

Health Information Act guidelines and practices manual

Chapter 15: 2020 amendments



Health Information Act Guidelines and Practices Manual. Chapter 15: 2020 Amendments

Alberta Health

April 2021

This publication is a practical reference tool for the application of Alberta's *Health Information Act* (HIA or the Act). It is designed to assist all custodians that are subject to the Act.

The Guidelines and Practices Manual (Manual) provides supplementary information regarding the HIA and Regulations. The Manual explains roles and responsibilities with respect to the administration of the Act.

The Manual is intended to provide guidelines and suggest best practices, not binding rules. The Manual also takes into consideration significant decisions of the Information and Privacy Commissioner.

All scenarios and examples provided are illustrative only and should not be viewable as authoritative statements of the law. This manual is not to be used as a substitute for legal advice. In case of any doubt as to the proper application of the Act, please consult with your privacy coordinator or legal counsel.

This edition of the Guidelines and Practices Manual incorporates amendments to the HIA up to December 9, 2020.

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This publication is available online only

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The *Health Information Act* and the regulations made under it establish the rules that must be followed for the collection, use, disclosure and protection of health information in the health sector. The *Health Information Act Guidelines and Practices Manual* is designed as a reference tool to help custodians and affiliates apply and administer the Act.

The *Manual* is intended to explain the legislation and to offer guidance on approaches, procedures and best practices. The information contained in the *Manual* is not meant to present binding rules. Any examples used are illustrative only and should not be used as authority for any decisions made under the Act.

The chapters of the *Manual* generally follow the scheme and order of the Act. A few chapters have been added to cover administrative processes and the first chapter is an overall introduction to the Act. At the back of many of the chapters are '*Things to Remember*'. These pages include bullet summaries of the important things to remember in the preceding chapter and, in some cases, decision flow charts or tables. They are meant to be used by readers as quick reminders or checklists about a particular topic but are not meant as a substitute for the more comprehensive chapter content or for referring to the Act and the regulations.

The Act and regulations can be found at: <http://www.qp.alberta.ca/>. There are a number of Appendices at the back of the *Manual*. These include forms, model letters, a detailed implementation checklist and components for agreements under the Act.

Best practices and examples used in the *Manual* should be considered as guidelines only. They are in boxes accompanying the text.

References to Practice Notes from the Office of the Information and Privacy Commissioner (OIPC) should also be considered as guidelines only since they are based upon practices related to the *Health Information Act* (HIA), the *Freedom of Information and Protection of Privacy* (FOIP) Act and the *Personal Information Protection Act* (PIPA).

Orders from the OIPC are binding on the parties to reviews and investigations related to the HIA, the FOIP Act and PIPA.

Health Information Act, FOIP Act and PIPA Orders are distinguished by their numbering in the Commissioner's Office. HIA Orders are identified with the letter H (i.e., H2002-001), FOIP Orders are identified with the letter F (i.e., F2002-001) and PIPA Orders are identified with the letter P (i.e., P2006-001).

For information about the Office of the Information and Privacy Commissioner, see the Website for the OIPC at: <http://www.oipc.ab.ca>.

Portions of the *Manual* have been adapted from the *Freedom of Information and Protection of Privacy Guidelines and Practices (2000)* published by Service Alberta. We gratefully acknowledge this contribution.

For information about the FOIP Act, see the Website for the *Freedom of Information and Protection of Privacy Act* at: <http://www.servicealberta.ca/foip/>

For information about the PIPA see the website for Private Sector Privacy at:
<http://pipa.alberta.ca>.

If there is any doubt as to the proper application of the Act, readers should request advice from the *Health Information Act Coordinator* (or the affiliate responsible for administering the Act) in their organization.

For further information about the administration or interpretation of the Act, please contact:

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The Website for Alberta Health is: <http://www.health.alberta.ca>

Throughout the *Manual*, there are references to “Minister” and “Department”. These refer to the Minister responsible for the *Health Information Act*, currently the Minister of Health, and the Department of Alberta Health, respectively.

Chapter 15 2020 Amendments

15.1 Overview of Chapter 15

The *Health Information Act* was amended December 9, 2020. The majority of the changes that are in force as of December 9, 2020, are updates, corrections, and enhancements to existing provisions.

15.1.2 Amendments in Force as of December 9, 2020

Amendments to the following sections are detailed in this Chapter:

- Section 22: Duty to collect health information from subject individual
- Section 23: Use of recording device or camera
- Section 30: Use of personal health number by non-custodian
- Section 35: Disclosure of diagnostic, treatment and care information
- Section 36: Disclosure of registration information
- Section 54: Agreement between custodian and researcher
- Section 56.71: Alberta Health's Use of Alberta Electronic Health Record (EHR) Information
- Section 64: Duty to prepare privacy impact assessment
- Section 66: Power to enter agreement with information manager
- Section 78: Refusal to conduct inquiry
- Section 104: Exercise of rights by other persons
- Section 105: Immunity from suit
- Section 107: Offences and penalties

Additional amendments reflecting updates to terminology have been made throughout the Act but are not detailed in this Chapter:

- “Practice review” is replaced with “practice visit”

- “A database” is replaced with “the electronic system”
- “Proposal” as it relates to research is replaced with “protocol”

15.2 Duty to Collect Health Information from Subject Individual

Section 22(2) has been amended to authorize custodians to collect health information from a person other than the individual who is the subject of the information where the disclosure of the health information is authorized by an enactment of Alberta or Canada.

There are no changes to authorities for direct collection and no other changes to the authorities for indirect collection.

For more information on collection authorities and requirements please see **sections 6.6.1 and 6.6.2 of the [HIA Guidelines and Practices Manual](#).**

15.3 Use of Recording Device or Camera

Section 23 has been amended to clarify the requirements for custodians to obtain consent where recording devices are used to collect health information. If a recording device is clearly visible to the subject of the information being recorded, such as a microphone and recorder placed on a desk, prior written consent is not required. If a custodian uses a device which may not be visible, such as a discreet camera, prior written consent is required.

Consent to use a recording device or camera that is not visible can be provided by the individual being recorded or a representative of the individual under **section 104** as applicable.

15.4 Use of Personal Health Number by Non-Custodians

Some public bodies and private organizations are authorized by **section 21(1)(b)** to require an individual to provide their personal health number (PHN). Under **section 30(1)** of the HIA, these entities may use a PHN only for the purpose for which it was collected. For example, Students Finance Boards may require a PHN for the purpose of administering student health benefits, or a licensed insurer under the *Insurance Act* may require a PHN for facilitating benefits claims.

Previously, if a public body or private organization collected an individual’s PHN, the [*Freedom of Information and Protection of Privacy Act*](#) (FOIP) governed the public body’s subsequent use of

the PHN, and the [*Personal Information Protection Act*](#) (PIPA) governed the private organization's subsequent use of the PHN.

Section 30(2) now clarifies that if there is an inconsistency or conflict between HIA **section 30(1)** and a provision in FOIP or PIPA, **section 30(1)** of the HIA prevails. PHNs are sensitive pieces of health information that uniquely identifies individuals and can be used to access an individual's health information or commit fraud. This amendment safeguards privacy by ensuring the appropriate use of PHNs by public bodies and private organizations who are authorized to require them.

For additional information about collecting personal health numbers, please see **sections 6.5 and 6.5.1 of the [HIA Guidelines and Practices Manual](#)**.

15.5 Disclosure of Diagnostic, Treatment and Care Information

Diagnostic, treatment and care information includes, but is not limited to, information about an individual's physical and mental health, health services that have been provided to the individual and other information about an individual that is collected when a health service is provided. For more information on the definition of diagnostic, treatment and care information see **section 1(1)(i) of the HIA or section 1.4.1 of the [HIA Guidelines and Practices Manual](#)**. In certain limited situations, custodians may disclose individually identifying diagnostic, treatment and care information without an individual's consent.

For information on disclosure without consent and requirements for custodians to disclose the least amount of information possible in the most anonymous manner, see HIA **section 57**, and to consider any expressed wish of the subject of the information to limit its disclosure, see HIA **section 58** and **sections 8.2, 8.2.1, 8.2.2, 8.2.3 and 8.5 of the [HIA Guidelines and Practices Manual](#)**.

15.5.1 Disclosure to Avert or Minimize a Significant Risk of Harm

Prior to November 1, 2013, **section 35(1)(m)** of the HIA read "a custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person".

On November 1, 2013, this section was amended to:

35(1)(m) a custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize

- (i) a risk of harm to the health or safety of a minor, or
- (ii) an imminent danger to the health or safety of any person.

Section 35(1)(m)(ii) has been amended to replace the “imminent danger” threshold with “significant risk of harm”. **Section 35(1)(m)(ii)** now authorizes a custodian to disclose an individual’s health information without consent to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize a significant risk of harm to the health or safety of any person. This change from ‘imminent’ to ‘significant’ is intended to shift the focus to the severity of harm and the likelihood that harm will occur, rather than how quickly the harm might happen.

This section requires custodians to consider both the level and type of harm that may reasonably be expected to occur, and who can take steps to minimize or avert the harm prior to making a disclosure. A custodian is authorized to make the disclosure to any person who is in a position to avert or minimize the potential harm.

Best Practice Scenario

An adult woman has missed a regularly scheduled appointment with her family physician and has not returned multiple calls to reschedule the appointment. Missing appointments and not returning calls is not consistent with the woman’s usual behavior. At the woman’s last appointment, the physician noticed bruising and abrasions to her face and was concerned when the woman refused to explain how she received the injuries. The physician is aware that the woman is attending victim support services and mental health services at a local community organization due to previous episodes of domestic violence by her spouse. The physician wishes to share their concerns about the woman’s safety with the local police service and/or the community organization, as they may be able to support the individual to mitigate any further abuse. When disclosing information about the woman, the physician should consider what information the police and/or the community organization needs to know in order to avert or minimize the risk of harm to the woman. For example, the police might need to know what the physician noticed at the last appointment, the date of the appointment, and the fact that the woman regularly receives supports from the community organization for domestic abuse, but they don’t need to know the woman’s full medical history in order to perform a wellness check.

The custodian is authorized to make a disclosure under **section 35(1)(m)(ii)**. Custodians are required to limit the disclosure to the least amount of information possible, in the most non-

identifying manner possible, in order to achieve the purpose of the disclosure, see HIA **section 57**.

Best Practice Scenario

Police are looking for an individual that has been reported missing and is believed to be in the company of their spouse. There is a documented history of domestic violence towards the individual at the hands of their spouse and police services are concerned that the individual may be in danger. The police request information from a local hospital that may assist them in locating the individual. The hospital searches for records related to this individual over the past year and finds records that the individual was treated the previous week for injuries that appear to be the result of a physical altercation. The individual has visited the hospital's emergency department on multiple occasions with the most recent visit occurring four days prior where they received treatment for injuries to their face. Before disclosing information about the individual to the police, the hospital must limit the information to only what will assist the police to avert or minimize the risk of harm to the individual. In this case, they may decide to limit the disclosure to only the date and demographic information provided by the individual at their most recent visit to the emergency department.

The custodian is authorized to make a disclosure under **section 35(1)(m)(ii)**.

15.5.2 Disclosure to the Successor of a Custodian

Section 35(1)(q) authorizes custodians to disclose patient records to a successor custodian. This authority is used when a custodian is closing their practice or will otherwise not be providing health services. This section has been amended to simplify the criteria for this disclosure to support continuity of care for patients by removing geographic requirements for transferring records to a custodian who is in a position to succeed the originating custodian. **Section 35(1)(q)** authorizes a custodian to disclose diagnostic, treatment and care information to any successor custodian.

For information on who qualifies as a successor custodian, please see **section 8.5.19 of the [HIA Guidelines and Practices Manual](#)**.

15.6 Disclosure of Registration Information

Section 36 authorizes custodians to disclose individually identifying registration information without the consent of the individual who is the subject of the information. **Section 36(a)** authorizes custodians to disclose individually identifying registration information without consent

for any purpose diagnostic, treatment and care information can be disclosed under **section 35(1)(a) or (4)**. This subsection has been amended to include **section 35(5)**.

Custodians are authorized to disclose individually identifying registration information to a health professional body for the purpose of lodging a complaint with the health professional body. This supports health professional bodies in obtaining the information required to conduct investigations, discipline proceedings and practice visits.

For additional information on disclosures under **section 36**, including a detailed definition of “registration information”, please see **section 8.8 of the [HIA Guidelines and Practices Manual](#)**.

15.7 Agreement between Custodian and Researcher

Part 5, Division 3 of the HIA sets out the process for researchers to obtain access to health information including obtaining approval for their research protocol from an approved research ethics board and entering into a research agreement with the custodian who is disclosing the health information.

Section 54 has been amended to include **subsection (3.1)** which requires researchers to comply with the terms and conditions of the research agreement and the conditions set out in the research ethics board’s response to the research protocol and limits researcher’s collection, use and disclosure of health information to the purposes set out in the agreement and protocol.

Section 54(4) has been amended to clarify that the research agreement of a researcher who does not comply with **section 54(3.1)** is cancelled and the researcher is no longer authorized to use the health information for any purpose and must destroy or return the information to the custodian.

For more information on authorities and requirements for research under the Act, please see **sections 5.4.5, 8.15, 8.15.1, 8.15.2, 8.15.3 and 8.15.4 of the [HIA Guidelines and Practices Manual](#)**.

15.8 Alberta Health’s Use of Alberta Electronic Health Record Information

The Alberta Electronic Health Record (EHR) is the integrated electronic health information system established to provide shared access by authorized custodians to prescribed health information in a secure environment.

The majority of amendments to Part 5.1 of the HIA are not yet in force. This chapter will discuss **section 56.71(1) of the HIA**, as it is the only amendment to Part 5.1 in force at the time of publication.

For more information about the Alberta EHR, please see [**Chapter 13 of the HIA Guidelines and Practices Manual**](#).

The HIA has been amended to include **section 56.71(1)** which authorizes the Department to access and use health information accessible via the Alberta EHR for any purpose or function that is authorized by section 27, despite any information manager agreements under the *Alberta Electronic Health Record Regulation*, or the Alberta Netcare EHR Information Exchange Protocol. Use of health information accessible via the Alberta EHR by other authorized custodians remains the same until further amendments come into force.

15.9 Duty to Prepare Privacy Impact Assessment

Section 64 has been amended to include **subsection 3**. Alberta Health, Alberta Health Services (AHS), and the Health Quality Council of Alberta (HQCA) are not required to conduct privacy impact assessments (PIA) for routine information sharing activities. This includes the collection, use or disclosure of health information between or among these custodians for a function set out in **section 27(2)**, which includes:

- Planning and resource allocation;
- Health system management;
- Public health surveillance; and
- Health policy development.

Alberta Health, AHS and the HQCA continue to be subject to PIA requirements under the HIA for other activities that may affect individuals' privacy as it relates to the collection, use and disclosure of health information, including:

- any other collection, use or disclosure of health information conducted among the custodians for purposes other than those specified in **section 27(2)**,
- collection, use or disclosure of health information for a function under section 27(2) that does not involve information sharing between or amongst AH, AHS or the HQCA,
- any new administrative practices established by, or any changes made to an existing administrative practice, involving the custodians which are unrelated to **section 27(2)**, and
- any new information system established by the custodians, or any changes made to an existing information system.

This amendment has no impact to the PIA requirements of any other custodians other than Alberta Health, AHS and the HQCA.

For more information on PIA requirements under the HIA please see **section 5.2.7 of the [HIA Guidelines and Practices Manual](#)**. Alberta Health has published a guide to assist custodians with this process, please see [Completing a Privacy Impact Assessment: Annotated Template](#). The Office of the Information and Privacy Commissioner has resources available on their [website](#).

15.10 Power to Enter Agreement with Information Manager

Section 66(1) defines the term information manager and sets out requirements for custodians who have others provide them with information management and information technology services. **Section 66(1)(c)** was amended to clarify that an agreement must be entered into with an information manager who provides information management or information technology services, only if the services require the use of health information. For example, if a custodian contracts with an IT service provider to use that company's application to manage patient appointment information, but the IT service provider has no ability to access or use the health information, an information manager agreement would not be required. The amendment to section 66(1) of the HIA does not impact section 66(1)(a) and (b) and persons or bodies performing services or functions under those subsections continue to be information managers.

The amendment to **section 66(1)** also excludes individuals employed by a custodian who performs any of the functions listed in **section 66(1)(a)-(c)** from the definition of an information manager.

The requirements for entering into information manager agreements are otherwise unchanged. For additional information about information manager agreements, please see **section 5.2.3 of the [HIA Guidelines and Practices Manual](#)**.

15.11 Refusal to Conduct Inquiry

Part 7, Division 1 of the HIA sets out the rules regarding reviews by the Commissioner, including the Commissioner's power to refuse to conduct an inquiry.

Over time, issues raised in requests for review may replicate issues already dealt with by the Commissioner. If the Commissioner believes that the subject matter of a request has already been dealt with in an order or an investigation report, the Commissioner may refuse to conduct an inquiry under **section 78(a)**.

Section 78(b) provides the Commissioner with authority to refuse to conduct an inquiry where “the circumstances warrant refusing to conduct an inquiry.” Expanding the Commissioner’s authority to refuse to conduct inquiries strengthens the Commissioner’s role in conducting relevant investigations, and results in a more effective use of resources.

For additional information about the Commissioner’s authorities to conduct reviews and investigations, please see **section 2.2.3 of the [HIA Guidelines and Practices Manual](#)**.

15.12 Exercise of Rights by Other Persons

Section 104(1) states that any right or power conferred on an individual by this Act may be exercised by certain persons for particular purposes. These rights or powers include the right to access an individual’s own health information. **Section 104(1)(d)(ii)** authorizes the nearest living relative, as defined by the [Personal Directives Act](#), of a deceased individual to exercise the rights of the deceased individual under the Act for the purpose of processing an insurance claim.

Family members of deceased individuals, especially seniors, often rely heavily on life insurance benefits for financial security. Life insurance companies often require health records of the deceased individual in order to process life insurance policies. Section 104(1)(d)(ii) authorizes the deceased’s nearest living relative to access their deceased relative’s health information, but only in so far as it is required for processing life insurance policies.

For information related to disclosure of health information to relatives of deceased persons for purposes beyond processing insurance claims, see **sections 8.5.5, 8.5.6 and 8.5.16 of the [HIA Guidelines and Practices Manual](#)**.

For additional information about authorities for exercising rights of other persons, please see **section 2.2.3 of the [HIA Guidelines and Practices Manual](#)**.

15.13 Immunity from Suit

Section 105 has been amended to remove “including without limitation, any failure to do something where a person has discretionary authority to do something by does not do it”. The section now reads, “No action lies and no proceeding may be brought against the Crown, a custodian or any person acting for or under the direction of a custodian for damages resulting from anything done or not done by that person in good faith while carrying out duties or exercising powers under this Act.”

For more information on immunity from suit protections under the HIA, please see **section 9.8.1 of the [HIA Guidelines and Practices Manual](#)**.

15.14 Offences and Penalties

Amendments to the offences and penalties section of the HIA recognize the need to further limit inappropriate access and disclosure of health information, as increasing amounts of health information becomes readily available to more health services providers and organizations across Alberta's health sector.

For more information on offences and penalties, please see **section 9.8.3 of the [HIA Guidelines and Practices Manual](#).**

15.14.1 Changes to Offence Penalties

Any person who contravenes **section 107** is guilty of an offence and liable to a fine. **Section 107** has been amended to increase the penalties for offences under the Act:

- Penalties for offences committed by individuals have been increased from a range of not more than \$10,000 to \$100,000, to a new maximum of not more than \$200,000.
- Penalties for offences committed by any other persons have been increased from a range of not more than \$50,000 to \$500,000, to a new maximum of not more than \$1,000,000.

This change also makes penalties consistent for all offences. Previously, penalties amounts under the HIA were not uniform.

15.14.2 Changes to Limitation Period

Section 107(9) has been amended to change the limitation period for prosecution of offences from two years from the date that the alleged offence was committed, to two years from the date on which evidence of the alleged offence first came to the attention of the Commissioner. This change also makes the limitation period consistent for all offences under the HIA.

Offences under the HIA, especially unauthorized accesses, are sometimes ongoing over several years and are often not discovered until long after they occur. For example, individuals often only discover the misuse of their health information after requesting an audit showing who has accessed their health record.

Potential offences that occurred prior to this amendment coming into force are not subject to the new limitation period.