

Alberta's Health Information Act: What is Changing?

November 2020

Bill 46: Health Statutes Amendment Act, 2020 (Bill 46) was recently introduced in the Alberta Legislature. The omnibus bill amends a number of pieces of health legislation, including the *Health Information Act* (HIA). As the Minister of Health described during the introduction of Bill 46, portions of the Bill are targeted towards facilitating the “broader use of the electronic health record [Netcare] to support better patient outcomes”.

However, a number of other amendments will also be of interest to health care organizations, professionals, and Custodians operating under the Act.

- Disclosure of health information where significant risk of harm exists.**
 Currently, Custodians may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information to any person if the custodian believes, on reasonable grounds that the disclosure will (1) avert or minimize a risk of harm to the health or safety of a minor, or (2) an imminent danger to the health or safety of any person (s. 35(1)(m)). Bill 46 will arguably lower the threshold for non-minors and allow for disclosure where a significant risk of harm to the health or safety of any person exists.
- Refusal to conduct inquiry.**
 The Commissioner currently has the ability to refuse to conduct an inquiry following review if the subject has been dealt with in an order or investigation report of the Commissioner. The Commissioner’s discretion is widened by Bill 46, as the Commissioner may refuse to conduct an inquiry if “the circumstances warrant deciding not to conduct an inquiry”.
- Increase in fines for offences.**
 Bill 46 introduces higher fines for offences outlined in s. 107 of the HIA, including a fine of not more than \$200,000 for individuals and a fine of not more than \$1,000,000 in the case of any other person. This includes offences where custodians fail to take reasonable steps to safeguard health information.

Bill 46 does not represent an overhaul to the HIA, but the amendments are substantive, and the Information and Privacy Commissioner of Alberta may provide comments before the Bill passes and the amendments come into force.

The broadening of the Privacy Commissioner’s ability to refuse to conduct an inquiry represents a notable development but is consistent with existing provisions under the *Alberta Freedom of Information and Protection of Privacy Act* (FOIPPA) and *Personal Information Protection Act* (PIPA). Of 99 HIA cases reported to be resolved in the Office of the Information and Privacy Commissioner’s 2018-2019 Annual Report, 10 were resolved by the Commissioner’s decision to refuse to conduct an inquiry, or approximately 10% (this percentage is lower in FOIPPA and PIPA cases). If the amendments pass, it is unknown whether a greater number of inquiries will be concluded by the Commissioner in this manner, but it provides her office with another tool to truncate proceedings that are often very resource-intensive for health care organizations.

Heightened monetary penalties for offences will naturally attract the attention of custodians, especially those employing large numbers of employees that are expected to adhere to the

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HIA. The proposed fines mark a significant increase and are substantially higher than the fines currently contained in FOIPPA and PIPA. However, increases in penalties for violations of privacy legislation **are not a new development**. Changes under FOIPPA and PIPA could follow in Alberta.

It is unclear whether Bill 46 marks an intention to more broadly review the HIA by the Government of Alberta, but it is likely that the HIA will need to be continually shaped to adapt to the proliferation of electronic medical records in the health services industry, increased multi-disciplinary patient-centred care, and the broader modernization of privacy legislation currently taking place across all public and private sectors.

Field Law's Professional Regulatory Group will be providing an update on how the changes brought forward by Bill 46 will affect regulated health care professionals shortly. If you have any questions about how Bill 46 will impact you or your organization, please contact any member of our **Privacy + Data Management** or **Professional Regulatory** groups.