The Health Information Protection Amendment Act, 2015

Questions and Answers for Stakeholders

May 31, 2016

1. **Why was it decided to amend *The Health Information Protection Act*? Why was it needed?**
   - In 2011, a large number of medical records were found abandoned in a Regina dumpster. In August 2012, the Ministry of Health established the Health Records Protection Working Group after it was determined there wasn't enough evidence to prosecute the physician responsible under *The Health Information Protection Act* (HIPA).
   - The working group looked at HIPA's offence provisions and advised on the mechanisms for enforcing trustee responsibilities to protect patient records.
   - The group also examined and recommended specific changes to help prevent abandonment of patient records.

2. **What amendments to HIPA were recommended by the Working Group?**
   - The working group recommended changes to *The Health Information Protection Act* to aid in enforcement of trustees' responsibilities under the Act, to address possible gaps in legislation, and to put a system in place to deal with the discovery of abandoned records.
   - The four amendments to HIPA include:
     - The *"strict liability offence"* means that when records are found abandoned or unsecured, the trustee will need to show they took all reasonable steps to prevent the abandonment. This is called the "reverse onus" clause, so we no longer need to prove the trustee intended to abandon the records.
     - The *"snooping offence"* means it will be an offence for an employee to access someone's personal health information without a need for that information. This is an inappropriate use of personal health information.
     - It will be an individual offence to willfully disclose personal information. This will apply not only to trustees, but to their employees.
     - We'll also put a system in place to quickly respond to a discovery of abandoned or unsecured records and to take control of those records.

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3. **When will the legislative amendments come into effect?**
   - June 1, 2016

4. **Who participated in the working group?**
   - The group includes members from the College of Physicians and Surgeons, Saskatchewan Medical Association, College of Pharmacists, Saskatchewan Registered Nurses Association, a patient representative, and the Ministries of Justice and Health.

5. **What do the amendments mean for me and my organization?**
   - The amendments strengthen and clarify the requirements of trustees, Information Management Service Providers and their employees in protecting personal health information. They also provide the mechanism through which swift action can be taken to secure personal health information, such as patient files, if found abandoned.
   - Trustees should take the following steps:
     - Ensure that contracts are in place with any external service provider that secure your obligations as a trustee are in place;
     - Have documented policies regarding internal controls in place to prevent abandoned or unsecured records.
     - Ensure that all staff receives training and/or information regarding access to personal health information, appropriate use and disclosure of personal health information and the "snooping" offence.

6. **What does the reverse onus clause mean for me?**
   - The "strict liability offence" means that when records are found abandoned or unsecured, the trustee will need to show they took all reasonable steps to prevent the abandonment. This is called the "reverse onus" clause, so we no longer need to prove the trustee intended to abandon the records.

7. **What is snooping?**

   - The "snooping offence" means it will be an offence for an employee to access someone's personal health information without a need for that information. This is an inappropriate use of personal health information.

   - Snooping is when an individual who has access / permissions to personal health information, both electronic and hard copy, views that information without an established "need-to-know". For example:
     - A health care provider accessing a hospital database and looking up friends and family would be snooping.

- Someone asks you to look up an individual via your access permissions and information is shared without appropriate consent or need to know.

8. How do I know that my employee is snooping?

- You may receive a complaint from a member of the public believing their personal health information has been accessed improperly.

- You may personally know of or receive information from another staff member who believe one of their co-workers are looking at personal health information of an individual not in care.

- The eHealth Privacy Service (eHPS) provides services to Saskatchewan residents for PIP, PACS, CHIP, and the eHR Viewer. Individuals can contact the eHealth Privacy Service to ask questions, discuss concerns, request masking of their personal health information, request a full block be applied to their eHR Viewer profile, and request a report on who has viewed their personal health information. Here is the link to eHealth's website: http://www.ehealthsask.ca/ehealthexplained/Pages/privacyandsecurity.aspx

- It is good practice to perform random audits of your systems to review access logs and compare those access logs against patient lists.

9. How do I train my staff?

- The Health Information and Privacy Unit at the Ministry of Health is in the process of developing a training module that will be available soon.

10. Can the new offences be used for former cases of snooping?

- No, this offence will apply to actions after the date of proclamation

11. The Working Group made seven other recommendations. What is the status of these?

The other seven recommendations government will consider include:

- Creating a single repository of abandoned records.
- Enacting regulations governing designated archives.
- Designating archives required to accept records.
- Making private record storage solutions available.
- Requiring trustees to pay for archive storage costs.
- Clarifying definition of "trustee" for physician practice arrangements.
- And proclaiming sections of HIPA requiring trustees to have record retention policies and written contracts with information management service providers.
- The Ministry will be considering these recommendations in the coming months. Some may require regulations or policy change. Some may require other solutions. More information will be shared as the work unfolds.

12. Who do I share this with?

- Everyone within your organization that has contact with personal health information.

13. Where do I go for advice or more information?

- Contact the Health Information and Privacy Office at Health.InfoPrivacy&AccessHelp@health.gov.sk.ca

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