

Media Backgrounder

Recommendations Supported to Improve Protection of Health Information

The Health Records Protection Working Group (Working Group) was established in September 2012 by the Ministry of Health for the purpose of examining the following issues and reporting their findings and recommendations to the Deputy Minister of Health:

- a. the mechanisms for enforcement of trustee responsibilities to protect patient records as required under *The Health Information Protection Act* (HIPA). The Working Group will review not only the current enforcement mechanisms, but also comment on specific changes which may be desired to clarify trustee responsibilities or to assist in achieving trustee compliance with HIPA; and
- b. specific changes which will prevent abandonment of patient records, thereby protecting patient confidentiality and reducing events requiring need for enforcement.

The Working Group undertook a series of meetings to address the issues and conducted multi-jurisdictional research to determine how similar issues are addressed in other provinces. The Working Group analyzed the underlying causes of the issues raised and the differences in approach undertaken in other jurisdictions and provided the following 11 recommendations for the Ministry of Health to consider to address the issues identified.

Recommendations

1. **Strict liability offence.** The Working Group recommended that a strict liability offence provision should be added to HIPA specifically aimed at addressing abandoned records. This will forego the need to establish evidence of specific intent. When records are found abandoned, once the abandonment is established and the trustee determined, that trustee will have to show he/she took all reasonable steps to prevent the abandonment from occurring.
2. **Individual offence for willful disclosure of personal health information.** The Working Group recommended that provisions be added to make it clear that the offence provisions for intentional/willful disclosure of personal health information apply not only to trustees, but to individuals who are employees of trustees.
3. **Proposed snooping offence.** The Working Group recommended the addition of a specific offence for inappropriate use of personal health information by employees of a trustee who access information without a need for that information (snooping).
4. **Gaps in definition of trustee for physician practice arrangements.** The Working Group recommended that the Government take one of two actions to address some forms of physician clinic practice arrangements currently being utilized, which HIPA does not contemplate. The Working Group concluded that the definition of trustee under the Act does not apply to these arrangements and recommended:

- (a) Regulations be passed under HIPA to make the clinic operators that control patient records trustees; or
 - (b) the practice arrangements be precluded by:
 - (i) making legislative changes to HIPA to make the physician responsible for the records notwithstanding the arrangements;
 - (ii) making legislative changes to *The Medical Professions Act, 1981* clearly precluding these types of operating structures.
5. **Proclaim sections of HIPA.** The Working Group recommended that subsections 17(1), and subsections 18(2) and (4) of HIPA be proclaimed into force. These provisions require trustees to have record retention/ destruction policies and written contracts with information management service providers.
 6. **Take control of abandoned records.** The Working Group recommended that a system be put in place to quickly respond to a discovery of abandoned records and to take control of the records. A new provision should be added to HIPA authorizing the Minister of Health to appoint a person to take over control and custody of the records where an active trustee abandons records.
 7. **Single repository for abandoned records.** The Working Group recommended that there should be one facility where abandoned records associated with an unknown or unavailable trustee are taken. The Working Group determined that the operator of the existing electronic health record system, eHealth Saskatchewan, would be the most appropriate party to be that repository.
 8. **Enact regulations governing designated archives.** The Working Group recommended that Government pass the remaining regulations contemplated by section 63(1) (k) of HIPA to complete the responsibilities of designated archives for dealing with records transferred by trustees.
 9. **Designated archives required to accept records.** The Working Group recommended at least one of the designated archives should be required to accept records offered by trustees. Ideally, that archive might be eHealth Saskatchewan, however, it is possible to designate that particular designated archives be required to accept records from particular trustees.
 10. **Private record storage solutions be available.** The Working Group recommended Government consider permitting private records storage and processing companies with sound privacy practices to be considered for listing in the regulations as designated archives to provide for more options for transferring patient records.
 11. **Designated archive storage costs borne by trustees.** The Working Group recommended that the costs associated with transferring and storing with a designated archive be the responsibility of the trustee. A system should be developed to ensure that the funds required covering the costs of the designated archive services are paid by the trustee in some fashion. The Working Group is not unanimous on how this would be accomplished, but the discussion noted the following:
 - (a) For trustees that are regulated by a professional association, the professional association could levy annual fees from the members and set up a fund to cover the costs associated with record storage where records are abandoned by their members.
 - (b) Trustees licensed to carry on their health operations could be required to demonstrate that they have an arrangement or plan to deal with patient records on winding up operations. Additional licensing fees could be assessed for the purposes of establishing a fund that the licensing body can access in the event records of an operator are abandoned.

The complete report is available at www.Saskatchewan.ca