

# KHSC

## ADMINISTRATIVE POLICY MANUAL

**Subject: Access to, Correction and Use of Personal Health Information**

**Number: 09-140**

Issued by: President and Chief Executive Officer

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### Principle

Personal Health Information (PHI) is one of the most sensitive types of personal information that is shared for a variety of purposes, including care and treatment, health research, and managing our publicly funded health care system. The Personal Health Information Protection Act (PHIPA) sets out the rules that custodians and agents of patient's personal health information must follow for the collection, use, disclosure, retention, and destruction of PHI.

Employees, medical staff, volunteers, students, contractors who act for or on behalf of the hospital for the purposes of the hospital and not their own purposes, are "agents" of the hospital.

The Freedom of Information and Protection of Privacy Act (FIPPA) includes provisions covering access to and correction of PHI. Any PHI request through Freedom of Information (FOI) will be directed to Health Records for processing under this policy and PHIPA.

Under PHIPA, patients have the right to withhold or withdraw their consent to the use and disclosure of their PHI, with some exceptions.

The hospital is the "custodian" of PHI collected for the purpose of the provision of health care to all registered in-patients and out-patients. The hospital will provide access to this PHI to our patients in the timeliest manner operationally possible. Where there is a request for correction to a patient's PHI (if the information is out-of-date, inaccurate or incomplete), a process is in place to appropriately evaluate and apply the correction.

### Preamble

The PHIPA permits use of PHI by defined individuals for the purpose for which the information was collected or if permitted by law;

- for planning and delivering services (but not if the patient expressly instructs otherwise)
- for risk management
- for educating students
- pursuant to a legal proceeding
- obtaining payment for the provision of health services
- approved research (but not if the patient expressly instructs otherwise)

For policy and procedure on rights to copy and distribute PHI, see KHSC policy 09-050 Disclosure of Personal Health Information and KHSC policy 09-150 Duplication of Personal Health Information Policy.

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### Definitions

Access: Under PHIPA, “access” refers to an individual’s right to view or obtain copies of their own PHI. Under this policy, the term also refers to any action that involves an authorized individual being able to view or use PHI, as in the context of providing health care and treatment.

Agent: A person who acts on behalf of the Health Information Custodian (HIC) in exercising powers or performing duties with respect to personal/private information whether or not employed (or paid) including: volunteers, students, physicians, consultants, nurses, vendors and contractors.

Consent Directive/Lock-box: A directive made by a patient to withhold or withdraw, in whole or in part, his or her consent to the collection, use, and disclosure of their PHI (i.e. lock/block the PHI) for the purpose of providing or assisting in the provision of health care and treatment.

Express Consent: Is obtained when patients explicitly agree to the collection use and disclosure of their personal health information.

Health Information Custodian: As defined in the Personal Health Information Protection Act, 2004, PHIPA states “a person or organization who has custody or control of Personal Health Information as a result of or in connection with performing the person’s or organization’s powers or duties or the work as described in section 3 (1) of the act.”

Implied Consent: Permits one to conclude from surrounding circumstances that a patient would reasonably agree to the collection, use or disclosure of the patient’s personal health information.

Patient: Patient includes patient, substitute decision maker, or legal guardian.

Personal Health Information: In the Act is described as “Identifying information about an individual in oral or recorded form” as it:

- a) Relates to the physical or mental health of the individual, including information that consists of the health history of the individuals family,
- b) Relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

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- c) Is a plan of service within the meaning of the Long-Term Care Act, 1994 for the individual,
- d) Relates to payments or eligibility for health care in respect of the individual,
- e) Relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,
- f) Is the individual's health number, or
- g) Identifies an individual's substitute decision-maker.

**Research:** Means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.

**Use:** Under PHIPA, "Use", in relation to PHI in the custody or under the control of a HIC or a person, means to view, handle or otherwise deal with the information, subject to subsection 6 (1) of PHIPA, but does not include to disclose the information, and "use", as a noun, has a corresponding meaning.

### Policy

#### 1. Patient Withdrawal of Consent

A patient can withhold consent for use and disclosure with some exceptions. (i.e., emergency, mandatory reporting through other laws, subpoena, etc.). When a patient exercises this right, it is formally known as a consent directive and informally as a lock-box.

#### 2. Use of PHI with Consent

Use of PHI is permitted to anyone with the expressed written consent of the patient (or their substitute decision-maker). (See KHSC policy 09-050 Disclosure of Personal Health Information).

2.1 If a consent directive/lock-box is initiated on a patient record, additional consent may be required.

#### 3. Use of PHI without Consent

Use of PHI is authorized to all persons directly involved in the care of the patient which includes:

3.1 Health care practitioners and groups of health care practitioners, public and private hospitals, pharmacies, laboratories, ambulance services, community care

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access corporations, community service providers (defined in the Long-Term Care Act), psychiatric facilities, independent health facilities, homes for the aged, rest homes, nursing homes, care homes and homes for special care and community health or mental health centers, programs and services whose primary purposes are providing care,

- 3.2 Students from recognized programs under supervision of their instructors,
- 3.3 Administrative staff exercising responsibilities as it relates to risk management, error management or maintenance of quality of care,
- 3.4 For approved research conducted by the custodian. (See KHSC policy #11-150 Health Research),
- 3.5 Affiliated staff, health care professionals,
- 3.6 Obtaining payment, claims processing,
- 3.7 A patient's locked PHI may be accessed without consent only in emergency circumstances or as allowable by law.

#### 4. Access to PHI and Logs by Patient

The custodian must provide patients with access to their PHI or access logs in a timely manner unless under these exceptions:

- 4.1 A record or information in the record are subject to legal privilege that restricts the disclosure to patients,
- 4.2 Acts of Canada or court order prohibiting disclosure to individuals,
- 4.3 Psychological tests or assessments (raw data),
- 4.4 Information collected in anticipation of or for use in legal proceedings,
- 4.5 Access may cause harm to the patient or identified individuals.

#### 5. Correction of PHI

An individual may ask the HIC to correct medical records if the PHI is inaccurate or incomplete.

#### 6. Employee access to their own PHI

Agents of the hospital who have access to systems containing their own PHI are required to follow the same process described for "Outpatients" below.

### **Procedure**

Patient Withdrawal of Consent (Consent Directive/Lock-box)

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1. A patient's request to withdraw consent for use or disclosure must be indicated on the appropriate form. (See KHSC policy 09-054 Consent Management/Lock-Box).
2. The instructions for completion must be followed as listed on the form.
3. All requests for withdrawal of consent for access, use or disclosure must be processed immediately and documented in the patient record.
4. Questions regarding consent directives/lock-box should be directed to the KHSC Privacy Office.

### Outpatients (closed record):

1. Patients or substitute decision makers (SDM's) must request access to and/or a copy of their PHI in writing to: (See Appendix A "Request for Access to Personal Health Information")
  - 1.1 Their health care provider,
  - 1.2 Director of Patient Records and Registration or delegate.
2. Patients must be granted access within 30 days after making a request. Urgent circumstances may require a shorter turnaround and this will be accommodated as operationally possible.
3. Staff will be present if the record is reviewed by the patient to respond to any questions they may have. The patient may elect to receive a photocopy only.

### Inpatients (open record):

1. When a patient is an inpatient, a health care provider is required to assist the patient with the review of their record and document on the patient record that the review has occurred.
2. Where there is a patient request to view their record, access should be granted right away.
3. Staff will be present if the record is reviewed by the patient to respond to any questions they may have.
4. If copies of PHI are being requested, the request should be made in writing as indicated in "Outpatients" above.

### Requests for Correction of PHI:

1. The patient must complete the form "Request for Correction to Personal Health Information" (Appendix B) before it is forwarded to the Privacy Office.
2. Privacy Office will create a case file, and will log and track all requests for corrections for annual reporting to the Information and Privacy Commissioner of Ontario (IPCO). In the event that a request for access or correction relates to information contributed by another

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organization, eHealth Ontario or a regional/provincial system, the custodian will redirect the patient accordingly.

3. Privacy Office will contact the author of the PHI subject to correction to review the requested correction(s). An incomplete or inaccurate record must be corrected, but the author is not required to change professional opinion.
4. Privacy Office will notify the patient in writing of the author's decision to grant or refuse the patient's request within 30 days.
5. If required, an extension of up to 30 days is permitted under PHIPA.
6. If a request for correction is refused, an explanation must be provided to the patient.
7. The patient may submit a statement of disagreement with the decision to add to their record or make a complaint to the IPCO within six months of the decision, if they are not satisfied.
8. The request and the results of the request are logged by the Privacy Office.

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Authorizing Signature

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Dr. David Pichora  
President and Chief Executive Officer

### **Related Policies**

09-054 Consent Management/Lock-Box  
09-055 Personal Health Information Protection  
09-050 Disclosure of Personal Health Information  
09-150 Duplication of Personal Health Information  
11-150 Health Research