



NEWFOUNDLAND AND LABRADOR
MEDICAL ASSOCIATION

January 20, 2017

Dr. David Morgan
Chairperson
PHIA Review Committee
Department of Health and Community Services
Confederation Building
St. John's, NL A1B 4J6
phiareview@gov.nl.ca

Dear Dr. Morgan:

Subject:

The Newfoundland and Labrador Medical Association (NLMA) thanks the Personal Health Information Act (PHIA) Review Committee for the opportunity to comment on PHIA during this review period.

The NLMA is the voice of organized medicine in Newfoundland and Labrador, Canada. A division of the Canadian Medical Association (CMA), the NLMA is a non-profit professional organization funded primarily by its members. The Association represents the views of the physicians of the province with governments, the media and the general public. It also advocates on behalf of all patients for a fair and equitable health care system in Newfoundland and Labrador, and Canada.

The NLMA represents over 1300 practicing physicians, including 700 fee-for-service physicians, which is the single largest group designated as custodians under PHIA. Membership also includes approximately 600 salaried and alternatively funded physicians, and students and residents enrolled at Memorial University. As a group, physicians play a lead role in the collection, use, disclosure and protection of the personal health information of the residents of Newfoundland and Labrador. A survey of patients conducted by the NLMA in 2016 found that 91% had a family doctor. In a Canadian Institute of Health Information survey 82% responded that they received care from a physician in an office, clinic, or practice. Almost all of these encounters would involve a physician who is a custodian.

In 2016, the NLMA conducted two initiatives that have informed this submission to the Review Committee. In March 2016, the NLMA, through consultation with its physician community and patients, submitted a series of recommendations to the provincial government regarding health system sustainability. Two of the areas of recommendations were in the areas of technology adoption and expansion, and coordination of services. In November 2016, the NLMA hosted a forum entitled, "Do We Need a Health Services Review? A Forum on the Need to Review Health Facilities and Services in Newfoundland and Labrador." The report from this forum was submitted to the Minister in January 2017.

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*Representing and supporting a united medical profession and providing leadership
in the provision of excellent health care in Newfoundland and Labrador*

In general, the NLMA does not see the need for any significant changes to PHIA, but would like to take this opportunity to focus on a few areas of interest to physicians.

Circle of Care

A clear understanding of the circle of care is essential for strong coordination of services to patients.

Section 24 of PHIA allows for the use of implied consent within the circle of care when providing health care or assisting in the provision of health care. Subsection 3 defines the expression “circle of care”. This definition should be included in Section 2 of PHIA. Circle of care has come to be one of the foundations of the Act to allow for the sharing of personal health information among health care professionals and providers.

In addition to including “circle of care” in the Interpretation section of the Act, the definition of circle of care should also be clarified. There has been inconsistent interpretation and application of the circle of care among custodians and non-custodians that has hindered the appropriate sharing of personal health information with physicians for patient care.

From the NLMA consultations in 2016 it was found that patients often found their care was disjointed. Inadequate care continuity was attributed to silos that have been created between disciplines and programs, which impedes the ability to provide patient-centred care. The use of the provincial Electronic Health Record can contribute to reducing these silos but what is required is a clear definition of the circle of care that is agreed amongst all custodians and applied consistently in all situations. Physicians should not have to face difficulties in collecting personal health information from another custodian so that timely care is provided to patients.

The definition of circle of care should be expanded to include the family physician as a permanent member unless the patient expresses that personal health information should not be shared with the family physician.

Recommendations for Circle of Care

1. The definition of circle of care should be included in section 2 of PHIA.
2. The definition of circle of care should be amended to include the family physician as a permanent member of the circle of care unless the patient expresses otherwise.
3. A consistent interpretation and use of the circle of care and communication on this definition to all custodians and their employees

Agent

“Agent” is another term that has caused some problems for physicians. Physicians in the community settings often have residents or students work with them. There is not a clear understanding that while the resident or student is using personal health information at a physician’s practice, the physician is accountable and the student is an agent of the physician

and must adhere to the physician's policies and procedures. This is in addition to any policies and procedures the Medical School requires the resident or student to adhere to. This interpretation of agent has not been clearly and consistently communicated from the Department of Health and Community Services (HCS) or the Medical School to the physician, resident or student.

Recommendation for Agent

4. A consistent interpretation and use of "agent" and communication on this definition to all custodians.

Consent Directives

Physicians are concerned that consent directives given by patients, and recorded in the information system originally used to collect the personal health information, are not being communicated to other information systems into which the personal health information might flow. For example, a consent directive in the Pharmacy Network is not communicated to the patient record in the EMR when the physician collects it from the EHR. The NLMA would like to see further discussions on consent directives by all custodians contributing personal health information to the EHR to allow for better patient control over their own personal health information.

Recommendation for Consent Directives

5. All custodians should be involved in further discussion on the use consent directives in information systems.

Reforming the health care system

The NLMA has strong support from its members to advocate with the Government of Newfoundland and Labrador for reforms to the health system. A clear message from the November 2016 forum was that the provincial health system must embrace a fundamental shift from an acute to a community-based model of care. This shift must include the adoption of a technology strategy. The NLMA is concerned that the interpretation and implementation of PHIA not hinder reforms in the health system unnecessarily. In particular, physicians are concerned that the interpretation and implementation of Section 15 must not place information protections that make it impossible to modernize the health system.

Through the NLMA consultations it was determined that patients are generally comfortable – 71% – using telehealth as a way to have access to their doctors for some types of appointments. The two most preferred technologies are telephone and video-conferencing. Telehealth, remote patient monitoring and other e-health solutions are identified as underutilized services that could result in system savings and improved access to care, especially for patients who must travel to access care.

Any concerted strategy to put technology to work in support of patients and efficient care must include new approaches to what is considered best practices for the protection of personal health information using information technology. For example:

- A large volume of specialist referrals can be avoided by implementing an e-Consult platform that will allow specialists to determine whether a family physician referral is needed. The reduced referrals will mean reduced travel costs in the medical transportation program, avoidance of unnecessary tests, and shorter wait times for patients who need access to specialists. E-Consult has been successful with the use of a secure website.
- Broadened use of EMR and improved appointment scheduling tools in hospitals will allow appointment reminders for patients to avoid the huge burden of missed appointments. This may require sending some potentially identifiable personal health information through email or text. Other jurisdictions have established privacy-best practices in this area which should be considered in Newfoundland and Labrador
- Changing the rules that require physicians to use facility-based telemedicine sites will unleash new capacity in the telemedicine stream, further reducing patient travel costs, improving access, and making better use of physician time. There are many opportunities for physicians to use video-consults with patients in their homes which will extend the time patients can remain in their own homes and which will also provide better support for those providing care in the home. Other jurisdictions have established privacy best-practices in this area which should be considered in Newfoundland and Labrador
- Greater efforts need to be made to reduce the still-enormous volume of paper used in ordering diagnostic tests and receiving results. Privacy best-practices should be established for non-paper faxing.

Recommendation for PHIA Section 15

6. Best practices for protecting personal health information should be developed that support the use of telehomecare, particularly videoconferencing and other information technology that allows for providing patient care in the home by family physicians in their clinic.

NLMA thanks the Committee for this opportunity to comment. Physicians in both the community and institutional settings make extensive use of personal health information. They also share personal health information with others providing care. Physicians want to ensure that they are not in contravention of PHIA, or breaking the rules, when they are collecting, using or disclosing personal health information. This can best be achieved through consistent provincial interpretation and application of PHIA and related best practices.

Sincerely,



Christopher Cox, MD, FRCSC, FACS
President