

IPC's review of St Joseph's Healthcare Hamilton's high number of misdirected faxes reported to the IPC as part of its 2020 Annual Statistical Report

Statistical reports submitted by St. Joseph's Healthcare Hamilton (the Hospital) to the Information and Privacy Commissioner of Ontario (IPC) under the Personal Health Information Protection Act, 2004 (the Act) for the year 2020, showed 1,006 unauthorized disclosures of personal health information (PHI), with 981 of those disclosures due to misdirected faxes. Given the large number reported, the IPC opened a file to gather more information about these incidents.

In response to our request for additional information regarding the circumstances of the misdirected faxes, the Hospital conducted a comprehensive review of all the reported instances of misdirected faxes. The IPC learned that the Hospital introduced a fax reporting tool, which included a form for staff to report misdirected faxes, in preparation for the mandatory breach reporting requirement under the Act that went into effect in late 2018. The introduction of the centralized fax incident reporting tool resulted in an increase in the number of fax-related mishaps reported and enabled the Hospital to identify the cause of misdirected faxes.

As a result of the Hospital's subsequent review, it explained that the number of misdirected faxes was over-reported to the IPC in 2020. It advised that there were 708 incidents in total and that 563 resulted from primary health care provider contact information being changed and not updated in its system. 124 instances of the misdirected faxes were caused by Hospital error.



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For those 124 misdirected faxes that can be attributed to hospital error, 47 instances were caused by a miscommunication between the patient and the registration/clinic staff that resulted in the wrong provider's contact information being recorded (e.g., similarly named provider), resulting in the wrong provider receiving the information. There were 74 instances where PHI was faxed to an incorrect health information custodian due to human error (i.e., manual entry error, or the incorrect provider selected in the Hospital's health information system).

Reports of misdirected faxes were typically received from external health information custodians, for example, family physicians, who received reports from the Hospital for patients they did not or no longer provided care to.

The Hospital advised that a contributing factor for the increased use of fax transmissions in 2020 was the COVID-19 pandemic. The pandemic resulted in increases in health information reports (i.e., COVID-19 lab results) being sent via fax to primary care providers.

REMEDATION: PROCESS IMPROVEMENTS TO PREVENT MISDIRECTED FAXES

The Hospital committed to making many changes to prevent re-occurrence of these incidents related to incorrect primary health care provider information, including the following:

- At registration, which occurs at each hospital visit, patients are now asked to re-confirm their primary care provider information if there is already a provider on file.
- The Hospital provided education to registration staff in areas with high volumes of misdirected faxes, stressing the importance of confirming the correct primary care provider with patients and the privacy and clinical impacts of outdated records. This will be complemented by training on the additional steps that can be taken to help patients identify their primary care provider (e.g., when the patient may not know the full name of their physician).
- Using the fax reporting tool, the Hospital will review returned faxes to flag incorrect contact information of primary caregivers and trigger a reconfirmation with the patient at their next visit or earlier where possible.
- The Hospital proactively reached out to primary care providers to determine whether they are set up on a secure electronic portal through which they may receive patient records/reports. Currently, the Hospital communicates with 6,900 care providers using the secure electronic portal Hospital Report Manager (HRM). In 2020, there were only 300 primary care providers who notified the Hospital that they were using the secure electronic portal Hospital Report Manager (HRM). Currently, the Hospital communicates with

6,900 care providers using HRM. A very impressive and impactful result that will significantly reduce the use of faxes.

IMPROVED BREACH MANAGEMENT, PATIENT NOTIFICATION AND REPORTING

In addition to reviewing its use of the fax, the Hospital took the opportunity to review its breach management, patient notification and reporting obligations under the Act and made the following improvements:

- Increased governance and oversight of privacy incidents, including an annual report to the Hospital's Board of Trustees and a mid-year report to the Hospital Quality & Patient Safety Committee.
- Enhanced the Hospital's privacy policy that sets out rules for the collection, use and disclosure of personal health information, a protocol for responding to privacy breaches, and warns of disciplinary consequences for non-compliance, up to and including termination.
- Launched and completed mandatory annual privacy training for all staff, in addition to the existing requirements for training at onboarding.
- Introduced an annual requirement for all staff to attest to confidentiality, in addition to the existing attesting at onboarding. (Prior to April, 2022, the Hospital provided privacy training and required staff to attest to confidentiality at the time of onboarding only).
- Privacy Team staff have successfully completed externally-provided privacy officer refresher training.
- Created and hired an executive-level Chief Risk, Legal & Privacy Officer position.

With respect to misdirected fax incidents, the Hospital has undertaken the following:

- The Hospital's fax reporting tool has been updated to collect greater fields of information which will allow for more timely investigation into whether a misdirected fax incident constitutes a breach of PHIPA, earlier determination of whether patient and IPC notification are required, and enhanced ability to track and remediate incidents.
- Established a performance metric of patient notification of a fax incident (where the incident constitutes an unauthorized disclosure) within 30 days of discovery by the Hospital.

- Established a bi-monthly review of fax incidents (both non-breach and breach incidents) by privacy and health records staff to identify system issues, trends, opportunities for remediation, and point-in-time reporting requirements to the IPC.
- Undertaken a review of all recent fax incidents with a view to identifying compliance gaps, opportunities for improvement, and reducing breaches.

PLANS TO ELIMINATE OR REDUCE USE OF FAXES

In addition to the remedies noted above, the Hospital is pursuing a number of initiatives to reduce the use of faxes both internally and in partnership with other healthcare organizations and providers in the region. It has expressed its commitment to work with health system partners to explore alternate solutions for the secure transmission of health information. This includes the implementation of an electronic referral system, whereby referrals can be received directly from primary care providers' electronic medical record systems. Currently, the Hospital has implemented an "e-referral first" approach for referrals in a number of clinical areas. In these areas, e-referral is the preferred transmission and must be used unless a primary care provider is not able to access e-referral due to technology constraints. The Hospital plans on implementing this approach for other clinical areas in the near future.

Finally, the Hospital is actively working with primary care providers to optimize communications. This initiative involves a review of the types of health information records that are transferred and how these records are transferred between primary care providers and the Hospital.

OUTCOME

The IPC was satisfied that the Hospital made reasonable efforts to notify all of the 124 affected patients whose personal health information was breached under the Act either through miscommunication between the patient and the registration/clinic staff, or through human error.

As for the remaining 563 reported instances where faxes were misdirected due to the Hospital not being provided up to date information about a patient's healthcare provider, the Hospital takes the position that these cases did not constitute breaches under the Act. According to the Hospital, these included 13 instances in which the wrong location but correct health care provider was provided and 550 instances where patients did not update or gave incorrect primary health care provider information. The IPC is not necessarily persuaded by the Hospital's conclusion in this regard. However, given the evidentiary difficulty of ascertaining, in each of these 563 instances, whether the disclosure of the patient's personal health information at the time was authorized under s. 29 of the Act (and whether there was a duty to notify the patient under

s. 12(2) of the Act), the IPC will not be making a determination in each particular case.

Further, the IPC has not determined whether the Hospital previously took steps that were reasonable in the circumstances to prevent unauthorized disclosures under s. 12(1). For all practical intents and purposes, the Hospital has now changed its practices and taken steps to address this matter on a systemic basis. The Hospital has confirmed that patients are now routinely asked at registration to re-confirm their primary care provider information if there is already a provider on file and that staff are trained on carrying out this critical step.

After considering the circumstances in this matter, the Hospital's detailed review, its report outlining all of its efforts to prevent future misdirected faxes and its clear commitment to reducing its reliance on this technology, the IPC was sufficiently satisfied to close this Commissioner-initiated file.

The IPC is pleased that, in response to the IPC opening this file, the Hospital has taken the initiative to work towards the elimination of its use of faxes.

The Hospital's diligence and broad approach to reporting highlight the benefit of annual reporting of privacy breaches to the IPC by health information custodians. Having to record and report annual breaches helps identify concerning trends and prioritize efforts to address them. Through the steps taken by the Hospital to prevent misdirected faxes and significantly reduce the use of faxes, the IPC believes that meaningful improvements have been made, and will continue to be made, to protect the personal health information of patients interacting with the Hospital.