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# Fact Sheet

## Lock-box Fact Sheet

### What does the term 'lock-box' mean?

The *Personal Health Information Protection Act (PHIPA)* is a consent-based statute, meaning that it gives Ontarians control over the collection, use and disclosure of their personal health information by stipulating that health information custodians can only collect, use and disclose an individual's personal health information with the express or implied consent of that individual, subject to limited exceptions.

Integral to the concept of consent is the notion that individuals have the ability to withhold or withdraw their consent to the collection, use or disclosure of their personal health information for a particular purpose, including for the provision of health care. Section 20(2) of *PHIPA* makes it clear that individuals may withhold or withdraw their consent to the collection, use or disclosure of their personal health information by health information custodians for the purposes of providing or assisting in providing health care.

Further, under *PHIPA*, individuals may provide express instructions to health information custodians not to use or disclose their personal health information for health care purposes without consent in the circumstances set out in sections 37(1) (a), 38(1)(a) and 50(1)(e) of *PHIPA*.

These provisions have come to be referred to as the "lock-box" provisions, although lock-box is not a defined term in *PHIPA*.

### What information can individuals 'lock,' and from whom can they lock it?

The withholding or withdrawal of consent or the express instructions cited above may take various forms, including communications from individuals to health information custodians:

- not to collect, use or disclose a particular **item** of information contained in their record of personal health information (for example, a particular diagnosis);
- not to collect, use or disclose the contents of their **entire** record of personal health information;
- not to **disclose** their personal health information to a particular health information custodian, a particular agent of a health information custodian or a class of health information custodians or agents (e.g. physicians, nurses or social workers); or
- not to enable a particular health information custodian, a particular agent of a health information custodian or a class of health information custodians



or agents (e.g. physicians, nurses or social workers) to use their personal health information.

Although it is up to the individual to whom the information relates to decide what personal health information to lock, if any, and to whom the lock should apply, a health information custodian may discuss with the individual how locking personal health information might affect the individual's health care and why a health information custodian may need more personal health information to provide the best possible care.

### When do the lock-box provisions take effect?

In the majority of cases, the lock-box provisions have been in effect since November 1, 2004, when *PHIPA* came into force.

**Public hospitals** were granted a one-year exemption from having to comply with certain lock-box requirements of *PHIPA* until November 1, 2005. The exemption applies only with respect to express instructions related to:

- disclosures of personal health information to certain health information custodians without consent that are reasonably necessary for the provision of health care (section 38(1)(a) of *PHIPA*);
- disclosures of personal health information to persons outside of Ontario without consent that are reasonably necessary for the provision of health care (section 50(1)(e) of *PHIPA*); and
- uses of personal health information where the information was collected with

the individual's consent or without the individual's consent pursuant to section 36(1)(b) because the collection was reasonably necessary for the provision of health care (section 37(1)(a) of *PHIPA*).

However, this one-year delay in the application of the lock-box for public hospitals does not apply to any withholding or withdrawal of consent to the collection, use or disclosure of personal health information for purposes of providing or assisting in providing health care based on implied consent.

### What "lock-box" obligations are imposed on health information custodians?

Health information custodians are required to respect the decisions of individuals to withhold or withdraw their consent to the collection, use or disclosure of their personal health information for purposes of providing or assisting in providing health care and to respect express instructions not to use or disclose their personal health information for health care purposes without consent in the circumstances set out in sections 37(1)(a), 38(1)(a) and 50(1)(e) of *PHIPA* (subject, in the case of express instructions, to a one-year extension for public hospitals).

To ensure that no unauthorized collection, use or disclosure occurs, it is important for health information custodians to record any such express instructions or limitations on consent to the collection, use or disclosure of personal health information for health care purposes.

Compliance with the lock-box provisions of *PHIPA* may be achieved by health information custodians through:



- policies, procedures or manual processes;
- electronic or technological means; or
- a combination of policies, procedures or manual processes and technological means;

depending on the avenue chosen by the health information custodian.

Once an individual locks personal health information by withholding or withdrawing consent to its collection, use or disclosure for health care purposes, or providing an express instruction to that effect, a health information custodian who is subject to the withdrawal or withholding of consent or express instruction cannot collect, use or disclose, as the case may be, that personal health information for health care purposes unless:

- the individual changes his or her mind and informs the health information custodian accordingly; or
- the collection, use or disclosure can be made without consent (except as set out in section 37(1)(a), 38(1)(a) and 50(1)(e) of *PHIPA*), such as where the health information custodian believes on reasonable and probable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons, subject to any applicable constitutional restrictions (section 40(1) of *PHIPA*).

## What notice obligations do health information custodians have when an individual locks his or her personal health information?

*PHIPA* (section 20(3)) provides that, where personal health information has been locked and a health information custodian is prevented from disclosing to certain health information custodians personal health information that the first custodian considers reasonably necessary for the provision of health care, the disclosing health information custodian must notify the other health information custodian(s) of that fact.

The receiving health information custodian would then be able to explore the matter of the “locked” personal health information with the individual and seek his or her consent to access the locked information. (The disclosing health information custodian would need to obtain the express consent of that individual to disclose the locked information.)

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