

Privacy and Protection of Personal Information	
Manual: Administration	
Section: Records Management	Subsection: Records Security
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Approved By: Vice President, Home and Community Care	
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Policy:

The Central East Local Health Integration Network (LHIN) as a health information custodian (HIC) under the Ontario *Personal Health Information Protection Act, 2004* (PHIPA) collects, uses, and discloses personal information and shall be committed to protecting the privacy, confidentiality and security of all personal information to which it is entrusted.

A violation of this policy may lead to disciplinary action up to and including termination of employment and may result in individual civil and/or criminal liability.

Purpose:

To outline the Central East LHIN requirements for managing the collection, use, and disclosure of personal information and personal health information by employees and agents of the Central East LHIN.

The Central East LHIN is committed to protect personal health information and shall comply with applicable legislation and the Canadian Standards Association's (CSA) ten (10) Principles of Fair Information Practices to protect each patient's right to privacy of their personal information.

Definitions:

Agent: A person who, with authorization from the Central East LHIN, acts for, or on behalf of the Central East LHIN in respect to personal information for the purposes of the Central East LHIN and not for the agent's own purposes. Examples include students and contracted service providers.

Capacity: As taken from the *Personal Health Information Protection Act, 2004*, Section 21 (1).

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An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able:

- (a) To understand the information that is relevant to deciding whether to consent to the collection use or disclosure, as the case may be, and
- (b) To appreciate the reasonable foreseeable consequences of giving, not giving, withholding or withdrawing the consent.

Circle of care: The term “circle of care” is not a defined term in the *Personal Health Information Protection Act, 2004* (PHIPA). It is a term commonly used to describe the ability of certain health information custodians to assume an individual’s implied consent to collect, use or disclose personal health information for the purpose of providing health care, in circumstances defined in PHIPA.

Consent: The permission from a patient or his/her Substitute Decision Maker (SDM) to collect, use or disclose personal information on the patient’s behalf. Under PHIPA consent must be:

- From an individual/SDM who must be knowledgeable and informed about the purposes of consent and that the individual/SDM may give or withhold consent
- Related to the information to be collected, used or disclosed; and
- Obtained without deception or coercion

Consent can be **implied** or **expressed** but it must be expressed where:

- a) A Health Information Custodian (HIC) discloses personal information to a person that is not a HIC; or
- b) A HIC discloses personal information to another HIC for a purpose other than providing health care or assisting in providing health care

Expressed Consent: Confirms agreement in clear terms either in writing or verbally; Central East LHIN employees are required to specifically ask a patient for his/her permission to collect and share his/her personal health information before using it for purposes outlined in the Ontario *Personal Health Information Protection Act, 2004* (PHIPA).

Health Information Custodian (HIC): A person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person’s or organization’s powers or duties or the work described in the paragraph, if any:

1. A health care practitioner or a person who operates a group practice of health care practitioners.
2. A service provider within the meaning of the *Home Care and Community Services Act, 1994* who provides a community service to which that Act applies.
3. A community care access corporation within the meaning of the *Community Care Access Corporations Act, 2001*.
4. A person who operates one of the following facilities, programs or services:
 - i. A hospital within the meaning of the *Public Hospitals Act*, a private hospital within the meaning of the *Private Hospitals Act*, a psychiatric facility within the meaning of the *Mental Health Act* or an independent health facility within the meaning of the *Independent Health Facilities Act*.

- ii. A long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*, a placement coordinator described in subsection 40 (1) of that Act, or a care home within the meaning of the *Residential Tenancies Act, 2006*.
 - ii.(1). A retirement home within the meaning of the *Retirement Homes Act, 2010*.
 - iii. A pharmacy within the meaning of Part VI of the Drug and Pharmacies Regulation Act.
 - iv. A laboratory or a specimen collection centre as defined in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act*.
 - v. An ambulance service within the meaning of the *Ambulance Act*.
 - vi. A home for special care within the meaning of the *Homes for Special Care Act*.
 - vii. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.
5. An evaluator within the meaning of the *Health Care Consent Act, 1996* or an assessor within the meaning of the *Substitute Decisions Act, 1992*.
 6. A medical officer of health of a board of health within the meaning of the *Health Protection and Promotion Act*.
 7. The Minister, together with the Ministry of the Minister if the context so requires.
 8. Any other person prescribed as a health information custodian if the person has custody or control of personal health information as a result of or in connection with performing prescribed powers, duties or work or any prescribed class of such persons. ⁱ

Note: Section 3 of Ontario Regulation 329/04 is amended by adding the following subsection:

- (8) Every local health integration network,
 - (a) is prescribed as a health information custodian;
 - (b) is prescribed as a single health information custodian with respect to all of its functions; and
 - (c) shall be deemed to be included in the list of types of custodians referred to in subsections 20 (2) and (3), clause 38 (1) (a) and sub clause 39 (1) (d) (i) of the Act. ⁱⁱ

Implied Consent: Occurs when an action indicates that consent has been given, although no direct or explicit words of agreement have been expressed. The individual is not specifically asked for consent but is given relevant information. For example, patient puts out his/her arm for an injection; patient starts removing outer dressing for dressing change.

Note: Once the initial verbal consent has been obtained the Central East LHIN has express consent from the patient/SDM to collect, use, and disclose personal health information (PHI) for the purpose of providing health care or assisting in providing health care to the patient, unless the patient/SDM specifically withdraws his or her consent. The Central East LHIN has express consent from the patient/SDM to share PHI with Central East LHIN employees and its contracted service providers.

Informed Consent: Before agreeing to the collection and sharing of PHI, the patient/SDM is provided with information that a reasonable person would need to make an informed decision about the collection or sharing of their PHI.

Elements of informed consent include:

- Who is going to collect, share, and/or receive the information

- Why the information is needed and what it will be used for
- What kind of information is needed and how much
- How patient information is protected
- The possible consequences of a decision to give or to not give consent

Personal Health Information (PHI): As taken from the *Personal Health Information Protection Act, 2004*, Section 4(1).

Personal Health Information means identifying information about an individual in oral or recorded form, if the information,

- Relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family,
- Relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,
- Is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the individual,
- Relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,
- Relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,
- Is the individual’s health number, or
- Identifies an individual’s substitute decision maker

Personal Information: Information about the individual that relates to their person. Personal information includes an individual’s contact information such as home address, age, gender, identifiers such as driver’s license, health number, social insurance number and information such as an individual’s racial or ethnic origin, political opinions or religious beliefs.

Note: In this document, the term personal information means both personal information and personal health information.

Substitute Decision Maker (SDM): A specified person(s), identified as per the hierarchy of persons set out in the *Health Care Consent Act, 1996*, who may make a treatment decision for someone who is mentally incapable of making his/her own decisions.

Procedures:		
<i>Responsibility</i>	<i>Steps</i>	<i>Actions</i>
Senior Manager, Health Records	1.	Ensure the <i>Privacy and Protection of Personal Information</i> policy remains current relative to legislative changes.
	2.	Educate all employees on the content and intent of the <i>Privacy and Protection of Personal Information</i> policy.

Employee	3.	Maintain the privacy, confidentiality, and security of a patients' personal health information by following the Principles of Fair Information Practices as indicated in this policy.
Director, Contract Management, Performance and Accountability	4.	Ensure that agents are aware of the Central East LHIN <i>Privacy and Protection of Personal Information</i> policy and the legal requirements for each agent to meet the intent of the Health Information Protection Act.
Senior Manager, Health Records/ Health Records Associate	5.	Notify individuals when their personal information is stolen, lost, or accessed by unauthorized persons.
Care Coordinator/ Team Assistant	6.	Provide new patients with Central East LHIN "Welcome To Our Services" booklet; review on assessment "Your Privacy at Central East LHIN"

The following describes the *Principles of Fair Information Practices* and how the Central East LHIN uses these Principles to protect the privacy of individuals

Principle 1 - Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with privacy principles.

The Central East LHIN has appointed the Vice President, Home and Community Care as the Chief Privacy Officer to oversee the compliance with the CSA Principles and Privacy Legislation.

The Central East LHIN uses contractual means to provide a comparable level of protection while the information is being processed by our Agents.

The Central East LHIN has implemented policies and procedures to give effect to this policy including:

- Implementing procedures to protect personal information
- Establishing procedures to receive and respond to complaints and inquiries
- Training, and communicating to employees, information about privacy policies and procedures

All Central East LHIN employees are responsible for maintaining the privacy, confidentiality, and security of a patient's personal information.

Principle 2 – Identifying Purpose

The purpose for which personal information is collected shall be identified by the organization at or before the time information is collected.

At or before the time personal information is collected, the Central East LHIN employee shall identify the purposes for which information is collected. The primary purposes are to assess or review the requirements for services in the community, to determine eligibility, to develop or revise a plan of service, and to provide service in the community to the person to whom the record relates.

When personal information is to be used for a purpose not previously identified, the new purpose shall be identified prior to use. Unless the new purpose is required under law, the consent of the individual is required before information can be used for that purpose.

Principle 3 – Obtain Consent for the Collection, Use and Disclosure of Personal Information
The knowledge and consent of the individual is required for the collection, use, or disclosure of personal information. It is understood that obtaining consent may be inappropriate or impossible when the individual is a minor, seriously ill, or mentally incapacitated. In such cases consent must be obtained from the Substitute Decision Maker.

Consent is required for the collection of personal information and the subsequent use or disclosure of this information. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use.

The principle requires “knowledge and consent”. The Central East LHIN will make a reasonable effort to ensure that the patient is advised of the purposes for which the information will be used. To make consent meaningful, the purposes must be stated in such a manner that the patient can reasonably understand how the information will be used or disclosed.

Patients can give consent verbally during a telephone assessment or during a face-to-face assessment.

Patients may specify with whom information may be shared and for what purpose when giving consent.

A patient may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The Central East LHIN will inform the individual of the implications of such withdrawal.

The Central East LHIN has policies related to the release of personal records to a third party including the requirement for consent.

Principle 4 – Limiting Collection of Personal Information
The collection of personal information will be limited to that which is necessary for the purposes identified by the Central East LHIN. Information will be collected by fair and lawful means.

The Central East LHIN will not collect personal information indiscriminately. Both the amount and the type of information collected will be limited to that which is necessary to fulfill the purposes identified.

The requirement that personal information be collected by fair and lawful means is intended to prevent the Central East LHIN from collecting information by misleading or deceiving patients about the purpose for which information is being collected. This requirement implies that consent with respect to collection must not be obtained through deception.

Principle 5 – Limiting Use, Disclosure, and Retention of Personal Information
Personal information will not be used or disclosed for purposes other than those for which it was collected, except with the consent of the patient or as required by law.

If using personal information for a new purpose the Central East LHIN will obtain the consent of the patient. Personal information shall be maintained in strictest confidence and is not to be shared with any unauthorized person. Employees must avoid using personal information in any area where it may come to the attention of someone who is not entitled to receive such information.

The Central East LHIN has policies and procedures with respect to retention of personal information. These policies and procedures include required retention periods. Personal information that has been used to make a decision about a patient will be retained long enough to allow the patient access to the information after the decision has been made.

Principle 6 – Ensuring Accuracy of Personal Information

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

Personal information used by the Central East LHIN shall be sufficiently accurate, complete, and up-to-date to minimize the possibility that inappropriate information may be used to make a decision about the patient.

The Central East LHIN will routinely update personal information as necessary to fulfill the purposes for which the information was collected.

Personal information that is used on an ongoing basis, including information that is disclosed to third parties, will generally be accurate and up-to-date, unless limits to the requirement for accuracy are clearly set out.

Principle 7 – Ensuring Safeguards for Personal Information

Personal Information shall be protected by security safeguards appropriate to the sensitivity of the information.

The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use or modification. The Central East LHIN shall protect personal information regardless of the format in which it is held.

The nature of the safeguards will vary depending on the sensitivity of the information that has been collected, the amount, distribution, and format of the information, and the method of storage. A higher level of protection will safeguard more sensitive information, such as health records.

The methods of protection will include:

- a) Physical measures, for example, filing cabinets and restricted access to offices
- b) Organizational measures, for example, limiting access on a “need to know” basis; and
- c) Technological measures, for example, the use of passwords, encryption and audits, and by not sending patient information via email to external persons including service providers, patients, hospitals, physicians, etc.

Care will be given in the disposal and destruction of personal information, to prevent unauthorized parties from gaining access to the information.

Principle 8 – Openness about Personal Information Policies and Procedures

An organization shall make readily available to an individual specific information about its policies and practices relating to the management of personal information.

The Central East LHIN will be open about its policies and procedures with respect to the management of personal information. Patients will be able to acquire information about its policies and procedures

without unreasonable effort. This information will be made available in a form that is generally understandable.

The information made available will include:

- a) The name or title, and the address of the person, who is responsible for the Central East LHIN's privacy policies and procedures, and to whom complaints or inquiries can be forwarded
- b) The means of gaining access to personal information held by the Central East LHIN
- c) A description of what type of information is collected by the Central East LHIN, including a general account of its use
- d) What personal information is made available to related contracted service providers

The Central East LHIN makes information on its policies and procedures available in a variety of ways; e.g. brochures, information on our website, or providing a toll-free telephone number.

Principle 9 – Individual Access to their own information

Upon request, an individual shall be informed of the existence, use, and disclosure of his/her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

All patients are informed of the existence, use and disclosure of his/her personal information and upon request will be given access to that information. A patient is able to challenge the accuracy and completeness of the information and have it amended as appropriate.

In certain situations, the Central East LHIN may not be able to provide access to personal information it holds about a patient. The reasons for denying access will be provided to the individual upon request. Exceptions may include a physician's confirmation that the information may be detrimental to the patient's health, information that cannot be disclosed for legal reasons, such as a coroner's inquest, and information that contains references to other individuals.

The Central East LHIN will respond to a patient's request at no cost to the patient as per the [Requests for Release of, Access to and/or Correction to Patient Personal Health Information](#) policy.

When a patient successfully demonstrates the inaccuracy or incompleteness of personal information, the Central East LHIN will amend the information as required. Depending upon the nature of the information challenged, amendment involves the correction, amendment, or addition of information. Where appropriate, the amended information will be transmitted to third parties having access to the information in question.

When a challenge is not resolved to the satisfaction of the individual, the Central East LHIN will record the substance of the unresolved challenge. When appropriate, the existence of the unresolved challenge will be transmitted to third parties having access to the information in question.

Principle 10 - Challenging Compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

A patient will be able to address a challenge concerning compliance with this policy to the Senior Manager, Privacy Health and Organizational Records.

The Central East LHIN has procedures in place to receive and respond to complaints or inquiries about its policies and procedures relating to the handling of personal information. The complaint procedures will be easily accessible and simple to use.

The Central East LHIN will inform patients who make inquiries or lodge complaints of the existence of relevant complaint procedures.

The Central East LHIN will investigate all complaints. If a complaint is found to be justified, the Central East LHIN will take appropriate measures, including if necessary, amending its policies and procedures. The patient will be informed of the investigation regarding his/her complaint.

Cross Reference: [*Confidentiality and Occupational Health and Safety Agreement for Non-Employees*](#), [*Confidentiality of Personal and/or Personal Health Information*](#), [*Breach of Privacy*](#)

Relevant Forms/Guidelines:

Endnotes:

ⁱ PHIPA 3. (1)

ⁱⁱ PHIPA – Ontario Regulation 117/17 Amending O. Reg. 329/04