

PHIA and PIPEDA

What is PHIA?

The *Personal Health Information Act (PHIA)* is Nova Scotia's health privacy law that governs how regulated health care professionals and organizations collect, use, disclose and maintain personal health information. *PHIA* comes into force on June 1, 2013.

What is PIPEDA?

The *Personal Information Protection Electronic Documents Act (PIPEDA)* is the federal privacy legislation that establishes the rules to govern the collection, use and disclosure of personal information. *PIPEDA* applies to any "commercial" activity, including the delivery of health services considered to be commercial.

Who is governed by PHIA?

Individuals or organizations that have custody or control of personal health information and are defined in the *Act* or prescribed by regulations as being custodians are governed by *PHIA*. This includes, but is not limited to, a regulated health professional, a person who operates a group practice of regulated health professionals, and the Department of Health and Wellness.

Who is governed by PIPEDA?

Currently, health care providers who are collecting, using and disclosing personal health information in the course of a commercial activity, including the delivery of health care services, are governed by the federal *PIPEDA*. Non-commercial areas of health care such as publicly funded hospitals are not subject to *PIPEDA*.

What does the term "substantially similar" mean?

In 2002, Industry Canada – the federal department responsible for *PIPEDA* - published the criteria used to determine whether provincial or territorial privacy legislation would be considered "substantially similar" to *PIPEDA*.

Laws are "substantially similar" if they:

- incorporate the ten principles in the National Standard of Canada entitled *Model Code for the Protection of Personal Information* (Schedule 1 of *PIPEDA*) with special emphasis on the principles of consent, access and

- correction rights;
- provide for an independent and effective oversight and redress mechanism with powers to investigate; and
- restrict the collection, use and disclosure of personal information to purposes that are appropriate or legitimate.

If *PHIA* is deemed “substantially similar”, Industry Canada will issue an order that will exempt organizations from the application of *PIPEDA* in respect of collection, use and disclosure of personal health information within the province.

I am a private practitioner subject to *PIPEDA*. What happens when *PHIA* is in force?

Before the legislation is designated as “substantially similar”, both *PHIA* and *PIPEDA* will apply to all commercial providers in the health sector.

What happens before *PHIA* is designated as “substantially similar”?

As noted above, before the designation of “substantially similar”, both *PHIA* and *PIPEDA* will apply to a health information custodian’s collection, use and disclosure of personal health information in the course of commercial activities. In most cases, if health professionals are compliant with *PIPEDA*, they will also be compliant with *PHIA*. There are a few exceptions where *PHIA* has additional privacy requirements. For example:

- *PHIA* requires that a custodian report to an individual a breach of personal health information if, in the custodian’s opinion, the breach is likely to cause the individual harm or embarrassment.
- *PHIA* requires that a custodian must be able to produce a record of user activity for any electronic information system the custodian uses to maintain personal health information.
- *PHIA* requires that a custodian receive the approval of a research ethics board for research conducted using personal health information the custodian itself has collected for care purposes.

In those cases, it would generally not be considered a conflict, as an individual custodian can comply with *PIPEDA* and the additional privacy protections in *PHIA*.

When will *PIPEDA* not apply?

Once the federal government, through Industry Canada, designates that *PHIA* is “substantially similar”, commercial providers of health care covered under *PHIA* will only be required to comply with *PHIA*. This is expected to occur 12 to 16 months after *PHIA* comes into force. Therefore, the “substantially similar” designation is expected to occur in early 2014.

How are offences and penalties determined?

Both *PIPEDA* and *PHIA* establish remedies for contravention of the legislation. The offences created by *PHIA* are in addition to the offences created by *PIPEDA*, not a replacement. This means that a custodian who is subject to *PHIA* and *PIPEDA* who improperly collects, uses or discloses personal health information may be charged with both federal and provincial offences when the custodian is subject to both *PHIA* and *PIPEDA*.

For more information, contact:

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