



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

HEALTH INFORMATION ACT

PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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HEALTH INFORMATION ACT

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HEALTH INFORMATION ACT

CHAPTER H-1.41

PART 1 — INTERPRETATION, PURPOSES AND APPLICATION

1. Definitions

In this Act

- (a) “**agent**”, in relation to a custodian, means a person that, with the authorization of the custodian, acts on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent’s purposes, whether or not the agent has the authority to bind the custodian, is paid by the custodian or is being remunerated by the custodian, and includes, but is not limited to, an employee of a custodian or a volunteer who deals with personal health information, a custodian’s insurer, a lawyer retained by a custodian’s insurer or a liability protection provider;
- (b) “**capable**” means mentally capable, in accordance with section 14, of making a decision;
- (c) “**collect**” in relation to personal health information, means to gather, acquire, receive or obtain the personal health information by any means from any source;
- (d) “**Commissioner**” means the Information and Privacy Commissioner appointed under Part 3 of the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988 Cap. F-15.01;
- (e) “**custodian**” means a person or organization that collects, maintains, uses or discloses personal health information for the purpose of providing or assisting in the provision of health care or treatment or the planning and management of the health care system or delivering a government program or service related to health care, and, without limiting the foregoing, includes
 - (i) public bodies,
 - (ii) health care providers,
 - (iii) the Minister,
 - (iv) the following organizations or agencies,
 - (A) Island EMS,
 - (B) Canadian Blood Services,
 - (v) information managers,
 - (vi) researchers conducting a research project approved in accordance with this Act,
 - (vi.1) a research data repository,
 - (vii) health care facilities,
 - (viii) nursing homes and community care facilities, and

- (ix) a person designated in the regulations as a custodian;
- (f) **“data matching”** means the creation of individually identifying personal health information by combining individually identifying personal health information, de-identified personal health information or other information from 2 or more electronic databases or 2 or more electronic records, without the consent of the individuals to whom the information relates;
- (g) **“de-identified information”** means personal health information that has been stripped, encoded or otherwise transformed so as to ensure that the identity of the individual who was the subject of the personal health information cannot be readily ascertained from the de-identified information;
- (h) **“disclose”** in relation to personal health information in the custody or under the control of a custodian or a person, means to make the personal health information available or to release it to another custodian or to another person, but does not include using the personal health information;
- (i) **“enactment”** means an enactment as defined in the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8.1;
- (j) **“guardian”** means a guardian appointed pursuant to an enactment or a court order;
- (k) **“health care”** means any observation, examination, assessment, care, service or procedure that is carried out, provided or undertaken for a health-related purpose, including
 - (i) the diagnosis, treatment or maintenance of an individual’s physical or mental condition,
 - (ii) the prevention of disease or injury or promotion of health,
 - (iii) rehabilitative or palliative care,
 - (iv) the compounding of a drug for the use of an individual, pursuant to a prescription,
 - (v) the dispensing or selling of a drug, a device, equipment or any other item to an individual for the use of the individual, pursuant to a prescription,
 - (vi) a program or service related to health care prescribed by regulation, and
 - (vii) the taking of a donation of blood, blood products, body tissues or organs;
- (l) **“health care facility”** means
 - (i) a hospital,
 - (ii) a health centre,
 - (iii) a medical clinic,
 - (iv) a dental clinic,
 - (iv.1) an optometry clinic,
 - (iv.2) a physiotherapy clinic,
 - (v) a pharmacy, and
 - (vi) any other facility in which health care is provided that is designated in the regulations;
- (m) **“health care provider”** means a person who is registered or licensed to provide health care under an enactment or who is a member of a class of persons designated as health care providers in the regulations;
- (n) **“health number”** means a health number as defined in the *Provincial Health Number Act* R.S.P.E.I. 1988, Cap. P-27.01;



- (o) **“identifying information”** means information that identifies an individual or which it is reasonably foreseeable in the circumstances could be utilized, either alone or with other information, to identify an individual;
- (p) **“individual”**, in relation to personal health information, means the individual, whether living or deceased, whose personal health information was or is being collected or created;
- (q) **“information manager”** means a person or organization that on behalf of a custodian
 - (i) possesses, stores, retrieves, archives or disposes of personal health information,
 - (ii) de-identifies or otherwise transforms personal health information, or
 - (iii) provides information management or information technology services;
- (r) **“information practices”**, in relation to a custodian, means the policies of the custodian governing actions in relation to personal health information, including
 - (i) when, how and the purposes for which the custodian routinely collects, uses, modifies, discloses, retains, destroys or disposes of personal health information, and
 - (ii) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the personal health information;
- (s) **“Minister”** means the Minister of Health and Wellness;
- (t) **“personal health information”** means identifying information about an individual in oral or recorded form that
 - (i) relates to the individual’s physical or mental health, family health history or health care history, including genetic information about the individual,
 - (ii) relates to information about an individual that is collected for the purpose of registering the individual for the provision of health care, including a health number, medical record number and any other identifier assigned to an individual,
 - (iii) relates to the provision of health care to the individual,
 - (iv) relates to an individual’s entitlement to benefits under or participation in a health care program or service,
 - (v) is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service,
 - (vi) relates to a drug, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care provider,
 - (vii) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,
 - (viii) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,
 - (ix) identifies the individual’s substitute decision maker, or
 - (x) identifies the individual’s health care provider;
- (u) **“pharmacy”** means a pharmacy as defined in the *Pharmacy Act* R.S.P.E.I. 1988, Cap. P-6.1 and includes a premises or place in a health care facility where drugs are stored, compounded, dispensed or provided to a patient as defined in that Act;

- (v) “**proceeding**” means a proceeding held before, in or under the rules of a court, a tribunal, a commission, the Commissioner, a body with the statutory authority for the discipline of health professionals, an arbitrator or a mediator;
- (w) “**public body**” means a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and the regulations under that Act;
- (x) “**record**” means a record containing information in any form, including information that is oral, written, photographed, recorded or stored in any manner, on any storage medium or by graphic, electronic, mechanical or any other means, but does not include electronic software or any mechanism that produces records;
- (y) “**research**” means a systematic investigation designed to develop or establish principles, facts or general knowledge, or any combination of them, and includes the development, testing and evaluation of research;
- (z) “**research data repository**” means an organization that has entered into an agreement with the province for the purpose of
 - (i) conducting and facilitating research to describe and explain health care patterns and profiles of health and illness,
 - (ii) assisting in the evaluation of monitoring of health care service planning or the delivery of a government service, or
 - (iii) facilitating research between or among areas such as health care, justice, education and social services;
- (aa) “**research ethics board**” means a research ethics board designated in the regulations;
- (bb) “**researcher**” means a person whose research plan has been submitted to a research ethics board pursuant to section 30;
- (cc) “**spouse**” means a spouse as defined in section 29 of the *Family Law Act* R.S.P.E. I. 1988, Cap. F-2;
- (dd) “**substitute decision-maker**”, in relation to an individual, means, unless the context requires otherwise, a person who is authorized under this Act to give, withhold or withdraw consent on behalf of and in the place of the individual with respect to the collection, use or disclosure of the individual’s personal health information;
- (ee) “**use**”, in relation to personal health information in the custody of or under the control of a custodian, means to handle or deal with personal health information or to apply the personal health information for a purpose and includes reproducing the personal health information, but does not include disclosing the personal health information.
2014,c.31,s.1; 2016,c.9,s.1; 2018,c.47,s.1; 2021,c.10,s.52.

2. Purposes

The purposes of this Act are

- (a) to establish a set of rules for custodians regarding the collection, use, disclosure, retention and secure destruction of personal health information that protects the confidentiality of personal health information and the privacy of the individual to whom the personal health information relates;
- (b) to enable personal health information to be shared and accessed, where appropriate, for the better provision of health services and the planning and management of the health care system;
- (c) to provide an individual with the right to examine and receive a copy of the individual’s personal health information maintained by a custodian, subject to limited and specific exceptions, as set out in this Act;



- (d) to provide an individual with the right to request the correction of or amendment to the individual's personal health information maintained by a custodian, as set out in this Act;
- (e) to establish mechanisms to ensure the accountability of persons having custody or control of personal health information and to safeguard the security and integrity of the personal health information in their custody or control;
- (f) to provide for an independent review of decisions made by custodians and the resolution of complaints made with respect to custodianship of personal health information; and
- (g) to provide effective remedies for contraventions of this Act. *2014,c.31,s.2.*

3. Application

This Act applies

- (a) to personal health information that is collected, used or disclosed by a custodian or that is in the custody or control of a custodian; and
- (b) for greater certainty, to personal health information collected before the coming into force of this Act that is used or disclosed by a custodian or that is in the custody or control of a custodian. *2014,c.31,s.3; 2018,c.47,s.2.*

4. Non-application

- (1) Unless otherwise specifically provided in this Act, this Act does not apply to
 - (a) anonymous or statistical information that does not, either by itself or when combined with other information available to the holder of the information, permit individuals to be identified;
 - (b) an individual's personal health information if twenty years have passed since the death of the individual;
 - (c) a person or organization that collects, maintains or uses personal health information for purposes other than health care or treatment and the planning and management of the health care system, including
 - (i) employers,
 - (ii) insurance companies,
 - (iii) regulatory bodies of health care providers,
 - (iv) licensed or registered health care providers who do not provide health care,
 - (v) any other person or organization prescribed by regulation;
 - (d) a note made by or for, or a communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
 - (e) a constituency record of a Minister of the Crown;
 - (f) information in a court record, a record of a judge, a judicial administration record or a record relating to support services provided to a judge or to a court official.

Idem

- (2) Unless otherwise provided in this Act or the regulations, this Act does not apply to a record created or information held by a person under or for the purposes of the following enactments, notwithstanding that the information would otherwise be considered to be personal health information or the person would otherwise be considered to be a custodian within the meaning of this Act:

- (a) the *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5;
- (a.1) the *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3;
- (b) the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1;
- (c) the *Human Tissue Donation Act* R.S.P.E.I. 1988, Cap. H-12.1;
- (d) the *Narcotics Safety and Awareness Act* R.S.P.E.I. 1988, Cap. N-.01;
- (e) the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1;
- (e.1) the *Public Interest Disclosure and Whistleblower Protection Act* R.S.P.E.I. 1988, Cap. P-31.01;
- (f) the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1;
- (g) any enactment prescribed by regulation.

Idem

- (3) This Act does not apply to
 - (a) standardized tests, including intelligence tests, or a record that contains raw data from a standardized test or assessment;
 - (b) testing or auditing procedures or techniques. *2014,c.31,s.4; 2017,c.11,s.30; 2019,c.21,s.39*

5. Operation of Act

Unless otherwise specifically provided in this Act, this Act

- (a) does not affect the law of evidence;
- (b) does not restrict information that is otherwise available by law to a party to legal proceedings;
- (c) does not affect any information that would disclose privileged communications;
- (d) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of documents;
- (e) does not interfere with the activities of a body with statutory responsibility for the discipline of health care providers;
- (f) does not affect a court order that prohibits a person from making information public or from publishing information;
- (g) is in addition to and does not replace existing procedures for access to records or information normally available to the public; and
- (h) does not prohibit the transfer, storage or disposition of a record in accordance with another enactment or an Act of the Parliament of Canada. *2014,c.31,s.5.*

6. Paramountcy

If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

- (a) the other enactment; or
- (b) a regulation under this Act

expressly provides that the other enactment or a provision of it prevails despite this Act. *2014,c.31,s.6.*



7. Relationship to *Freedom of Information and Protection of Privacy Act*

- (1) The *Freedom of Information and Protection of Privacy Act* does not apply to personal health information in the custody or under the control of a custodian unless this Act specifies otherwise.

Idem

- (2) If a request is made under section 8 that contains information to which the *Freedom of Information and Protection of Privacy Act* applies, the part of the request that relates to that information is deemed to be a request under section 7 of the *Freedom of Information and Protection of Privacy Act* and that Act applies to that part of the request as if it had been made under section 7 of that Act.

Idem

- (3) If a request is made under section 11 to correct information to which the *Freedom of Information and Protection of Privacy Act* applies, the request is deemed to be a request under section 34 of the *Freedom of Information and Protection of Privacy Act* and that Act applies to the request as if it had been made under section 34 of that Act. 2014,c.31,s.7.

PART 2 — ACCESS TO PERSONAL HEALTH INFORMATION**8. Severance of personal health information**

- (1) This Part applies to that part of a record of personal health information that can be severed from the part of the record that contains the information described in subsection 7(2).

Right of access to personal health information

- (2) Subject to this Act, an individual has a right, on request, to examine or receive a copy of his or her personal health information maintained by a custodian.

Request to custodian

- (3) A request made under this section shall
- (a) be made to the custodian that the individual believes has the custody and control of the personal health information; and
 - (b) contain sufficient detail to permit the custodian to identify and locate the record with reasonable efforts.

Request in writing

- (4) A custodian may require a request to be in writing.

Assistance with request

- (5) If a request under this section does not contain sufficient detail to permit the custodian to identify and locate the record containing the personal health information with reasonable efforts, the custodian shall offer assistance to the person who made the request to reformulate the request to comply with this section.

Timely response required

- (6) A custodian shall respond to a request made under this section openly, accurately and completely, and as promptly as required in the circumstances, but not later than 30 days after receiving it, unless the time limit for responding is extended under subsection (11) or (12) or the request is transferred to another custodian under subsection (14).

Effect of failure to respond

- (7) The failure of a custodian to respond to a request within the 30-day period shall be treated as a decision to refuse to permit the personal health information to be examined or copied.

Response by custodian

- (8) In responding to a request, a custodian shall do one of the following:
- (a) make the personal health information available for examination and provide a copy, if requested, to the individual;
 - (b) inform the individual in writing if the personal health information does not exist, no longer exists, is no longer available, has been transferred to another custodian or cannot be found; or
 - (c) inform the individual in writing that the request is refused, in whole or in part, for a specified reason described in section 10 and advise the individual of the individual's right to request a review of the refusal under Part 6.

Assistance on request

- (9) A custodian shall, on request, provide assistance to an individual in reviewing the individual's personal health information.

Record of personal health information

- (10) If a request is made for personal health information that a custodian maintains in electronic form, the custodian shall produce a record of the personal health information for the individual in a form usable by the individual, if it can be produced using the custodian's normal computer hardware and software and technical expertise.

Extension of time for response

- (11) The custodian may extend the time for responding to a request for up to an additional 30 days if
- (a) the individual making the request does not give enough detail to enable the custodian to identify a requested record;
 - (b) the individual making the request does not respond to a request for clarification by the custodian within the remainder of the original 30-day period, or 15 days, whichever is longer;
 - (c) a large number of records is requested or must be searched or responding within the time period set out in subsection (1) would interfere unreasonably with the operations of the custodian;
 - (d) time is needed to consult with another custodian before permitting the personal health information to be examined or copied; or
 - (e) the individual requests records that relate to a proceeding commenced by a Notice of Action or a Notice of Application.

Extension approved by Commissioner

- (12) In any circumstances referred to in subsection (11), the custodian may, with the prior approval of the Commissioner, extend the time limit for responding to a request for a period longer than 30 days.

Notice to applicant

- (13) If the time limit for responding to a request is extended under subsection (11) or (12), the custodian shall send a written notice to the applicant setting out
- (a) the reason for the extension;



- (b) when a response can be expected; and
- (c) if the time limit was extended without the approval of the Commissioner, that the individual making the request may file a complaint with the Commissioner respecting the extension.

Transfer of request

- (14) Within 15 days after receiving a request under subsection (2), a custodian may transfer a request to another custodian if the personal health information is maintained by the other custodian.

Notification of transfer

- (15) If a request is transferred under subsection (14),
 - (a) the custodian who transferred the request shall notify the individual making the request of the transfer in writing as soon as possible; and
 - (b) the custodian to which the request is transferred shall respond to the request within 30 business days after receiving it, unless the time for responding to the request is extended by that custodian in accordance with subsection (11). *2014, c.31, s.8.*

9. Obligations of custodian

A custodian

- (a) shall not permit personal health information to be examined or copied unless the custodian is satisfied as to the identity of the individual making the request; and
- (b) shall take reasonable steps to ensure that any personal health information intended for an individual is received only by that individual or a representative of that individual. *2014, c.31, s.9.*

10. When access may be refused

- (1) A custodian may refuse to permit an individual to examine or copy his or her personal health information under this Part
 - (a) if knowledge of the personal health information could reasonably be expected to endanger the health or safety of the individual or another person;
 - (b) if disclosure of the personal health information would reveal personal health information about another person who has not consented to the disclosure;
 - (c) if disclosure of the personal health information could reasonably be expected to identify a third party, other than another custodian, who supplied the personal health information in confidence under circumstances in which confidentiality was reasonably expected;
 - (d) if the personal health information was compiled and is used solely
 - (i) for the purpose of a review by a committee established to study or evaluate the health care practices of a health care facility,
 - (ii) for the purpose of a body with statutory responsibility for the discipline of health care providers or to regulate the quality or standards of professional services provided by the health care providers, or
 - (iii) for the purposes of risk management or error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;

- (e) if the personal health information was compiled principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding to which the custodian is or may be a party;
- (f) if the information is protected by privilege;
- (g) if another enactment, an Act of the Parliament of Canada or a court order prohibits disclosure of the personal health information;
- (h) if the personal health information was collected for the purposes of an investigation conducted pursuant to an enactment; or
- (i) for any reason prescribed by regulation.

Consultation by custodian

- (2) A custodian may consult with a health care provider who has been involved in an individual's care, or another health care provider, before deciding to refuse under clause (1)(a) to permit personal health information to be examined or copied.

Severance where possible

- (3) A custodian who refuses to permit personal health information to be examined or copied under subsection (1) shall, to the extent possible, sever the personal health information that cannot be examined or copied and permit the individual to examine and receive a copy of the remainder of the personal health information. *2014, c.31, s.10.*

11. Request to correct personal health information

- (1) For purposes of accuracy or completeness, an individual may make a request to correct any personal health information that the individual may examine and copy under this Part.

Request in writing

- (2) A request under subsection (1) shall
 - (a) be made in writing to the custodian that the individual believes has the custody and control of the personal health information; and
 - (b) contain sufficient detail to permit the custodian to identify and locate the personal health information with reasonable efforts.

Duty of custodian

- (3) Within 30 days after receiving a request under subsection (1), the custodian shall do one of the following:
 - (a) make the requested correction to the record of the personal health information in such a manner that it will be read with and form part of the record or be adequately cross-referenced to it if the individual making the request
 - (i) demonstrates to the satisfaction of the custodian that the record is incomplete or inaccurate for the purposes for which the custodian uses the personal health information, and
 - (ii) provides to the custodian the information necessary to enable the custodian to correct the record;
 - (b) inform the individual, in writing, if the personal health information no longer exists or cannot be found;
 - (c) if the custodian does not have the personal health information in the custodian's custody and control,



- (i) inform the individual making the request that the custodian does not have the personal health information,
 - (ii) provide the individual with the name and address of the custodian who has the custody and control of the personal health information, if known, and
 - (iii) if the custodian who has the custody and control of the personal health information is known, transfer the request to that custodian and notify the individual making the request of the transfer;
- (d) refuse the request for correction where
- (i) the record was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record,
 - (ii) the personal health information which is the subject of the request consists of a professional opinion or observation that a custodian has made in good faith about the individual, or
 - (iii) the custodian believes on reasonable grounds that the request is frivolous, vexatious or made in bad faith.

Notice of refusal

- (4) If a custodian refuses a request for correction in accordance with subsection (3), the custodian shall inform the individual in writing of the custodian's refusal to correct the individual's personal health information as requested, the reason for the refusal, and the individual's right to add a statement of disagreement to the record of the individual's personal health information and to request a review of the refusal under Part 6.

Extension of time to respond

- (5) The custodian may, with the prior approval of the Commissioner, extend the time limit for responding to a request for a period longer than 30 days in the circumstances set out in subsection 8(11).

Statement of disagreement

- (6) A custodian who refuses to make a correction that is requested under this section shall
- (a) permit the individual to file a concise statement of disagreement stating the correction requested and the reason for the correction; and
 - (b) add the statement of disagreement to the record of the individual's personal health information in such a manner that it will be read with and form part of the record of the individual's personal health information or be adequately cross-referenced to it.

Notice to other custodians, etc.

- (7) If a custodian makes a correction or adds a statement of disagreement under this section, the custodian shall, when practicable, notify the individual who made the request for correction and any other custodian or person to whom the personal health information has been disclosed respecting the correction or statement of disagreement.

Application to other records of individual

- (8) A custodian shall make the correction or add the statement of disagreement, if applicable, to any record of the individual's personal health information that the custodian maintains.

Fee prohibited

- (9) A custodian shall not charge a fee in connection with a request for a correction made under this section. *2014,c.31,s.11.*

12. Activities not prevented

Nothing in this Part prevents a custodian from

- (a) granting an individual access to a record of the individual's personal health information if the individual makes an oral request for access or makes no request, provided that access is authorized under this Part; and
- (b) communicating with the individual about the collection, use or disclosure of the individual's personal health information. *2014, c.31, s.12.*

PART 3 — CONSENT

13. Criteria respecting consent

- (1) If this Act or any other enactment requires the consent of an individual to the collection, use or disclosure of personal health information by a custodian, the consent
 - (a) shall be a consent of the individual, if the individual is capable of granting consent, or the consent of a substitute decision-maker;
 - (b) shall be knowledgeable;
 - (c) shall be able to be withdrawn or withheld;
 - (d) shall relate to the personal health information;
 - (e) shall not be obtained through deception or coercion; and
 - (f) subject to subsection (6), may be express or implied.

Knowledgeable consent

- (2) The consent to the collection, use or disclosure of an individual's personal health information is knowledgeable if it is reasonable in the circumstances for the custodian to believe that the individual knows
 - (a) the purpose of the collection, use or disclosure, as the case may be;
 - (b) that the individual may give or withhold consent; and
 - (c) that the personal health information may be collected, used or disclosed without the individual's consent in accordance with the provisions of this Act.

When knowledge may be assumed

- (3) Unless it is not reasonable in the circumstances to make the assumption, a custodian is entitled to assume that an individual knows the purpose of the collection, use or disclosure of the individual's personal health information by the custodian if the custodian
 - (a) posts or makes readily available a notice describing the purpose where it is likely to come to the individual's attention; or
 - (b) provides the individual with such a notice.

Implied consent

- (4) Unless it is not reasonable in the circumstances to make the assumption, where an individual has provided personal health information to a custodian, the custodian is entitled to assume that the custodian has the individual's implied consent, and to assume the consent is knowledgeable, to collect or use the individual's personal health information or to disclose that information to another custodian for the purpose of providing health care to that individual.



Continuing consent implied

- (5) If a custodian receives personal health information relating to an individual from the individual, the individual's substitute decision-maker or another custodian for a purpose for which the individual's consent was required, the custodian is entitled to assume that consent was given and that the custodian has the individual's continuing implied consent to collect, use or disclose the personal health information for that purpose, unless the custodian that receives the personal health information is aware that the individual has expressly withheld or withdrawn the consent.

Express consent required

- (6) An individual's consent to the disclosure of the individual's personal health information shall be express, and may not be implied, when
- (a) a custodian proposes to disclose the personal health information to a person that is not a custodian; or
 - (b) a custodian proposes to disclose the personal health information to another custodian, other than the Minister, if the disclosure is not for the purpose of providing health care or assisting in providing health care to the individual who is the subject of the personal health information.

Consent, when express

- (7) The express consent of an individual to the collection, use or disclosure of personal health information by a custodian may be oral or written.

Limit on conditional consent

- (8) If an individual places a condition on his or her consent to have a custodian collect, use or disclose the individual's personal health information, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a custodian that is required by law or by established standards of professional or institutional practice.

Assumption respecting consent

- (9) A custodian who has obtained an individual's consent to the collection, use or disclosure of the individual's personal health information or who has received a copy of a document purporting to record the individual's consent to the collection, use or disclosure of the information is entitled to assume that the consent fulfils the requirements of this Act and the individual has not withdrawn it, unless it is not reasonable in the circumstances to make the assumption.

Exceptions to refusal of consent

- (10) An individual may refuse to grant his or her consent or withdraw his or her consent to the collection, use or disclosure of the individual's personal health information by a custodian except where
- (a) it is prohibited by law to withdraw consent;
 - (b) the collection, use or disclosure is for the purposes of a program to monitor the prescribing, dispensing or use of prescribed classes of drugs;
 - (c) the collection, use or disclosure is for the purpose of the establishment and maintenance of the PEI EHR as set out in Part 7; or
 - (d) the collection, use or disclosure is for another purpose provided for in this Act.

Duty of custodian with respect to refusal

- (11) If an individual refuses to grant consent or withdraws his or her consent to the collection, use or disclosure of his or her personal health information under subsection (1), the custodian shall
- (a) take reasonable steps to act in accordance with the decision;
 - (b) inform the individual of the implications of the refusal or withdrawal; and
 - (c) inform the other custodians, if known, holding the individual's personal health information of the decision.

When custodian may refuse to comply

- (12) A custodian may refuse to comply with the refusal or withdrawal of an individual's consent to the collection, use or disclosure of his or her personal health information under subsection (1) if compliance with the individual's refusal or withdrawal of consent is likely to endanger the health of the individual or the health of another person.

Notice to individual

- (13) If the custodian refuses to comply with the refusal or withdrawal of an individual's consent for the reasons referred to in subsection (12), the custodian shall inform the individual as soon as possible, and in writing if practicable, of the collection, use or disclosure of the individual's personal health information. *2014,c.31,s.13.*

14. Capability of individual to consent

- (1) An individual is capable of consenting to the collection, use or disclosure of the individual's personal health information if the individual is able
- (a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and
 - (b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.

Capability may vary

- (2) An individual may be capable of consenting to the collection, use or disclosure of personal health information at one time, but incapable of consenting at another time.

Presumption

- (3) An individual is presumed to be capable of consenting to the collection, use or disclosure of the individual's personal health information.

Exception

- (4) A custodian may rely on the presumption under subsection (3), unless the custodian has reasonable grounds to believe that the individual is incapable of consenting to the collection, use or disclosure of personal health information.

Requirements may be prescribed

- (5) A custodian that determines that an individual is incapable of consenting to the collection, use or disclosure of personal health information under this Act shall do so in accordance with the requirements and restrictions, if any, prescribed by regulation. *2014,c.31,s.14.*



15. Substitute decision-maker

- (1) If an individual is incapable of consenting, or of communicating that consent, to the collection, use or disclosure of personal health information by a custodian, the following persons may, in descending order of priority, on the individual's behalf and in the place of the individual, act as a substitute decision-maker for that individual by giving, not giving, withholding or withdrawing the consent:
- (a) a person who has been authorized, in writing, by the individual to provide consent;
 - (b) the individual's guardian;
 - (c) the individual's spouse;
 - (d) the individual's adult child;
 - (e) the individual's parent;
 - (f) the individual's adult sibling;
 - (g) any other adult next of kin of the individual;
 - (h) the individual's health care provider;
 - (i) a guardian; and
 - (j) if the individual is deceased,
 - (i) the individual's personal representative as defined in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21, or
 - (ii) the individual's
 - (A) spouse,
 - (B) adult child,
 - (C) parent,
 - (D) sibling, or
 - (E) any other adult next of kin.

Criteria

- (2) A person referred to in subsection (1) may decide whether or not to consent on behalf of an individual only if the person
- (a) is capable of consenting to the collection, use or disclosure of the person's own personal health information by a custodian; and
 - (b) is willing to assume the responsibility of making a decision on behalf of the individual as to whether or not to consent.

***Idem*, tissue and organ donation**

- (3) A person referred to in clause (1)(j) may also decide whether or not to consent to the collection, use and disclosure of personal health information of a deceased individual for purposes related to tissue and organ donation. *2014, c.31, s.15; 2018, c.47, s.3.*

16. Duties of substitute decision-maker

A person who consents under this Act or any other enactment on behalf of and in the place of an individual to the collection, use or disclosure of personal health information by a custodian, or who withholds or withdraws a consent on that basis, shall take into consideration

- (a) any written instruction provided by the individual in a health care directive;
- (b) the wishes, values and beliefs that,

- (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal health information, or
 - (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal health information;
 - (c) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;
 - (d) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and
 - (e) whether the collection, use or disclosure is necessary to satisfy any legal obligation.
- 2014,c.31,s.16.*

PART 4 — COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

Collection of Personal Health Information

17. Collection of personal health information

- (1) A custodian may collect personal health information relating to an individual if
 - (a) the custodian has the individual's consent under this Act and the collection, to the best of the custodian's knowledge, is necessary for a lawful purpose; or
 - (b) the collection is otherwise permitted or required by this Act.

Collection without consent

- (2) A custodian may collect personal health information relating to an individual without the individual's consent if
 - (a) the individual is incapable of providing or communicating consent;
 - (b) the decision of a substitute decision-maker respecting consent cannot be obtained in a timely manner; and
 - (c) the collection of the personal health information is necessary for the provision of health care to the individual. *2014,c.31,s.17; 2018,c.47,s.4.*

18. Methods of collection

A custodian shall collect personal health information directly from the individual to whom it relates except where

- (a) the individual has authorized another method of collection;
- (b) collection of the personal health information directly from the individual could reasonably be expected to endanger the health or safety of the individual or another person;
- (c) collection of the personal health information is in the interest of the individual and time or circumstances do not permit collection directly from the individual;
- (d) collection of the personal health information directly from the individual could reasonably be expected to result in the collection of inaccurate information;



- (e) collection of the personal health information is reasonably necessary to ensure the safety of the national blood supply and it is not reasonably possible to collect, directly from the individual, personal health information that can be relied on as accurate or that is timely;
- (f) the custodian collects the personal health information from a person who is not a custodian for the purpose of carrying out a research project of the custodian;
- (g) another method is authorized or required by a court order, an enactment, an Act of the Parliament of Canada or a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada;
- (h) the individual is unable to provide the personal health information and a substitute decision-maker consents to another method of collection;
- (i) the personal health information is to be collected for the purpose of assembling a family health or genetic history and the information collected will be used in the context of providing a health service to the individual;
- (j) the personal health information is collected for the purpose of
 - (i) determining the individual's eligibility to participate in a health care program or to receive a benefit, product or health care service from a custodian and the personal health information is collected in the course of processing an application made by or for the individual to whom it relates, or
 - (ii) verifying the eligibility of an individual who is participating in a health care program or receiving a benefit, product or health care service from a custodian to participate in the program or to receive the benefit, product or service;
- (k) the custodian is collecting the personal health information for a purpose authorized by law that relates to
 - (i) the investigation of a breach of an agreement or a contravention or an alleged contravention of an enactment or an Act of the Parliament of Canada,
 - (ii) the conduct of a proceeding or a possible proceeding, or
 - (iii) a function of the custodian under this Act;
- (l) the custodian is collecting personal health information for the purpose of analysis or compiling statistical information respecting the management, evaluation or monitoring of the allocation of resources to, or planning for all or part of, the health care system, including the delivery of services, and the person from whom the personal health information is collected has in place practices and procedures to protect the privacy of the individual whose personal health information it receives and to maintain the confidentiality of the personal health information;
- (m) the custodian is the Minister and is collecting personal health information from another custodian for the purposes of the establishment and maintenance of the PEI EHR as set out in Part 7;
- (n) the custodian is an authorized custodian and is accessing prescribed personal health information by means of the PEI EHR in accordance with Part 7;
- (o) the custodian is the Minister and is collecting personal health information from another custodian for the purposes of maintaining the DIS as set out in Part 7.1; or
- (p) the custodian is an authorized custodian and is accessing personal health information stored in the DIS in accordance with Part 7.1. 2014,c.31,s.18; 2016,c.9,s.2.

19. Prohibition

Unless a custodian is required to do so by law, the custodian shall not collect

- (a) personal health information if other information will serve the same purpose as the personal health information; or
- (b) more personal health information than is reasonably necessary to meet the purpose for which the personal health information is collected. *2014,c.31,s.19.*

20. Collection of de-identified information

A custodian may collect for any purpose personal health information that has been de-identified. *2014,c.31,s.20.*

21. Individual to be informed

- (1) A custodian who collects personal health information directly from the individual to whom it relates or from another person in accordance with section 18 shall, before it is collected or as soon as practicable afterwards, take reasonable steps to inform the individual
 - (a) of the purpose for which the personal health information is being collected; and
 - (b) if the custodian is not a health care provider, how to contact an officer or employee of the custodian who can answer the individual's questions about the collection.

Exception

- (2) A custodian is not required to comply with subsection (1) if the custodian has recently provided the individual with the information referred to in that subsection about the collection of the same or similar personal health information for the same or a related purpose. *2014,c.31,s.21.*

USE OF PERSONAL HEALTH INFORMATION

22. Use of personal health information

- (1) A custodian shall not use personal health information except as authorized under this section.

Limitation on use of personal health information

- (2) Every use by a custodian of personal health information shall be limited to the minimum amount of personal health information necessary to accomplish the purpose for which it is used.

Idem

- (3) A custodian shall limit the use of personal health information it maintains to those employees and agents of the custodian who need to know the personal health information to carry out the purpose for which the personal health information was collected or received or to carry out any of the permitted uses authorized under this section.

Use of de-identified information

- (4) A custodian may use for any purpose personal health information that has been de-identified.



Authorized purposes

- (5) A custodian may use personal health information in its custody or under its control for one or more of the following purposes:
- (a) for the purpose for which the personal health information was collected or created and for all the functions reasonably necessary for carrying out that purpose, unless the individual expressly instructs otherwise;
 - (b) another use to which the individual who is the subject of the personal health information consents;
 - (c) for a purpose for which the use of the personal health information is authorized by this Act, an enactment or an Act of the Parliament of Canada;
 - (d) to prevent or reduce a risk of significant harm to the health or safety of the public or a group of people;
 - (e) if the custodian is a public body, for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of those programs or services, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;
 - (f) for the purpose of risk management or error management or for the purpose of activities to improve or maintain the quality of health care or to improve or maintain the quality of any related programs or services of the custodian;
 - (g) for educating agents of the custodian to provide health care;
 - (h) for the purpose of disposing of the personal health information or de-identifying the personal health information;
 - (i) for the purpose of seeking the individual's consent, or the consent of the individual's substitute decision-maker, if the personal health information used by the custodian for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, if applicable;
 - (j) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the personal health information relates to or is a matter in issue in the proceeding or contemplated proceeding;
 - (k) if the custodian is a Minister of the Crown, for the purpose of recovering health care costs;
 - (l) for the purpose of obtaining payment for or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services;
 - (m) for a research project approved by a research ethics board under section 30;
 - (n) for the purpose of conducting research or performing other services to facilitate another person's research
 - (i) if the custodian or researcher has submitted a research plan to a research ethics board in accordance with section 30,
 - (ii) if the research ethics board has approved the research plan,
 - (iii) if the custodian or researcher has complied with or undertaken to comply with any conditions imposed by the research ethics board, and
 - (iv) where the research ethics board recommends that consents should be obtained from the individuals whose personal health information is to be used, if those consents have been obtained;

- (o) for the purpose of performing data-matching;
- (p) subject to any requirements and restrictions prescribed by regulation, for the purposes of complying with an enactment or a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada;
- (q) for the purpose of the custodian's
 - (i) planning and resource allocation,
 - (ii) health system management,
 - (iii) public health surveillance,
 - (iv) health policy development, or
 - (v) delivery or administration of health care;
- (r) to produce de-identified information. *2014, c.31, s.22.*

DISCLOSURE OF PERSONAL HEALTH INFORMATION

23. Disclosure of personal health information

- (1) A custodian shall not disclose personal health information except as authorized under this Act or the regulations.

Limitation on disclosure of personal health information

- (2) Every disclosure by a custodian of personal health information shall be limited to the minimum amount of personal health information necessary to accomplish the purpose for which it is disclosed.

Idem

- (3) A custodian shall limit the disclosure of personal health information it maintains to those employees and agents of the custodian who need to know the personal health information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under this section.

Disclosure of de-identified information

- (4) A custodian may disclose for any purpose personal health information that has been de-identified.

Prohibition

- (5) A custodian shall not disclose personal health information that is in its custody or control unless
 - (a) it has the individual's consent under this Act to the disclosure and the disclosure is necessary for a lawful purpose; or
 - (b) the disclosure is permitted or required by this Act.

Idem

- (6) A custodian shall not disclose personal health information if other information will serve the purpose of the disclosure.

Disclosure without consent permitted

- (7) Unless the disclosure is contrary to an express request of the individual, a custodian may disclose personal health information without the consent of the individual to whom the information relates



- (a) to a custodian, where the disclosure is necessary for the provision of health care to the individual;
- (b) to a person, where the disclosure is necessary for the provision of health care to the individual; or
- (c) to a person other than a custodian, for the purpose of contacting a relative, spouse, friend or potential substitute decision-maker of the individual, where the individual is injured, incapacitated or ill and unable to give consent personally.

Notification where disclosure is limited

- (8) If a custodian discloses personal health information relating to an individual under clause (7)(a) or (b) and an express request of the individual prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care to the individual, the custodian shall notify the person to whom it makes disclosure of that fact.

Disclosure - health care facility

- (9) A custodian that is a health care facility may disclose to a person the following personal health information relating to an individual who is a patient or resident of the facility if the facility offers the individual the opportunity, at the first reasonable opportunity after admission to the facility, to object to that disclosure and the individual does not do so:
- (a) the fact that the individual is a patient or resident in the facility;
 - (b) the individual's general health status, described as critical, poor, fair, stable or satisfactory, or in similar terms; and
 - (c) the general location of the individual in the facility.

Disclosure respecting deceased individual

- (10) A custodian may disclose personal health information relating to an individual who is deceased or presumed to be deceased
- (a) for the purpose of identifying the individual;
 - (b) for the purpose of informing a person whom it is reasonable to inform in the circumstances of the fact that the individual is deceased or presumed to be deceased and the circumstances of the death, if appropriate;
 - (c) to the personal representative of the deceased, as defined in the *Probate Act*, for a purpose related to the administration of the individual's estate;
 - (d) to a spouse, sibling, parent or descendant of the individual if the recipient of the information reasonably requires the information to make decisions about his or her own health care or the health care of his or her child or if the disclosure is necessary to provide health care to the recipient; or
 - (e) for the purpose of facilitating tissue or organ donation.

Where disclosure is required

- (11) A custodian shall disclose personal health information relating to an individual without the consent of the individual
- (a) if the custodian is a Minister of the Crown, for the purpose of recovering health care costs;
 - (b) to a person conducting an audit or reviewing an accreditation, if the audit or review relates to the services provided by the custodian;

- (c) to a custodian who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances;
- (d) to the Chief Public Health Officer if the disclosure is required by an enactment or an Act of the Parliament of Canada; and
- (e) to a public health authority established under an Act of the Parliament of Canada, another province or other jurisdiction, if the disclosure is made for a public health purpose.

Disclosure for audit, etc.

- (12) If a custodian discloses personal health information under clause (11)(b),
- (a) the person conducting the audit or reviewing an application for accreditation or reviewing an accreditation shall undertake in writing
 - (i) if the personal health information was physically acquired by the person, to destroy the information at the earliest possible opportunity after the audit or review, and
 - (ii) not to disclose the personal health information to any other person, except as required to accomplish the audit or review or to report unlawful conduct by the custodian; and
 - (b) the custodian shall take reasonable measures to confirm that the terms of the undertaking have been fulfilled.

Disclosure without consent permitted

- (13) A custodian may disclose personal health information relating to an individual without the consent of the individual if the disclosure is
- (a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an enactment or an Act of the Parliament of Canada and funded in whole or part by the Government or the Government of Canada;
 - (b) for the purpose of determining or providing payment to the custodian for the provision of health care or for processing, monitoring, verifying or reimbursing claims for payment for the provision of health care;
 - (c) to a department of the government of another jurisdiction or to an agency of that government to the extent necessary to obtain payment for health care provided to the individual to whom the personal health information relates;
 - (d) for the purpose of delivering, evaluating or monitoring a program of the custodian that relates to the provision of health care or the payment for health care;
 - (e) for the purpose of review and planning necessary for the provision of health care to the individual to whom the personal health information relates by another custodian;
 - (f) to an information manager in accordance with this Act;
 - (g) to a person who requires the personal health information to carry out an audit for, or to provide legal services, error management services, risk management services, peer reviews or quality improvement services to, the custodian;
 - (h) to a research data repository in accordance with the terms of an agreement between the research data repository and the custodian;
 - (i) to a potential successor of the custodian for the purpose of allowing the potential successor to assess or evaluate the operations of the custodian, on condition that the potential successor first enters into an agreement with the custodian to keep the personal health information confidential and secure and not to retain the personal



health information any longer than is necessary for the purpose of the assessment or evaluation;

- (j) for the purpose of ensuring the safety of the national blood supply; and
- (k) to the successor of the custodian if
 - (i) the custodian transfers records to the successor as a result of the custodian's ceasing to be a custodian or ceasing to provide health care, and
 - (ii) the successor is a custodian.

Notice respecting transfer of personal health information

- (14) For the purpose of clause (13)(k), a custodian who transfers a record of personal health information to its successor shall
 - (a) make reasonable efforts to give notice to the individual to whom the personal health information relates before the transfer or, if this is not possible, as soon as possible after the transfer, that it has ceased to be a custodian of the personal health information; and
 - (b) inform the individual as to the identity of its successor.

Disclosure to Minister

- (15) A custodian shall disclose to the Minister personal health information without the consent of the individual to whom it relates if the disclosure is for the purpose of the Minister's
 - (a) planning or delivery of programs or services that the Minister provides or funds in whole or in part;
 - (b) monitoring or verifying claims for payment for health care or drugs provided under those programs or services;
 - (c) allocation of resources to any of those programs or services;
 - (d) evaluation or monitoring of any of those programs or services;
 - (e) evaluation and monitoring of the health and safety of the general public; or
 - (f) detection, monitoring or prevention of fraud or any unauthorized receipt of services or benefits related to any of those programs or services.

Disclosure by Minister

- (16) The Minister may disclose personal health information referred to in subsection (15) to another person without the consent of the individual to whom it relates for a purpose set out in that subsection if in the opinion of the Minister the disclosure is necessary for that purpose.
2014, c.31, s.23.

24. Disclosure permitted for health or safety reasons

- (1) A custodian may disclose personal health information without the consent of the individual to whom it relates if the custodian reasonably believes that disclosure is required
 - (a) to prevent or reduce a risk of serious harm to the health or safety of the individual to whom it relates or another individual; or
 - (b) to prevent or reduce a risk of significant harm to the health or safety of the public or a group of people.

Disclosure permitted

- (2) A custodian may disclose personal health information without the consent of the individual to whom it relates to the superintendent of a correctional facility in which the individual is lawfully detained or to the administrator of a psychiatric facility in which the individual is

lawfully detained under the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1 to assist the superintendent or administrator, as the case may be, in making a decision respecting

- (a) arrangements for the provision of health care to the individual; or
- (b) the placement of the individual into custody or the detention, release, conditional release, discharge or conditional discharge of the individual under an enactment or an Act of another province or territory or of the Parliament of Canada.

Disclosure required - discipline, etc.

- (3) A custodian shall disclose personal health information without the consent of the individual to whom it relates
 - (a) on written request, to a body with statutory responsibility for the discipline of health care providers or for regulating the quality or standards of professional services provided by health care providers, including for the purpose of an investigation by that body;
 - (b) for the purpose of complying with a summons, subpoena, warrant, order or similar requirement issued by a court, person or entity with jurisdiction to compel the production of personal health information; or
 - (c) for the purpose of complying with the rules of court concerning the production of evidence in a proceeding.

Disclosure permitted – proceedings, etc.

- (4) A custodian may disclose personal health information without the consent of the individual to whom it relates
 - (a) for the purpose of a proceeding or contemplated proceeding in which the custodian, or an agent or former agent of the custodian, is or is expected to be a party or a witness, if the personal health information relates to or is a matter in issue in the proceeding or contemplated proceeding;
 - (b) to a person who is a proposed litigation guardian, committee or legal representative of the individual for the purpose of having the person appointed as a litigation guardian, committee or legal representative; or
 - (c) to a litigation guardian, committee or a legal representative who is authorized under the rules of court to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding.

Idem

- (5) Where a custodian discloses personal health information under clause (4)(a) to or on behalf of an agent or former agent of the custodian, the agent or former agent may disclose the personal health information to the agent's or former agent's professional adviser for the purpose of providing advice or representation to the agent or former agent, if the adviser is under a professional duty of confidentiality to the agent or former agent.

Disclosure required – investigations, etc.

- (6) A custodian shall disclose personal health information without the consent of the individual to whom it relates, to a person carrying out an inspection, investigation or similar procedure that is authorized by or under this Act, another enactment or an Act of the Parliament of Canada for the purpose of facilitating the inspection, investigation or procedure.

Disclosure permitted – fraud, etc.

- (7) A custodian may disclose personal health information without the consent of the individual to whom it relates to another custodian if the custodian disclosing the personal health



information has a reasonable expectation that disclosure will detect or prevent fraud, limit abuse in the use of health care or prevent the commission of an offence under an enactment or an Act of the Parliament of Canada.

Disclosure permitted – pursuant to agreement

- (8) A custodian may disclose personal health information without the consent of the individual to whom it relates if the disclosure is to the Canadian Institute for Health Information or other entity prescribed in the regulations for the purpose of compiling and analyzing statistical information to assist in the management, evaluation and monitoring of the allocation of resources, health system planning and delivery of health care services in accordance with the terms of an agreement between the Canadian Institute for Health Information or other entity and the province.

Disclosure required by law

- (9) A custodian or an agent of a custodian shall disclose personal health information without the consent of the individual to whom it relates if the disclosure is required by an enactment or an Act of the Parliament of Canada or by a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada. *2014, c.31, s.24.*

PRIVACY IMPACT ASSESSMENTS AND DATA-MATCHING

25. Privacy impact assessment

- (1) Subject to subsection (2), a custodian shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment in the following situations:
- (a) for the new collection, use or disclosure of personal health information or any significant change to the collection, use or disclosure of personal health information;
 - (b) for the creation of a personal health information system or personal health information communication technology or a significant modification to a personal health information system or personal health information communication technology; or
 - (c) if a custodian performs data matching with personal health information collected by it or with any personal health information held by another custodian or another person.

Exemption

- (2) A custodian or class of custodians may be exempted by the regulations from the requirements of subsection (1). *2014, c.31, s.25.*

26. Data matching

- (1) A custodian may perform data matching using personal health information that is in its custody or under its control.

Idem

- (2) If data matching is performed for the purpose of conducting research, the custodian that proposes to perform the data matching shall comply with sections 30 to 32 before the data matching is performed. *2014, c.31, s.26; 2016, c.9, s.3.*

27. *Idem*

- (1) A custodian may perform data matching by combining personal health information that is in its custody or under its control with personal health information that is in the custody or under the control of another custodian.

Privacy impact assessment

- (2) Before performing data matching under this section, the custodian in whose custody and control the personal health information that is created through data matching will be stored shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment. *2014,c.31,s.27.*

28. Data matching by custodian and non-custodian

- (1) A custodian may perform data matching by combining personal health information that is in its custody or under its control with personal health information that is in the custody or under the control of a person that is not a custodian.

Privacy impact assessment

- (2) Before performing data matching under this section, the custodian shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment. *2014,c.31,s.28.*

29. Data matching for research

For the purposes of this Part, a privacy impact assessment shall

- (a) specify how the proposed administrative practices and information systems relating to the collection, use and disclosure of personal health information may affect the privacy of the individual to whom the information relates;
- (b) describe how the personal health information to be used in the data matching is to be collected; and
- (c) set out how the personal health information that is created through data matching is to be used or disclosed. *2014,c.31,s.29; 2016,c.9,s.4.*

RESEARCH USING PERSONAL HEALTH INFORMATION

30. Submission of research plan

- (1) A person who proposes to use personal health information for research purposes shall submit a research plan respecting the proposed research to a research ethics board for approval.

Content of research plan

- (2) A research plan for the purposes of subsection (1) shall be in writing and shall set out
- (a) the affiliation of each person involved in the research;
 - (b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and
 - (c) all other prescribed matters related to the research.



Consideration of research plan

- (3) A research ethics board to which a research plan is submitted shall
- (a) consider whether the custodian of the personal health information specified in the research plan should be required to obtain consents for the disclosure of the personal health information to be used in the research from the individuals to whom it relates;
 - (b) consider whether the objectives of the research could reasonably be accomplished without the disclosure or use of personal health information; and
 - (c) assess whether, in the opinion of the research ethics board,
 - (i) the proposed research is of sufficient importance that the public interest in the proposed research outweighs to a substantial degree the public interest in protecting the privacy of the individuals who are the subjects of the personal health information to be used in the research,
 - (ii) the researcher is qualified to carry out the research,
 - (iii) adequate safeguards will be in place at the time the research will be carried out to protect the privacy of the individuals whose personal health information will be used in the research and the confidentiality of the personal health information, and
 - (iv) obtaining the consents referred to in clause (a) is unreasonable, impractical or not feasible.

Factors in assessment

- (4) In making an assessment under clause (3)(c), the research ethics board shall consider the degree to which the proposed research may contribute to
- (a) identification, prevention or treatment of illness or disease;
 - (b) scientific understanding relating to health or illness;
 - (c) promotion and protection of the health of individuals and communities;
 - (d) improved delivery of health services; or
 - (e) improvements in health system management.

Response in writing

- (5) If the research ethics board approves the research plan, it shall prepare a written response to the researcher setting out
- (a) its recommendation under subsection (3)(a);
 - (b) its assessment of the matters set out in subsection (3)(b); and
 - (c) any conditions that the research ethics board considers should be imposed on the researcher.

Idem

- (6) If the research ethics board refuses to approve a research plan, it shall prepare a written response to the researcher setting out its reasons for the refusal.

Copy to Commissioner

- (7) The research ethics board shall send a copy of its response prepared pursuant to subsection (5) to the Commissioner.

Publication of response

- (8) If the response of the research ethics board sent to the Commissioner under subsection (7) indicates that the research ethics board approves the research plan, the Commissioner may publish the response in any manner the Commissioner considers appropriate.

Bar to research

- (9) If the research ethics board refuses to approve the research plan, the researcher shall not apply to a custodian under section 31. *2014,c.31,s.30.*

31. Researcher may apply

If the research ethics board has approved a research plan submitted to it under section 30, the researcher may forward to one or more custodians

- (a) the researcher's proposed research plan referred to in subsection 30(2);
- (b) the response of the research ethics board to the researcher's proposed research plan; and
- (c) a written application for one or more of the following:
 - (i) disclosure of the personal health information to be used in the research,
 - (ii) if consents are required, a request that the custodian obtain the required consents,
 - (iii) performance of data-matching, or
 - (iv) performance of any other service to facilitate the research. *2014,c.31,s.31.*

32. Disclosure permitted

- (1) A custodian who has received the documents referred to in section 31 may, but is not required to, disclose the requested personal health information or perform data matching or other services to facilitate the research.

Conditions on disclosure

- (2) If a custodian decides to disclose the requested personal health information or perform data matching or other services to facilitate the research,
- (a) the custodian
 - (i) shall impose on the researcher the conditions suggested by the research ethics board, and
 - (ii) may impose other conditions on the researcher, relating to the use, protection, disclosure, return or disposal of the personal health information or providing safeguards against the identification, direct or indirect, of the individuals who are the subjects of the personal health information, as the custodian considers necessary or advisable; and
 - (b) if the research ethics board recommended that consents referred to in clause 30(3)(a) be obtained, the custodian shall obtain the consents before the disclosure of the personal health information or performance of data matching or other services.

Conditions

- (3) If a custodian decides to disclose personal health information to a researcher or perform data matching or other services to facilitate the research, the researcher shall
- (a) comply with
 - (i) this Act and the regulations made under this Act,



- (ii) any conditions imposed by the custodian relating to the use, protection, disclosure, return or disposal of the health information, and
 - (iii) any requirements imposed by the custodian to provide safeguards against the identification, direct or indirect, of an individual who is the subject of the personal health information;
- (b) use the personal health information only for the purpose of conducting the proposed research;
- (c) not publish the personal health information in a form that could reasonably enable the identity of an individual who is the subject of the personal health information to be readily ascertained;
- (d) not make any attempt to contact an individual who is the subject of the personal health information to obtain additional personal health information unless the individual has provided the custodian with the consent referred to in subsection (6);
- (e) allow the custodian to access or inspect the researcher's premises to confirm that the researcher is complying with the Act and regulations and the conditions and requirements referred to in clause (a); and
- (f) pay the costs referred to in subsection (5).

Disclosure to researcher

- (4) A custodian may disclose to the researcher the personal health information requested under section 31 or perform data matching or other services to facilitate the research
 - (a) with the consent of the individuals who are the subjects of the personal health information, where the research ethics board recommends that consents should be obtained; or
 - (b) without the consent of the individuals who are the subjects of the personal health information, where the research ethics board does not recommend that consents be obtained.

Costs

- (5) A custodian may charge to a researcher the costs of
 - (a) preparing personal health information for disclosure, or performing data matching or other services;
 - (b) making copies of personal health information; and
 - (c) obtaining the consents referred to in section 30,which shall not exceed the actual cost of the service provided.

Further consents needed

- (6) If a researcher wishes to contact the individuals whose personal health information was disclosed under subsection (4) to obtain additional personal health information, the custodian shall first obtain consents from those individuals to their being contacted for that purpose.
2014, c.31, s.32.

33. Application for order

- (1) If a researcher refuses to allow a custodian to have access to or inspect its premises in accordance with section 32, the custodian may apply to the Supreme Court for an order under subsection (2).

Court order

- (2) If the court is satisfied that there are reasonable and probable grounds to believe that access to premises or the production or removal of documents is necessary for the purpose of determining whether section 32 is being complied with, the court may make any order it considers necessary to enforce compliance with that section and the other provisions of this Act and the regulations.

Powers of custodian

- (3) Where authorized to do so by an order under subsection (2), a custodian may
- (a) enter and search any premises of the researcher where the research is conducted;
 - (b) operate or cause to be operated any computer system of the researcher to search any data contained in or available to the system and produce a document from the data; and
 - (c) seize and make copies of any documents of the researcher that are or may be relevant to the investigation.

Application without notice

- (4) An application for an order under this section may be made ex parte unless the court orders otherwise.

Return of documents

- (5) The custodian shall return any documents seized pursuant to a court order under this section within 60 days after the conclusion of the investigation that gave rise to the seizure, including any hearing or appeal.

“Document” defined

- (6) In this section, “document” includes but is not limited to any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record, electronic record or other material or thing, regardless of physical form or characteristics. *2014, c.31, s.33.*

MANAGEMENT OF PERSONAL HEALTH INFORMATION

34. Records respecting disclosure without consent

- (1) A custodian that discloses personal health information without the consent of the individual to whom it relates for health related purposes shall record the following information and retain the record for at least 10 years following the disclosure, unless this Act or the regulations provide otherwise:
- (a) the name of the person to whom the custodian discloses the personal health information;
 - (b) the date and purpose of the disclosure; and
 - (c) a description of the personal health information disclosed.

Electronic record of access to personal health information

- (2) Subsection (1) does not apply if
- (a) the custodian discloses personal health information by permitting access to the personal health information stored in the information system of the custodian; and



- (b) when the personal health information is accessed the system automatically keeps an electronic log of the following information:
 - (i) the unique user identification of the individual who accesses the personal health information,
 - (ii) the date and time the personal health information is accessed, and
 - (iii) a description of the personal health information that was or could have been accessed by that individual. *2014, c.31, s.34; 2018, c.47, s.5.*

35. Disclosure outside province

A custodian may disclose personal health information relating to an individual that is collected in the province to a person outside the province without the consent of the individual only in the circumstances described in subsections 23(7), (10) and (13) or as specified in the regulations. *2014, c.31, s.35.*

36. Duties of custodian

- (1) A custodian shall
 - (a) establish and implement information practices to facilitate the implementation of, and to ensure compliance with, this Act;
 - (b) promote openness and transparency of policies and procedures toward the public;
 - (c) notify the individual to whom the personal health information relates and the Commissioner in writing at the first reasonable opportunity if personal health information is
 - (i) stolen,
 - (ii) lost,
 - (iii) disposed of, except as permitted by this Act, or
 - (iv) disclosed to or accessed by an unauthorized person.

Exception

- (2) Clause (1)(c) does not apply if the custodian reasonably believes that the theft, loss, disposition or disclosure of, or access to, the personal health information will not have an adverse impact on the provision of health care or other benefits to, or the mental, physical, economic or social well-being of, the individual to whom the personal health information relates. *2014, c.31, s.36; 2018, c.47, s.6.*

37. Designation

A custodian may designate a person

- (a) to assist in ensuring the custodian's compliance with this Act and the regulations;
- (b) to respond to inquiries about the custodian's information practices; and
- (c) to receive and respond to complaints from the public about any alleged contravention of this Act or the regulations by the custodian. *2014, c.31, s.37.*

38. Disclosure to non-custodian

- (1) Except as permitted or required by law, a person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose the personal health information for any purpose other than

- (a) the purpose for which the custodian was authorized to disclose the information under this Act; or
- (b) the purpose of carrying out a statutory or legal duty.

Limitation on use or disclosure by non-custodian

- (2) A person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose more of the personal health information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless more extensive use or disclosure is required by law. 2014, c.31, s.38.

39. Protection of personal health information

- (1) A custodian shall protect personal health information by adopting information practices that include reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information.

***Idem* - information practices**

- (2) The information practices referred to in subsection (1) shall be based on nationally or provincially recognized information technology and security standards and processes that are appropriate for the level of sensitivity of the personal health information to be protected.

Idem

- (3) The information practices referred to in subsection (1) shall include appropriate measures to address the risks associated with the storage of personal health information, taking into account the manner and form in which the personal health information is recorded, the location of storage and the degree of sensitivity of the personal health information to be protected.

Controls and safeguards

- (4) Without limiting the generality of subsection (1), a custodian shall
 - (a) implement controls that limit the persons who may use personal health information maintained by the custodian to those specifically authorized by the custodian to do so, including where appropriate the restriction of access to an individual's personal health information by an employee, agent, contractor or volunteer of the custodian or by a health care professional who has the right to treat persons at a health care facility operated by the custodian to only that personal health information that the employee, agent, contractor, volunteer or health care professional requires to carry out the purpose for which the personal health information was collected or will be used;
 - (b) implement safeguards and controls to ensure that personal health information maintained by the custodian cannot be used unless
 - (i) the identity of the person seeking to use the personal health information is verified as a person the custodian has authorized to use it, and
 - (ii) the proposed use is verified as being authorized under this Act;
 - (c) if the custodian uses electronic means to request disclosure of personal health information or to respond to requests for disclosure, implement procedures to prevent the interception of the personal health information by unauthorized persons;
 - (d) provide for the secure storage, retention and disposal of records to minimize the risk of unauthorized access to or disclosure of personal health information;
 - (e) when responding to requests for disclosure of personal health information, ensure that the request contains sufficient detail to uniquely identify the individual to whom the information relates; and



- (f) ensure agents of the custodian adhere to the safeguards and controls implemented to protect personal health information.

Limitation

- (5) This section does not override or modify any requirement in an enactment or an Act of the Parliament of Canada concerning the retention or secure destruction of records of personal health information maintained by a custodian. *2014, c.31, s.39.*

40. Production of de-identified information

A custodian may strip, encode or otherwise transform personal health information in order to create or produce de-identified information. *2014, c.31, s.40.*

41. Written agreement with agent of custodian

A custodian that retains the services of an agent for the collection, use, disclosure, retention or secure destruction of personal health information shall enter into a written agreement with the agent requiring the agent to comply with

- (a) the duties imposed on the agent under the agreement; and
- (b) the same requirements concerning the protection, retention and secure destruction of personal health information that the custodian is required to comply with under this Act. *2014, c.31, s.41.*

42. Provision of personal health information to information manager

- (1) A custodian may provide personal health information to an information manager for the purpose of processing, storing or destroying the personal health information or providing the custodian with information management or information technology services.

***Idem* - written agreement**

- (2) A custodian that proposes to provide personal health information to an information manager shall enter into a written agreement with the information manager that provides for the protection of the personal health information against risks such as unauthorized access to or use or disclosure, secure destruction or alteration of the personal health information. *2014, c.31, s.42.*

43. Requirement to comply

An information manager who enters into a written agreement under subsection 42(2) shall comply with

- (a) the duties imposed on the information manager under the agreement; and
- (b) the same requirements concerning the protection, retention and secure destruction of personal health information that the custodian is required to comply with under this Act. *2014, c.31, s.43.*

44. Obligations of custodian

Before using or disclosing personal health information, a custodian shall take reasonable steps

- (a) to ensure that the personal health information is accurate, up-to-date and complete; and

- (b) to ensure that the disclosure is made only to the person intended and authorized to receive the personal health information. *2014, c.31, s.44.*

45. Ceasing to be custodian

- (1) Subject to this section, a custodian does not cease to be a custodian with respect to a record of personal health information until complete custody and control of the record passes to another person who is legally authorized to hold the record.

***Idem* - obligation to notify**

- (2) If the custodian ceases to operate as a custodian, the custodian or the custodian's successor shall
 - (a) notify the individual to whom the personal health information relates that the personal health information will be or has been transferred to the custodian's successor;
 - (b) indicate where the person may make a written request for access to the personal health information; and
 - (c) state the period during which the personal health information will be retained. *2014, c.31, s.45.*

46. Where custodian is deceased

If a custodian who is an individual dies, the duties and powers of a custodian under this Act shall be performed and exercised by the personal representative of the deceased as defined in the *Probate Act* until custody and control of the record of personal health information passes to another person who is legally authorized to hold the record, or the personal health information is destroyed in accordance with the custodian's usual procedures for secure destruction. *2014, c.31, s.46.*

PART 5 — COMMISSIONER

47. Designation of Commissioner

- (1) The Information and Privacy Commissioner appointed under Part 3 of the *Freedom of Information and Protection of Privacy Act* is hereby designated as the Commissioner for the purposes of this Act.

Functions of Commissioner

- (2) In addition to the Commissioner's functions under Part 6 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may
 - (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of personal health information set out in any other enactment;
 - (b) review privacy impact assessments for the purposes of sections 25, 27 and 28 and make recommendations to the custodians respecting proposed changes;
 - (c) review the response of a research ethics board under section 30;
 - (d) make an order described in subsection 64(2) or (3), whether or not a review is requested;
 - (e) inform the public about this Act;



- (f) comment on the implications for protection of personal health information of proposed legislative schemes or programs of custodians;
- (g) comment on the implications for protection of personal health information by using or disclosing personal health information for the purpose of data matching;
- (h) bring to the attention of a custodian any failure by the custodian to assist individuals under section 8; and
- (i) give advice and recommendations of general application to custodians on matters respecting the rights or obligations of custodians under this Act.

Investigation and resolution of complaints

- (3) Without limiting subsection (2), the Commissioner may investigate and attempt to resolve complaints that
 - (a) a duty imposed by subsection 8(9) has not been performed;
 - (b) an extension of time for responding to a request is not in accordance with section 8 or 11;
 - (c) a fee charged by a custodian for a service under this Act is inappropriate;
 - (d) a correction of personal health information requested under section 11 has been refused without justification; and
 - (e) personal health information has been collected, used or disclosed by a custodian in violation of Part 4. *2014, c.31, s.47.*

48. Advice and recommendations

- (1) A custodian may request the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.

Advice, etc. in writing

- (2) The Commissioner may in writing provide a custodian with advice and recommendations that
 - (a) are based on material facts provided by the custodian; and
 - (b) may include any other considerations that the Commissioner considers appropriate. *2014, c.31, s.48.*

49. Conflict of interest

- (1) Where, in the opinion of the Commissioner, a conflict of interest exists or may exist with respect to a custodian, the Lieutenant Governor in Council may designate a judge to act as an adjudicator in the matter in accordance with clause 68.1(1)(c) of the *Freedom of Information and Protection of Privacy Act*, and sections 68.2 to 68.7 of that Act apply with any necessary changes.

Powers of adjudicator

- (2) An adjudicator designated under subsection (1) has the same powers and obligations as the Commissioner with respect to an investigation or inquiry under this Act and the order of the adjudicator shall have the same effect as an order of the Commissioner. *2014, c.31, s.49.*

50. Authorization to disregard request

- (1) At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8 or 11 if, in the opinion of the Commissioner,

- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests; or
- (b) one or more of the requests are frivolous or vexatious.

Effect of request

- (2) The processing of a request under section 8 or 11 ceases when a custodian has made a request under subsection (1) and
 - (a) if the Commissioner authorizes the custodian to disregard the request, does not resume;
 - (b) if the Commissioner does not authorize the custodian to disregard the request, does not resume until the Commissioner advises the custodian of the Commissioner's decision. *2014, c.31, s.50.*

51. Powers of Commissioner

- (1) In conducting an investigation under clause 47(2)(a) or an inquiry under section 61 or in giving advice and recommendations under section 48, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31, and the powers given by subsection (2).

Production, etc. of record

- (2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record, including personal health information, whether or not the record is subject to the provisions of this Act.

Production within 10 days

- (3) Despite any other enactment or any privilege of the law of evidence, a custodian shall produce to the Commissioner within 10 days any record or a copy of any record required under subsection (1) or (2).

Examination at site

- (4) If a custodian is required to produce a record under subsection (1) or (2) and it is not practicable to make a copy of the record, the custodian may require the Commissioner to examine the original at its site.

Return of record, etc.

- (5) After completing a review or investigating a complaint, the Commissioner shall return any record or any copy of any record produced. *2014, c.31, s.51.*

52. Admissibility

- (1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except
 - (a) in a prosecution for perjury in respect of sworn testimony;
 - (b) in a prosecution for an offence under this Act; or
 - (c) in an application for judicial review or an appeal from a decision with respect to that application.



Idem

- (2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner. *2014,c.31,s.52.*

53. Privilege applies

Anything said, any information, including personal health information, supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court. *2014,c.31,s.53.*

54. Prohibition

- (1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information, including personal health information, obtained in performing their functions under this Act, except as provided in subsections (2), (4) and (5).

Exceptions

- (2) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information, including personal health, that is necessary to
- (a) conduct an investigation or inquiry under this Act; or
 - (b) establish the grounds for findings and recommendations contained in a report under this Act.

Disclosure prohibited

- (3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner shall take every reasonable precaution to avoid disclosing and shall not disclose
- (a) any personal health information the custodian would be required or authorized to refuse to disclose if it were contained in a record requested under subsection 10(1); or
 - (b) whether personal health information exists, if the custodian in refusing to provide access does not indicate whether the personal health information exists.

Disclosure related to offence

- (4) The Commissioner may disclose to the Minister of Environment, Labour and Justice and Attorney General information, including where necessary personal health information, relating to the commission of an offence against an enactment or an Act of the Parliament of Canada if the Commissioner considers there is evidence of an offence.

Disclosure for specified purposes

- (5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, personal health information in the course of a prosecution, application or appeal referred to in section 52. *2014,c.31,s.54.*

55. Protection from liability

No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a function under this Part or Part 6. *2014,c.31,s.55.*

56. Delegation

- (1) The Commissioner may delegate to any person any function of the Commissioner under this Act, except the power to delegate under this section.

Requirements

- (2) A delegation under subsection (1) shall be in writing and may contain any conditions or restrictions the Commissioner considers appropriate. *2014,c.31,s.56.*

57. Annual report

- (1) The Commissioner shall provide a written report annually to the Speaker of the Legislative Assembly respecting

- (a) the work of the Commissioner's office;
- (b) such other matters relating to access to and protection of personal health information as the Commissioner considers appropriate.

Tabling in Legislative Assembly

- (2) The Speaker shall lay each annual report before the Legislative Assembly as soon as possible. *2014,c.31,s.57.*

PART 6 — REVIEW, INVESTIGATION AND INQUIRY

58. Request for review

- (1) An individual who makes a request to a custodian for access to or for correction or amendment of the individual's personal health information may ask the Commissioner to review any decision, act or failure to act of the custodian that relates to the request.

Idem

- (2) An individual who believes that the individual's personal health information has been collected, used or disclosed in contravention of this Act may ask the Commissioner to review that matter.

Requirements

- (3) A request for the review of a decision of a custodian under subsection (1) or a collection, use or disclosure of personal health information under subsection (2) shall be in writing and delivered to the Commissioner within
- (a) 60 days after the person asking for the review is notified of the decision or becomes aware of the contravention; or
 - (b) any longer period allowed by the Commissioner.

Effect of failure to respond

- (4) The failure of a custodian to respond in time to a request for access to personal health information shall be treated as a decision to refuse access, but the time limit in clause (3)(a) for delivering a request for review shall not apply.

Notice deemed to be request

- (5) A notice to the Commissioner under clause 36(1)(c) shall be treated as a request for review by the Commissioner under this Part. *2014,c.31,s.58; 2018,c.47,s.7.*



59. Commissioner's duties

- (1) On receipt of a request for a review, the Commissioner shall as soon as practicable
 - (a) provide,
 - (i) in the case of a matter under clause 36(1)(c), a copy of the notice to any person who, in the opinion of the Commissioner, is affected, and
 - (ii) in any other case, a copy of the request to the custodian and any other person who, in the opinion of the Commissioner, is affected;
 - (b) provide a summary of the review procedures and an anticipated date for a decision in respect of the review
 - (i) to the person who asked for the review,
 - (ii) to the custodian concerned, and
 - (iii) to any other person who in the opinion of the Commissioner is affected by the request.

Severance of personal health information

- (2) Notwithstanding clause (1)(a), the Commissioner may sever any information in the request that the Commissioner considers appropriate before giving a copy of the request to the custodian or any other person affected by the request. *2014, c.31, s.59; 2018, c.47, s.8.*

60. Mediation

The Commissioner may, where the Commissioner considers it appropriate in the circumstances, authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review. *2014, c.31, s.60.*

61. Inquiry

- (1) Unless a matter is settled under section 60, the Commissioner shall, subject to section 62, conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

Proceedings may be in private

- (2) An inquiry under subsection (1) may be conducted in private.

Opportunity for representations

- (3) The person who requested the review, the custodian concerned and any other person given a copy of the request for the review shall be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

Representations may be oral or written

- (4) The Commissioner may decide whether the representations are to be made orally or in writing.

Counsel or agent

- (5) The person who asked for the review, the custodian concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

90-day period unless extended

- (6) An inquiry under this section shall be completed within 90 days after receiving the request for the review unless the Commissioner
- (a) notifies the person who asked for the review, the custodian concerned and any other person given a copy of the request for the review that the Commissioner is extending that period; and
 - (b) provides an anticipated date for the completion of the review. *2014,c.31,s.61.*

62. Grounds for refusal

The Commissioner may refuse to conduct an inquiry pursuant to section 61 if, in the opinion of the Commissioner,

- (a) the subject matter of a request for a review under section 58 has been dealt with in an order or investigation report of the Commissioner; or
- (b) the circumstances warrant refusing to conduct an inquiry. *2014,c.31,s.62.*

63. Onus of proof - custodian

- (1) If an inquiry under section 61 relates to a decision by a custodian to refuse an applicant access to all or part of the personal health information in a record, it is up to the custodian to prove that the applicant has no right of access to the personal health information.

Onus of proof - applicant

- (2) Notwithstanding subsection (1), if the record or part of the record to which the applicant is refused access contains the personal health information of a third party, it is up to the applicant to prove that disclosure of the personal health information would not be an unreasonable invasion of the third party's personal privacy.

Onus of proof - third party

- (3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing the personal health information of a third party, it is up to the third party to prove that the applicant has no right of access to the personal health information of the third party. *2014,c.31,s.63.*

64. Order *re* disposition

- (1) On completing an inquiry under section 61, the Commissioner shall dispose of the issues by making an order under this section.

***Idem* - access**

- (2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:
- (a) require the custodian to give the applicant access to all or part of the personal health information, if the Commissioner determines that the custodian is not authorized or required to refuse access;
 - (b) either confirm the decision of the custodian or require the custodian to reconsider it, if the Commissioner determines that the custodian is authorized to refuse access;
 - (c) require the custodian to refuse access to all or part of the personal health information, if the Commissioner determines that the custodian is required to refuse access.



Idem - other matters

- (3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:
- (a) require that a duty imposed by this Act or the regulations be performed;
 - (b) confirm or reduce the extension of a time limit under section 8;
 - (c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including where a time limit is not met;
 - (d) confirm a decision not to correct personal health information;
 - (e) specify how personal health information is to be corrected;
 - (f) require a custodian to stop collecting, using or disclosing personal health information in violation of Part 4;
 - (g) require a custodian to destroy personal health information collected in violation of this Act.

Terms or conditions

- (4) The Commissioner may specify any terms or conditions in an order made under this section.

Copies of order

- (5) The Commissioner shall give a copy of an order made under this section
- (a) to the person who asked for the review;
 - (b) to the custodian concerned;
 - (c) to any other person given a copy of the request for the review;
- and
- (d) to the Minister.

Order may be filed with Supreme Court

- (6) A copy of an order made by the Commissioner under this section may be filed with the Registrar of the Supreme Court and, after filing, the order is enforceable as a judgment or order of that court. *2014,c.31,s.64.*

65. Order final

An order issued by the Commissioner under this Act is final. *2014,c.31,s.65.*

66. Compliance required

- (1) Subject to subsection (2), not later than 40 days after being given a copy of an order of the Commissioner, the custodian concerned shall comply with the order.

Application for judicial review

- (2) The custodian shall not take any steps to comply with an order of the Commissioner until the end of the period for bringing an application for judicial review of the order under the *Judicial Review Act R.S.P.E.I. 1988, Cap. J-3.*

Order stayed pending outcome of application

- (3) If an application for judicial review is made before the end of the period referred to in subsection (2), the order of the Commissioner is stayed until the application is dealt with by the court. *2014,c.31,s.66.*

PART 7 — PRINCE EDWARD ISLAND ELECTRONIC HEALTH RECORD SYSTEM

67. Definitions

In this Part,

- (a) “authorized custodian” means a custodian that meets the prescribed eligibility requirements to be an authorized custodian;
- (b) “PEI EHR” means the integrated system of electronic health records established and maintained by the Minister under section 68;
- (c) “prescribed personal health information” means personal health information about an individual that is of a class or type prescribed in the regulations. *2014, c.31, s.67.*

68. Establishment of PEI EHR

- (1) The Minister may establish and maintain an integrated system of electronic health records, to be known as the PEI EHR, in which prescribed personal health information is recorded and stored for the purpose of facilitating
 - (a) the delivery, evaluation or monitoring of a program that relates to the provision of health care or the payment for health care;
 - (b) the review and planning necessary for the provision of health care or the payment for health care; and
 - (c) the shared access to and use of prescribed personal health information in a secure environment by authorized custodians in accordance with the regulations.

Purpose

- (2) The purpose of this Part is to enable the sharing and use, by means of the PEI EHR, of prescribed personal health information among authorized custodians.

Delegation by Minister

- (3) The Minister may delegate the Minister’s powers or duties under subsection (1) to any person or organization. *2014, c.31, s.68.*

69. Obligation of authorized custodian

- (1) An authorized custodian shall make prescribed personal health information in its custody or under its control accessible to authorized custodians by means of the PEI EHR in accordance with the regulations.

Access by authorized custodian

- (2) Subject to the regulations, an authorized custodian is entitled to access to prescribed personal health information by means of the PEI EHR for the purposes set out in this Part or prescribed in the regulations.

Minister is authorized custodian

- (3) The Minister is an authorized custodian. *2014, c.31, s.69.*



70. Offence

- (1) An authorized custodian who
- (a) fails or refuses to make prescribed personal health information in its custody or under its control accessible by means of the PEI EHR in accordance with this Part and the regulations; or
 - (b) accesses prescribed personal health information by means of the PEI EHR for a purpose or in a manner not authorized by this Part or the regulations,
- is guilty of an offence and liable on summary conviction to the penalties set out in subsections 79(1) and (2).

Limitation period

- (2) For greater certainty, subsection 79(3) applies to a prosecution for an offence under this Part. *2014, c.31, s.70.*

71. Conditions on use of prescribed personal health information

- (1) Subject to the regulations,
- (a) the Minister may use prescribed personal health information that is accessible by means of the PEI EHR for any purpose that is authorized under section 22; and
 - (b) an authorized custodian other than the Minister may use prescribed personal health information that is accessible by means of the PEI EHR, and that is not otherwise in the custody or under the control of that authorized custodian, only for a purpose that is authorized by clauses 22(5)(a), (b), (c), (d), (e), (f), (l) and (q).

Requirement to track access to prescribed personal health information

- (2) If an authorized custodian uses prescribed personal health information pursuant to subsection (1), the authorized custodian shall establish and maintain an electronic access record of the following information:
- (a) a name or number that identifies the authorized custodian or the employee of the authorized custodian who accesses the prescribed personal health information;
 - (b) the date and time when the prescribed personal health information is accessed;
 - (c) a description of the prescribed personal health information that is accessed.

Retention of information

- (3) The information in an electronic access record referred to in subsection (2) shall be retained by the authorized custodian for a period of 10 years following the date of the access.

Access to information

- (4) An individual to whom the prescribed personal health information referred to in subsection (2) relates may request access to and a copy of the electronic access record from the authorized custodian, and Part 2 shall apply to that request.

Correction of personal health information

- (5) An individual may make a request for correction of the individual's personal health information that is prescribed personal health information to the information manager for the PEI EHR designated in the regulations in the manner prescribed in the regulations. *2014, c.31, s.71.*

72. Access not disclosure

- (1) For greater certainty, an authorized custodian's making prescribed personal health information accessible by means of the PEI EHR, and the accessing of prescribed personal health information by an authorized custodian, pursuant to section 69, does not
- (a) constitute a disclosure of that personal health information; or
 - (b) require the consent of the individual to whom the prescribed personal health information relates.

Use not collection

- (2) For greater certainty, the use pursuant to subsection 71(1) of prescribed personal health information that is accessible by means of the PEI EHR does not constitute collection of that information under this Act.

Use not disclosure

- (3) For greater certainty, the use pursuant to subsection 71(1) of prescribed personal health information that is accessible by means of the PEI EHR does not constitute a disclosure of that information by or to
- (a) the authorized custodian who originally made that information accessible by means of the PEI EHR pursuant to section 69;
 - (b) any other authorized custodian;
 - (c) the information manager of the PEI EHR designated in the regulations; or
 - (d) any other person. *2014, c.31, s.72.*

73. Committee

- (1) The Minister may establish a committee of not fewer than three members whose function is to make recommendations to the Minister with respect to rules related to access, use, disclosure and retention of prescribed personal health information that is accessible by means of the PEI EHR.

Support to committee

- (2) The Minister may provide to the committee such administrative and research support as may be reasonably required.

Allowances and expenses

- (3) The members of the committee may receive such allowances and expenses as the Lieutenant Governor in Council may determine. *2014, c.31, s.73.*

PART 7.1

DRUG INFORMATION SYSTEM

73.1 Definitions

In this Part,

- (a) “**authorized custodian**” means
- (i) the Minister,
 - (ii) Health PEI,
 - (iii) the manager,



- (iv) a custodian electronically linked to the DIS,
- (v) a custodian who has authorized access to the DIS pursuant to section 73.4, and
- (vi) a person or organization prescribed by regulation as an authorized custodian;
- (b) “**dispenser**” means a pharmacist, a pharmacy technician or another health care provider prescribed by regulation who is responsible for dispensing a drug pursuant to a prescription, or supplying a drug without a prescription, for a patient;
- (c) “**drug**” means a Schedule I drug or a Schedule II drug, as defined in the *Pharmacy Act* R.S.P.E.I. 1988, Cap. P-6.1;
- (d) “**Drug Information System**” or “**DIS**” means the provincial computerized pharmacy network and database continued in subsection 73.2(1);
- (e) “**hospital**” means a hospital as defined in the *Hospitals Act* R.S.P.E.I. 1988, Cap. H-10.1;
- (f) “**manager**” means the person appointed pursuant to subsection 73.2(5) to control access to the DIS and manage the information collected and stored in the DIS;
- (g) “**patient**” means a resident for whom a drug is dispensed or supplied;
- (h) “**personalized password**” means a personalized password issued pursuant to the *Pharmaceutical Information Act* General Regulations (EC211/07);
- (i) “**pharmacist**” means a person who is registered as a pharmacist in the pharmacists register of the College of Pharmacists;
- (j) “**pharmacy technician**” means a person who is registered as a pharmacy technician in the pharmacy technicians register of the College of Pharmacists;
- (k) “**resident**” means a resident of the province as defined in the *Health Services Payment Act* R.S.P.E.I. 1988, Cap. H-2, 2016,c.9,s.5.

73.2 Drug Information System or DIS

- (1) The Pharmaceutical Information Program, a provincial computerized pharmacy network and database established by the Minister under the *Pharmaceutical Information Act* R.S.P.E.I. 1988, Cap. P-5.2, is continued as the Drug Information System or DIS to be maintained and administered by the Minister.

Privacy impact assessment not required

- (2) For greater certainty, the requirements in section 25 with respect to privacy impact assessments do not apply to the continuation of the provincial computerized pharmacy network and database under subsection (1).

Purposes of DIS

- (3) The purposes of the DIS include
 - (a) to electronically link authorized custodians with a secure database for the maintenance and sharing of the medication profiles of patients to assist in patient care;
 - (b) to provide for the monitoring of information respecting drug use by patients for the purpose of establishing and administering provincial drug programs;
 - (c) to act as a repository of information for health planning, research and the evaluation of the beneficial and adverse effects of drugs used by patients;
 - (d) to provide for the monitoring of patient compliance with drug therapy; and

- (e) to provide for the monitoring of drug prescribing and dispensing practices for the purposes of the *Narcotics Safety and Awareness Act*.

Delegation by Minister

- (4) The Minister may delegate the Minister's powers and duties under this Part to any person.

Manager

- (5) The Minister shall appoint a person as manager to control access to the DIS and manage the information collected and stored in the DIS. *2016, c.9, s.5.*

73.3 Pharmacies to be linked to DIS

- (1) The Minister and the operator of a pharmacy shall ensure that the pharmacy is electronically linked to the DIS.

Dispenser to collect and record information in DIS

- (2) Subject to subsection (3), when a drug is dispensed in a pharmacy for a patient pursuant to a prescription or a drug of a type or class prescribed by regulation is supplied in a pharmacy for a patient without a prescription, the dispenser shall collect and record in the DIS the information, including personal health information, prescribed by regulation or shall ensure that information is collected and recorded in the DIS by an employee of the pharmacy under the direct supervision of the dispenser.

Exception

- (3) Subsection (2) does not apply when the drug is dispensed or supplied in a hospital.

Links through other custodians

- (4) The Minister may provide for other custodians to be electronically linked to the DIS. *2016, c.9, s.5.*

73.4 Application for access

- (1) A custodian may apply to the manager, in the form required by the manager, for access to the DIS.

Access granted

- (2) On receiving an application in accordance with subsection (1), the manager may grant a custodian access to the DIS, subject to any restrictions or requirements prescribed by regulation.

Access deemed granted

- (3) A health care provider who, immediately before the coming into force of this Part, has authorized access to the DIS is deemed to have been granted access under this section.

Register

- (4) The manager shall keep a register of custodians who have been granted access to the DIS, which contains the information required by the Minister.

User identification

- (5) The manager shall assign unique user identification to each custodian who has been granted access to the DIS.



Access suspended or revoked

- (6) The Minister may suspend or revoke a custodian's access to the DIS in accordance with the regulations.

Prohibition – access to DIS

- (7) No person shall access the DIS except
- (a) the Minister;
 - (b) the manager;
 - (c) a custodian who has been granted access to the DIS, which access has not been suspended or revoked; or
 - (d) a person who is providing technical support in respect of the DIS. *2016, c.9, s.5.*

73.5 Electronic record of access to DIS

- (1) The Minister shall ensure that each time information, including personal health information, is accessed in the DIS, the system automatically keeps an electronic record of the following information:
- (a) the unique user identification of the individual who accesses the information;
 - (b) the date and time the information is accessed;
 - (c) a description of the information that was accessed by that individual.

Retention period

- (2) The Minister shall ensure that an electronic record created pursuant to subsection (1) is retained in the DIS for at least 10 years following the date of the access.

Request for copy

- (3) An individual whose personal health information is accessed in the DIS may request from an authorized custodian a copy of the electronic record of that access created pursuant to subsection (1), and Part 2 shall apply to that request, with any necessary modifications. *2016, c.9, s.5.*

73.6 Disclosure for reports, planning, or research

- (1) The Minister may disclose to any person non-identifying information or de-identified information stored in the DIS to be used for the purpose of
- (a) reports or planning activities; or
 - (b) research that has been approved by a research ethics board.

Disclosure to professional regulatory body

- (2) The Minister may disclose, without the consent of the health care provider, information stored in the DIS about the health care provider, other than personal health information, to a professional regulatory body for the purpose of an investigation or hearing into the professional conduct or competence of the health care provider. *2016, c.9, s.5.*

73.7 Prohibition

- (1) Notwithstanding any other provision of this Act or the regulations, no person other than an authorized custodian shall
- (a) collect personal health information for the purposes of the DIS;

- (b) use personal health information stored in the DIS that is not otherwise available to the person, unless the personal health information is disclosed to the person by an authorized custodian; or
- (c) disclose personal health information stored in the DIS.

Use, collection and disclosure by authorized custodians

- (2) The collection of personal health information for the purposes of the DIS and the use, management and disclosure of personal health information stored in the DIS by an authorized custodian, or a person referred to in clause (1)(b) to whom personal health information has been disclosed by an authorized custodian, shall be in accordance with Part 4 of this Act and the regulations, with any necessary modifications.

Requests for access or correction

- (3) An individual may make a request to an authorized custodian for access to, a copy of, or correction of, the individual's personal health information stored in the DIS and Part 2 shall apply to that request, with any necessary modifications. *2016, c.9, s.5.*

73.8 Access not disclosure

- (1) For greater certainty, where an authorized custodian accesses personal health information in the DIS that was collected and recorded in the DIS by another authorized custodian, it does not
 - (a) constitute disclosure of the personal health information; or
 - (b) require the consent of the individual to whom the personal health information relates.

Use not collection

- (2) For greater certainty, the use in accordance with this Act and the regulations of personal health information stored in the DIS does not constitute collection of the personal health information.

Use not disclosure

- (3) For greater certainty, the use in accordance with this Act and the regulations by an authorized custodian of personal health information stored in the DIS does not constitute disclosure of the personal health information by or to another authorized custodian or any other person. *2016, c.9, s.5.*

73.9 Transitional – personalized password

- (1) An individual who, immediately before the coming into force of this Part, has a personalized password may continue to use the personalized password to control access by an authorized custodian to the individual's personal health information stored in the DIS.

Not assignable or transferable

- (2) A personalized password is not assignable or transferable.

Prohibition – access without password

- (3) No authorized custodian shall access personal health information stored in the DIS of an individual who has a personalized password unless
 - (a) the individual provides the personalized password to the authorized custodian; or



- (b) the authorized custodian requires access to provide health care or treatment to the individual in an emergency and the individual is not able to provide the personalized password.

Subsections do not apply

- (4) Subsections (1) and (3) do not apply if the individual notifies the manager that the individual no longer intends to use his or her personalized password. *2016,c.9,s.5.*

PART 8 — GENERAL

74. Disclosure to Commissioner

- (1) An employee of a custodian may disclose to the Commissioner any personal health information that the employee is required to keep confidential and that the employee, acting in good faith, believes
 - (a) ought to be disclosed by a custodian under section 23; or
 - (b) is being collected, used or disclosed in contravention of Part 4.

Investigation

- (2) The Commissioner shall investigate and review any disclosure made under subsection (1).

Identity protected

- (3) If an employee of a custodian makes a disclosure under subsection (1), the Commissioner shall not disclose the identity of the employee to any person without the employee's consent.

Protection of employee

- (4) An employee of a custodian is not liable to a prosecution for an offence under any Act
 - (a) for copying personal health information in order to disclose it to the Commissioner; or
 - (b) for disclosing personal health information to the Commissioner, unless the employee acted in bad faith.

Prohibition

- (5) A custodian shall not take any adverse employment action against an employee because the employee, acting in good faith,
 - (a) has disclosed personal health information to the Commissioner under this section; or
 - (b) has exercised or may exercise a right under this section.

Powers and duties of Commissioner

- (6) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 47 and 51, and sections 52 to 55 apply. *2014,c.31,s.74.*

75. Service

Where this Act requires any notice or other document to be given to a person, it shall be given

- (a) by sending it to that person by prepaid mail to the last known address of that person;
- (b) by personal service;
- (c) by substituted service if so authorized by the Commissioner; or

- (d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system. *2014, c.31, s.75.*

76. Exercise of rights or powers

- (1) Any right or power conferred on an individual by this Act may be exercised
 - (a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;
 - (b) if a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;
 - (c) if the individual is a minor, by a parent or guardian of the minor in circumstances where, in the opinion of the custodian concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the personal privacy of the minor;
 - (d) if the individual has appointed a proxy to make decisions on his or her behalf, by the proxy if the exercise of the right or power relates to the powers and duties of a proxy conferred by the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2; or
 - (e) by any person with written authorization from the individual to act on the individual's behalf.

Notice

- (2) Any notice required to be given to an individual under this Act may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1). *2014, c.31, s.76.*

77. Protection from liability

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

- (a) the disclosure of or failure to disclose, in good faith, personal health information under this Act or any consequences of that disclosure or failure to disclose; or
- (b) the failure to give a notice required by this Act if reasonable efforts are made to give the required notice. *2014, c.31, s.77.*

78. Prohibition

- (1) No person shall
 - (a) collect, use or disclose personal health information in contravention of this Act;
 - (b) attempt to gain or gain access to personal health information in contravention of this Act;
 - (c) knowingly make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;
 - (d) obstruct the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;
 - (e) fail to comply with an order made by the Commissioner under section 64;



- (f) destroy, alter, falsify or conceal any personal health information, or direct another person to do so, with the intent to evade a request for access to the personal health information; or
- (g) destroy, alter, falsify or conceal personal health information, or direct another person to do so, to affect the outcome of an audit or an investigation authorized under this Act or another enactment.

Offence - employee

- (2) A person who is an employee of a custodian or information manager and who, without the authorization of the custodian or information manager, discloses personal health information in contravention of this Act in circumstances where the custodian or information manager would not be permitted to disclose the information under this Act, commits an offence.

Idem - custodian etc.

- (3) Any person commits an offence if the person
 - (a) collects, uses or discloses personal health information contrary to this Act;
 - (b) subject to subsection (4), sells or discloses for consideration personal health information;
 - (c) fails to protect personal health information in a secure manner as required by this Act;
 - (d) discloses personal health information contrary to this Act with the intent of obtaining a monetary or other material benefit or to confer a benefit on a custodian or other person; or
 - (e) takes any adverse employment action against an employee because the employee has complied with a request or requirement to provide personal health information or evidence to the Commissioner, or a person acting for or under the direction of the Commissioner, under this Act.

Exception

- (4) A custodian may sell, otherwise dispose of or disclose for consideration personal health information if
 - (a) the sale, disposition or disclosure is essential to facilitate the sale or disposition of the practice of a health care provider or the business of a health care facility as a going concern; and
 - (b) subject to subsection (5), the sale, disposition or disclosure is to another custodian.

Exception for retail pharmacy

- (5) Clause (4)(b) does not apply to a change in ownership of a retail pharmacy.

Defence

- (6) No custodian or information manager shall be found to have contravened clause (3)(a) or (b) if the custodian or information manager can establish that he or she took all reasonable steps to prevent the contravention. *2014, c.31, s.78.*

79. Penalty for contravention

- (1) Every person who contravenes a provision of this Act or the regulations or who fails to comply with an order of the Commissioner is guilty of an offence and liable on summary conviction

- (a) in the case of an individual, to a fine of not more than \$15,000 or a term of imprisonment of not more than six months, or to both; or
- (b) in the case of a corporation, to a fine of not more than \$50,000.

Continuing offence

- (2) A contravention of this Act or the regulations or a failure to comply with an order of the Commissioner that is of a continuing nature constitutes a separate offence in respect of each day or part of a day on which it continues.

Limitation period

- (3) No prosecution for an offence under this Act shall be commenced after two years from the date of the discovery of the alleged offence. *2014, c.31, s.79.*

80. Fees

- (1) Subject to subsection (2), a custodian may require an individual to pay to the custodian fees for services in accordance with the regulations.

Examination without charge

- (2) A custodian shall permit an individual to examine the individual's personal health information free of charge.

Estimate required

- (3) If an individual is required to pay a fee to a custodian for a service pursuant to subsection (1), the custodian shall give the individual an estimate of the total fee before providing the service.

Request to waive fee

- (4) An individual may, in writing, request that a custodian waive the payment of all or part of a fee for a service under subsection (1).

Payment may be waived

- (5) A custodian may waive the payment of all or part of a fee if, in the opinion of the custodian, the individual cannot afford the payment or for any other reason it is appropriate to waive the payment.

Review

- (6) If an individual has requested under subsection (4) that a custodian waive the payment of all or part of a fee and the custodian has refused the individual's request, the custodian shall notify the individual that the individual may ask for a review of the refusal under Part 6 of this Act.

Limit on fees

- (7) A fee prescribed pursuant to subsection (1) shall not exceed the actual cost of the service. *2014, c.31, s.80.*

81. Regulations

- (1) The Lieutenant Governor in Council may make regulations
 - (a) designating custodians for the purposes of the definition "custodian" in section 1;
 - (b) prescribing health care services for the purposes of the definition "health care" in section 1;



- (c) designating a facility in which health care is provided for the purposes of the definition “health care facility” in section 1;
- (d) designating a class of persons as health care providers for the purposes of the definition “health care provider” in section 1;
- (e) prescribing personal health information for the purposes of clause 3(b);
- (f) prescribing types or classes of personal health information to which this Act does not apply for the purposes of subsection 4(1);
- (g) prescribing enactments for the purposes of subsection 4(2);
- (h) prescribing individuals or organizations that collect, maintain or use personal health information for purposes other than health care or treatment and the planning and management of the health care system to which this Act does not apply;
- (i) specifying for the purposes of section 6 the enactments or provisions of them over which this Act does not prevail;
- (j) prescribing for the purposes of clause 10(1)(i) the circumstances in which a custodian may refuse to permit an individual to examine or copy his or her personal health information;
- (k) prescribing requirements and restrictions applicable to the determination of an individual’s inability to provide consent for the purposes of subsection 14(5);
- (l) respecting the circumstances in which and the method by which an individual may refuse to grant consent or withdraw his or her consent to the collection, use or disclosure of his or her personal health information for the purposes of subsection 13(11);
- (m) prescribing any requirements or restrictions applicable to the use of an individual’s personal health information for the purposes of clause 22(5)(o);
- (n) prescribing an entity for the purposes of subsection 24(8);
- (o) designating a custodian or class of custodians for the purposes of subsection 25(2);
- (p) designating research ethics boards for the purposes of section 30;
- (q) prescribing the required information to be provided with a research plan for the purposes of subsection 30(2);
- (r) prescribing exceptions in respect of the information required to be recorded under subsection 34(1);
- (s) prescribing for the purposes of section 35 the circumstances in which a custodian may disclose personal health information relating to an individual that is collected in the province to a person outside the province;
- (t) prescribing the required scope and content of a privacy impact assessment;
- (u) prescribing the manner in which a notice or a record shall be served or given to a person under this Act;
- (v) prescribing fees to be paid under this Act;
- (w) respecting any matter that shall be included in a notice required by this Act;
- (x) defining, enlarging or restricting the meaning of any term used in this Act but not defined in this Act;
- (y) requiring custodians to provide to the Minister information that relates to the administration of this Act;
- (z) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Idem, Part 7

- (2) The Lieutenant Governor in Council may make regulations
- (a) further defining or otherwise describing the PEI EHR;
 - (b) respecting the eligibility requirements for a custodian to become and remain an authorized custodian for the purposes of Part 7, including, without limitation, regulations respecting an authorized custodian's powers, duties and functions under Part 7 and the scope of the authorized custodian's access to prescribed personal health information by means of the PEI EHR;
 - (c) prescribing classes or types of personal health information as prescribed personal health information;
 - (d) respecting the manner in which an authorized custodian shall make prescribed personal health information in its custody or under its control accessible to authorized custodians by means of the PEI EHR;
 - (e) respecting the manner in which an authorized custodian may access prescribed personal health information by means of the PEI EHR;
 - (f) respecting additional purposes for which an authorized custodian may use prescribed personal health information;
 - (g) respecting the governance, management and structure of the PEI EHR, including, without limitation, regulations
 - (i) designating an information manager for the PEI EHR, and
 - (ii) respecting the powers, duties and functions of the information manager;
 - (h) respecting the procedures, systems and safeguards that an authorized custodian shall maintain in respect of prescribed personal health information that is accessible by means of the PEI EHR;
 - (i) respecting the means by which and manner in which an individual may request correction of the individual's personal health information that is prescribed personal health information;
 - (j) respecting the audit or monitoring of any matter related to the PEI EHR;
 - (k) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of Part 7.

Application of regulations

- (3) A regulation made under subsection (1) or (2) may be made to apply to particular classes of custodians or persons or to particular classes of personal health information.

Adoption of standard

- (4) A regulation made under subsection (1) that adopts a standard may adopt it as amended from time to time and with or without changes, and may require compliance with the standard as adopted.

Regulations for Part 7.1

- (5) The Lieutenant Governor in Council may make regulations in relation to Part 7.1
- (a) prescribing a person or organization as an authorized custodian;
 - (b) prescribing a health care provider as a dispenser for the purposes of clause 73.1(b);
 - (c) respecting the powers and duties of the manager;
 - (d) requiring specified authorized custodians to collect and record prescribed information in the DIS;



- (e) prescribing the information that shall be collected and recorded in the DIS when a drug is dispensed in a pharmacy for a patient pursuant to a prescription or when a drug of a type or class prescribed by regulation is supplied in a pharmacy for a patient without a prescription;
- (f) prescribing a type or class of drugs referred to in clause (e);
- (g) restricting the type or class of custodian who may be granted access to the DIS;
- (h) prescribing requirements a custodian shall meet to obtain or maintain access to the DIS;
- (i) providing for the suspension or revocation of a custodian's access to the DIS by the Minister;
- (j) requiring an authorized custodian to establish and maintain specified procedures, systems and safeguards to protect personal health information stored in the DIS;
- (k) respecting the audit or monitoring of any matter related to the DIS;
- (l) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of Part 7.1. 2014,c.31,s.81; 2016,c.9,s.6.

82 to 83 Consequential Amendments

(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.) 2014,c.31,s.82, 83.

REPEAL**83.1 Repeal**

The *Pharmaceutical Information Act* R.S.P.E.I. 1988, Cap. P-5.2, is repealed. 2016,c.9,s.7.