



Friends, Family, Surrogates...Access or Disclosure?

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What do we mean by “access”?

- Acts governing access to, and privacy of, personal health information use this term in a specific way.
- Most do not define it.
- The dictionary definition reads something like: “*the right to obtain or make use of or take advantage of something*”;

What do we mean by “access”?

- Our FIPPA defines an “applicant” as a “person who makes a request for access to a record under section 8”;
- The applicant wants to obtain information – perhaps government information or his or her own personal information held by a public body;

What do we mean by “access”?

- “Access” in personal health information legislation means access by the individual to his or her own personal health information;
- The legislation in the prairie provinces is consistent in using the word “access” in this way;
- They each set out the individual’s rights re access;

Rights of Access

- Right to examine the information;
- Right to obtain a copy of the information;
- Right to request a correction to inaccurate information;
- Right to authorize another person to exercise these rights;

What do we mean by “Disclosure”?

- The Acts in MB, SK and AB do not define “disclose” or “disclosure”;
- The ON Act defines “disclose” as: “*to make the information available or to release it to another health information custodian or to another person but does not include to use the information*”;

What do we mean by “Disclosure”?

- The common understanding of the word is to share the information with someone outside of the trustee/custodian organization;
- The word “use” means to share the information within the trustee/custodian organization;

Who can have access?

- In MB, the following persons:
 - The individual the information is about;
 - Any person with written authorization from the individual;
 - The individual's proxy appointed under *The Health Care Directives Act*;
 - The committee appointed for the individual under *The Mental Health Act*;

Who can have access?

- a substitute decision maker for personal care appointed for the individual under *The Vulnerable Persons Living with a Mental Disability Act*
- the parent or guardian of an individual who is a minor, if the minor does not have the capacity to make health care decisions;
- if the individual is deceased, by his or her personal representative.

Other Prairie Provinces

- AB has similar provisions re access by others – adds power of attorney if the POA document includes the authority to manage personal care;
- SK is the same as MB;

Summary re Access

- Access to personal health information is limited to the individual or any person referred to in the statutes;
- Access is limited to legal representatives (i.e. those appointed under the law – aka “surrogates”);

Disclosure to Family, Friends

- Acts authorize disclosure;
- May be with consent or without consent;
- Is discretionary – i.e. trustees not required to disclose;

Disclosure – Family, Friends - MB

PHIA (section 23) allows disclosure without consent:

- to an immediate family member, or to anyone else with whom the individual is known to have a close personal relationship, if
 - (a) the disclosure is about health care currently being provided;
 - (b) the disclosure is made in accordance with good medical or other professional practice; and
 - (c) the trustee reasonably believes the disclosure to be acceptable to the individual or his or her representative.

Disclosure – Family, Friends - MB

- Applies where the individual is a patient in a hospital or a resident of a personal care home;
- When a request is made under section 23, the trustee must provide the information:
 - Within 24 hours if the individual is in hospital;
 - Within 72 hours if the individual is in a personal care home



Disclosure – Family, Friends – Other Prairie Provinces

AB [Clause 35(1)(c)]

- Similar to MB – without consent
- Information can be disclosed if “*given in general terms and concerns the presence, location, condition, diagnosis, progress and prognosis of the individual on the day on which the information is disclosed, if the disclosure is not contrary to the express request of the individual;*”
- No reference to time lines for disclosure

Disclosure – Family, Friends – Other Prairie Provinces

SK [Clause 27(2)(c)]

- Similar to MB;
- Disclosure is with the deemed consent of the individual;
- No reference to time lines for disclosure

Summary

- Prairie provinces all have similar provisions;
- “Access” is given to surrogates;
- “Disclosure” is made to family, friends;

Does it make a difference?

- No restrictions on the type of information that surrogates can obtain – they stand in the shoes of the individual;
- Surrogates can exercise all of the rights of the individual – right to review the information, obtain a copy of the information and request a correction to the information;

Does it make a difference?

- Family and friends can have certain limited information disclosed to them – unless person is also a surrogate;
- Information is about care currently being provided;
- No right to obtain a copy of information;
- No right to request a correction to the information.

Questions?

