

**Notice of Minister of Health and
Long-Term Care**

NOTICE OF PROPOSED REGULATION

Personal Health Information Protection Act, 2004

The Minister of Health and Long-Term Care on behalf of the Government of Ontario invites public comments on a regulation proposed to be made under the *Personal Health Information Protection Act, 2004* ("PHIPA").

PHIPA came into force on November 1, 2004. Ontario Regulation 329/04, "General," made under PHIPA also came into force on November 1, 2004. The Government is proposing a regulation to amend Regulation 329/04. The Act requires that the Minister publish a notice of the proposed regulation and allow 60 days for public comment, after which the Minister reports to the Lieutenant Governor in Council, who may then finalize the regulation with or without changes.

Content of Proposed Regulation

The proposed regulation would make the following amendments to the existing regulation under PHIPA, Regulation 329/04:

- Permit Cancer Care Ontario to disclose personal health information about an out-of-province patient where: the information relates to health care provided to the individual in Ontario; the disclosure is for the purpose of health planning or health administration; and the disclosure is made to a body responsible for the provision, planning, analysis or payment of cancer services in the patient's province or territory.
- Include medical officers of health in the list of types of custodians referred to in subsections 20 (2) and (3) and clause 38 (1) (a) of the PHIPA.
- Prescribe additional persons for the purposes of s. clause 39(1)(c) of PHIPA, including the Children's Hospital of Eastern Ontario in respect of the Ontario Perinatal Surveillance System and the Ontario Institute for Cancer Research in respect of the Ontario Tumour Bank.
- Revoke section 25.1.

In addition, the regulation may clarify the status of specific occupational health services as "health care." The Ministry of Health and Long-Term Care is aware that there is some uncertainty about the application of PHIPA in this area. A regulation could, for example, clarify that the term "health care" in PHIPA also includes the following procedures: The act of a physician or other health care provider determining whether an individual is able to continue his or her occupational activities having regard to his or her health status, and determining whether the individual requires accommodation to do so. The Ministry is interested in receiving submissions on a regulation to this effect,

exceptions to such a regulation that should be considered, as well as on the application of PHIPA in the context of occupational health matters more generally.

Invitation to Provide Comments on Proposed Regulations

The public is invited to provide written comments on the proposed regulation over a 60-day period, commencing on **July 11, 2009 and ending on September 11, 2009.**

In providing comments, please consider whether the proposed amendments to Regulation 329/04 should be made, with or without changes. Furthermore, please consider whether any other amendment should be made to Regulation 329/04. Please be as specific as possible, and provide a full rationale for any suggested changes or additions.

Written comments may be addressed to:

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The proposed regulation set out following this notice is provided in English and French. We welcome your input in either English or French. All comments and submissions received during the comment period will be considered during final preparation of the regulation. The content, structure and form of the proposed regulation is subject to change as a result of the comment process in the discretion of the Lieutenant Governor in Council, who has the final decision on the contents of any regulation.

Information respecting the *Personal Health Information Protection Act, 2004*, Regulation 329/04, and electronic copies of this notice, including the text of the proposed regulation, may be accessed through the Ministry of Health and Long Term Care's web-site at the following address:

http://www.health.gov.on.ca/english/public/legislation/bill_31/personal_info.html.

Copies of the legislation and Regulation 329/04 are available at www.e-laws.gov.on.ca.

Please note that unless requested and agreed otherwise by the Ministry all materials or comments received from organizations in response to this Notice will be considered public information and may be used and disclosed by the Ministry to assist the Ministry in evaluating and revising the proposed regulation. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process. **An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified.** Materials or comments received from individuals who do not indicate an affiliation with an organization will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments provided by

individuals may be used and disclosed by the Ministry to assist in evaluating and revising the proposed regulation. Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be disclosed by the Ministry without the individual's consent unless required by law. If you have any questions about the collection of this information, you can contact the Freedom of Information and Privacy Coordinator of the Ministry of Health and Long-Term Care at (416) 327-7040.

**The Honourable David Caplan
Minister of Health and Long-Term Care**

PROPOSED REGULATION

made under the

PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004

Amending O. Reg. 329/04

(General)

Note: Ontario Regulation 329/04 has previously been amended. For the legislative history of the Regulation, see the Table of Consolidated Regulations – Detailed Legislative History at www.e-Laws.gov.on.ca.

1. Subsection 1 (1) of Ontario Regulation 329/04 is revoked and the following substituted:

Definitions for the purposes of the Act

(1) In the definition of “health care” in section 2 of the Act, “a procedure that is done for a health-related purpose” includes taking a donation of blood or blood products from an individual.

Note: For the purposes of this draft regulation, no revisions are proposed to subsection 1(1). However, see Minister’s Notice of Proposed Regulations for more information.

2. Section 3 of the Regulation is amended by adding the following subsection:

(2) A health information custodian described in paragraph 6 of subsection 3 (1) of the Act shall be deemed to be included in the list of types of custodians referred to in subsections 20 (2) and (3) and clause 38 (1) (a) of the Act.

3. Subsection 13 (1) of the Regulation is amended by adding the following paragraphs:

7. Children’s Hospital of Eastern Ontario in respect of the Ontario Perinatal Surveillance System.

8. Ontario Institute for Cancer Research in respect of the Ontario Tumor Bank Program.

4. Section 18 of the Regulation is amended by adding the following subsection:

(9) Despite subsection 45 (6) of the Act, Cancer Care Ontario may disclose personal health information about an individual to a person outside Ontario where,

- (a) the disclosure is for the purpose of health planning or health administration;
- (b) the information relates to health care provided in Ontario to a person who is a resident of another province or territory of Canada; and
- (c) the disclosure is made to a body responsible for the provision, planning, analysis or payment of cancer services in that province or territory.

5. Section 25.1 of the Regulation is revoked.