



## **Personal Health Information Act (PHIA) Legislative Review**

### **Submitted By:**

**Labrador-Grenfell Health Regional Health Authority**

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***Note: Labrador-Grenfell Health collaborated with Western Health in the development of this document, although individual RHA submissions are being made for purposes of this review.***

### **Background**

Labrador-Grenfell Health covers the communities in all of Labrador as well those north of Bartlett's Harbour on the Northern Peninsula. L-G Health provides quality health and community services throughout twenty-two facilities which includes three hospitals, three community health centers, fourteen community clinics and two long-term care facilities. In collaboration with the Nunatsiavut Department of Health Development, two Innu Band Council, NunatuKavuk, Health Canada and Private practitioners, L-G Health provides health programs to meet the health needs of residents in the Aboriginal communities.

### **Strengths associated with PHIA**

Although this document will outline certain areas where the *Personal Health Information Act (PHIA)* may be strengthened, this Act has certainly provided guidance to Labrador-Grenfell Health as a custodian of personal health information (PHI) regarding the appropriate collection, use and disclosure of PHI for health care and other related purposes. The PHIA provides individuals with information around their right to access, correct and place limitations on access to their own PHI. Although the latter of these had proven challenging at times (i.e. current limitations of electronic systems), these elements of the PHIA can certainly be considered empowering for clients of health care custodians in relation to the collection, use and disclosure of his/her PHI.

Labrador-Grenfell Health has created many policies procedures in relation to privacy, disclosure and access to PHI based on the PHIA and in doing so, believes it has fostered continued growth of a “privacy culture” throughout the organization.

### **Issues and Challenges Associated with the Personal Health Information Act (PHIA)**

#### **1. Lack of clarity of the term “spouse”:**

Throughout the PHIA the term “spouse” is referenced, however a definition is not provided to support the NL interpretation of who would be considered a person’s spouse. The definition may therefore be left to interpretation regarding who may act in this capacity.

#### **Suggested Resolution:**

Include definition of “spouse” in Section 2 of the PHIA. For example, Human Resource Secretariat of NL defines spouse as *“employee’s husband or wide, including a common law or same sex partner with whom the employee has lived with for more than one year.”*

#### **2. Lack of clarity of the term “minor”:**

Section 7(d) of PHIA states, *“A right or power of an individual under this Act or the regulations may be exercised by the parent or guardian of a **minor** where, in the opinion of the custodian, the minor does not understand the nature of the right or power and the consequences of exercising the right or power.”* However, the PHIA does not give a definition of the term “minor.”

#### **Suggested Resolution:**

Define the term “minor” by age in Section 2 of the PHIA and/or include wording similar to that of the Advanced Health Care Directive Act or the Children and Youth Care and Protection Act regarding persons who between the ages of 16-18.

#### **3. Regional Health Authorities not named in Section 24(2)**

Regional Health Authorities (RHAs) were not specifically named in Section 24(2) of PHIA. Although RHAs might be considered as included in the sub definition 4(g), being “persons” who operate health care facilities, naming them outright would provide more clarity.

#### **Suggested Resolution:**

Although the current wording has not interrupted RHAs regarding the use and disclosure of PHI “...for the purpose of providing health care and to assume the individual's continuing implied consent to use or disclose the information to another custodian or person for the purpose of providing health care...” as relying on their inclusion under sub definition 4(g), adding 4 (a), being “an authority” to Section 24(2) of PHIA, would make the inclusion of the RHAs more clear in this Section of the legislation.

#### **4. Students in a course of study:**

Section 3 of the Personal Health Information Regulations states “Where a custodian has entered into an affiliation agreement to provide instruction to a student or other person in his or her course of study to become a **health care provider** or a **health care professional**, that instruction is a health care service within the meaning of paragraph 2(1)(h)(viii) of the Act.” It has been noted that there are also students enrolled in studies related to supportive services functions (i.e. clerical support) that complete work placements in the RHAs. As these students are not considered health care providers or health care professionals under the definitions provided in the PHIA, this instruction does not appear to be viewed as a “health care service” under the current definition and may therefore be a limitation as it relates to his/her access to personal health information during their course of study.

#### Suggested Resolution:

Broaden Section 3 of the *PHIA Regulations* to include students who provide supportive services in the health care setting.

#### **5. Material Breach:**

Section 5 of the *PHIA Regulations* lists the factors that are “...relevant to determining what constitutes a material breach for the Purposes of Subsection 15(4) in the Act” and section 15(4) of *PHIA* provides direction that where a custodian reasonably believes that there has been a material breach as defined in the regulations involving the unauthorized collection, use, or disclosure of personal health information, that custodian shall inform the commissioner of the breach. However, the factors identified in Section 5 of the *PHIA Regulations* that would constitute a material breach and requiring notification to the commissioner are quite broad and therefore, open to a great deal of interpretation and possible disparity across the province as it relates to the notification requirement.

#### Suggested Resolution:

Provide more clarity on the definition of “material breach” as outlined in Section 5 of the *PHIA Regulations*.

## 6. Personal Representative of Deceased Individuals:

Section 7(e) of the *PHIA* states “*where the individual is deceased, by the individual’s personal representative or, where there is no personal representative, by the deceased’s nearest relative, and for this purpose, the identity of the nearest relative may be determined by reference to section 10 of the Advance Health Care Directives Act;*” Section 38 lists instances where “*A custodian may disclose personal health information about an individual who is deceased or presumed to be deceased without the consent of the individual who is the subject of the information*”.

Sections 7(e) and 38 of *PHIA* address the disclosure of information of deceased individuals, although Section 38 seems to specify more limited the circumstances in which information may be disclosed. Clarification is required with respect to these how these two sections work together to provide greater clarity regarding the disclosure of such information.

Suggested Resolution:

Recommend further review of Sections 7(e) and 38 of the *PHIA* to ensure that they do not lead to an interpretation whereby information is inappropriately disclosed or withheld.

## 7. Clarification of the terms “representative” and “personal representative:”

Section 38(c) makes reference to the “personal representative of the deceased” as opposed to the term “representative.” The question is whether the addition of the word “personal” to 38(c) changes the definition of the term “representative”. If so, a definition of personal representative should be added to section 2 of *PHIA*. On a related note,

Suggested Resolution:

Broaden the language of section 2 of *PHIA* to include a definition of the term “personal representative” or otherwise, use the term “representative” consistently throughout the legislation.