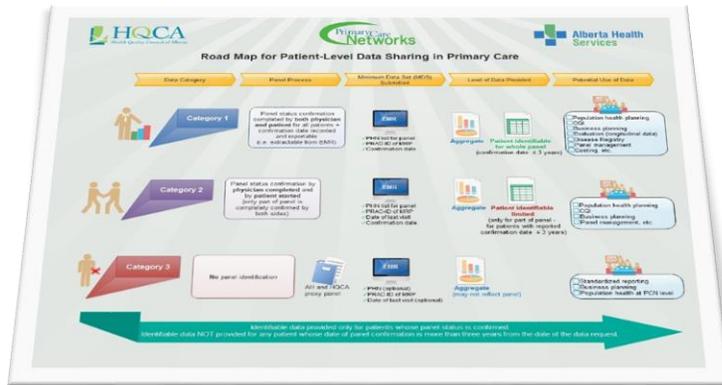


PRIVACY AGREEMENTS

COMPANION TO

“A GUIDE FOR DATA SHARING STANDARDS IN PRIMARY HEALTH CARE”



Prepared by: Data Sharing Standards in Primary Health Care Advisory Committee and Privacy Officers' Working Group.

Participants & Reviewers:

Alberta Health(AH), Alberta Health Services (AHS), Health Quality Council of Alberta (HQCA), Alberta Medical Association (AMA) Primary Care Networks Program Management Office (PCN PMO) and Toward Optimized Practice (TOP), Alberta Access Improvement Measures (AIM), Primary Care Networks Representatives (Privacy officers and Executive Directors), Physician Leads and Office Information & Privacy Commissioner (OIPC).

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Comparison of Agreements: ISA vs IMA vs Contractual Agreement within Primary Health Care

Criteria	Information Sharing Agreement (ISA)	Information Management Agreement (IMA)	Contractual Agreement (CA)
Purpose	<ul style="list-style-type: none"> <input type="checkbox"/> Obligations to share information within limited parameters within a clinical setting (<i>usually within a common or shared practice such as a clinic, clinics, or PCN</i>) <input type="checkbox"/> Sets out the authority for collecting, using & disclosing health or personal information under the HIA, FOIP or PIPA. Note: ISA does not create the authority to conduct information sharing activities (entering into an ISA does not authorize information sharing where disclosure and collection authority does not exist in legislation.) <input type="checkbox"/> Sets out the terms and conditions for how health information will be collected, used, and disclosed by the entity receiving the data <input type="checkbox"/> ISA enhances the transparency and accountability of custodians caring for patients with respect to sharing of health information and how the privacy of individuals is being protected 	<p>Related to the functions of an Information Manager described in the HIA - Section 66 (1):</p> <ul style="list-style-type: none"> <input type="checkbox"/> “processes, stores, retrieves or disposes of health information; <input type="checkbox"/> strips, encodes or otherwise transforms individually identifying health information to create non-identifying health information, OR <input type="checkbox"/> provides information management or information technology services.” 	<ul style="list-style-type: none"> <input type="checkbox"/> A contractual agreement that sets out the obligations / conditions for sharing of health information <input type="checkbox"/> May be used to appoint an affiliate or authorized representative with regards to health information in the custody of that organization <input type="checkbox"/> May contain elements of an ISA or IMA
Parties (to sign off)	Between primary care custodians using a common EMR(s) within a clinic or shared practice.	Between custodian(s) and an Information Manager who may or may not be a custodian (i.e., AHS, PCN, EMR vendor)	Between a custodian and another party who may or may not be a custodian (i.e., HQCA / physician, HQCA / PCN; physician / PCN)

Content	<p>ISA may include:</p> <ul style="list-style-type: none"> ✓ Detailed obligations of the parties regarding sharing of health information ✓ Terms and conditions for how shared health information will be collected, used, and disclosed ✓ Security measures for protection of shared health information & procedures for privacy breaches (ISA content in the References below – HIA Guidelines) 	<p>IMA must comply with</p> <ul style="list-style-type: none"> ✓ Section 66 of the HIA and ✓ Section 7.2 of the HIA Regulation (see information about IMA content in the References below - Alberta Regulation 107/2016). 	<p>Contractual Agreement may include:</p> <ul style="list-style-type: none"> ✓ Appointment of an affiliate and related details about health information sharing ✓ ISA and IMA sections
Services	To share patient records for the purpose of providing patient care within a clinic or shared practice	To provide information management or Information technology services	To share health information for quality improvement, evaluation or business planning
Data Use	<p>Primary use of data (definition on page 5):</p> <p>To support clinical decision-making in the care of individual patients (as per CPSA Standards of Practice Patient Record Retention (3))</p>	<p>Secondary use of data (definition on page 5):</p> <p>Data may be used for purposes such as quality improvement, evaluation or business planning.</p>	<p>Secondary use of data;</p> <p>Primary use of data (definition on page 5)</p>
Info Systems	Single Information System (i.e., EMRs)	Multiple Information System (i.e., PCN EMRs; AHS Information System)	Multiple Information System (i.e., EMR(s), HQCA data)
Note!	<p>A custodian is not required to enter into an agreement with another custodian to continue provision of health services (s.27 HIA). For example, no agreement is required when a physician shares patient information with a specialist to whom his/her patient was referred or with a pharmacist to whom the patient’s prescription was faxed.</p>		

Key Messages & References

- If individually identifying health information is being disclosed by a custodian to another custodian for the purpose of **providing continuing treatment and care of the individual**, no agreement with the recipient of that information is required.
- **“Information Manager”** means a person or body that (HIA s. 66(1)):
 - (a) processes, stores, retrieves or disposes of health information,
 - (b) in accordance with the regulations, strips, encodes or otherwise transforms individually identifying health information to create non-identifying health information, or
 - (c) provides information management or information technology services in a manner that requires the use of health information but does not include an individual employed by a custodian who performs any of the functions listed in clauses (a) to (c).

¹The Health Information Act (PDF) - Alberta. Retrieved from <http://www.qp.alberta.ca/documents/Acts/H05.pdf>

- “An Information Manager is a **type of affiliate** who provides information processing, storing, retrieving or disposing services, data transformation or information management or information technology functions.” ²

²Guidelines and Practices Manual - Alberta Health. Retrieved from <https://open.alberta.ca/publications/9780778582922>

- The HIA Section 66 (2): “A custodian must enter into a **written agreement with an information manager** in accordance with the regulations for the provision of any or all of the services described in subsection (1).”³

³The Health Information Act (PDF) - Alberta. Retrieved from <http://www.qp.alberta.ca/documents/Acts/H05.pdf>

The HIA Section 66 (2) “requires custodians to enter into an agreement with an information manager to perform the data transformation function.” ⁴

⁴Guidelines and Practices Manual - Alberta Health. Retrieved from <https://open.alberta.ca/publications/9780778582922>

- “In OIPC IR H2008-IR-002, the OIPC concluded that information manager agreements must not contain provisions excusing compliance with the HIA.” ⁵

⁵Guidelines and Practices Manual - Alberta Health. Retrieved from <https://open.alberta.ca/publications/9780778582922>

□ Information Management Agreement (IMA)

Per Health Information Regulation (Alberta Regulation 107/2016) section 7.2

“For the purposes of section 66(2) of the Act, an agreement between a custodian and an information manager **must**

- (a) identify the objectives of the agreement and the principles to guide the agreement,
- (b) indicate whether or not the information manager is permitted to collect health information from any other custodian or from a person and, if so, describe that health information and the purpose for which it may be collected,
- (c) indicate whether or not the information manager may use health information provided to it by the custodian and, if so, describe that health information and the purpose for which it may be used,
- (d) indicate whether or not the information manager may disclose health information provided to it by the custodian and, if so, describe that health information and the purpose for which it may be disclosed,
- (e) describe the process for the information manager to respond to access requests under Part 2 of the Act or, if the information manager is not to respond to access requests, describe the process for referring access requests for health information to the custodian itself,
- (f) describe the process for the information manager to respond to requests to amend or correct health information under Part 2 of the Act or, if the information manager is not to respond to requests to amend or correct health information, describe the process for referring access requests to amend or correct health information to the custodian itself,
- (g) describe how health information provided to the information manager is to be protected, managed, returned or destroyed in accordance with the Act,
- (h) describe how the information manager is to address an expressed wish of an individual relating to the disclosure of that individual’s health information or, if the information manager is not to address an expressed wish of an individual relating to the disclosure of that individual’s health information, describe the process for referring these requests to the custodian itself, and
- (i) set out how an agreement can be terminated.”⁶

⁶ Health Information Regulation - Alberta. Retrieved from http://www.qp.alberta.ca/documents/Regs/2001_070.pdf

□ **Information Sharing Agreement (ISA) should:**

1. Define what health information means.
2. Describe the purpose for data sharing.
3. Reference all applicable legislation that provides the legal authority for collection, use, and disclosure of personal information.
4. Establish an understanding of who has custody and control.
5. Identify the type of information that each party will share with each other.
6. Identify the uses for the information and limitations on the uses to the specified purpose.
7. Describe who will have access and under what conditions.
8. Describe how the information will be exchanged.
9. Describe the process for ensuring accuracy.
10. Describe the process for managing privacy breaches, complaints, and incidents
11. Identify retention periods.
12. Identify secure destruction methods when retention expires.
13. Describe the security safeguards in place to protect information.
14. Describe termination of the agreement procedures.⁷

⁷ Best Practices for Information Sharing Agreements - Saskatchewan Information and Privacy Commissioner. Retrieved from <https://oipc.sk.ca/resources/privacy/best-practices-for-information-sharing-agreements/>

“The following components **should be considered** for inclusion in an ISA:

1. A title that appropriately reflects the purpose of the ISA;
2. The parties to the agreement that are disclosing the personal information and the collecting party/parties. Include contact names at all institutions subject to the agreement;
3. [The purpose\(s\) of the ISA;](#)
4. [The legal authorities permitting the exchange of personal information \(collection, use and disclosure\) between the parties, including relevant program legislation;](#)
5. [The elements of personal information that will be disclosed and collected;](#)
6. Where possible, the position titles of officials who will have access to the personal information that will be shared;
7. [Whether any consent or any notices to individuals are required;](#)
8. [Any limitations on the subsequent use and disclosure of personal information shared between the parties to the agreement,](#) subject to applicable laws in each jurisdiction;
9. [All the administrative, technical and physical safeguards required to protect the personal information shared against accidental or unauthorized access, disclosure, use, modification and deletion, from initial transfer to final disposition;](#)
10. [Processes for addressing privacy or security breaches including notification requirements;](#)

11. [Processes to be used to ensure that the personal information shared is kept accurate, complete and up-to-date by all parties involved;](#)
12. [The maximum retention period for the personal information shared by the parties and the disposition methods required;](#)
13. Where possible and applicable, processes to be used to address individuals' access rights to their personal information, including rights to request correction;
14. [Processes for compliance monitoring and audits;](#)
15. Procedures required to modify and/or to terminate the agreement;
16. [Conflict resolution mechanisms;](#)
17. Where applicable, [measures to address potential privacy risks posed by anti-terrorism legislation in a foreign country;](#)
18. Where applicable, [requirements to abide by specific provisions of specific mutual legal assistance treaties or other international agreements;](#)
19. [Human rights considerations;](#)
20. [Signatures and signing dates.](#)"⁸

⁸Guidance on Preparing Information Sharing Agreements Involving Personal Information – Government of Canada, Treasury Board of Canada Secretariat Privacy (2010, July). Retrieved from <http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/p-prp/isa-eer/isa-eertb-eng.asp>
<http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/p-prp/isa-eer/isa-eer05-eng.asp#Toc267044428>

Contractual agreement may include elements of an IMA or ISA depending on how the information will be used.

CPSA Standards of Practice (College of Physicians and Surgeons of Alberta) states the requirements for when a physician must have an ISA or IMA:

When do I need an ISA?

- “A regulated member acting as a custodian who shares patient information with other custodian(s) **must have an information sharing agreement** that clarifies access, transfer and return of patient records.”

When do I need an IMA?

- “A regulated member acting as a custodian must have **policies and procedures** in place in accordance with the HIA that:
 - (a) includes an **information manager agreement**, if an information manager has been identified;
 - (b) establishes processes for the retention, protection, access, disclosure and secure destruction of patient health information; and
 - (c) clarifies roles, expectations and accountabilities of all parties.”⁹

⁹Standards of Practice – College of Physicians & Surgeons of Alberta. Retrieved from <https://cpsa.ca/physicians/standards-of-practice/>

□ **Canadian Health Information Management Association (CHIMA) defines:**

- **“Primary use of health data** is the use of personal health information by the organization or entity (health facility or health provider) that produced or acquired the data in the process of providing real-time, direct care of an individual.”
“In this case, where information is collected for the purposes of assessing, diagnosing, and treating the patient or providing other health-related services, consent is not required. This holds true as long as the information is being used for the purposes for which it was initially collected.”
- **“Secondary use of health data** refers to the use of personal health information for purposes other than direct care. That includes its use for quality or safety measurement; outcome analysis; clinical and health services research or epidemiological studies; costing and funding of health services; public health surveillance; policy development; provider or institution certification and/or accreditation; and marketing or other business or commercial activities.”
“Secondary uses of the information are necessary to support the effectiveness, efficiency, and sustainability of the health system.”
“There is federal and provincial legislation on permissible uses of health information. Some secondary uses are required by law or are considered to be reasonably connected to the primary use.”¹⁰

¹⁰ Abrams, K., & Gibson, C. J. (2013). *Fundamentals of Health Information Management*. Canadian Health Information Management Association (CHIMA). Ottawa, ON: Canadian Healthcare Association.

References:

The Health Information Act (PDF) - Alberta.

<http://www.qp.alberta.ca/documents/Acts/H05.pdf>

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<https://oipc.sk.ca/resources/privacy/best-practices-for-information-sharing-agreements/> Guidance on Preparing Information Sharing Agreements Involving Personal Information – Government of Canada, Treasury Board of Canada Secretariat Privacy (2010, July).

<http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/p-prp/isa-eer/isa-eertb-eng.asp>

Standards of Practice – College of Physicians & Surgeons of Alberta.

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Abrams, K., & Gibson, C. J. (2013). *Fundamentals of Health Information Management*. Canadian Health Information Management Association (CHIMA). Ottawa, ON: Canadian Healthcare Association.