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# The President's Letter

Dr. Noel W. Grisdale



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May 15, 2009

Dear Member:

In light of substantive changes to Bill 52, *Health Information Amendment Act, 2009*, being recommended by the Legislature's all-party Standing Committee on Health, the Alberta Medical Association (AMA) now is "strongly supportive" of the proposed legislation.

The recommended changes would protect the privacy and confidentiality of our patients' personal health information and at the same time provide a legislative framework on which Alberta can build a robust electronic health system including the electronic medical record (EMR) and electronic health record (EHR).

As you will recall, the Alberta Medical Association vigorously opposed Bill 52 when it was introduced, and over the past few months we've invested many hours in meetings with the standing committee, MLAs, government officials and other organizations.

Our priorities were threefold with the focus being on Patients First®. On Wednesday the standing committee agreed to address all of them!

The standing committee, chaired by MLA Fred Horne (PC-Edmonton Rutherford), will meet next week to finalize its report. The Legislative Assembly, which is scheduled to break by June 4, is expected to approve the recommended changes before the current session ends.

The AMA's three priorities were:

## **Government and privacy impact assessments**

Bill 52 included a section that would allow the minister to bypass the requirement to perform a privacy impact assessment (PIA). This was a significant concern for physicians.

With the recommended amendments, the Provincial Government will still be required to conduct PIAs for new collection, use or disclosure of patient information that impacts the privacy of individuals.

### **EHR and “use” vs. “disclosure”**

Bill 52 would change the characterization of information flow into or out of the EHR from a “disclosure” to “use.” A “disclosure” requires the provider to consider the expressed wishes of patients, while a “use” of information does not. Since the current methods for taking the expressed wishes of patients into account are disclosure logs and masking, this amendment would effectively eliminate the requirement for these or other similar privacy protections.

With the recommended changes, patients will continue to have the option of masking their personal health information and audit logs will be required so that Albertans can find out who has looked at their personal health information. Patients, however, will not be able to opt out of the EHR.

### **Flow of information from custodian to the EHR**

Bill 52 would create a class of prescribed health information that the minister could compel physicians and health providers to put into the EHR. The minister would determine what was prescribed information and non-compliance would result in fines ranging from \$200,000 - \$500,000.

The standing committee considered a number of options before agreeing to recommend a change that respects the importance and the value of professional self-regulation.

- The College of Physicians and Surgeons of Alberta (CPSA) and the colleges for the other health professions will have the authority to establish standards for what flows from the records of their members into the EHR.
- There will be no fines or penalties in the legislation for non-compliance.
- If the minister is concerned about the standards set by a college, he or she may act to establish standards, provided he or she has first consulted with the affected college and the Office of the Information and Privacy Commissioner (OIPC). A privacy impact statement would also be required.

The delegation to the colleges – which have the responsibility for establishing standards in the best overall interest of patients – is very appropriate. Oversight by the minister, with an eye to the public interest, is also appropriate given the conditions proposed in the third bullet.

The AMA is strongly supportive of the recommended changes because they will significantly improve the bill. The EHR must be paired with highest respect for privacy and confidentiality; the AMA believes the standing committee has struck the right balance in that regard.

The AMA will be reviewing the actual amendments to determine if they accomplish the intent of the recommended changes.

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The standing committee is to be commended for its willingness to listen (including the holding of hearings and a call for public submissions) and to respond to the numerous concerns and objections that were raised by the AMA, CPSA, OIPC and others.

I would also thank the many AMA members who encouraged us to be a strong advocate regarding Bill 52 and who said they were willing, if necessary, to publicly demonstrate their opposition.

Yours truly,

Noel W. Grisdale, MD, CCFP  
President