

Introducing Yukon's *Health Information Privacy and Management Act (HIPMA)* and the Custodian Toolkit

Disclaimer: This document is not an official legal interpretation of the legislation and is not binding on the Government of Yukon. It is not a substitute for legal advice, which would consider, among other things, facts specific to your situation, specific legal issues relevant to your situation, your goals, limits and constraints, and the context you are operating within.

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HIPMA questions

1. What is the purpose of the Act?

Yukon's *Health Information Privacy and Management Act (HIPMA)* provides a set of rules that protect the confidentiality, integrity and security of personal health information (PHI) and the privacy of individuals in regards to their health information. These rules govern how PHI can be collected, used, disclosed and secured within Yukon's health care sector and Yukon's department of Health and Social Services (HSS). The rules reflect the increased use of electronic information systems in healthcare delivery, e.g. electronic medical records, telehealth systems. Similar laws are in place across most of Canada.

HIPMA identifies a series of rights that individuals have in regards to their PHI, such as the right to access their PHI and to request corrections to their PHI. In addition, *HIPMA* and its regulations govern the fees which may be charged by health care providers to individuals for copies of their health records.

The *Act* is also designed to enhance health care delivery in Yukon by improving the flow of PHI needed to provide care between an individual's different healthcare providers. An individual in Yukon may require the help and collaboration of many health care professionals in different organizations and locations during treatment. The *Act* recognizes having the necessary PHI available to health professionals is an important part of providing safe, high quality care. *HIPMA* allows health care providers to collect and use PHI to provide care on the basis of implied consent and PHI can be disclosed without consent to other health providers who provide the individual with health care, unless the individual objects.

The *Act* also provides the legal framework for the Yukon Health Information Network (YHIN), a territory wide electronic health network that will improve the availability and accessibility of PHI by allowing authorized health care providers to access and share PHI electronically. For example, Yukon's Drug Information System (DIS), an electronic system that will contain in one place a record of all drugs dispensed in community pharmacies in the territory, will be part of YHIN once the DIS is implemented.

2. How does the Act define Personal Health Information?

Personal health information (PHI) is individually identifiable information that includes, but is not limited to:

- ▶ Demographic and registration information of an individual, such as the individual's name, gender, address, phone number, date of birth, substitute decision maker, or health card number
- ▶ Information related to the health and the provision of health care to an individual, e.g. an individual's physical and mental health history
- ▶ Genetic information
- ▶ Information regarding a donation of a body part, tissue or bodily substance and any information derived from their testing or examination
- ▶ Health care payment information, e.g. billing information
- ▶ Specific information about an individual's health care provider, e.g. the provider's name, business contact information and license number, which is referred to in the *Act* and its regulations as "provider registry information."

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HIPMA protects PHI regardless of the form it is in. It applies to PHI recorded on paper, in electronic information system, or as a photograph. It also protects PHI when it is unrecorded, such as when PHI is being shared in a conversation.

3. Who must follow the Act?

Custodians and their agents must comply with *HIPMA* when they collect, use or disclose personal health information (PHI) for the following purposes: providing health care, research and health system planning and management. In addition, a custodian must enter into an agreement with any information manager acting on behalf of the custodian to ensure *HIPMA* safeguards for PHI are in place. Lastly, any person in the territory who collects, uses or discloses of the Yukon health card number or requests an individual to present the health card can only do so in accordance with *HIPMA*.

Custodians

Custodians, who are typically individuals or organizations who provide or support health care, are named in the *Act* and its regulations. Custodians include: Yukon's department of Health and Social Services (HSS), the Yukon Hospital Corporation (YHC), Kwanlin Dün First Nation Health Centre, Emergency Medical Services (EMS), and a variety of health care providers, such as pharmacists, physicians and dentists. Custodians have a number of legal responsibilities under the *Act*.

Agents

An agent is any person or organization who acts on behalf of a custodian in relation to PHI. Examples of agents include:

- ▶ Employees of the custodian, such as the receptionist in a family physician's clinic or a nurse at the hospital
- ▶ Contractors or service providers who provide services on behalf of the custodian
- ▶ Students and volunteers

Information Managers

An information manager is any organization or individual who processes, stores, retrieves, de-identifies or otherwise transforms, archives or disposes of PHI on behalf of the custodian. Organizations and individuals who provide information management or information technology services on behalf of a custodian are also information managers. Examples of information managers include software companies who maintain a clinic's information management system on the clinic's behalf, a company that stores a custodian's paper health records that have been archived, or a shredding company that a custodian contracts with to dispose of PHI. The *Act* and its regulations contain a number of requirements for the agreements between custodians and their information managers.

4. What are the new rules regarding Yukon's health card number and health card? Can I collect and use the number as a custodian?

Under *HIPMA*, the health card number and health card are now considered personal health information (PHI). This means that the health card and health card number are protected in the same way as other personal health information. There are restrictions on the collection, use and disclosure of the health card number and when an individual can be asked to show their health card.

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Custodians may use the health card and health card number for providing publically funded health care, securing payment for publically funded health care, and for a purpose related to the Yukon Health Information Network or a proceeding. Other approved purposes include, but are not limited to, insurance policy claims, *Worker's Compensation Act* matters and health research.

5. Can an organization collect, use and disclose personal health information (PHI) and not be a custodian under *HIPMA*?

Yes. Many organizations, such as insurance companies, employers and regulatory bodies of health professionals, may collect PHI for purposes other than providing direct health care to the individual, research or health system planning and management. For example, insurance companies collect PHI to process an application for insurance coverage or a body that regulates health professionals collect PHI to investigate a complaint. While these organizations are not bound by *HIPMA*, other federal or provincial privacy legislation may apply to their activities.

HIPMA applies to custodians named in the *Act* and the regulations when they collect, use and disclose PHI for the purposes of providing health care, conducting research and planning and management of the healthcare system. Sometimes, even though you are a custodian under *HIPMA*, you may collect PHI for purposes that are not covered under the *Act*. For example, in your role as an employer, you may collect PHI from your employee to determine eligibility for sick leave benefits. *HIPMA* would not apply in this instance, although other federal or territorial privacy legislation might.

6. What are the responsibilities of a custodian under the *Act*?

HIPMA identifies several responsibilities of a custodian in relation to the collection, use, disclosure, and protection of PHI. For example, custodians must:

- ▶ Implement the appropriate administrative policies, as well as technical and physical safeguards, to protect the confidentiality, privacy, integrity, and security of PHI in its custody;
- ▶ Collect, use, and disclose the minimum amount of PHI necessary to fulfil the purpose;
- ▶ Implement controls to ensure that PHI can only be collected, accessed, used or disclosed to authorized individuals;
- ▶ Ensure that all agents have signed a confidentiality pledge and receive initial and regular privacy training;
- ▶ Take all reasonable steps to prevent security breaches;
- ▶ Keep a written record of all security breaches;
- ▶ Ensure that all documents are securely stored and disposed of;
- ▶ Develop written policies on the collection, use, and disclosure of PHI, breach management and reporting, and the handling of access requests from individuals seeking access to their PHI;
- ▶ Appoint a privacy contact individual to handle all access requests, complaints, and breaches;
- ▶ Conduct an audit of their security safeguards at least every two years;
- ▶ Ensure that removable media is secure and protected when stored and in use;
- ▶ Adhere to all information practices as stated in *HIPMA*.

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7. What rights are granted to individuals under the Act?

HIPMA and its regulations specify a number of rights that individuals have in relation to their PHI, including, but not limited to, the right to:

- ▶ Consent to the collection and use of their PHI for health care provision and the collection, use and disclosure of their PHI for other authorized purposes, unless an exception to consent applies.
- ▶ Be informed, as part of the consent process, about the purpose of the collection, use and disclosure of their PHI, their right to give, refuse or withdraw consent, and that in instances where their consent is not required, the custodian can only collect, use and disclose their PHI in accordance with *HIPMA* and the regulations.
- ▶ Refuse to give consent, withdraw their consent once given, or object to the disclosure of their PHI for the purpose of providing healthcare, subject to any limitations outlined in the *Act*.
- ▶ To authorize another individual in writing to give consent to the collection, use and disclosure of their PHI on their behalf, e.g. advance directive.
- ▶ Access their PHI and to make a complaint to Yukon's Information and Privacy Commissioner (IPC) if access is refused.
- ▶ Request a correction or annotation to their PHI.
- ▶ Obtain a record of who has looked at their PHI on a custodian's electronic information system. This record is called a "record of user activity."
- ▶ Be notified by the custodian of any theft, loss, unauthorized access or disclosure, and disposal of their PHI contrary to *HIPMA* that poses a risk of significant harm to them. Harm includes identity theft or fraud, personal humiliation or embarrassment and damage to reputation.
- ▶ Make a complaint to the IPC if they believe a custodian has failed to comply with *HIPMA* and its regulations.

8. I am a health care provider already covered by the federal privacy legislation, *PIPEDA*. Does *HIPMA* now replace *PIPEDA* for me?

Since 2004, the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* applies to the collection, use and disclose of personal information, including personal health information, by private organizations engaged in commercial activities. This includes private physician offices, pharmacies, laboratories and other private health care clinics. Once *HIPMA* comes into force, Yukon's department of Health and Social Services can apply to the federal government to have *HIPMA* declared substantially similar to *PIPEDA*, as has been done in other jurisdictions, such as Ontario, New Brunswick, Newfoundland and Labrador and Nova Scotia. However, Yukon custodians engaged in commercial activities will continue to be bound by *PIPEDA* as well as *HIPMA* until the federal government declares the two pieces of legislation substantially similar.

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9. Our organization is a public body currently under Yukon's *Access to Information and Protection of Privacy Act (ATIPP)*. What is changing for us?

Certain *HIPMA* custodians, such as Yukon Health and Social Services, Yukon Hospital Corporation and Yukon department of Community Services, Emergency Medical Services, are also public bodies under *ATIPP*. *HIPMA* and its rules will apply to PHI in the custody or control of a custodian who is also a public body instead of *ATIPP*, with limited exceptions (See s. 12 (2) of *HIPMA*). However, *ATIPP* will continue to apply to personal information that is not personal health information under *HIPMA*. For example, an employee of Health and Social Services requests to see his interview test scores after finding out he was the unsuccessful candidate for a position. This request would continue to be processed under *ATIPP*, as the information sought is not personal health information.

10. How can I find out more information about the Act?

If you would like to consult the *Act* itself, you can find a link to it on our Yukon Health and Social Services website at: www.hss.gov.yk.ca/healthprivacy.php. Under *HIPMA*, one of the functions of Yukon's Information and Privacy Commissioner is to advise custodians and promote best practices. You can contact the Office of Information and Privacy Commissioner using the information below:

Phone: 867-667-8468

Toll free in the Yukon: 1-800-661-0408 (ext. 8468)

Fax: 867-667-8469

Email: info@ombudsman.yk.ca

Address: 211 Hawkins Street, Suite 201 Whitehorse, Yukon Y1A 1X3

Custodians may also obtain more information about *HIPMA* by visiting our Yukon Health and Social Services website at: www.hss.gov.yk.ca/healthprivacy.php and/or emailing our health privacy team at: healthprivacy@gov.yk.ca

Custodian Toolkit questions

11. What is the purpose of the *HIPMA* Custodian toolkit?

The toolkit was created to help custodians understand and prepare for *HIPMA*'s new requirements before the *Act* and its regulations come into force. The toolkit contains numerous resources, such as sample policies and forms that can be adapted by custodians to fit their organization's needs. The toolkit contains documents that will guide custodians through the *HIPMA* training, policy development, and implementation process. However, it is not a substitute for proper legal advice and should not be relied upon as such.

12. How do I use the toolkit in my organization?

We recommend the toolkit be reviewed by key staff in your organization, in particular the person who will be your organization's privacy contact individual. You may also want to establish a committee or small working group who will assess your *HIPMA* compliance and adapt the sample policies and forms in the toolkit.

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All sample policies and forms in the toolkit are meant to be customized and operationalized by your organization to fit your business practices, which must meet or exceed the legal standards set by *HIPMA* and its regulations. For example, *HIPMA* regulations set out the maximum fees a custodian can charge an individual seeking access to his or her PHI. In reviewing the access to records policy, your organization may decide to charge less than the maximum amount and adjust the fees in your policy accordingly, but a custodian cannot charge more than the maximum fees in *HIPMA* for this service.

13. What are some of the key documents in the toolkit?

The toolkit contains many documents that will be helpful in preparing your organization for *HIPMA*. Key documents include:

- ▶ *HIPMA* Online Training Course — The Health Information Privacy and Confidentiality training course provides an overview of *HIPMA* requirements and privacy best practices for health care workers.
- ▶ Readiness Checklist for Custodians: This document is designed to assist custodians by identifying key *HIPMA* requirements, against which they can assess their level of preparedness for *HIPMA* implementation. Once completed, the checklist should provide a sense of what key practices are already in place and what actions need to be taken.
- ▶ Sample Disclosure Policy: This document is a sample policy that contains certain *HIPMA* rules related to when and how custodians can disclose PHI. The rules included in the policy are meant to reflect common disclosure scenarios in health care and is not meant to be exhaustive. You should review the disclosure rules in *HIPMA* to see if any additional rules should be included given the nature of your practice.
- ▶ Sample Access to PHI Policy and Sample Access to PHI Application/Form: These documents provide a sample of how your organization may handle requests for records.
- ▶ Sample Privacy Notice/Poster: A privacy notice is a document that is used to inform the public of their rights, as well as custodian responsibilities, under *HIPMA*. The privacy notice must be noticeable, posted in plain view in a public area (e.g. waiting room), and written in plain language.

14. There are a number of documents in the toolkit. Where do you recommend I start?

Start by taking the *HIPMA* online training course and then going through the readiness checklist. This will give you a good sense of your level of preparedness. In working through the checklist, you will be able to note what requirements your organization already has in place and what needs to be implemented. From there, you can work through the toolkit sample policies and forms and customize them to your organization.

15. Who can I contact if I have questions about the toolkit?

If you have any questions, please email healthprivacy@gov.yk.ca.

