

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 regulatory activities and **govern** Health Care Aides (HCAs) * in a manner that protects and serves the public interest.

HCAs 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 HCA 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 to maintain control over the information. In some instances, **legislation** or other legal processes will allow 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 Health Care Aides in Alberta*, HCAs 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 its first collection to its disposal or destruction.

PURPOSE

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

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

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

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

INTERPRETATION

Privacy Legislation Overview

HCAs 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 personal information, 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), while PIPEDA applies to various federally regulated businesses and private sector organizations.

The *Privacy Act* and PIPEDA are less applicable to HCAs working in Alberta, and this document focuses on Alberta legislation. However, HCAs 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 HCAs are not defined as custodians under the HIA, HCAs that are employed with or provided 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. HCAs 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 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 HCA is employed by Alberta Health Services to work in a post-surgical unit at a hospital. The HIA governs the HCA's collection, use, and disclosure of health information while care is being provided to clients. An HCA can communicate individually identifying information about the client to other members of the healthcare team to deliver care.

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

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 HCA is applying to work for a private operator of a Type A facility. The Type A facility collects information about the HCA’s education and employment history for the purposes 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 AIA 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 HCA 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 AIA.

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.

HCAs must be aware of and follow these legal and professional requirements in their practice. HCAs are ultimately responsible for determining and understanding which legislation applies to their practice and ensuring compliance. HCAs 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 cKnowledge Hub on clha.com.

If you have questions about the content of this document and privacy legislation in Alberta, please contact the CLHA's Professional Practice Team at practice@clha.com, 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.

Authority: refers to the power or right to give orders, make decisions, and enforce obedience. It can also mean the appropriate person to give orders or make decisions.

Confidentiality: the ethical duty to protect personal and health information about a client.

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

Framework: a system of rules or ideas used to plan or do something.

Govern: to lead, control, or manage an organization or group, often by creating rules and making decisions that guide their actions.

Legislation: any legally binding rule that governs the HCA profession. This includes the *Health Professions Act* or other laws regulations, bylaws, standards of practice, and Code of Ethics.

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 or employment history.

Privacy: the right of a client to have some control over how their personal information or personal health information is collected, used, accessed or disclosed.

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

- assist and support activities of daily living to provide basic personal care and health services,
- assist in teaching a Health Care Aide certificate program approved by the council,
- participate in client education and promotion of client wellness across the lifespan,
- teach Health Care Aide techniques and practices to practitioners in the workplace, and
- provide restricted activities provided by the regulation.

Responsibility: the ability to respond and answer for one's actions and duties. Being responsible means that an individual is trustworthy and reliable.ⁱ

REFERENCES

ⁱ CCPNR, *Entry-Level Competencies*.