

Recommendations for the Direction of an NWT HSPL

What is Health Information?

The definition of health information should be sufficiently broad to capture the wide variety of healthcare services delivered but should not extend so far as to include all information that is collected in the NWT-wide health and social services system.

The definition should convey a concept of healthcare that can be readily understood by northerners and applied by northerner healthcare providers.

Specifically, where a term that relates to the concept of health is defined, the Panels indicated it should encompass a spiritual element as well as physical and emotional elements.

“health information” means

information about an identifiable individual that relates to the:

- a) physical, mental or spiritual health of the individual, or
- b) provision of health services to the individual,

and may include information about:

- a) the registration of the individual for the provision of health services,
- b) payments or eligibility for health care in respect to the individual,
- c) a number, symbol or particular assigned to an individual to uniquely identify the individual for health care purposes, and
- d) the testing or examination of a body part or bodily substance.

This type of wording provides for a broad range of information, including information about an individual’s spiritual health.

This definition does not limit health information to recorded information. While non-recorded information may be challenging conceptually, the HSPL should apply equally to recorded and non-recorded information. To do otherwise, creates different rules for the handling of sensitive information based only on the distinction of whether information has been recorded in some form.

In order to capture only health services, and not expand into social services, health services can be defined.

This definition does not include information about healthcare providers. Their information which may be a part of a person's file, remains governed by *ATIPPA*.

“health service” means

a service that is provided to an individual:

- (a) for any of the following purposes and is directly or indirectly and fully or partially paid or made available through or by a custodian:
 - (i) protecting, promoting or maintaining physical and mental health;
 - (ii) preventing illness;
 - (iii) diagnosing and treating illness;
 - (iv) rehabilitation;
 - (v) caring for the health needs of the ill, disabled, injured or dying,

but does not include those services as prescribed in the regulations.

Those regulations would specifically exclude dentists, opticians, medical supplies and equipment providers, addictions treatment centres, etc.

The recommendation creates the opportunity to specifically exclude certain services. This is important given the various and numerous services falling under (or connected to) to the NWT-wide health and social services system. For example, one can argue that information collected, used and disclosed in providing an addiction service includes information about an individual's health. That is, the individual's addiction progress and/or history can be said to be information about his/her mental health, or about a service that is for the purpose of rehabilitation. While the list of services to be excluded can be set out in the definition of 'health service', this approach is not as flexible and efficient for amendments as setting out a list in regulations.

The Act would only apply when custodians are providing health service:

Such as

Where a custodian provides services that are not health services, this Act does not apply

- (a) to the custodian in respect of those other services, or
- (b) to information relating to those other services.

This recommendation addresses the case where information that could fall under the definition of the 'health information' but does not relate to a health service and for which the HSPL ought not apply. For example, a Regional Health and Social Services Authority would have in its custody or control information that would fall under the definition of health information, such as medical information about apprehended children or about children in care, but uses this information in the performance of Child Protection Services. In this case, the information falls within the definition of health information because it is information about an identifiable individual that relates to *the physical, mental or spiritual health of the individual*. So while this information can be used for both a health service purpose and a social service purpose, Recommendation 1.3 would operate to prevent the HSPL from governing HSS when it uses this information for a social service purpose.

Which organizations should the HSPL apply to? Who Collects, Uses and Discloses Health Information?

The HSPL should support the functioning of a 'circle of care'. This requirement goes to one of purposes for enacting HSPL: to ensure that those healthcare providers with a need to know health information have a clear and strengthened ability to collect, use and disclose among each other.

The term, which seems to be most appropriate for the persons who form the 'circle of care', is either 'custodian' or 'trustee'. Similarly, in order to describe those other persons connected to the 'circle of care' who provide services to custodians/trustees, the terms 'affiliate' or 'agent' were also considered appropriate.

The HSPL will also identify the rules and requirements for consent when a person or organization that is outside of the circle of care requests health information.

Because we want to HSPL to resemble Alberta's HIA, the recommendation is to use 'custodian' and 'affiliate'.

Another key recommendation is to classify the Department of HSS and the 8 regional Health and Social Services Authorities as one single "custodian" of health information. The very small population of NWT, the significant capacity issues facing the entire system, the mobility of

patients and healthcare providers, the need to establish common operating practices, guided by common policies, drove this approach.

In effect, this would mean that when health information moves between the Department of HSS and the Regional Health and Social Services Authorities, it would be categorized as a use, as opposed to a disclosure. For example, the HSA already provides all regional authorities with access to its HCP registration information. While disclosures between custodians can be drafted to have the same flow of information as when information is used within a custodian, conceptually, the idea of information flowing within one unit helps promote a more accountable framework.

At this time, the other key healthcare provider is considered to be pharmacies and pharmacists and they should be identified as custodians in the HSPL. The HSPL should allow for additional healthcare providers (or health services) in the private sector to be added by enacting regulations.

There are many healthcare providers. The application of HSPL to a provider results in significant new obligations for the custodians to manage records and systems, to train staff and understand legal obligations. We need to move slowly and cautiously and understand these implications and consequences before making decisions to include other providers, such as dentists, ambulance operators, opticians, massage therapists and chiropractors. Pharmacists and pharmacists have critical health information that is not easily accessed by other healthcare providers, but at the same time is highly valued by those healthcare providers. Most pharmacies are already operating at high privacy and security standards, because of the federal drug legislation and because their own standards of practice. Thus the recommendation is to start with pharmacies and pharmacists as the first private sector custodians and to be able to add other providers through regulations.

“Custodian” means:

- (a) the NWT Healthcare System;
- (b) a pharmacist as defined in the *Pharmacy Act*;
- (c) a pharmacy as defined in the *Pharmacy Act*; and
- (d) such other person as prescribed by the regulations

‘NWT Healthcare System’ (that name is a temporary label!) means the following operating as one person:

- (a) the Department of Health and Social Services;
- (b) each Board of Management as defined in the *Hospital Insurance And Health And Social Services Administration Act*, including:
 - (i) Beaufort-Delta HSS Authority;
 - (ii) Dehcho HSS Authority;
 - (iii) Fort Smith HSS Authority;
 - (iv) Hay River HSS Authority;
 - (v) Sahtu HSS Authority;
 - (vi) Stanton Territorial Health Authority;
 - (vii) Tlicho Community Services Agency; and
 - (viii) Yellowknife HSS Authority.

“Affiliate”, in relation to a custodian, means:

a person that, with the authorization of the custodian, acts for or on behalf of the custodian to perform a service for the purposes of the custodian, and

not solely the affiliate's own purposes, whether or not the affiliate is employed by the custodian and whether or not the affiliate is being remunerated, and

includes healthcare professionals who treat persons at a health care facility operated by a custodian.

We need to consider how to deal with physicians in the NWT. Most physicians are contracted employees of the regional health and social services authorities. Their records belong to the custodian. Some physicians are fee-for-service, but have their office at a regional HSSA medical clinic. By agreement, their records belong to the custodian. A few physicians work as fee-for-service and have offices outside of HSSA offices. Some contracted physicians take on additional work completely outside of the HSSA. These physicians should be identified separately as custodians under the HSPL.

To further understand how the terms ‘custodian’ and ‘affiliate’ would be used in the HSPL, consider the following:

The HSPL would set out certain obligations (particularly those obligations respecting the collection, use and disclosure of health information) that apply to both custodians and affiliates. For example, “a custodian and its affiliates shall only disclose information without consent if ...”.

The HSPL would set out obligations imposed only on custodians. For example “custodians shall ensure that health information in its custody or control is protected from unauthorized access through the implementation of adequate technical safeguards, including ...”.

As a consequence, it is anticipated that custodians would prepare and implant certain administrative efforts (such as policies on how employees must follow technical safeguarding measures) to ensure its obligations are met. To ensure that affiliates follow such administrative efforts, the HSPA would include an obligation to the effect that each custodian shall ensure its affiliates: i) take an oath of confidentiality; ii) comply with the HSPL; and iii) comply with all policies or procedures of the custodian that relate to the HSPL, etc.