

Bill 188

schedule 6

personal health information protection act, 2004

1 (1) Section 2 of the *Personal Health Information Protection Act, 2004* is amended by adding the following definition:

“Crown” means the Crown in right of Ontario; (“Couronne”)

(2) The definition of “de-identify” in section 2 of the Act is amended by striking out “to remove any information” and substituting “to remove, in accordance with such requirements as may be prescribed, any information”.

2 Paragraph 2 of the definition of “health information custodian” in subsection 3 (1) of the Act is repealed and the following substituted:

2. A service provider within the meaning of the *Home Care and Community Services Act, 1994* who provides a community service within the meaning of that Act. A service provider is a health information custodian in connection with the provision of any community service within the meaning of *Home Care and Community Services Act, 1994*, regardless of whether a particular community service is publicly funded.

3 The Act is amended by adding the following section:

Electronic audit log

10.1 (1) Subject to any prescribed exceptions, a health information custodian that uses electronic means to collect, use, disclose, modify, retain or dispose of personal health information shall,

(a) maintain, or require the maintenance of, an electronic audit log described in subsection (4);

(b) audit and monitor the electronic audit log as often as is required by the regulations; and

(c) comply with any requirements that may be prescribed.

Access by Commissioner

(2) A health information custodian referred to in subsection (1) shall provide a copy of the electronic audit log to the Commissioner, upon request.

Same

(3) Despite subsection 60 (13), the Commissioner may be provided with a copy of the electronic audit log even if it contains personal health information.

Content of log

(4) The electronic audit log must include, for every instance in which a record or part of a record of personal health information that is accessible by electronic means is viewed, handled, modified or otherwise dealt with,

(a) the type of information that was viewed, handled, modified or otherwise dealt with;

(b) the date and time on which the information was viewed, handled, modified or otherwise dealt with;

(c) the identity of all persons who viewed, handled, modified or otherwise dealt with the personal health information;

(d) the identity of the individual to whom the personal health information relates; and

(e) any other information that may be prescribed.

4 (1) Subsection 34 (2) of the Act is amended by adding the following clause:

(b.1) if the person is prescribed and is collecting or using the health number, as the case may be, with the express consent of the other person, for the purpose of accurately identifying the other person's records of personal health information, verifying their identity or linking their records of personal health information, subject to the additional requirements, if any, that are prescribed;

(2) Section 34 of the Act is amended by adding the following subsections:

Collection, use and disclosure, non-provincially funded health resource

(6) Subject to the additional requirements, if any, that are prescribed, a health information custodian that is providing health care to a person may collect, use or disclose the person's health number with the consent of the person for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information, even where the health information custodian is not providing a provincially funded health resource.

Same, provincially funded health resource

(7) Subject to the additional requirements, if any, that are prescribed, a health information custodian that has collected a health number for purposes related to the provision of a provincially funded health resource to a person may use the health number for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information.

Other permitted collection, etc. not affected

(8) Nothing in subsection (6) or (7) limits a health information custodian's authority to collect, use or disclose a health number as otherwise permitted or required by this Act.

5 Clauses 39 (2) (a) and (b) of the Act are amended by adding "or the *Immunization of School Pupils Act*" at the end of each clause.

6 Section 44 of the Act is amended by adding the following subsection:

Same

(1.1) For greater certainty, the decision of only one research ethics board is sufficient for the purposes of subclause (1) (a) (iii).

7 Section 45 of the Act is amended by adding the following subsection:

Additional uses, extra-ministerial data integration unit

(7) Despite subsection (6), if an entity that receives personal health information under subsection (1) is an extra-ministerial data integration unit within the meaning of Part III.1 of the *Freedom of Information and Protection of Privacy Act*, or if such an extra-ministerial data integration unit is located within the entity, the entity may also use the personal health information for a purpose set out in section 49.2 of that Act if the entity

complies with Part III.1 of that Act as if it were initially collecting the personal health information.

8 (1) Section 46 of the Act is repealed and the following substituted:

Health care payments

46 (1) If requested by the Minister or the minister of a prescribed ministry, a health information custodian shall disclose personal health information to the minister who made the request for the purpose of determining, providing, monitoring or verifying payment or funding for health care funded wholly or in part by the Ministry, the prescribed ministry, a local health integration network or the Agency or for goods used for health care funded wholly or in part by one or more of them.

Disclosure by minister

(2) The Minister or a minister of a prescribed ministry may disclose information collected under subsection (1) to any person for a purpose set out in that subsection if the disclosure is reasonably necessary for that purpose.

Other information

(3) The Minister or minister of a prescribed ministry, as the case may be, who makes a request under subsection (1) shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure.

Extent of information

(4) The Minister or minister of a prescribed ministry, as the case may be, who makes a request under subsection (1) shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be.

(2) Subsection 46 (1) of the Act, as re-enacted by subsection (1), is amended by striking out “a local health integration network”.

9 Section 52 of the Act is amended by adding the following subsection:

Format of records

(1.1) The right to access a record of personal health information includes the right to access the record in an electronic format that meets the prescribed requirements, subject to any restrictions, additional requirements or exceptions that may be prescribed.

10 The Act is amended by adding the following section:

Consumer electronic service providers

54.1 (1) In this section,

“consumer electronic service provider” means a person who provides electronic services to individuals at their request, primarily for,

(a) the purpose of allowing those individuals to access, use, disclose, modify, maintain or otherwise manage their records of personal health information, or

(b) such other purposes as may be prescribed.

Prescribed requirements

(2) In providing electronic services to an individual, a consumer electronic service provider shall comply with the prescribed requirements.

Health number

(3) Despite section 34, a consumer electronic service provider may, if authorized by the individual who requested the provider's services, collect and use health numbers in accordance with any prescribed rules in order to verify the identity of an individual or for any other prescribed purpose.

Health information custodians

(4) A health information custodian that provides personal health information to a consumer electronic service provider shall comply with any prescribed requirements or procedures.

Not required to respond through consumer electronic service provider

(5) For greater certainty, a health information custodian that receives an individual's request for access to their records of personal health information from a consumer electronic service provider is not required to provide the personal health information to the consumer electronic service provider in responding to the request.

11 Section 55.9 of the Act is repealed and the following substituted:

Collection of information by Ministry

55.9 (1) Despite section 55.5, members of a ministry data integration unit located within the Ministry may collect personal health information by means of the electronic health record for the purposes set out in section 49.2 of the *Freedom of Information and Protection of Privacy Act* in accordance with the requirements set out in Part III.1 (Data Integration) of that Act.

No other uses and disclosures permitted

(2) Despite any other provision in this Act or the regulations, members of a ministry data integration unit shall not use or disclose the personal health information collected under subsection (1) except as authorized by this section or by Part III.1 of the *Freedom of Information and Protection of Privacy Act*.

Direction to prescribed organization

(3) A member of a ministry data integration unit located within the Ministry may issue a direction requiring the prescribed organization to provide members of the ministry data integration unit with the information that the members are authorized to collect under subsection (1), and the prescribed organization must comply with the direction.

Terms and conditions

(4) A direction made under subsection (3) may specify the form, manner and timeframe in which the information that is the subject of the direction is to be provided to the ministry data integration unit.

Disclosure

(5) If members of a ministry data integration unit collect personal health information by means of the electronic health record under subsection (1), the disclosure of the

personal health information to the members of the ministry data integration unit by the health information custodian who provided it to the prescribed organization is permitted under this Act.

Definitions

(6) In this section, “member” and “ministry data integration unit” have the same meanings as in Part III.1 of the *Freedom of Information and Protection of Privacy Act*.

12 The Act is amended by adding the following section:

Provision of personal health information to, and collection by, coroners and medical officers of health

Provision to coroner

55.9.1 (1) Where the prescribed requirements, if any, are met, the prescribed organization may provide personal health information that is accessible by means of the electronic health record to a coroner in relation to an investigation conducted under the *Coroners Act*.

Collection by medical officer of health

(2) The Chief Medical Officer of Health or a medical officer of health within the meaning of the *Health Protection and Promotion Act* may collect personal health information by means of the electronic health record for purposes related to their duties under that Act or the *Immunization of School Pupils Act*.

Disclosure

(3) Personal health information may be provided or collected in accordance with subsection (1) or (2) despite any provision of sections 55.5, 55.6 and 55.7.

13 Subsection 55.12 (1) of the Act is repealed and the following substituted:

Practices and procedures review

(1) The Commissioner shall review the practices and procedures of the prescribed organization referred to in paragraph 14 of section 55.3 every three years after they are first approved or reviewed, as the case may be, to determine if the practices and procedures continue to meet the requirements of subparagraph 14 i of section 55.3 and, after the review, the Commissioner may renew the approval.

14 Clause 55.14 (2) (g) of the Act is repealed.

15 (1) Section 60 of the Act is amended by adding the following subsection:

Inspection of record without consent

(12.1) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates except in the circumstances referred to in subsections (13) and (14.1).

(2) Subsection 60 (13) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Same, public interest

(13) The Commissioner may inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates if,

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(3) Section 60 of the Act is amended by adding the following subsection:

Inspection of record without consent, abandoned records

(14.1) The Commissioner may inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates if the Commissioner determines or has reasonable grounds to suspect that the record of personal health information has been abandoned.

16 (1) Subsection 61 (1) of the Act is amended by adding the following clause:

(f.1) make an order requiring a health information custodian or a class of health information custodians to cease providing personal health information to a consumer electronic service provider;

(2) Subsection 61 (1) of the Act is amended by adding the following clause:

(h.1) make an order in accordance with section 61.1 requiring any person whose activities the Commissioner reviewed to pay an administrative penalty in the amount set out in the order if the Commissioner is of the opinion that the person has contravened this Act or its regulations;

17 The Act is amended by adding the following section:

Administrative penalties

61.1 (1) An order requiring a person to pay an administrative penalty may be issued under clause 61 (1) (h.1) for the purposes of,

(a) encouraging compliance with this Act and its regulations; or

(b) preventing a person from deriving, directly or indirectly, any economic benefit as a result of a contravention of this Act or its regulations.

Amount of administrative penalty

(2) The amount of an administrative penalty for a contravention shall,

(a) reflect the purposes referred to in subsection (1); and

(b) be determined by the Commissioner in accordance with the regulations made under this Act.

Two-year limitation

(3) An order requiring a person to pay an administrative penalty shall not be issued under this section more than two years after the day the most recent contravention on which the order is based first came to the knowledge of the Commissioner.

Content of order of administrative penalty

(4) An order requiring a person to pay an administrative penalty shall,

(a) contain or be accompanied by a description of the contravention; and

(b) set out the amount of the penalty to be paid and specify the time and manner of the payment.

Payment to Minister of Finance

(5) A person who is required to pay an administrative penalty shall pay the penalty to the Minister of Finance.

18 Subsection 62 (1) of the Act is amended by striking out “to (h)” and substituting “to (h.1)”.

19 Section 63 of the Act is amended by adding the following subsections:

Interest

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order requiring a person to pay an administrative penalty under clause 61 (1) (h.1) and, for the purpose, the date on which the order is filed under subsection (1) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

Debt due to the Crown

(3) An administrative penalty imposed under clause 61 (1) (h.1) that is not paid in accordance with the terms of the order is a debt due to the Crown, and the Crown may recover the debt by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

20 (1) Clause 64 (3) (b) of the Act is amended by striking out “to (h)” and substituting “to (h.1)”.

(2) Subsection 64 (4) of the Act is amended by striking out “to (h)” and substituting “to (h.1)”.

21 The Act is amended by adding the following section:

Enforcement measures

65.1 The use of an enforcement measure provided for in this Act in respect of a contravention of this Act or its regulations does not prohibit the use, at the same time or different times, of any other enforcement measure or remedy provided for in this Act or otherwise available in law in respect of the same contravention.

22 The Act is amended by adding the following section:

Production order

71.1 (1) On application without notice by a provincial offences officer, a justice may issue a production order to a person, other than a person under investigation for an offence, requiring the person to,

(a) produce documents or copies of documents, certified by affidavit to be true copies, or produce data; or

(b) prepare a document based on documents or data already in existence and produce it.

Contents of order

(2) A production order must stipulate when, where and how the documents or data are to be produced, and to whom they are to be produced.

Grounds

(3) A justice may make a production order if satisfied by information given under oath or affirmation that there are reasonable grounds to believe that,

(a) an offence under this Act has been or is being committed;

(b) the document or data will provide evidence respecting the offence or suspected offence; and

(c) the person who is subject to the order has possession or control of the document or data.

Conditions

(4) A production order may contain any conditions the justice considers advisable.

Evidence

(5) A copy of a document or data produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under this Act and has the same probative force as the original document or data would have if it had been proved in the ordinary way.

No return of copies

(6) Copies of documents or data produced under this section are not required to be returned to the person who provided them.

Compliance required

(7) A person to whom a production order is directed shall comply with the order according to its terms.

Definitions

(8) In this section, “justice” and “provincial offences officer” have the same meanings as in the *Provincial Offences Act*.

23 Clauses 72 (2) (a) and (b) of the Act are repealed and the following substituted:

(a) if the person is a natural person, to a fine of not more than \$200,000 or to a term of imprisonment of not more than 1 year, or to both; or

(b) if the person is not a natural person, to a fine of not more than \$1,000,000.

24 (1) Subsection 73 (1) of the Act is amended by adding the following clause:

(l.1) prescribing circumstances in which a person who compiles or maintains a registry of personal health information referred to in clause 39 (1) (c) may use or disclose personal health information;

(2) Subsection 73 (1) of the Act is amended by adding the following clause:

(m.1) governing the services provided by consumer electronic service providers within the meaning of section 54.1, including their collection, use and disclosure of personal health information, the use of those services by health information custodians as well as by individuals and the rights of those individuals with regard to the services;

(3) Subsection 73 (1) of the Act is amended by adding the following clauses:

(o.1) governing administrative penalties imposed by the Commissioner under clause 61 (1) (h.1) and all matters necessary and incidental to the administration of a system of administrative penalties under this Act;

(o.2) governing the de-identification of personal health information and the collection, use and disclosure of de-identified information by health information custodians and any other persons;

(4) Section 73 of the Act is amended by adding the following subsection:

Regulations respecting administrative penalties

(5) Without limiting the generality of clause (1) (o.1), regulations made under that clause may prescribe specific amounts of administrative penalties or provide that the amounts of administrative penalties be based on the type of the contravention in question, on the contravention history of the person required to pay the administrative penalty or on whether the person is or is not a natural person.

The People's Health Care Act, 2019

25 Subsection 17 (8) of Schedule 3 to *The People's Health Care Act, 2019* is repealed.

Amendments in respect of Bill 175 — *Connecting People to Home and Community Care Act, 2020*

26 (1) This section only applies if Bill 175 (*Connecting People to Home and Community Care Act, 2020*), introduced on February 25, 2020, receives Royal Assent.

(2) References in this section to provisions of Bill 175 are references to those provisions as they were numbered in the first reading version of the Bill.

(3) On the later of the day this subsection comes into force and the day subsection 8 (4) of Schedule 3 to Bill 175 comes into force, paragraph 3 of the definition of “health information custodian” in subsection 3 (1) of the Act is amended by adding “A health service provider or person or entity that is part of an Ontario Health Team is a health information custodian in connection with the provision of any home and community care service within the meaning of the *Connecting Care Act, 2019*, even where a particular home and community care service is not funded under that Act.” at the end.

Commencement

27 (1) Subject to subsection (2), this Schedule comes into force on the day the *Economic and Fiscal Update Act, 2020* receives Royal Assent.

(2) Subsection 1 (2), section 3, subsection 8 (2), sections 10, 11, 12 and 13, subsection 24 (2) and section 26 come into force on a day to be named by proclamation of the Lieutenant Governor.