

HIPA COMPLIANCE MADE EASIER

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Role of OIPC (1)

- ▣ 'umpire' in the information age
- ▣ Oversees compliance by 3,000 + bodies in Sk with 3 laws:
 - *Freedom of Information and Protection of Privacy Act (FOIP)*
 - *Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)*
 - *Health Information Protection Act (HIPA)*

Role of OIPC (2)

- ▣ 4 major activities:
 - Appeals from access denials by trustees/public bodies
 - Appeals from privacy breaches by trustees/public bodies
 - Advice and commentary
 - Education
- ▣ Cooperation, collaboration & consultation
- ▣ OIPC cannot issue binding orders only recommendations

Which law applies

- ▣ If a trustee ...
- ▣ If a provincial government institution (Ministry, Crown corp., board, commission or agency) ...
- ▣ If a local authority (RHA, municipality) ...
- ▣ If a non-profit community agency ...
- ▣ If RCMP ...
- ▣ If municipal police service ...

HIPA (1)

- ▣ Rules for collection, use, disclosure, access to and correction of personal health information
- ▣ Applies only to 'trustees' [s. 2(t)]
- ▣ Applies only to 'personal health information' [s. 2(m)]
- ▣ Applies only if phi is in custody or control of a trustee [s. 2(t)]

HIPA (2)

- ▣ HIPA sets out 2 kinds of duties for trustees
 - General duties
 - ▣ [s. 9 (prospective transparency), 10 (retro transparency), 16 (policies and procedures), 22 (continuing duties), 23 (data minimization & need-to-know)]
 - Transaction-specific duties
 - ▣ Collection, use, disclosure, access, correction

HIPA (3)

- ▣ Making sense of section 4 carve out:
- ▣ Exclusion only for:
 - Part II (Rights of individual)
 - Part IV (Limits on collection, use, disclosure)
 - Part V (Access and correction rights)
- ▣ Several of **general** duties continue to apply even for mental health services (i.e. ss. 16, 22 and some **transaction-specific** duties (i.e. ss. 8, 19, 20, 21)

Predictable problem areas

- ▣ Glossary for HIPA – need clarity to avoid confusion
- ▣ Access by patients to phi
- ▣ Consent
- ▣ Disclosure
- ▣ Security

Access

- ▣ Distinguish from 'use' and 'disclosure'
- ▣ Mechanics of access request
- ▣ Duty to assist
- ▣ Sec. 38 discretion
- ▣ Fees
- ▣ OIPC Reports H2007-001, H2008-001, H2008-002

Consent

- ▣ Cascading thresholds:
 1. Express consent
 2. Implied consent
 3. No-consent (“deemed consent”)

- ▣ Consent is about patient empowerment and key to a patient-centred health system

- ▣ Discretion of trustees as to type of consent is limited only by 3 provisions

Disclosure

- ▣ Distinguish from 'access' and 'use'
- ▣ Sec. 23 data minimization & need-to-know
- ▣ Sec. 20 (to another trustee)
- ▣ Sec. 21 (to non-trustees)
- ▣ Sec. 27 (major disclosure provision)
- ▣ Sec. 28 (registration info.)
- ▣ Sec. 29 (health research rules)

Security

- ▣ Important but bigger threat is the twin C's:
 - ▣ Carelessness of trustee organizations, and
 - ▣ Curiosity of employees of those organizations
- ▣ Sec. 16 obligations (policies, procedures for technical, administrative and physical safeguards)

Mental Health & FOIP (1)

- ▣ Sec. 38 of *The Mental Health Services Act* trumps any conflicting rules in the FOIP Act
- ▣ Sec. 38:
 - All records maintained by 'facility' are property of that facility
 - Shall disclose patient info. as required by law
 - Shall disclose when ordered to do so by Minister

Mental Health & FOIP (2)

- ▣ Sec. 38 (continued)
 - May disclose where:
 - ▣ Info. required to administer the Mental Health Services Act or regulations
 - ▣ Info. required to assist person to receive other services necessary for mental health of patient
 - ▣ Disclosure is requested or approved by patient

Mental Health Services Reg. (1)

- ▣ Sec. 15
 - Shall disclose to review panel or patient on request
 - Exception where disclosure injurious to patient or third party
- ▣ Sec. 16
 - Application to Q.B. judge if access denied

Mental Health Services Reg. (2)

- ▣ Sec. 17
 - Lists 7 requirements for access request and for form of consent of patient

- ▣ Sec. 18
 - May disclose to list of care providers for the purpose of providing diagnosis, treatment or care
 - List includes anyone designated by Regional Director

Mental Health Services Reg. (3)

- ▣ Section 18 (continued)
 - May disclose for disciplinary/quality assurance purposes
 - To administer dependent adult's estate
 - To person providing care
 - To Minister
 - Limited circumstances for release of info. concerning deceased

Surrogacy (1)

- ▣ A right or power may be exercised by:
 - Executor or administrator of estate
 - Personal guardian
 - Mature minor
 - Minor's legal custodian, if not unreasonable invasion of privacy
 - If incompetent, by designate under *The Residential Services Act* or *Rehabilitation Act* or under *The Health Care Directives and Substitute Health Care Decision Makers Act*

Surrogacy (2)

- ▣ A right or power may be exercised by:
 - ...
 - Any person designated in writing by patient
 - ▣ (sec. 56)

Case Study #1

- ▣ Personal services to senior in own home. She is becoming increasingly confused. Adult daughter phones for update but not listed as next of kin.
 - What phi can be shared?
 - Is consent required?
 - What else must be considered?

Case study #2

- ▣ Hospital refers client to ABI services for follow-up once client discharged to own home. Client is aware of referral. As part of intake, ABI seeks to collect relevant phi.
 - Is consent required to obtain phi?
 - If yes, what type of consent is required?
 - What about further disclosure to other trustees or third parties?

Case study #3

- ▣ You are RHA employee but you provide services in school setting for a client.
 - What is law re: sharing of phi of client?
 - What phi can be shared with school?
 - Is consent from client required?

Case study #4 (1)

- ▣ You are RHA employee. Your client lives in Seniors Housing Complex managed by local housing authority. Lease agreement for single person unit. C&FS has placed grandson with client instead of in foster care. Grandson has a YO worker. Housing authority threatens eviction. Concern re capability of client as child caregiver.

Case study #4 (2)

- Can you contact the YO worker to discuss problem?
- Can you contact C & FS?
- What type of consent is required from client?

Case summary #5 (1)

- ▣ Client injured in AB in work-related injury. Traumatic brain injury leads to acute care in AB. Costs covered by AB WCB. Client lives alone in P.A. but many family members involved despite tenuous relationships. Many calls from family members requesting his phi. Client continually changing instructions about which relatives get access to his phi.

Case summary #5 (2)

- ▣ Drastic impairment of short term memory. Serious ongoing substance abuse issues. Daily use of marijuana and alcohol, cocaine and pills when available. Client has pre-existing mental illness and was diagnosed in one of SK's larger centres 5 years ago. Client has little involvement with mental health services in PA and refused those services when file transferred. Medical social worker wants to develop discharge plan for client.

Case summary #5 (3)

- Can social worker contact WCB AB without consent?
- Can service provider access phi from home region and other RHA to assist in doing discharge plan without consent?
- Is client's signed consent valid? What if client deemed incompetent by psychiatrist?
- Which family members can the social worker discuss this client?

Case summary #5 (4)

- Can information be shared with Addiction services to develop a discharge plan?

Resources

- ▣ *Annotated FOIP Section Index*
- ▣ *Annotated HIPA Section Index*
- ▣ *Annotated Section Index for Report H2005-002*
- ▣ *Glossary for HIPA*
- ▣ *Report on the Management of Access Requests from Patients to Sk RHAS*
- ▣ *FOIP FOLIO (e-newsletter)*

Questions ??

- ▣ SK Information & Privacy Commissioner
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