

Changes to Ontario's Personal Health Information Protection Act: Clarity for Health Teams?

April 21, 2022

On April 14, 2022, Ontario's Bill 106, *Pandemic and Emergency Preparedness Act, 2022* (Bill 106) received royal assent. According to the Government of Ontario, the purpose of Bill 106 is to "prepare Ontario for future pandemics and threats". Bill 106 seeks to accomplish its stated objective, in part, by introducing changes to Ontario's [*Personal Health Information Protection Act, 2004*](#) (PHIPA) that will facilitate the sharing of personal health information in electronic and other formats.

Background

PHIPA governs the collection, use and disclosure of personal health information within the provincial health sector, including by health information custodians, individuals, and organizations that receive personal health information from custodians. PHIPA also provides individuals with rights that relate to their personal health information, including the right to access a copy of the individuals' personal health information that is in the custody or under the control of a custodian (subject to limited exceptions).

Summary of PHIPA changes

Key changes to PHIPA:

- **Alternative formats for electronic records:** PHIPA's existing individual right of access provisions expressly include the right of an individual to access a record of personal health information in an electronic format that meets the prescribed requirements and restrictions (none of which were prescribed as of the date of this bulletin). **Bill 106 will amend PHIPA to permit Ontario Health (the Agency) to specify electronic formats for providing access, including requirements, conditions, restrictions or exceptions that the Agency may impose in its discretion.**
- **New regulations for Ontario Health Teams:** In 2019, the Government of Ontario sought to revolutionize provincial health care delivery by introducing Ontario Health Teams – groups of health care providers and organizations

specifically authorized by the Ministry of Health and Long-Term Care (the Ministry) to be clinically and fiscally accountable for delivering a full and coordinated continuum of care to a defined geographic population. **Bill 106 will amend PHIPA to provide the Ministry with new powers to enact regulations regarding the collection, use, and disclosure of personal health information by Ontario Health Teams.** Bill 106 contemplates that the Ministry's regulations, once enacted, will enhance the ability of Ontario Health Teams to handle personal health information and thereby help Ontario Health Teams to plan, implement and improve the delivery of health care.

Takeaway

Health information custodians and other persons subject to PHIPA should pay attention to new regulations promulgated under PHIPA.

The new regulation-making powers in respect of Ontario Health Teams are particularly interesting. Currently, PHIPA permits health information custodians in an Ontario Health Team to disclose personal health information to each other based on implied consent under PHIPA's "circle of care" provisions. Because the circle of care applies only to health information custodians, Ontario Health Teams members that are not health information custodians (such as community housing providers) face issues with participating in the circle of care. New regulations might provide welcome clarity for information sharing among all members of Ontario Health Team members.

For questions about the proposed changes to Bill 106, please reach out to any of the authors or key contacts listed below.

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