



APPENDIX

Please note that suggestions for deletion contain ~~strike-throughs~~. Suggestions for additions are **bolded**.

Recommendation 1: Amend Schedule 6, section 1 (1), to ensure consistency with other provisions in Schedule 6 and the Act, as follows:

- “authentication services” means,
(a) services that rely upon validation and verification services to ~~establish confidence in~~ **confirm** an individual’s identity, or
(b) any other prescribed services; (“services d’authentification”)
[...]
“digital health identifier records” means records of personal health information that;
(~~a~~) are in the prescribed organization’s custody or under its control **as a result of or in connection with the prescribed organization performing its powers or duties**, and
(~~b~~) ~~are collected or used by the prescribed organization under Part V.2;~~ (“dossiers liés aux identifiants Santé numériques”)

Recommendation 2: Amend Schedule 6, section 5, to delineate the different functions of the prescribed organization under Part V.1 and Part V.2 and ensure there is a right of access to the electronic record logs referenced in Recommendation 12, as follows:

- 5 (1) Section 51 of the Act is amended by adding the following subsection:
Application to prescribed organization
(5) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to the prescribed organization as if it were a health information custodian and as if it had custody or control of a record of personal health information that is accessible to health information custodians by means of the electronic health record developed and maintained by the prescribed organization **under Part V.1.**
- 5(2) Section 51 of the Act is amended by adding the following subsection:
Same
(6) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to the prescribed organization as if it were a health information custodian and as if it had custody or control of an electronic record kept by the prescribed organization under paragraphs 4, 5 and 6 of section 55.3 **in Part V.1.**
- (3) Section 51 of the Act is amended by adding the following subsection:
Same



(7) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to the prescribed organization as if it were a health information custodian with respect to digital health identifier records **and the electronic record logs under Part V.2.**

(4) Section 51 of the Act is amended by adding the following subsection:

Application to record of a custodian

(8) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to a record in the custody or control of a health information custodian respecting all instances where all or part of the personal health information of the individual that is accessible by means of the electronic health record developed and maintained by the prescribed organization **under Part V.1** is viewed, handled or otherwise dealt with by the custodian.

Recommendation 3: Amend Schedule 6 and add a provision under Part V of the Act to clearly delineate when and how a request for access is made under subsection 53(1) of the Act with respect to the records referenced in the newly proposed subsections 51(5), 51(6) and 51(7) of the Act, as follows:

53.1 An individual is deemed to exercise a right of access under subsection 53(1) to a record referenced in subsections 51(5), 51(6) or 51(7) by making a request for access to the prescribed organization in the prescribed manner.

Recommendation 4: Amend Schedule 6 by striking the current subsection 55.3(18) of the Act and substituting it with the below provision. This would require the initial review and approval of the practices and procedure of the prescribed organization for “responding to or facilitating a response to a request made by an individual under Part V in respect of the individual’s record of personal health information that is accessible by means of the electronic health record” and the “record kept by the prescribed organization under paragraphs 4, 5 and 6 of section 55.3” be done by the IPC rather than the Minister of Health and Long-Term Care. This will streamline the initial review that is already required to be completed by the Commissioner under subparagraph 55.3(14) of the Act, thereby avoiding duplication and risk of divergence in reviews.

18. It shall have in place and comply with practices and procedures,

- i. that are for the purpose of responding to or facilitating a response to a request made by an individual under Part V in respect of the individual’s record of personal health information that is accessible by means of the electronic health record and the record kept by the prescribed organization under paragraphs 4, 5 and 6 of section 55.3; and
- ii. that are approved by the Commissioner.

Recommendation 5: Amend Schedule 6 and include an amendment to subsection 55.12(1) of the Act to require the continued review of the practices and procedure of the prescribed organization for responding to or facilitating a response to a request made by an individual under Part V in respect of the individual's record of personal health information that is accessible by means of the electronic health record and the record kept by the prescribed organization under paragraphs 4, 5 and 6 of section 55.3, as follows:

55.12 (1) The Commissioner shall review the practices and procedures of the prescribed organization referred to in paragraphs 14 **and 18** 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 ~~sub~~paragraphs 14 i **and 18 i** of section 55.3 and, after the review, the Commissioner may renew the approval.

Recommendation 6: Amend Schedule 6, section 8 that proposes to add a new section 55.16, to specify a clear purpose for the proposed new Part V.2 of the Act, as follows:

55.16 The prescribed organization may, in accordance with this Part and the regulations, carry out digital health identifier activities **for the purpose of providing access to the individual to the records referenced in subsections 51(5), 51(6) and 51(7) of this Act.**

Recommendation 7: Amend Schedule 6, section 8 that proposes to add a new section 55.18, by removing any modification or exclusion of the requirement to obtain the express consent of the individual under the proposed new Part V.2 of the Act, as follows:

Application of Part III

55.18 (1) Part III applies to the prescribed organization when it acts under this Part as if it were a health information custodian, subject to any necessary modifications and to any exceptions or modifications set out in the regulations.

Regulations

(2) Despite subsection (1), the regulations may modify or exclude the application of **sections 21-28** ~~all or part of Part III~~ to the prescribed organization when it acts under this Part ~~or may provide that, despite any requirement in this Act, consent of the individual to whom the personal health information relates is not required for specified activities.~~

(2.1) Despite subsection (2), the requirement to obtain the express consent of the individual in subsections 55.17(1) and 55.17(2) may not be modified or excluded.

Recommendation 8: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to the Act to ensure that digital health identifier records that are the subject of a request for access under Part V must be retained by the prescribed organization for as long as necessary to allow the individual to exhaust any recourse under the Act that he or she may have with respect to the request, as follows:

55.22.1 Retention of records subject to a request

Despite subsection 55.22, the prescribed organization that has custody or control of a digital health identifier record that is the subject of a request for access under Part V shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request.

Recommendation 9: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to the Act that requires the prescribed organization to ensure records of personal health information in its custody or control are handled in a secure manner, consistent with the obligation set out under subsection 13(1) of the Act, as follows:

Handling of records

(xx.x) The prescribed organization shall ensure that the records of personal health information that it has in its custody or under its control under this Part are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements, if any.

Recommendation 10: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to the Act to ensure that a person who provides goods or services to the prescribed organization must comply with prescribed requirements and that the prescribed organization must also comply with any prescribed requirements, consistent with the requirements set out under subsection 10(3) and (4) of the Act, as follows:

Providers to prescribed organization

55.23 (5) A person who provides goods or services for the purpose of enabling the prescribed organization to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information under this Part shall comply with the prescribed requirements, if any.

Use of goods or services by prescribed organization

55.23 (6)

The prescribed organization shall comply with the prescribed requirements, if any, when using goods or services supplied by a person referred to in subsection 55.23.1.

Recommendation 11: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to require the prescribed organization to take reasonable steps to ensure that personal health information that it collects, uses or discloses under the new Part V.2 is accurate, complete and up to date, consistent with the requirements set out under section 11 of the Act, as follows:

Accuracy

Xx.x(x) The prescribed organization that uses personal health information about an individual under this Part shall take reasonable steps to ensure that the information

is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.

Same, disclosure

(x) The prescribed organization that discloses personal health information about an individual shall,

(a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the prescribed organization at the time of the disclosure;

or

(b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

Recommendation 12: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to require the prescribed organization to take reasonable steps to ensure that personal health information is not collected without authority, consistent with the requirements set out under section 11.1 of the Act, as follows:

Steps to ensure collection

(xx.x) The prescribed organization shall take steps that are reasonable in the circumstances to ensure that personal health information is not collected without authority under this Part.

Recommendation 13: Amend Schedule 6, section 8 to add a provision in the new Part V.2 to require the prescribed organization to keep an electronic record of any collection, use or disclosure of personal health information under Part V.2, consistent with the requirements set out under subsection 55.3 of the Act, as follows:

Logging an electronic record

(xx.x) The prescribed organization shall keep an electronic record of all instances where all or part of the personal health information in an individual's digital health identifier record is collected, used or disclosed, and ensure that the electronic record identifies the individual to whom the information relates, the type of information that is collected, used or disclosed, all persons who have collected, used or disclosed the information, and the date, time and location of the collection, use or disclosure.

Recommendation 14: Amend Schedule 6, section 8 and the new subsection 55.26(1) by removing the power of the Minister to issue directives to the prescribed organization that may limit the eligibility of individuals or groups of individuals to receive digital health identifier activities, as follows:

55.26 (1) The Minister may issue directives to the prescribed organization related to digital health identifiers and digital health identifier activities, including directives related to,

- ~~(a) the eligibility of individuals or groups of individuals to receive digital health identifier activities;~~
- (b) requiring the prescribed organization to undertake additional privacy or security measures, which may include entering into agreements and conducting assessments;
- (c) **additional** audit log and auditing requirements; or
- (d) changes in technologies that relate to the digital health identifier activities.

Recommendation 15: Amend Schedule 6, section 8 and the new subsection 55.27 by removing or amending broad regulation making authority that, (1) lacks justification; (2) unduly expands authorities of health information custodians, the prescribed organization and other persons in ways that should be more clearly and transparently included in statute instead; and (3) excludes requirements under the Act that protect the privacy of individuals and the confidentiality of their personal health information, as follows:

55.27 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- ~~(a) prescribing additional circumstances in which the prescribed organization may collect, use and disclose personal health information for purposes related to digital health identifiers and digital health identifier activities;~~
- (b) establishing and governing conditions or restrictions that apply to the collection, use and disclosure of personal health information by the prescribed organization;
- ~~(c) prescribing and governing disclosures of personal health information that may be made by a health information custodian or other person to the prescribed organization for purposes related to digital health identifier activities;~~
- ~~(d) prescribing additional conditions or restrictions that apply to health information custodians and other persons who use digital health identifiers, who seek to use digital health identifiers or who otherwise receive or seek to receive authentication services from the prescribed organization;~~
- (e) prescribing additional conditions or restrictions that apply to the prescribed organization when it carries out digital health identifier activities **under this Part**;
- ~~(f) specifying provisions in this Act that apply to the prescribed organization as if it were a health information custodian when the prescribed organization carries out digital health identifier activities;~~
- (g) respecting the type of personal health information that is required for validation and verification services **under this Part**;
- (h) governing the application of Part III with respect to the prescribed organization **under Part V.2**, which may include excluding or modifying the application of the provisions **sections 21-28** in that Part **III** or providing that, despite anything in this Act, consent is not required for specified activities;
- (i) governing the privacy and security of personal health information under this Part;

- (j) governing the circumstances in which particular types of personal health information may or may not be collected, used or disclosed **by the prescribed organization under this Part** in relation to digital health identifier activities;
- (k) governing the modifications to the requirements of this Act described in subsection 55.23 (4);
- (l) governing notices of theft, loss or unauthorized use or disclosure that must be provided under subsection 55.24 (3);
- ~~(m) prescribing additional persons who may collect, use or disclose personal health information for purposes related to digital health identifiers or digital health identifier activities;~~
- ~~(n) governing any conditions or restrictions that apply to that collection, use or disclosure of personal health information by an additional person prescribed under clause (m), which may include providing that specified provisions in Part III apply or do not apply to consents that are required for the collection, use or disclosure, subject to any specified modifications or exclusions;~~
- (o) clarifying or creating exceptions from the definitions of “account management services”, “authentication services”, “digital health identifier activities” and “validation and verification services”.

Recommendation 16: Amend Schedule 6, section 8 and the new subsection 55.27 by adding the following regulation making authority, consistent with requirements added under the new Part V.2, as follows:

- (x) prescribing conditions and restrictions that apply to a person who provides goods or services for the purpose of enabling the prescribed organization under this Part to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information;**
- (x) prescribing conditions and restrictions that apply to the prescribed person when using goods or services supplied by a person for the purpose of enabling the prescribed organization under this Part to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information;**

Recommendation 17: Amend Schedule 6, by including amendments to the provisions under Part VI of the Act that refer to a “health information custodian” and not a “person”, to ensure that the prescribed organization under Part V, Part V.1 and the newly proposed Part V.2 is also subject to the IPC’s enforcement powers under Part VI by adding the words “and the prescribed organization under Part V, Part V.1 or Part V.2” as applicable to each of those provisions. This is a clearer way of ensuring all provisions under Part VI of the Act will apply to the prescribed organization in all its functions and duties.

Recommendation 18: Amend Schedule 6, section 10(2) and the new subsection 61(1)(f.2) of the Act relating to the Commissioner’s order making powers in respect of the prescribed organization to ensure consistency with the order making power under subsection 61(1)(f), while also delineating Parts V.1 and V.2 of the Act, as follows:

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

(f.2) make an order directing the prescribed organization to change, **cease or not commence** practices ~~and or~~ procedures under **Part V.1 or Part V.2 specified by the Commissioner**, if the Commissioner determines that the practices ~~and or~~ procedures contravene this Act or its regulations;

Recommendation 19: Amend Schedule 6, section 10 and add a provision under 61(1) of the Act, to include the power to direct the prescribed organization under Part V.1 or the newly added Part V.2 to implement a practice or procedure specified by the Commissioner, consistent with the order making power under subsection 61(1)(g) of the Act, as follows:

(g.1) make an order directing the prescribed organization under Part V.1 or Part V.2 to implement a practice or procedure specified by the Commissioner, if the Commissioner determines that the practice or procedure is reasonably necessary in order to achieve compliance with this Act and its regulations;

Recommendation 20: Amend Schedule 6, section 10(3), to ensure consistency with the inclusion of requirements with respect to agents of the prescribed organization set out under only the newly added Part V.2 of the Act and correct the reference to “custodian” in this provision, as follows:

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

(h.0.1) make an order directing any person who is an agent of the prescribed organization acting under Part ~~V or~~ V.2 and whose activities the Commissioner reviewed and that an order made under any of clauses ~~(a.1), (c), (d), or (e), (f.2)~~ **or (g.1)** directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent to ensure that the ~~eustodian~~ **prescribed organization** will comply with the order made against the ~~eustodian~~ **prescribed organization;**

Recommendation 21: Amend Schedule 6, section 13, by removing or amending broad regulation making authority that, (1) lacks justification; (2) unduly expands the authorities of health information custodians, the prescribed organization and other persons in ways that should be more clearly and transparently included in statute instead, (3) does not clearly differentiate between the different functions and authorities that the prescribed organization holds under the Act; (4) limits or eradicates the right of access; and (5) excludes requirements under the Act that protect the privacy of individuals and the confidentiality of their personal health information, as follows:

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

(d.1) prescribing an organization as the prescribed organization **under Part V.1 and/or Part V.2 for the purposes of this Act and respecting the purposes for which the organization is prescribed**, subject to subsection (4.1);
~~(d.2) prescribing additional powers, duties and functions of the prescribed organization;~~

- (d.3) establishing and governing reporting requirements that apply to the prescribed organization **under Part V.2**;
- (d.4) prescribing provisions of the Freedom of Information and Protection of Privacy Act that apply to the prescribed organization, subject to any specified conditions or modifications, to personal health information,
 - (i) in the custody or under the control of the prescribed organization, or
 - (ii) that is described in this Act as being treated as if it were in the custody or under the control of the prescribed organization;
- ~~(d.5) specifying provisions in this Act that apply to the prescribed organization as if it were a health information custodian when the prescribed organization carries out specified activities under this Act, subject to any conditions or modifications that may be prescribed;~~
- (d.6) specifying requirements or provisions in this Act that apply to agents of the prescribed organization **under Part V.2** when they carry out activities on behalf of the prescribed organization **under that Part**;
- ~~(d.7) governing the application of Part III of this Act with respect to the prescribed organization, which may include excluding or modifying the application of the provisions in that Part;~~
- ~~(d.8) prescribing under what circumstances the prescribed organization may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the prescribed organization and disclosures of personal health information that may be made by a health information custodian or other person to the prescribed organization;~~
- (d.9) prescribing conditions and restrictions that apply to a person who provides goods or services for the purpose of enabling the prescribed organization **under Part V.2** to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information;

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

- ~~(m.2) prescribing exceptions or additional requirements that apply with respect to the prescribed organization and the records described in subsection 51 (5), (6) or (7), which may include excluding,~~
 - ~~(i) classes of records from the application of those subsections, or~~
 - ~~(ii) classes of persons from access to those records in a prescribed form or manner;~~
- ~~(m.3) governing the application of section 52 to records in the custody or control of the prescribed organization, or that are described in this Act as being treated as if they were in the custody or control of the prescribed organization, which may include prescribing exceptions in subsection 52 (1) that do not apply or permitting or requiring another person to be responsible for identifying whether an exception applies to the records;~~
- (m.4) establishing and governing pilot programs with respect to records described in subsection 51 (5), including allowing the prescribed organization to specify the eligibility of individuals or groups of individuals to receive records in a specified format or manner;

(m.5) prescribing the format or manner in which records described in subsection 51 (5), (6) or (7) shall be made available;

~~(m.6) authorizing the prescribed organization to deactivate digital health identifiers or block an individual's access to the records described in subsection 51 (5), (6) or (7) and governing the conditions and process for reactivating the digital health identifier or access to records;~~

(m.7) requiring the prescribed organization to provide summaries of records in addition to the records described in subsection 51 (6) or (7), and governing the circumstances when a summary shall be provided;

~~(m.8) authorizing a health information custodian to provide summaries in response to a request for access instead of the complete record described in subsection 51 (8) in specified circumstances, subject to any conditions;~~

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

Two or more organizations prescribed

(4.1) A regulation made under clause (1) (d.1) may prescribe more than one organization to act as the prescribed organization **under Part V.1 and Part V.2**~~for the purposes of this Act and may provide for the respective powers, duties and functions of each organization under this Act.~~

Recommendation 22: Amend Schedule 6, section 13, by adding the following regulation making authority, consistent with provision added under Recommendation 3, as follows:

(x.x) prescribing the manner in which an individual may exercise a right of access to a record referenced in subsections 51(5), 51(6) and 51(7);