

2003

CHAPTER 25

An Act to amend *The Health Information Protection Act* and to make a consequential amendment to *The Regional Health Services Act*

(Assented to June 27, 2003)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Health Information Protection Amendment Act, 2003*.

S.S. 1999, c.H-0.021 amended

2 *The Health Information Protection Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) by adding the following clause after clause (c):

“(c.1) ‘**comprehensive health record**’ means a comprehensive health record described in subsection 18.1(2)”;

(b) by repealing clause (l); and

(c) by repealing clause (r) and substituting the following:

“(r) ‘**Saskatchewan Health Information Network**’ means the Saskatchewan Health Information Network established as a Crown corporation pursuant to *The Crown Corporations Act, 1993*”.

Section 4 amended

4 The following clause is added after clause 4(4)(g):

“(g.1) *The Vital Statistics Act, 1995* or any former *Vital Statistics Act*”.

Section 5 amended

5(1) Subsection 5(1) is amended by striking out “An individual” and substituting “Subject to subsection (2), an individual”.

(2) Subsections 5(2), (3) and (4) are repealed and the following substituted:

“(2) A trustee shall use or disclose personal health information about an individual only:

(a) with the consent of the subject individual; or

(b) in accordance with a provision of this Act that authorizes the use or disclosure”.

New section 8**6 Section 8 is repealed and the following substituted:****“Rights re comprehensive health record**

8(1) An individual has the right to prevent access to a comprehensive health record of that individual’s personal health information.

(2) In the case of a comprehensive health record created and controlled by the Saskatchewan Health Information Network, the subject individual may require that the record not be disclosed to trustees by giving a written direction, in the prescribed form, to the Saskatchewan Health Information Network.

(3) In the case of a comprehensive health record created and controlled by a person prescribed for the purposes of subsection 18.1(1), the subject individual may require that the record not be disclosed to trustees by giving a written direction, in the prescribed form, to the prescribed person.

(4) The Saskatchewan Health Information Network shall comply with every written direction pursuant to subsection (2) that it receives, and each prescribed person shall comply with every written direction pursuant to subsection (3) that the prescribed person receives”.

Section 10 amended**7 Section 10 is amended:**

(a) by renumbering it as subsection 10(1); and

(b) by adding the following subsection after subsection (1):

“(2) This section does not apply to the disclosure of personal health information for the purposes or in the circumstances set out in subsection 27(2)”.

Section 15 amended

8 Section 15 is amended by adding “or powers” after “rights”.

Section 18 amended**9 Subsection 18(1) is amended:**

(a) by striking out “or” after clause (b);

(b) by adding “or” after clause (c); and

(c) by adding the following clause after clause (c):

“(d) for the purpose of combining records containing personal health information”.

New section 18.1**10 The following section is added after section 18:****“Comprehensive health record**

18.1(1) Subject to the terms of any agreements made pursuant to subsection 18(2), the Saskatchewan Health Information Network or a prescribed person may create comprehensive health records with respect to individuals.

- (2) A comprehensive health record with respect to an individual:
- (a) consists of records containing the individual’s personal health information that are provided by two or more trustees;
 - (b) is created for the purposes of:
 - (i) compiling a complete health history of the individual; and
 - (ii) providing access to that history to any trustee; and
 - (c) is stored and controlled by the Saskatchewan Health Information Network or the prescribed person that created it.
- (3) The Saskatchewan Health Information Network or a prescribed person shall provide a trustee with access to a comprehensive health record only if:
- (a) access is authorized by each trustee whose records were used to compile the comprehensive health record; and
 - (b) either:
 - (i) the subject individual has provided consent in writing authorizing the trustee to have access; or
 - (ii) one of the purposes or circumstances set out in subsection 27(2) or (4) exists and the subject individual has not made a direction pursuant to subsection 8(2) or (3).
- (4) Nothing in this section prevents the combining of records of personal health information where the combination is not for the purpose of creating a comprehensive health record”.

New section 19**11 Section 19 is repealed and the following substituted:****“Duty to collect accurate information**

19 In collecting personal health information, a trustee must take reasonable steps to ensure that the information is accurate and complete”.

Section 21 amended

12 Clause 21(a) is amended by striking out “verify” and substituting “take reasonable steps to verify”.

Section 23 amended**13(1) Subsection 23(2) is repealed and the following substituted:**

“(2) A trustee must establish policies and procedures to restrict access by the trustee’s employees to an individual’s personal health information that is not required by the employee to carry out the purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act”.

(2) Subsection 23(3) is repealed.**(3) Subsection 23(4) is amended by adding “, where practicable,” after “must”.****New sections 26 and 27****14 Sections 26 and 27 are repealed and the following substituted:****“Restrictions on use**

26(1) A trustee shall not use personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section.

(2) A trustee may use personal health information:

- (a) for a purpose for which the information may be disclosed by the trustee pursuant to section 27, 28 or 29;
- (b) for the purposes of de-identifying the personal health information;
- (c) for a purpose that will primarily benefit the subject individual; or
- (d) for a prescribed purpose.

(3) Nothing in subsection (2) authorizes a trustee as an employer to use or obtain access to the personal health information of an individual who is an employee or prospective employee for any purpose related to the employment of the individual without the individual’s consent.

“Disclosure

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

(2) A subject individual is deemed to consent to the disclosure of personal health information:

- (a) for the purpose for which the information was collected by the trustee or for a purpose that is consistent with that purpose;
- (b) for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of, a service requested or required by the subject individual; or
- (c) to the subject individual’s next of kin or someone with whom the subject individual has a close personal relationship if:
 - (i) the disclosure relates to health services currently being provided to the subject individual; and
 - (ii) the subject individual has not expressed a contrary intention to a disclosure of that type.

- (3) A trustee shall not disclose personal health information on the basis of a consent pursuant to subsection (2) unless:
- (a) in the case of a trustee other than a health professional, the trustee has established policies and procedures to restrict the disclosure of personal health information to those persons who require the information to carry out a purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act; or
 - (b) in the case of a trustee who is a health professional, the trustee makes the disclosure in accordance with the ethical practices of the trustee's profession.
- (4) A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:
- (a) where the trustee believes, on reasonable grounds, that the disclosure will avoid or minimize a danger to the health or safety of any person;
 - (b) where, in the opinion of the trustee, disclosure is necessary for monitoring, preventing or revealing fraudulent, abusive or dangerous use of publicly funded health services;
 - (c) where the disclosure is being made to a trustee that is the successor of the trustee that has custody or control of the information, if the trustee makes a reasonable attempt to inform the subject individuals of the disclosure;
 - (d) to a person who, pursuant to *The Health Care Directives and Substitute Health Care Decision Makers Act*, is entitled to make a health care decision, as defined in that Act, on behalf of the subject individual, where the personal health information is required to make a health care decision with respect to that individual;
 - (e) if the subject individual is deceased:
 - (i) where the disclosure is being made to the personal representative of the subject individual for a purpose related to the administration of the subject individual's estate; or
 - (ii) where the information relates to circumstances surrounding the death of the subject individual or services recently received by the subject individual, and the disclosure:
 - (A) is made to a member of the subject individual's immediate family or to anyone else with whom the subject individual had a close personal relationship; and
 - (B) is made in accordance with established policies and procedures of the trustee, or where the trustee is a health professional, made in accordance with the ethical practices of that profession;

- (f) where the disclosure is being made in accordance with section 22 to another trustee or an information management service provider that is a designated archive;
- (g) where the disclosure is being made to a standards or quality of care committee established by one or more trustees to study or evaluate health services practice in a health services facility, health region or other health service area that is the responsibility of the trustee, if the committee:
 - (i) uses the information only for the purpose for which it was disclosed;
 - (ii) does not make a further disclosure of the information; and
 - (iii) takes reasonable steps to preserve the confidentiality of the information;
- (h) subject to subsection (5), where the disclosure is being made to a health professional body or a prescribed professional body that requires the information for the purposes of carrying out its duties pursuant to an Act with respect to regulating the profession;
- (i) where the disclosure is being made for the purpose of commencing or conducting a proceeding before a court or tribunal or for the purpose of complying with:
 - (i) an order or demand made or subpoena or warrant issued by a court, person or body that has the authority to compel the production of information; or
 - (ii) rules of court that relate to the production of information;
- (j) subject to subsection (6), where the disclosure is being made for the provision of health or social services to the subject individual, if, in the opinion of the trustee, disclosure of the personal health information will clearly benefit the health or well-being of the subject individual, but only where it is not reasonably practicable to obtain consent;
- (k) where the disclosure is being made for the purpose of:
 - (i) obtaining payment for the provision of services to the subject individual; or
 - (ii) planning, delivering, evaluating or monitoring a program of the trustee;
- (l) where the disclosure is permitted pursuant to any Act or regulation;
- (m) where the disclosure is being made to the trustee's legal counsel for the purpose of providing legal services to the trustee;
- (n) in the case of a trustee who controls the operation of a pharmacy as defined in *The Pharmacy Act, 1996*, a physician, a dentist or the minister, where the disclosure is being made pursuant to a program to monitor the use of drugs that is authorized by a bylaw made pursuant to *The Medical Profession Act, 1981* and approved by the minister;

(o) in the case of a trustee who controls the operation of a pharmacy as defined in *The Pharmacy Act, 1996*, where the disclosure is being made pursuant to a program to monitor the use of drugs that is authorized by a bylaw made pursuant to *The Pharmacy Act, 1996* and approved by the minister;

(p) in prescribed circumstances.

(5) For the purposes of clause (4)(h), where the personal health information in question is about a member of the profession regulated by the health professional body or prescribed professional body, disclosure may be made only:

(a) in accordance with clause (4)(i);

(b) with the express consent of the subject individual; or

(c) if the trustee has reasonable grounds to believe that the personal health information is relevant to the ability of the subject individual to practise his or her profession, on the request of the health professional body or prescribed professional body.

(6) Disclosure of personal health information pursuant to clause (4)(j) may be made only where the person to whom the information is to be disclosed agrees:

(a) to use the information only for the purpose for which it is being disclosed; and

(b) not to make a further disclosure of the information in the course of carrying out any of the activities mentioned in that clause”.

Section 30 amended

15(1) Subsection 30(1) is repealed and the following substituted:

“(1) No person who is aware, or should reasonably be aware, that he or she has received personal health information in contravention of this Act shall use or disclose the information without the consent of the subject individual or, where the subject individual is deceased, without the consent of a prescribed person”.

(2) Subsection 30(3) is repealed.

Section 40 amended

16 Subsection 40(6) is repealed and the following substituted:

“(6) A trustee is not required to notify other trustees where:

(a) an amendment or a notation cannot reasonably be expected to have an impact on the ongoing provision of health services to the individual; or

(b) the personal health information was disclosed to the other trustees for any of the purposes or in any of the circumstances set out in subsection 27(2)”.

Section 43 amended

17 Clause 43(2)(f) is amended by striking out “clause 27(4)(i)” and substituting “clause 27(4)(h)”.

Section 63 amended

18(1) Subsection 63(1) is amended:

- (a) by repealing clause (e);**
- (b) by adding the following clause before clause (f):**
“(e.1) for the purposes of section 8, prescribing a form for a written direction”;
- (c) by adding the following clause after clause (j):**
“(j.1) for the purposes of subsection 18.1(1), prescribing persons who may create and control comprehensive health records”;
- (d) by repealing clause (m) and substituting the following:**
“(m) prescribing purposes for which a trustee may use personal health information pursuant to clause 26(2)(d)”;
- (e) by repealing clause (n);**
- (f) by repealing clause (o) and substituting the following:**
“(o) for the purposes of clause 27(4)(p), prescribing circumstances in which personal health information in the custody or control of a trustee may be disclosed without the consent of the subject individual”;
- (g) in clause (p) by striking out “clause 27(4)(i)” and substituting “clause 27(4)(h)”;** and
- (h) by adding the following clause after clause (r):**
“(r.1) for the purposes of subsection 30(1), prescribing persons who may give consent to the use or disclosure of personal health information where the subject individual is deceased”.

(2) Subsection 63(2) is amended by striking out “clause (1)(d), (g), (l), (m), (n), (o) or (r)” and substituting “clause (1)(d), (g), (l), (m), (o) or (r)”.

S.S. 2002, c.R-8.2, section 77 amended

19 Subsection 77(4) of *The Regional Health Services Act* is repealed.

Coming into force

20 This Act comes into force on proclamation.