
Checklist for Health Information Custodians in the Event of a Planned or Unforeseen Change in Practice

Identify the health information custodian

- ✓ It is vital to identify who the health information custodian (the custodian) of personal health information records (records) is in the event of a planned or unforeseen change in practice.
- ✓ **Transfer to an Agent:** Upon transfer to an agent, such as a record storage company, the custodian of the records continues to remain the custodian.
- ✓ The custodian of the records ceases to be the custodian when complete custody and control of the records passes to another person who is legally authorized to hold them.
- ✓ **Death:** Upon the death of a custodian, the estate trustee becomes the custodian until custody and control passes to another person who is legally authorized to hold the records, or if there is no estate trustee, the person who assumed responsibility for the administration of the estate becomes the custodian.
- ✓ **Bankruptcy or Insolvency:** If another person (e.g., a trustee in bankruptcy) obtains complete custody or control of the records as a result of the bankruptcy or insolvency of the custodian, then that person becomes the custodian.
- ✓ **Transfer to a Successor:** When complete custody and control of the records is transferred to a successor, who is or will become a custodian, then the successor becomes the custodian.
- ✓ **Transfer to an Archive:** Upon transfer to an archive, there is no longer a custodian.
- ✓ If none of the conditions described above applies when there is a change in practice, then the existing custodian of the records remains the custodian.

Retain records in a secure manner

- ✓ Securely retain all records, either personally or through an agent such as a record storage company.
- ✓ Take steps that are reasonable in the circumstances to ensure that records are protected against theft, loss and unauthorized use or disclosure, and to ensure that records are protected against unauthorized copying, modification or disposal.
- ✓ Retain records in accordance with the retention periods specified by the governing legislation and the policies and standards of practice of the college regulating the custodian's health profession.

- ✓ Retain records that are subject to an access to information request for as long as necessary to allow the individual to exhaust any recourse regarding the request (e.g., complaint to the IPC)
- ✓ Ensure that any agent retained to securely retain records on the custodian's behalf collects, uses, discloses, retains and disposes of records only if the custodian permits the agent to do so *and* the custodian is permitted or required to collect, use, disclose retain or dispose of the information; the collection, use disclosure, retention or disposition is in the course of the agent's duties and not contrary to the limits imposed by the custodian or the law; and any prescribed requirements are met.
- ✓ Enter into written agreements with agents, such as record storage companies, setting out their duties in respect of the records.

Transfer records in a secure manner

- ✓ If records are transferred to another person (e.g., a successor, an archive, or a record storage company), this must be done in a secure manner.

Dispose of records in a secure manner

- ✓ Dispose of records in a secure manner only after the expiry of the specific retention period set out in the governing legislation and in the policies and standards of practice of the college regulating the custodian's health profession.
- ✓ Do not dispose of records that are subject to an access request until the individual has exhausted any recourse regarding the request (e.g., complaint to the IPC).
- ✓ Ensure that records are destroyed in such a manner that their reconstruction is not foreseeable (ie., using cross-cut shredding for paper records).

Notify individuals of the change in practice

- ✓ Where possible, directly notify individuals in person, by letter or by telephone.
- ✓ Where it is not possible to reach every affected individual by direct notification, notify them indirectly by using multiple forms of notification such as posting a notice in the custodian's office, posting a notice on the custodian's website, recording a message on the custodian's telephone answering machine, and advertising in newspapers.
- ✓ Make reasonable efforts to give notice to affected individuals before transferring their records, or if that is not reasonably possible, as soon as possible after the transfer.

Ensure that an appropriate person provides the notice

- ✓ Ideally, notice should be provided by the custodian who is initiating or undergoing the change in practice.

- ✓ If another person becomes the custodian as a result of an unforeseen change in practice, that person should provide notice.
- ✓ If possible, notice should be provided by someone that the individual would expect to have access to their personal health information, such as the custodian, rather than the custodian's agent, such as a record storage company.

Provide sufficient detail in the notice

- ✓ At a minimum, the notice should include:
 - A description of the change in practice;
 - Contact information for the custodian, successor custodian, estate trustee, other person who becomes the custodian, or the custodian's agent, such as the records storage company, that has or will have custody of the records;
 - Information about the length of time the records will be retained by the custodian or the agent of the custodian;
 - Information about how individuals may request access to or correction of their records or request transfer of their records to another custodian, both prior to and following the change in practice.

Think proactively about safeguarding all records

- ✓ Be aware of privacy protective record keeping practices set out in guidelines and legislation.
- ✓ Clearly identify the custodian where health care practitioners work together in a group practice.
- ✓ Establish formal agreements about the obligations of each health care practitioner involved in a group practice with respect to records, in the event of a change in practice.
- ✓ Develop policies and procedures to be followed in the event of a change in practice, such as the procedure for notifying individuals.
- ✓ Make arrangements for the secure storage of records, in the event of a change in practice.
- ✓ Fulfill all business-related obligations (e.g., rental payments) necessary to ensure that the custodian maintains custody and control of records at all times.
- ✓ In the event of a temporary loss of custody or control, take all steps necessary to regain custody or control of the records as soon as possible.
- ✓ Arrange in advance for a future successor.
- ✓ Ensure that any estate trustee appointed is willing and able to fulfill all the obligations of a custodian.

For more detailed information please refer to the document entitled, *How to Avoid Abandoned Records: Guidelines on the Treatment of Personal Health Information, in the Event of a Change in Practice*.