

Health Information Act: Making it work

Alberta Medical Association and
College of Physicians and Surgeons of Alberta
Guide for Medical-Office Staff



College of
Physicians and Surgeons
Province of Alberta





Understanding the Health Information Act

The issues at hand

The Health Information Act (HIA), proclaimed April 25, 2001, spells out how health information is to be collected, protected and used. This new law affects doctors, hospitals, health boards, regional health authorities (RHAs) and Alberta Health and Wellness (AHW). It also impacts staff, like you, who deal directly with patients.

There are four main issues underlying the Health Information Act – privacy, confidentiality, security and access. Privacy refers to an individual's right to keep certain personal information secret and out of the public arena. Confidentiality is a term used to describe the way people handle private or sensitive information.

Security – whether it refers to property, people or information – describes the ability to protect against intrusion, danger or violation. Access is the right of individuals to obtain any record with health information about them. All four concepts are important in the context of the HIA.

About this guide

This guide, *Health Information Act: Making it work, Alberta Medical Association and College of Physicians and Surgeons of Alberta Guide for Medical-Office Staff*, is for you. It was prepared by the AMA and the CPSA, specifically for staff who work daily with the HIA.

It provides a broad overview of the HIA and the situations you will most likely face. This guide is based on an earlier guide from The Office of the Information and Privacy Commissioner (OIPC). We are indebted to the OIPC for some of our definitions and examples. We also draw upon material from AHW's *Health Information Act, Guidelines and Practices* manual.

If you have a question that is not addressed here, please speak to your doctor or call the Alberta Health and Wellness (AHW) Help Desk at (780) 427-8089 or toll free anywhere in Alberta by calling

i Documents included in this mailing

O Documents can be found in other places

310-0000 and then 427-8089. You can also call the Office of the Information and Privacy Commissioner at (780) 422-6860.

What the HIA is about

The Health Information Act defines:

- what health information can be collected, how it can be collected, from whom and by whom
- how information is to be stored, protected and disposed of
- when consent is required to disclose information and when it is not
- when health information can be used without consent, and
- how patients can access and amend their own health records

It also defines the different people or organizations in the health care field that the HIA applies to. Custodians are the people who control the collection, protection and disclosure of information. Your doctor is a custodian and, as a general rule, so are:

- other health care service providers paid under the Alberta Health Care Insurance Plan (AHCIP)
- hospitals
- nursing homes
- provincial health boards (including the Alberta Cancer Board and the Alberta Mental Health Board)
- regional health authorities
- licensed pharmacies and pharmacists, and
- Alberta Health and Wellness

Note: If your doctor provides services that are not covered by the AHCIP, then he or she is not considered a custodian in that situation. Doctors may also have different roles, depending on where they provide their services.

People like you, who work for custodians – providing patient care, collecting information, booking appointments, processing billings and performing office maintenance – are considered affiliates.

≈ Who is a
custodian
and who an
affiliate ≈

There are exceptions to this rule, but to keep it simple, in this guide doctors are treated as custodians and staff as affiliates.

It is very important that everyone in your office has a common understanding of the HIA, and that you work together to develop clear policies and procedures for your office. **If you haven't already, you need to sit down as a team and define exactly how your office deals with the HIA.** This guide, the OIPC guide *Health Information: A Personal Matter* and the manual *Health Information Act: Guidelines and Practices* from AHW **can help.**

How does the HIA change things?

When dealing with patients, the HIA wants you to do what you've always done – use common sense and discretion to protect patient confidentiality. What is different now is that there are specific rules for:

- how information must be gathered
- how it must be protected, and
- when and to whom it can be disclosed

You and your doctor are expected to help patients understand what is happening with their information.

As an affiliate you will likely see requests for patient information come through your office on a regular basis.

In order to work with the HIA, you need to know (see the corresponding page in this guide):

- what kind of information is covered (page 4)
- how to collect information (page 6)
- what information is required from patients (page 6)
- what information to disclose (page 9)
- whom information can be disclosed to (page 9)
- when consent is required and when it's not (page 10)
- how patients can access their own files (page 12)
- what fees can be charged (page 12)

If there are questions this guide doesn't answer, please discuss them with your doctor or call:

- The AHW Health Information Act Help Desk at (780) 427-8089 (or toll free anywhere in Alberta by calling 310-0000 and then 427-8089), or
- The Office of the Information and Privacy Commissioner at (780) 422-6860

Not all information is alike

Under the Health Information Act there is a difference between *individually identifying* and *non-identifying information*. Individually identifying information tells who a person is; non-identifying information does not. This is simple, but important, because privacy can be violated only if the person can be identified. For that reason, the HIA is mainly concerned with information that identifies patients.

The HIA defines three separate kinds of health information:

- **diagnostic, treatment and care:** this includes a patient's medical history, condition and treatments
- **registration:** basic demographic information such as name, address and billing information, including personal health numbers
- **health services provider:** this includes such things as name, address, identification number, job classification and employment status of providers

As an affiliate, you will probably deal primarily with registration information and with diagnostic, treatment and care information.

There is also a difference between recorded and non-recorded information. Recorded information (chart, notes, X-rays, lab reports, etc.) can be used for purposes allowed by the HIA (e.g., research and education). Non-recorded information, as in things patients might say about themselves or others, can be used or disclosed only for the reason it was given. For example:

≈ What kind of information is covered ≈

≈ How to handle non-recorded information ≈

A patient might let slip some information regarding his personal habits that neither you nor the doctor records because it has no bearing on the patient's treatment that day. Later, if someone with legitimate access to that patient's health information asks the doctor about that personal habit, the information shouldn't be disclosed. The act provides that such unrecorded information can only be used for the purpose for which it was provided. In this example we can be fairly certain the patient did not disclose the information for the purpose of having it discussed with others.

Source: OIPC guide

Section summary

After reading this section, you should understand:

- Who is a custodian and who is an affiliate
- What kind of information is covered
- How to handle non-recorded information

≈ How to gather health information ≈

≈ What you must tell patients when gathering information ≈

Gathering information

The HIA says that you should gather, use or disclose the least amount of information needed to get the job done. This is probably what you do now. You ask only what you need to know, and you ask it only if your job requires you to.

When gathering information the HIA says that information should be gathered directly from the patient whenever possible. The patient should always be told:

- what the information is being collected for
- that you are collecting it under the HIA, and
- where to go for more information

In your role as an affiliate, you will likely gather this information during your first encounter with a patient. Unless you are gathering new information at each visit, it is not necessary to repeat this process each and every time.

When it's not possible to collect health information directly from the patient, either because they can't, won't or shouldn't provide the information, you or your doctor can turn to other sources such as:


- parents
- guardians, or
- persons authorized by the patient

If you are unsure about gathering information in these cases, consult with your doctor, the OIPC or the AHW HIA Help Desk before proceeding.

As always, try to make sure that the information you are getting is complete and accurate. If you sense it is wrong in any way – or that the person doesn't understand what you're asking – try again by rephrasing the questions or being more specific about the answers you need. If you continue to have difficulty, let your doctor know.

What patients need to know

We mentioned that patients need to be given a contact for any concerns whenever you are gathering information. You must choose a staff member to act as your HIA contact person. Your designated HIA contact person can be your office's official "point of contact" for patients and other staff who have questions about the HIA, and all inquiries relating to the HIA can be directed to him or her. This person needs to understand both the HIA and the specific policies that your team has developed for your office.

Your office's policies and procedures can be shared verbally, or through brochures or posters. Work together as an office to determine the best way to communicate with your patients and the most practical way for you to share this information. To start, you can use the  AMA/CPSA mini poster included with this guide. Feel free to adapt it or supplement it with other materials as you require.

Safeguarding information once it's been collected

When it comes to protecting health information once it's been gathered, the HIA specifies that each office must take reasonable steps to maintain **administrative, technical** and **physical safeguards** to keep records safe from unauthorized access.

Much of this is basic common sense. Make sure files aren't left out in the open. And use discretion when discussing patient information in the hearing of others. (*Remember, patients can make a formal complaint if they feel their information has been disclosed inappropriately.*)

Some suggestions for **physical safeguards** include:

- locking filing cabinets and unattended storage areas
- positioning fax machines and computer screens out of sight of the public, and
- keeping whiteboards with patient information away from the public

≈ How to safeguard information (and protect your practice from liability) ≈

If your office is computerized, there are various **technical safeguards** to consider, including:

- using screensavers and security screens to shield patient information
- using passwords, and
- encrypting sensitive e-mails

Administrative safeguards may include things such as:

- training staff on policies and procedures
- regularly updating addresses and phone numbers, and
- restricting access to those who need to know

All employees should sign **confidentiality agreements, which can be reviewed and renewed on an annual basis**. For information on what is included in a confidentiality agreement, you should review the **O** Components for an Affiliate's Oath of Confidentiality included in AHW's *Health Information Act, Guidelines and Practices* manual appendix one.

Care must also be taken when disposing of records. Files need to be shredded or burned and computer hard drives need to be erased in accordance with specified retention and disposal policies.

Section Summary

After reading this section, you should understand:

- How to gather health information
- What you must tell patients when gathering information
- How to safeguard information (and protect your practice from liability)

Using and disclosing information

Under the HIA there is a big difference between *use and disclosure*.

- Use: What you do with the information once you've got it.
 - > Most often you will use it for providing health services or determining eligibility to receive services.
- Disclosure: Providing information to custodians and third parties *outside* your office.
 - > Custodians can include regional health authorities, other physicians or AHW. **O** See page 11 of the OIPC guide *Health Information: A Personal Matter* or Section 35 of the HIA for a complete list. Third parties may include lawyers, insurers, employers or other individuals identified through consent by the patient.

Sometimes doctors can decide whether or not to disclose, while in other situations, such as in order to comply with other legislation, they have no choice. There may even be situations where the doctor wants to disclose in order to protect the patient or others.

Deciding whether it is necessary to disclose is up to the doctor. As a staff member, you won't and shouldn't be asked to make that decision. (If patients have specified information they do not want disclosed, doctors and staff must try to respect their wishes.) For more information on the guidelines physicians follow in determining the need to disclose, please see **O** the College of Physicians and Surgeons of Alberta's publication *An Alberta Physician's Guide to the Release of Medical Information*.

When consent is required

Patients do not have to provide consent in **every** situation. There are situations where they don't need to provide consent, such as when receiving health care services. This is important, because

≈ The difference between use and disclosure ≈

≈ When your doctor may decide whether or not to disclose ≈

≈ When you
will have
to ask for
consent ≈

you don't want patients to be under the mistaken assumption that they must give consent every time you send information to another physician or facility.

In many **non-treatment** situations, patients must consent before their information is disclosed. This consent must be given electronically or in writing and must state:

- what information is to be disclosed
- purpose of the information being disclosed
- whom it can be disclosed to
- that the person giving consent knows why it is being given and accepts the risks
- the date consent starts and the date consent ends, if any, and
- that the person can revoke consent at any time

A sample consent form is provided in the AHW *Health Information Act, Guidelines and Practices* manual appendix 1

- Health Information Act Forms. **O** See Consent to the Disclosure of Individually Identifying Health Information.

Patients must understand that even if they ask you to disclose the information, they must still provide consent. A typical phone conversation may go like this:

Affiliate: Hello, ABC clinic. May I help you?

Patient: Yeah, I'm starting a new job and my insurance company needs to see my medical record for insurance purposes. Can you send it over?

Affiliate: We can do that, but only if we receive consent from you to disclose that information.

Patient: Well, you've got my consent.

Affiliate: I'm sorry but under the Health Information Act we must receive electronic or written consent detailing (provide list of what the consent form must contain).

Patient: That sounds like a lot of work just to get my record sent to my insurance company.

Affiliate: Under the HIA we can't disclose the information any other way. Do you need our address or fax number to send your consent form in?

Recording disclosure and ensuring the right person gets the information

Whenever information is disclosed without consent, a note must be made in the file, including whom it was disclosed to and when. **O** See page 39 of the OIPC guide *Health Information: A Personal Matter* for more information on recording disclosure.

It is also important to ensure that the information is disclosed to the right person. So, if you are supposed to be sending a file to a Dr. Petterson, and there are three Dr. Pettersons in the phone book, you'll need to find out which one is the intended recipient.

You probably did many of these things as part of your routine long before the HIA was introduced. What has changed under the HIA is that for the protection of your doctor, the patient and you, it's very important to document everything you do when disclosing information. Refer to your office policy manual for information on how your office documents disclosure.

Section summary

After reading this section, you should understand:

- The difference between use and disclosure
- When your doctor may decide whether or not to disclose
- When you will have to ask for consent
- What documentation and safeguards are required (to protect everyone in your practice from liability)

≈ What documentation and safeguards are required (to protect everyone in your practice from liability) ≈

Section 4 ≈

Responding to patient requests

≈ How to respond to patient requests for information ≈

≈ What fees can be charged ≈

When patients want to see their files

The rules you have always followed when providing records to patients may not apply under the HIA. As always, patients still have a right to request access to any records or files containing their own health information. But, also as before, they do NOT have automatic access to *everything* in their file. Doctors may decide to allow *partial access* to records or hold back certain information if they feel it may cause harm to the individual or others.

A patient can only request file access for him/herself or if he/she has the authority to exercise this right for others (e.g., a mother on behalf of a child or a guardian on behalf of a dependent adult).

When an individual requests access to his/her own files, the HIA specifies that your office must:

- make every reasonable effort to assist him/her, and
- respond openly, accurately and completely within 30 days of receiving the request

The HIA also allows doctors to charge a fee for providing access, photocopying records, reviewing charts, etc. In many situations, these replace the fees you may have been charging under the AMA's *Guidelines to Billing for Uninsured Services*. See the enclosed **i** AMA's *Guide to Fees Under the HIA Regulations* for more information. As with all uninsured services, the patient must receive an estimate of costs up-front. If you want to notify someone about fees in writing, see the **o** sample letter provided in the AHW's *Health Information Act, Guidelines and Practices* manual appendix 2 (model letter c – fee estimate). You can also refer to the CPSA's document *Charging for Uninsured Services, 1999* for more information.

It may be helpful to create an office policy for dealing with requests. For instance, your doctor may decide that all requests must be submitted in writing. With a set policy in place for handling requests, it's much easier for you to respond to them consistently. Since many requests may initially be made by phone, a typical conversation might go like this:

Affiliate: Hello, ABC clinic, may I help you?

Caller: Yes, I'm a patient of Dr. Smith's and I would like to see my medical records.

Affiliate: Certainly we can help you with that. But our clinic has a policy that all requests for access must be received in writing. If you could send us a short letter specifying what you would like to see and the dates you are interested in, Dr. Smith will review your request and respond to you within 30 days of receiving it.

Caller: Do I have to send it in writing? Isn't phoning good enough?

Affiliate: I'm sorry, but our clinic policy is that requests must be made in writing. Would you like our address or fax number?

Caller: (takes address or fax number)

Affiliate: You should also be aware that under the Health Information Act, there might be a fee for fulfilling your request.

Caller: What kind of fee? Aren't these my records?

Affiliate: Yes they are, but the HIA allows us to charge a fee for the cost involved in retrieving and reviewing your records and for preparing any necessary copies. I can't tell you exactly what the fee will be as that will be determined once the doctor receives your request and sees what's involved. But you will receive an estimate before we do anything.

As a staff member you will likely receive telephone requests and may be involved in preparing the estimate and in tracking down and compiling the various documents that make up a person's medical record. Deciding whether to grant full or partial access is up to the doctor, although you may be the person who explains the decision to the patient. If the patient disagrees with the decision, he or she should speak with the doctor and may request a review of the decision by the Office of the Information and Privacy Commissioner. Refer to your office policy manual for information on how your office handles requests for access.

Correcting or amending information

Patients can request a correction to their records if they believe the information is inaccurate or incomplete. Patients must file a written request asking for the correction and the doctor/your office must respond in writing with approval or refusal, within 30 days of receiving the request.

Questions? Concerns?

As with any new legislation, it will take time for you and your physician to become familiar with the HIA.

There may always be gray areas in applying this legislation. In situations where you are unclear on the specifics of the act, ask either your designated HIA contact person or your doctor(s) for help. If you need further assistance, call the Office of the Information and Privacy Commissioner at (780) 422-6860 or the Alberta Health and Wellness Help Desk at (780) 427-8089 or toll free from anywhere in Alberta by calling 310-0000 and then 427-8089. You can also visit the Alberta Health and Wellness web site at www.health.gov.ab.ca or the OIPC web site at www.oipc.ab.ca.

≈ Where to
go for more
information ≈

Section summary

After reading this section, you should understand:

- How to respond to patient requests for information
- What fees can be charged
- Where to go for more information

The appendices to the Alberta Health and Wellness *Health Information Act, Guidelines and Practices* manual have a number of sample templates and letters you may find useful or wish to adapt. In addition to the ones we have indicated earlier, for this section we suggest you see:

- o Appendix 1: Request to Access Health Information
- o Appendix 1: Request to Correct or Amend Health Information

Notes:



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