

F: 306-787-4534

E: HIPAFOIhelp@health.gov.sk.ca

www.health.gov.sk.ca/hipa

Saskatchewan Information and Privacy Commissioner

503 – 1801 Hamilton Street
Regina, SK S4P 4B4

P: 1-877-748-2298 (in Sask.)

P: 306-787-8350 (in Regina)

F: (306) 798-1603

E: webmaster@oipc.sk.ca

www.oipc.sk.ca