

Privacy Legislation in Alberta

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INTRODUCTION

The College of Licensed Practical Nurses and Health Care Aides of Alberta (CLHA) has the authority under the *Health Professions Act* (HPA) to carry out its activities and govern Licensed Practical Nurses (LPNs)* in a manner that protects and serves the public interest.

LPNs have an ethical and legal responsibility to respect the privacy rights of individuals and protect the confidentiality of personal information collected while providing **professional services**. This responsibility applies regardless of whether an LPN provides professional services as an employee of an organization or while self-employed.

Privacy is often protected by regulating how personal information can be collected, used, and **disclosed**. This helps set expectations and provides individuals with an opportunity to understand why their personal information is needed and maintain control over the information. In some instances, legislation or other legal processes will permit the collection, use, and disclosure of personal information without the consent of the individual who is the subject of the information.

Under the *Standards of Practice for Licensed Practical Nurses in Canada*, LPNs must practice in accordance with legislation that governs the protection of privacy and **access to information** in Alberta. Legislation regulates how personal information is to be handled from initial collection to its disposal or destruction.

Terms found in the definition section are **bolded** where they appear for the first time in this document.

PURPOSE

This document provides an overview of the privacy legislation relevant to LPNs while practicing in Alberta and how to identify which legislation may be applicable to a given situation and environment in which an LPN is working.

Please be aware that this document is not a substitute for legal advice.

* In this document, "LPN(s)" has the same meaning as "regulated member(s)" in the *Health Professions Act*.

INTERPRETATION

Privacy Legislation Overview

LPNs are responsible for knowing what privacy legislation applies to their workplace. This is important because the rules and **framework** controlling the collection, use, disclosure of, and access to information can change depending on legislation.

There are four pieces of legislation that regulate privacy and access to information in Alberta:

- The *Health Information Act*,
- The *Personal Information Protection Act*,
- The *Protection of Privacy Act*, and
- The *Access to Information Act*.

The general applications of these acts are described below.

There are also two main pieces of federal privacy legislation, the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA). The *Privacy Act* applies to federal institutions (including federal departments, ministries, and agencies like Correctional Services Canada). PIPEDA applies to various federally regulated businesses and private sector organizations.

The *Privacy Act* and PIPEDA are less applicable to LPNs working in Alberta, and this document focuses on Alberta legislation. However, LPNs working with federal institutions and federally regulated businesses in the private sector should be mindful of how these acts may apply to them.

Health Information Act

Alberta has a specific piece of legislation that addresses the protection of health information. The *Health Information Act* (HIA) governs the collection, use, and disclosure of health information by "custodians" while providing health services.

Custodians are defined under the HIA and include provincial health agencies, hospitals, continuing care homes, and ambulance operators. Examples of custodians include Alberta Health Services, Recovery Alberta, and Covenant Health. Certain healthcare professions (e.g., registered nurses and physicians) are also defined as custodians. For example, if a physician is operating their own private clinic, they will be considered a custodian and must fulfill their duties and responsibilities under the HIA.

While LPNs are not defined as custodians under the HIA, LPNs that are employed with or provide contracted services to custodians are considered "affiliates" under the HIA and must

still adhere to the legislation. Custodians are responsible for ensuring that their affiliates (those individuals that they employ or have a contract with) follow the rules of collecting, using, and disclosing health information under the HIA.

Health services can include activities that protect, promote, and maintain physical and mental health; prevent, diagnose and treat illness; rehabilitate; and care for the health needs of the ill, disabled, injured, or dying. LPNs must collect, use, and disclose health information in a way that complies with the HIA because most of their duties and responsibilities fall under the definition of health services.

The HIA defines health information as diagnostic, treatment, and care information as well as client registration information. It permits the use of individually identifying health information (health information that can readily identify a particular individual) by custodians and affiliates for specific purposes, including the:

- provision of health services;
- determination or verification of eligibility to receive health services;
- conduct of investigations, discipline proceedings, practice visits, or inspections of members of a health profession;
- conduct of research; and
- resource planning and quality improvement.

Individually identifying health information may be collected, used, and disclosed without the consent of the individual who is the subject of the information, as the HIA recognizes that custodians and affiliates are required to regularly handle health information in their day-to-day duties to carry out their work. However, custodians and affiliates should still take precautions, including only accessing health information needed for their job, disclosing health information only to those with a need to know, and ensuring that safeguards are in place to protect health information.

The HIA also gives individuals the right to access their own health information and request corrections to it. Custodians have a duty to manage the process for access requests and assist individuals with their requests.

Example One: An LPN is employed by Alberta Health Services to work in a post-surgical unit at a hospital. The HIA governs the LPN's collection, use, and disclosure of health information while care is being provided to clients. An LPN can communicate individually identifying information of the client to other members of the healthcare team to deliver care.

Example Two: An LPN has entered into an agreement with a private operator of a designated supportive living facility. The LPN is responsible for collecting personal information from prospective clients to determine whether they are eligible for certain health services. This collection of information is governed by the HIA.

Personal Information Protection Act

The *Personal Information Protection Act* (PIPA) governs the collection, use, and disclosure of personal information by private sector “organizations” in Alberta. PIPA also provides individuals with the right to access their personal information that is within the custody or control of an organization. Organizations may include private corporations, unions, associations, non-profit organizations, and even individuals who are operating a business on their own (e.g., sole proprietors).

Personal information is defined broadly under PIPA and includes information about an identifiable individual. In other words, personal information is information that can be used alone or in combination with other pieces of data to identify an individual.

Consent is a central concept under PIPA, and organizations are only permitted to collect, use, and disclose personal information with the consent of the individual who is the subject of the information. There are certain exceptions under PIPA that allow for the collection, use, and disclosure of personal information without consent (e.g., for the purposes of an investigation or legal proceeding).

Example Three: An LPN is applying to work for a private operator of a Type A facility. The Type A facility collects information about the LPN’s education and employment history for the purpose of evaluating their qualifications. The collection, use, and disclosure of this information by the private operator is governed by PIPA.

Protection of Privacy Act and Access to Information Act

The *Protection of Privacy Act* (POPA) governs how a “public body” may collect, use, or disclose personal information. Public bodies include provincial departments, ministries, and agencies; school boards; universities; **municipalities**; and policing services. Personal information is defined similarly to the definition under PIPA.

A public body is permitted to collect personal information for a variety of purposes defined under POPA, including instances where the personal information relates directly to and is necessary for an operating program or activity of the public body. The public body is then able to use and disclose personal information for purposes that are consistent with the reason why the information was originally collected.

The *Access to Information Act* (ATIA) provides individuals with the right to access any records in the custody or control of a public body. An individual's right to access information is not limited to records containing their own personal information. However, the public body has the right to refuse access to information based on exceptions that are outlined in the legislation. The ATIA aims to find a balance between the public's right to know and the protection of the privacy interests of individuals and businesses whose information may be held by a public body.

Example Four: An LPN is an employee with Alberta Health Services and is on parental leave. Alberta Health Services collects medical information from the employee to administer payroll. Note that in this instance, Alberta Health Services is collecting the medical information to administer payroll and not to provide health services to the employee. Therefore, this collection is governed by POPA and not the HIA.

Example Five: A client is discharged from a hospital and believes a medical error was made during a procedure. The client wants a copy of their medical record from their hospital admission and a copy of the hospital policy related to the procedure. The client's right to access his medical record is governed by the HIA, and the client's right to receive a copy of the hospital policy is governed by the ATIA.

CONCLUSION

Personal information collected, used, and disclosed while providing professional services can be subject to specific legal requirements in addition to ethical responsibilities around confidentiality. In Alberta, the HIA governs the collection, use, and disclosure of health information by custodians; PIPA governs the collection, use, and disclosure of personal information by private sector organizations; and POPA governs how a public body may collect, use, or disclose personal information.

LPNs must be aware of and follow these legal and professional requirements in their practice. LPNs are ultimately responsible for determining and understanding which legislation applies to their practice and ensuring compliance. LPNs are encouraged to consult with their managers, privacy officers, and other members of their organization when dealing with specific privacy issues.

Documents are updated frequently. For the most current version and access to related documents and resources, please visit the Knowledge Hub on clha.com.

If after reading this document you have questions, please contact the CLHA's Professional Practice Team via practice@clha.com or 780-484-8886 or 1-800-661-5877 (toll free in Alberta).

DEFINITIONS

Access to Information: the ability for individuals to request access to information held by an organization.

Disclosure (disclosed): to make personal health information available or to release it to another person.

Framework: a particular set of rules, ideas, or beliefs used to deal with problems or decide what to do.

Municipalities: a city or town with its local government or the local government itself.

Personal information: recorded information about an identifiable individual, including an individual's name, home address, race, age, gender, and educational/employment history.

Professional service: defined in the *Health Professions Act* as a service that falls within the practice of an LPN. This includes one or more of the following:

- a) apply nursing knowledge, skills, and judgment to assess clients' needs;
- b) provide nursing care for clients and families;
- c) teach, manage, and conduct research in the science, techniques, and practice of nursing; and/or
- d) provide restricted activities authorized by the regulations.