

## COMPENDIUM

### HEALTH INFORMATION PROTECTION ACT, 2004

#### An Act to enact and amend various Acts with respect to the protection of health information

#### BACKGROUND

Currently, in Ontario the rules concerning who may use personal health information and how are not clear. Many jurisdictions have enacted or are developing legislation to protect the privacy of individuals, and the confidentiality and security of health information.

In October 2000, a consultation paper entitled Ontario's Proposed Personal Health Information Privacy Legislation for the Health Sector (Health Sector Privacy Rules) was released for public consultation. The consultation paper was widely distributed to about 5,000 organizations and individuals across the province, inviting written submissions. Roundtable meetings were held in a number of locations across Ontario. Over 100 written submissions were received.

This consultation built on earlier consultation processes. In June 1996 a consultation paper, A Legal Framework for Health Information, was followed by regional roundtable meetings and resulted in over 100 written submissions. In November 1997, the draft Personal Health Information Protection Act, 1997 was released for public consultation. The draft act and a plain language overview were sent for review and comment to 1,000 individuals and organizations, and the overview alone to a further 4,000. Regional consultation meetings were also held across the province. Approximately 200 written submissions were received. The advice received over the course of both rounds of consultation was used to revise the draft legislation.

On December 7, 2000, the Personal Health Information Privacy Act, 2000 (Bill 159) received first reading. After the standing committee hearings, the Legislature was prorogued in March 2001 and the Bill died on the order paper.

In February 2002, the Ministry of Consumer and Business Services released draft legislation, the Privacy of Personal Information Act, for consultation. The draft legislation, prepared in consultation with the Ministry of Health and Long-Term Care, was drafted so as to apply to both the health sector and business and not-for-profit sectors outside the health sector, with separate rules for personal health information in the health sector. Legislation of this scope, however, was not introduced.

The Health Information Protection Act, 2004, consisting of the Personal Health Information Protection Act, 2004 (Schedule A) and the Quality of Care Information Protection Act, 2004 (Schedule B), provides consistent and comprehensive rules for many individuals and organizations that collect personal health information. The goals of the legislation are to protect the privacy of individuals, and the confidentiality and security of personal health information in the health sector in a manner that facilitates the effective provision of health care.

## FEATURES OF THE PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004 (SCHEDULE A)

### I. INTERPRETATION AND APPLICATION

- Purposes, Definitions and Interpretation

The Act provides rules for collecting, using, disclosing and disposing of personal health information. It requires that personal health information be kept confidential and secure. It gives people a right to access their own personal health information and to require corrections, subject to limited exceptions. It sets out who can act on another person's behalf with respect to personal health information and in what circumstances. It also establishes remedies for violations of the Act [s. 1].

The Act applies to "health information custodians". These are listed individuals or organizations that have custody or control of personal health information as a result of or in connection to their work, duties or powers [s. 3(1)]. Health information custodians include: health care practitioners; hospitals; boards of health; community health and mental health programs; community care access corporations; long-term care facilities; laboratories; ambulance services; and the Minister of Health and Long-Term Care. Consistent with other legislation such as the Regulated Health Professions Act, 1991, the Act does not apply to aboriginal healers and aboriginal midwives who provide traditional services to aboriginal persons [s. 3(4)].

"Personal health information" is defined as identifying information about an individual whether oral or recorded, if the information (a) relates to the physical or mental health of the individual, including information that consists of the individual's family health history, (b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual (c) is a plan of service within the meaning of the Long-Term Care Act, 1994 of the individual, (d) relates to payments or eligibility for health care in respect of the individual, (e) relates to the donation by the individual of any body part or bodily substance, or is derived from testing of such body part or substance, (f) is the individual's health number, or (g) identifies the individual's substitute decision-maker [s. 4(1)]. Information is "identifying" when it identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the individual [s. 4(2)].

"Personal health information" also includes other identifying information that is contained in the same record with the information described above [s. 4(3)]. Generally, "personal health information" does not include identifying information held by health information custodians as employers, i.e. personal health information relating to an employee maintained primarily for a purpose other than the provision of health care to the employee [s. 4(4)].

- Application of Act

Except if the Act or regulations provide otherwise, the Act will apply to the collection of personal health information by health information custodians after the Act comes into force, and to the use and disclosure personal health information, even if it was collected before the Act comes into force [s. 7(1)]. The Act also applies to the use and disclosure of personal health information after the Act comes into force by a person who is not a health information custodian and to whom a health information custodian disclosed the information. Finally, the Act applies to the collection use and disclosure of health numbers by any person after the Act comes into force. The Act sets out a few specific circumstances in which it does not apply [s. 9]. For example, it does not apply to personal health information about an individual after the earlier of 120 years after the record was created, or 50 years after the death of the individual [s. 9(1)]. The Act makes it clear that it must not be construed to interfere with such legal rules as the law of evidence, and solicitor-client privilege [s. 9(2)].

In the event of a conflict between a provision of the Act or its regulations and a provision of any other Act or its regulations, this Act and the regulations prevail unless the Act, its regulations or another Act specifically provides otherwise [s. 7(2)]. The Quality of Care Information Protection Act, 2004, for example, prevails over the Act [s. 7(4)].

## II. PRACTICES TO PROTECT PERSONAL HEALTH INFORMATION

- General

The Act requires health information custodians to have and comply with information practices made in accordance with the requirements of the Act [s. 10(1), (2)]. Information practices are policies of the custodian setting out how it routinely collects, uses, modifies, discloses, retains or disposes of personal health information, and the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information [s. 2]. A health information custodian is required to comply with any requirements in the regulations when using electronic means to collect, use, disclose, or dispose of personal health information [s. 10(3)]. A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information is also required to comply with any requirements in the regulations [s. 10(4)]. Health information custodians must take reasonable steps to ensure a level of accuracy when using and disclosing information [s. 11]. The Act requires health information custodians to take steps to ensure information in their custody is protected against unauthorized use and disclosure [s. 12(1)]. Subject to limited exceptions, a health information custodian is required to notify an individual at the first reasonable opportunity if personal health information of the individual held by the custodian is stolen, lost, or accessed by unauthorized persons [s. 12(2)].

- Records

Health information custodians are required to ensure that the records of personal health information that they have in their custody or under their control are retained, transferred and disposed of in a secure manner and in accordance with the regulations

[s. 13]. Generally, the Act authorizes the keeping of records in the home of the individual to whom it relates, and other places not in the control of the individual, where done in a reasonable manner with the consent of the individual [s. 14].

- Accountability and Openness

A health information custodian must designate a contact person to help ensure compliance with the legislation, to respond to inquiries about information practices, and to receive complaints from the public. A custodian who is a natural person without agents performs these functions himself or herself [s. 15].

In addition, custodians will be required to set out their information practices in writing, and to make this information available to the public. The statement must also include details about how an individual may request access to and correction of the individual's record of personal health information held by the custodian, and information on how to lodge a complaint about matters under the legislation [s. 16].

If a health information custodian uses or discloses personal health information about an individual without the individual's consent in a manner that is outside the scope of the custodian's description of its information practices, the custodian is required to make a note of such uses and disclosures, inform the individual of the use or disclosure, as the case may be at the first reasonable opportunity. The custodian must keep the note as part of the records about the individual or in a form that is linked to those records [s. 16].

The Act sets out the responsibilities of a custodian with respect to employees and other "agents" who act for or on behalf of a custodian, such as volunteers, in addition to restrictions on the actions of such agents. A health information custodian may only authorize an agent to collect, use, disclose or retain personal health information if the custodian has that authority under the Act. An agent may not exceed the authority given by the custodian [s. 17].

### **III. CONSENT CONCERNING PERSONAL HEALTH INFORMATION**

- General

Where a person's consent is required under the Act or any other Act for collecting, using or disclosing personal health information, it must be knowledgeable, relate to the information, and not be obtained through deception or coercion [s. 18(1)]. A consent is knowledgeable if it is reasonable to believe in the circumstances that the individual knows the purposes of the collection, use or disclosure, as the case may be, and that the individual may provide or withhold the consent [s. 18(4)]. Consent may be express or implied [s. 18(2)], however a consent to the disclosure of personal health information about an individual by a health information custodian to a person who is not a health information custodian must be express. Similarly, consent must be express where information is disclosed by a health information custodian to another health information custodian, if this is done for a purpose other than providing health care or assisting in providing health care [s. 18(3)].

A consent may be withdrawn by the individual who gave it at any time by providing notice to the health information custodian [s. 19]. A health information custodian who receives a consent to a collection, use or disclosure of personal health information about an individual that the individual gives is entitled to assume that the consent fulfills the requirements set out in the Act unless it is not reasonable to assume so. A health information custodian who receives personal health information about an individual from the individual, the individual's substitute decision maker, or another health information custodian for the purposes of providing health care can assume that the individual implies consent to collect, use and disclose the information as necessary for that purpose, unless the individual has expressly withheld or withdrawn the consent. If a health information custodian discloses, with the consent of an individual, personal health information about the individual to a health information custodian for the purpose of the provision of health care and the disclosing custodian does not have the consent of an individual to disclose all the personal health information about the individual that it considers reasonably necessary for that purpose, the disclosing custodian must notify the receiving custodian of that fact [s. 20].

- Capacity and Substitute Decision-Making

The Act sets out a framework for making decisions about the collection, use and disclosure of personal health information on behalf of people who are not mentally capable of making their own decisions and for people who have died. In addition, the Act allows a capable person to authorize an individual in writing to make information decisions on his or her behalf. An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able to understand the information that is relevant to decision of whether to consent to the collection, use or disclosure, as the case may be, and appreciate the reasonably foreseeable consequences of giving, not giving or withholding the consent [s. 21(1)].

The Act allows a person who is determined to be mentally incapable of making decisions about his or her personal health information to apply to the Consent and Capacity Board (established under the Health Care Consent Act, 1996) for a review of the determination [s. 22(2)]. The Board also has the authority to appoint a representative to make decisions about an incapable person's personal health information on his or her behalf. An application can be made either by the incapable person or the person wishing to become the representative.

There is a list of substitute decision makers ranked according to priority (guardian of the person or property; attorney for personal care or property; representative appointed by the Consent and Capacity Board; spouse or partner, which are defined terms; child or parent; brother or sister; any other relative; Public Guardian and Trustee as last resort) [ss. 23, 25]. A substitute decision-maker of an individual under the Health Care Consent Act, 1996 is deemed to be a substitute decision-maker of the individual in respect of the collection, use and disclosure of personal health information about the individual if the collection, use or disclosure is ancillary to a decision under that Act [s. 5].

Where a child is less than 16 years of age, a parent of the child or another person who is lawfully entitled to give or refuse consent in place of the parent may give, withhold or withdraw consent or provide the information except where the information relates to treatment about which the child has made a decision on his/her own behalf or

counselling in which the child has participated on his/her own under the Child and Family Services Act [s. 23].

A substitute decision-maker who is authorized to make decisions about the collection, use and disclosure of personal health information on behalf of an incapable individual is authorized to make a request, give an instruction or take a step on behalf of the individual where the Act permits or requires an individual to take a step, for example requesting access to a record of personal health information on behalf of the individual [s. 25].

#### **IV. COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION**

- General Limitations and Requirements

A health information custodian shall not collect or use personal health information about an individual unless it has the individual's consent under the Act and the collection or use, as the case may be, is for a lawful purpose, or if the Act permits or requires the collection or use. A health information custodian must not disclose personal health information about an individual unless it has the consent of the individual or the disclosure is permitted or required under the Act [s. 29]. Personal health information must not be collected, used or disclosed if other information can serve the purpose [s. 30(1)]. If personal health information is needed, no more information than is reasonably necessary to meet the purpose can be collected, used or disclosed [s. 30(2)].

Health information custodians may collect, use or disclose personal health information about an individual for the purpose of fundraising activities with the express consent of the individual or if the individual consents by way of an implied consent and the information consists only of the individual's name and limited types of contact information, as described in the regulations [s. 32]. Health information custodians can only collect, use and disclose personal health information about an individual for the purpose of marketing with the individual's express consent and in accordance with any prescribed requirements and restrictions [s. 33].

The Act repeals the Health Cards Numbers and Control Act, 1991, as its provisions are incorporated into the Act, with some changes [s. 34]. This Act allows custodians to collect, use and disclose the health number under the rules of the Act but forbids or restricts its collection, use or disclosure by others [s. 34].

Health information custodians are prohibited from charging fees in an amount that exceeds the amount set out in regulations or the amount of a reasonable cost recovery fee, if there is no amount set out in regulations, when disclosing personal health information. Custodians may not charge fees for collections and uses of personal health information except as set out in the regulations [s. 35].

- Collection

Information may be collected indirectly without the consent of individual in certain circumstances. These circumstances include: where it is not reasonably possible to

collect the information from the individual in a timely manner and the information to be collected is reasonably necessary for the provision of healthcare to the individual; where it is not reasonably possible to rely on the information from the individual as accurate and the information to be collected is reasonably necessary for the provision of health care; where the Information and Privacy Commissioner authorizes another manner of collection; and where another Act permits the health information custodian to collect the information indirectly [s. 36].

- Use

Consent is needed to use information for purposes that are not listed in the exemptions to the requirement for consent. A health information custodian may use personal health information about the individual for the purposes for which the information was collected or created, except in limited circumstances where the individual can expressly instruct otherwise. A custodian may also use personal health information where it is used for planning or delivering programs of a custodian, and detecting or preventing fraud related to them, where it is used for risk and error management or for research where certain requirements are met. Consent is also not required where the information is used for a purpose for which the Act or another Act of Ontario or Canada permits or requires a person to disclose it to the custodian, and where the information is used for the purpose of processing, monitoring, and reimbursing claims for payment under an Act or program administered by the Minister of Health and Long-Term Care [s. 37].

- Disclosure

Consent is needed to disclose information for purposes that are not listed in the exemptions to the requirement for consent. It is important to note that the provisions of the Act that permit health information custodians to disclose personal health information without the consent of the individual to whom it relates do not require custodians to disclose the information; that is, custodians may exercise their discretion and are not mandated to disclose in these circumstances [s. 6(3)]. The discretionary status of a disclosure under the Act, however, does not excuse health information custodians from complying with any applicable legal requirement for disclosure. Existing required disclosures, as set out in other Acts, continue [ss. 43(1)(h), 6(3)].

Health information custodians may disclose information to a health care provider if the disclosure is reasonably necessary for the provision of health care and it is not reasonably possible to obtain the individual's consent in a timely manner, except where the individual has expressly instructed the custodian not to make the disclosure. Health information custodians who do not disclose information due to such an instruction must note the fact that information has been withheld from disclosure to the recipient custodian [s. 38].

The Act builds on existing laws that allow disclosure of personal health information without consent in certain circumstances. These exceptions are set out in the Act. They include disclosure for the purpose of determining or verifying eligibility of the individual to receive health care benefits; disclosure to a medical officer of health for a purpose of the Health Protection and Promotion Act; and disclosure where the disclosure necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to an individual [ss. 39, 40].

Personal health information can also be disclosed without consent if permitted or required by law. This provision continues to allow, for example, reporting of suspected child abuse under the Child and Family Services Act, and required reporting of information to the Workplace Safety and Insurance Board under the Workplace Safety and Insurance Act, 1997 [s. 43(1)].

Personal health information may be disclosed to a researcher for the purpose of research if certain conditions are met. Generally, a health information custodian may disclose personal health information to a researcher if a research ethics board that meets the requirements set out in the regulations has approved the researcher's research plan. The research ethics board determines, among other things, whether the objectives of the research can be accomplished without using the personal health information that is to be disclosed. The custodian and researcher must enter into an agreement before the disclosure of the personal health information in which the researcher agrees to comply with the conditions that the custodian imposes relating to the use, security, and disposal of the information [s. 44].

A health information custodian may disclose personal health information to entities prescribed by the regulations for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for the health system [s. 45(1)]. The prescribed entities must have in place practices and procedures to protect the privacy of individual's whose personal health information they receive and the Information and Privacy Commissioner must have approved the practices and procedures, if the information is disclosed after October 31, 2005 [s. 45(3)].

As a custodian, the Minister of Health and Long-Term Care is subject to the same rules as the other custodians under the Act. However, the Act includes some provisions permitting disclosures of personal health information without consent in order to permit him or her to fulfil his or her responsibilities. For example, a health information custodian is required, upon the request of the Minister of Health and Long-Term Care, to disclose to the Minister personal health information about an individual for the purpose of monitoring or verifying claims for payment for health care funded in whole or in part by the Ministry or for goods used for that health care [s. 46].

The Act also includes rules with which the Minister of Health and Long-Term Care must comply when requiring health information custodians to disclose health information for the purposes of analysis with respect to the management, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health system. The Act authorizes the Minister to direct health information custodians to disclose personal health information to a secure health data institute for such purposes. Before requiring a custodian to disclose personal health information to the health data institute, the Minister must provide a comprehensive proposal for review and comment to the Information and Privacy Commissioner. The health data institute would release only non-identifying information to the Ministry, unless a disclosure of personal health information is approved by the Information and Privacy Commissioner as a disclosure in the public interest. The Minister may approve a health data institute if it fulfils certain requirements, including if the corporate objects of the institute include performing data analysis of personal health information, linking the information with other information and de-identifying the information for the Minister. A health data institute must have in place practices and procedures approved by the Information and Privacy Commissioner to protect the privacy of individuals whose personal health information it receives [ss. 47, 48].

Except as permitted or required by law, a person who is not a health information custodian and who receives personal health information from a custodian cannot use or disclose that information for any purpose other than the purpose for which the custodian disclosed the information under the Act, or for the purpose of carrying out a legal duty. A health information custodian receiving health information about its employee from another custodian for a purpose other than the provision of health care to the employee is bound by the same rule. Institutions within the meaning of the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act may continue to use and disclose information as permitted by the applicable one of those Acts [s. 49].

The Act includes rules on disclosure of certain personal health information by custodians outside Ontario. A health information custodian that has collected personal health information in Ontario may disclose the information outside Ontario where the disclosure is reasonably necessary for the provision of health care, subject to the patient's instructions otherwise, or for certain other purposes analogous to certain disclosures permitted under the Act within Ontario, e.g. for child protection [s. 50].

## **V. ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION**

- Access

Subject to limited exceptions, an individual may access his or her record of personal health information held by a health information custodian [s. 52]. Some exceptions include where granting access could reasonably be expected to result in a risk of serious harm to the treatment or recovery of the individual and where the individual's access to the record is prohibited by law. The Act sets out the process for obtaining access to one's record pursuant to a written request by the individual [s. 53]. A health information custodian must respond to an individual's access request within 30 days of receipt of the request [s. 54], unless that time is extended by up to 30 days. Expedited

access is required where the individual satisfies the custodian, acting reasonably, that access is urgently required within a shorter time period, where the custodian is reasonably able to meet that shorter time frame [s.54(5)]. Nothing in this Act restricts the normal communication between a health information custodian and an individual with respect to personal health information about the individual held by the custodian [s. 52(6)].

A health information custodian may charge the individual seeking access a fee in an amount set out in regulations or a reasonable cost recovery fee for that purpose [s. 54(10)].

If a health information custodian refuses an access request in whole or in part, the individual is entitled to make a complaint to the Information and Privacy Commissioner [s. 54(8)].

- Correction

An individual may request that a custodian correct his or her personal health information where he or she has been granted access to the record and believes the record is inaccurate or incomplete [s. 55(1)]. The Act sets out the process for requesting a correction to one's record pursuant to a written request by the individual [s. 55].

A health information custodian is required to grant a request for a correction if the individual demonstrates to the satisfaction of the custodian that the record is incomplete or inaccurate and gives the custodian the information necessary to enable the custodian to correct the record [s. 55(8)]. Health information custodians, however, are not required to correct a record of personal health information that consist of a record that was not originally created by the custodian and the custodian does not have the sufficient, knowledge, expertise and authority to correct the record, or consists of a professional opinion that a custodian made in a good faith about the individual [s. 55(9)].

The custodian has a duty to either correct the information as requested by the individual, or permit the individual to prepare a statement of disagreement for the purpose of attaching it to the record [s. 55(10), (11)]. A custodian who corrects a record or who attaches a statement of disagreement to the record, at the individual's request must notify persons to whom the record was previously disclosed, except where the correction would not affect the provision of health care or other benefits. An individual may complain to the Information and Privacy Commissioner about a health information custodian's refusal to correct a record [s. 55(12)].

## **VI. ADMINISTRATION AND ENFORCEMENT**

The oversight body for the Act is the Information and Privacy Commissioner. The Information and Privacy Commissioner may delegate his or her powers and duties to the Assistant Commissioner for Personal Health Information or to an officer or employee of the Commissioner [s. 67].

A person who has reasonable grounds to believe that another person has contravened a provision of the Act may make a complaint in writing to the Commissioner [s. 56(1)]. Upon receiving a complaint, the Commissioner may take various steps, including

authorizing a mediator to review the complaint to try to effect a settlement between the complainant and the person about whom the complaint is made [s. 57(1)]. The Commissioner may also review the subject-matter of the complaint if satisfied that there are reasonable grounds to do so [s. 57(3)].

In other instances, the Commissioner may, on his or her own initiative, review any matter if he or she has reasonable grounds to believe that a person has contravened a provision of the Act [s. 58].

In conducting a review in which the Commissioner believes that entry to premises is necessary in connection with the review of the complaint, and the Commissioner does not have reasonable grounds to believe an offence has been committed, the Commissioner may, without warrant or court order, enter and inspect the premises [s. 60]. In connection with a review, the Commissioner may, where necessary, require that evidence be given under oath, demand the production of documents or inquire into information and information practices of a health information custodian. Before entering a dwelling, the Commissioner requires the consent of the occupier or a search warrant [s. 60(3)]. Before inquiring into records of personal health information without the consent of the individual to whom the information relates, the Commissioner is required to determine that it is reasonably necessary to do so in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances, subject to any conditions and restrictions that the Commissioner specifies. In addition, the Commissioner is required to provide a statement to that effect to the person who has custody or control of the record together with short written reasons [s. 60(13)].

The Commissioner may make orders to require compliance with the Act [s. 61(1)]. For example, the Commissioner may make orders directing any person whose activities the Commissioner has reviewed to perform a duty imposed by the Act, directing the health information custodian to grant an individual access to a requested record, and directing a health information custodian to implement an information practice specified by the Commissioner. The Commissioner has the power to vary an order [s.64].

When the Commissioner makes an order, apart from an order relating to complaints under Part V (Access and Correction), a person affected by the order may appeal to the Divisional Court on a question of law within 30 days [s.62].

When the Commissioner makes an order, an individual affected by the order may bring an action in the Superior Court of Justice for damages for actual harm suffered as a result of a contravention by a health information custodian of obligations under the Act [s. 65(1)]. Where the harm suffered was caused by a contravention that the health information custodian engaged in willfully or recklessly, the compensation may include an award not exceeding \$10,000 for mental anguish, as in the Human Rights Code [s. 65(3)].

In addition to the power to make orders, the Commissioner has some more general powers [s. 66]. The Commissioner, for example, has the power to conduct public education programs, and offer comment on the information practices of custodians.

## VII. GENERAL

Persons who, in good faith and on the basis of reasonable belief, complain or provided information about another person's contravention of the Act to the Information and Privacy Commissioner, or who otherwise seek to comply with or stop a contravention of the Act are protected from retaliation such as dismissal, suspension, demotion, and harrassment or other disadvantage [s. 70].

The Act provides protection from liability to health information custodians and their agents, and for substitute decision makers, for acts and omissions in good faith and reasonably in the circumstances in the exercise of powers or duties under the Act [s. 71].

Contraventions of various parts of the Act constitute offences [s. 72(1)]. Offences under the Act include: wilfully collecting, using or disclosing personal health information in contravention of the Act; knowingly making false statements to the Information and Privacy Commissioner; making a request for access to a record under false pretences; wilfully failing to comply with an order of the Commissioner; and disposing of a record in an attempt to avoid complying with an access request. Offences under the Act can result in fines of up to \$50,000 for individuals and up to \$250,000 for corporations [s. 72(2)].

The Act sets out regulation-making powers including regulations specifying: additional requirements with respect to the collection, use or disclosure of any class of personal health information; requirements governing the retention and disposal of personal health information; requirements with respect to information practices; requirements for collections, uses and disclosures of information in electronic form; and other matters necessary to carry out the purpose of the Act [s. 73]. Before making any such regulations, the Lieutenant Governor in Council is required to comply with the public consultation process set out in the Act [s. 74]. This process includes the notice in the Ontario Gazette of a proposed regulation and an opportunity to make submissions on the proposed regulation. The Lieutenant Governor in Council is not required to follow the open regulation making process initially in certain circumstances, such as where the urgency of the situation requires it. Regulations made under those circumstances are temporary regulations that lapse after a maximum of two years.

A committee of the Legislative Assembly must begin a review of the Act no later than three years after it comes into force and must make recommendations to the Assembly within one year of beginning the review [s. 75].

## VIII. COMPLEMENTARY AMENDMENTS

Some Acts require amendment, as their provisions are being incorporated into the Act or are no longer needed as a result of this Act. For example, the provisions of the Mental Health Act that deal with the disclosure of and access to clinical records and of the Long-Term Care Act that deal with disclosure of and access to personal records are being repealed. The Freedom of Information and Protection of Privacy Act is amended to make reference to the Assistant Commissioner for Personal Health Information, and to require the reporting of certain matters in respect of the Personal Health Information Protection Act, 2004. The Ambulance Act is amended to provide a set of rules

concerning the disclosures of personal health information to and by such persons as operators of ambulance services, base hospitals, and municipalities, as such disclosures are necessary for such activities as the provision, management and regulation of ambulance services. Other Acts require amendment to ensure that the provisions found in those Acts apply despite the provisions of the Act. For example, the Drug and Pharmacies Regulation Act is being amended by adding a provision to ensure that section 157 of that Act, which provides that a person who has a prescription filled is entitled to a copy of the prescription, will continue to apply, despite anything to the contrary in the Act. An amendment to the Health Protection and Promotion Act provides that the reporting obligations of the medical officer of health under section 11 of that Act will continue to apply despite anything to the contrary in the Act.

## **IX. COMMENCEMENT AND SHORT TITLE**

The Act comes into force on November 1, 2004. The short title of the Act is the Personal Health Information Protection Act, 2004.

## **FEATURES OF THE QUALITY OF CARE INFORMATION PROTECTION ACT, 2004 (Schedule B)**

The Quality of Care Information Protection Act, 2004 includes provisions dealing with information collected by or prepared for a quality of care committee established by a health facility, including a hospital, or other entity prescribed by the regulations, or by an 'umbrella' body. Quality of care committees must meet the prescribed requirements and carry on activities for the purpose of studying, assessing or evaluating the provision of health care with a view to further improving the quality of health care or competence of persons who provide health care [s.1].

The Act prohibits the disclosure of quality of care information, a defined term under the Act, except in limited circumstances. Quality of care information includes information collected by or prepared for such a committee solely or primarily for quality of care purposes. Certain information is excluded from the definition of quality of care information, such as information contained in a record that a health facility maintains for the purpose of providing health care, and facts relating to incidents unless also contained in health care records that are not protected under this Act [s.1]. The Act prohibits the disclosure of quality of care information in proceedings [s. 5]. The term "proceeding" is defined and includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, or a committee of a College within the meaning of the Regulated Health Professions Act, 1991 or within the meaning of the Social Work and Social Service Work Act, 1998 [s. 1]. Disclosures outside proceedings are permitted within the facility for the purpose of improving care, and for the purpose of avoiding a significant risk of serious bodily harm to any person [s. 3, 4]. It is an offence under the Act to disclose quality of care information in contravention of the Act [s. 7]. This approach reflects the public interest in promoting thorough reviews of patient care. The Act provides for an open regulation making process similar to that set out in the Personal Health Information Protection Act, 2004 (Schedule A) [s. 10]. The Act also amends Schedule 2 to the Regulated Health Professions Act, 1991 to provide comparable protection in respect of quality assurance information collected by a

College's Quality Assurance Committee. The Act comes into force on November 1, 2004 [s. 11].