

*Bill 31*  
*Dr. Brown*

## **BILL 31**

2006

### **HEALTH INFORMATION AMENDMENT ACT, 2006**

*(Assented to , 2006)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Amends RSA 2000 cH-5**

**1 The *Health Information Act* is amended by this Act.**

**2 Section 1(1) is amended**

**(a) by repealing clause (j);**

**(b) in clause (o)**

**(i) by adding the following after subclause (i):**

(i.1) business title;

**(ii) in subclause (vii) by adding “or registration number”  
after “licence number” and by adding “or registration”  
after “if a licence”;**

**(iii) by adding the following after subclause (xix):**

(xx) provincial service provider identification number that  
is assigned to the health services provider by the  
Minister to identify the health services provider,

**(c) by adding the following after clause (v):**

(v.1) “research ethics board” means a body designated by the regulations as a research ethics board;

**3 Section 3(b) is amended by adding “in Canada” after “court or tribunal”.**

**4 Section 27(1)(d) is amended**

**(a) in subclause (i) by striking out “an ethics committee” and substituting “a research ethics board”;**

**(b) in subclauses (ii), (iii) and (iv) by striking out “ethics committee” and substituting “research ethics board”.**

**5 Section 35 is amended**

**(a) in subsection (1)**

**(i) by adding the following after clause (a):**

(a.1) to the government of Canada or of another province or territory of Canada for that government’s use for health system planning and management and health policy development where

(i) the individual is a resident of that other province or territory, or

(ii) that government is otherwise responsible for payment for health services provided to the individual,

**(ii) by repealing clause (i) and substituting the following:**

(i) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,

**(iii) by repealing clause (j);**

**(iv) by striking out “or” at the end of clause (p);**

**(v) by repealing clause (q)(i) and substituting the following:**

(i) the custodian is transferring its records to the successor as a result of the custodian

(A) ceasing to be a custodian, or

(B) ceasing to provide health services within the geographic area in which the successor provides health services,

and

**(vi) by adding the following after clause (q):**

(r) for the purpose of obtaining or processing payment for health services provided to the individual by a person that is required under a contract to pay for those services for that individual, or

(s) to the College of Physicians and Surgeons of Alberta for the purpose of administering the Triplicate Prescription Program.

**(b) by repealing subsection (4)(b)(ii).**

## **6 Section 37 is amended**

**(a) in subsection (2) by striking out “(xviii) and (xix)” and substituting “(xviii), (xix) and (xx)”;**

**(b) by adding the following after subsection (2):**

**(3)** Subsection (2) does not apply where the disclosure is to a police service or the Minister of Justice and Attorney General under section 37.1, 37.2 or 37.3.

## **7 The following is added after section 37:**

**Disclosure to prevent or limit fraud or abuse of health services**

**37.1(1)** A custodian may disclose individually identifying health information referred to in subsection (2) without the consent of the individual who is the subject of the information to a police service or the Minister of Justice and Attorney General where the custodian reasonably believes

- (a) that the information relates to the possible commission of an offence under a statute or regulation of Alberta or Canada, and
- (b) that the disclosure will detect or prevent fraud or limit abuse in the use of health services.

**(2)** A custodian may disclose the following information under subsection (1):

- (a) the name of an individual;
- (b) the date of birth of an individual;
- (c) the personal health number of an individual;
- (d) the nature of any injury or illness of an individual;
- (e) the date on which a health service was sought or received by an individual;
- (f) the location where an individual sought or received a health service;
- (g) the name of any drug, as defined in the *Pharmaceutical Profession Act*, provided to or prescribed for an individual and the date the drug was provided or prescribed.

**(3)** If a custodian discloses individually identifying health information about an individual under subsection (1), the custodian may also disclose health services provider information about a health services provider from whom that individual sought or received health services if that information is related to the information that was disclosed under subsection (1).

(4) Health services provider information may be disclosed under subsection (3) without the consent of the health services provider who is the subject of the information.

**Disclosure to prevent or limit fraud or abuse of health services by health services providers**

**37.2(1)** A custodian may disclose individually identifying health information referred to in subsection (2) without the consent of the health services provider who is the subject of the information to a police service or the Minister of Justice and Attorney General where the custodian reasonably believes

- (a) that the information relates to the possible commission of an offence under a statute or regulation of Alberta or Canada by the health services provider, and
- (b) that the disclosure will detect or prevent fraud or limit abuse in the provision of health services.

(2) A custodian may disclose the following information under subsection (1):

- (a) the name of the health services provider;
- (b) the business address of the health services provider;
- (c) the date on which the health services provider provided a health service;
- (d) the description of a health service provided by the health services provider;
- (e) the benefits that were paid or charged in relation to a health service provided by the health services provider.

(3) If a custodian discloses information under subsection (1) about a health service, the custodian may also disclose individually identifying health information about the individual who received that health service if that information is related to that health service.

(4) Individually identifying health information may be disclosed under subsection (3) without the consent of the individual who is the subject of the information.

**Disclosure to protect public health and safety**

**37.3(1)** A custodian may disclose individually identifying health information referred to in subsection (2) without the consent of the individual who is the subject of the information to a police service or the Minister of Justice and Attorney General where the custodian reasonably believes

- (a) that the information relates to the possible commission of an offence under a statute or regulation of Alberta or Canada, and
- (b) that the disclosure will protect the health and safety of Albertans.

**(2)** A custodian may disclose the following information under subsection (1):

- (a) the name of an individual;
- (b) the date of birth of an individual;
- (c) the nature of any injury or illness of an individual;
- (d) the date on which a health service was sought or received by an individual;
- (e) the location where an individual sought or received a health service;
- (f) whether any samples of bodily substances were taken from an individual.

**(3)** If a custodian discloses individually identifying health information about an individual under subsection (1), the custodian may also disclose health services provider information about a health services provider from whom that individual sought or received health services if that information is related to the information that was disclosed under subsection (1).

**(4)** Health services provider information may be disclosed under subsection (3) without the consent of the health services provider who is the subject of the information.

**8 Section 41 is amended**

**(a) in subsection (1) by striking out “A custodian” and substituting “Subject to subsection (1.1), a custodian”**

**(b) by adding the following after subsection (1):**

**(1.1)** The requirement to make a note under subsection (1) does not apply to a custodian that discloses a record containing individually identifying diagnostic, treatment and care information under section 35(1)(a) by permitting access to the information stored in the computer database of the custodian if, when the information is accessed, the database automatically keeps an electronic log of the following information:

- (a) the user identification of the custodian that accesses the information;
- (b) the date and time that the information is accessed;
- (c) a description of the information that is accessed.

**(c) in subsection (2) by striking out “subsection (1)” and substituting “subsections (1) and (1.1)”;**

**(d) in subsection (3) by adding “or (1.1)” after “subsection (1)”.**

**9 Section 42(2) is amended by striking out “or” at the end of clause (b) and adding the following after clause (c):**

- (d) to a police service or the Minister of Justice and Attorney General under section 37.1, 37.2 or 37.3, or
- (e) to the individual who is the subject of the information.

**10 Section 46(1)(b) is repealed and the following is substituted:**

- (b) if the information requested relates to a health service provided by the other custodian and

- (i) the health service is fully or partially paid for by the Department or is provided using financial, physical or human resources provided, administered or paid for by the Department, or
- (ii) the information is prescribed in the regulations as information the Minister or the Department may request under this section.

**11 Section 49 is repealed and the following is substituted:**

**Research proposal**

**49** A person who intends to conduct research may submit a proposal to a research ethics board for review by that board.

**12 Section 50 is amended by striking out “ethics committee” wherever it occurs and substituting “research ethics board”.**

**13 The following is added after section 50:**

**Publication of response**

**50.1** If the response of the research ethics board sent to the Commissioner under section 50(4) indicates that the research ethics board is satisfied as to the matters referred to in section 50(1)(b), the Commissioner may publish the response in any manner the Commissioner considers appropriate.

**14 Sections 51 to 54 are amended by striking out “ethics committee” wherever it occurs and substituting “research ethics board”.**

**15 Section 87 is amended by renumbering it as section 87(1) and by adding the following after subsection (1):**

- (2) The processing of a request under section 8(1) or 13(1) ceases when a custodian has made a request under subsection (1) and
  - (a) if the Commissioner authorizes the custodian to disregard the request, does not resume;



- (b) if the Commissioner does not authorize the custodian to disregard the request, does not resume until the Commissioner advises the custodian of the Commissioner's decision.

**16 Section 91(1) is amended by adding “and section 50.1” after “to (5)”.**

**17 Section 107 is amended**

**(a) by adding the following after subsection (5):**

**(5.1)** No person shall knowingly disclose health information to which this Act applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta.

**(b) in subsection (6) by adding “, except subsection (5.1),” after “this section”;**

**(c) by adding the following after subsection (6):**

**(7)** A person who contravenes subsection (5.1) is guilty of an offence and liable

- (a) in the case of an individual, to a fine of not less than \$2000 and not more than \$10 000, and
- (b) in the case of any other person, to a fine of not less than \$200 000 and not more than \$500 000.

**(8)** A prosecution under this Act may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

**18 Section 108 is amended**

**(a) in subsection (1) by adding the following after clause (f):**

- (f.1) prescribing information for the purposes of section 46(1)(b)(ii);

- (b) in subsection (2)(a) by striking out “committees as ethics committees” and substituting “bodies as research ethics boards”.

**19 The *Pharmacy and Drug Act* is amended**

- (a) in section 47.1 by adding “section 37.1(2)(g).” after “section 1(1)(m)(ii).”;
- (b) by adding the following after section 47.1:

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**47.2 The *Health Information Amendment Act, 2006* is amended in section 7 in the new section 37.1(2)(g) by striking out “*Pharmaceutical Profession Act*” and substituting “*Pharmacy and Drug Act*”.**

**20 This Act, except section 19, comes into force on Proclamation.**

**Explanatory Notes**

**1** Amends chapter H-5 of the Revised Statutes of Alberta 2000.

**2** Section 1 presently reads in part:

*1(1) In this Act,*

- (j) “*ethics committee*” means a committee designated by the regulations as an ethics committee;
- (o) “*health services provider information*” means the following information relating to a health services provider:
  - (i) name;

- (ii) *business and home mailing addresses and electronic addresses;*
- (iii) *business and home telephone numbers and facsimile numbers;*
- (iv) *gender;*
- (v) *date of birth;*
- (vi) *unique identification number that*
  - (A) *is assigned to the health services provider by a custodian for the purpose of the operations of the custodian, and*
  - (B) *uniquely identifies the health services provider in relation to that custodian;*
- (vii) *type of health services provider and licence number, if a licence has been issued to the health services provider;*
- (viii) *date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services;*
- (ix) *education completed, including entry level competencies attained in a basic education program and post-secondary educational degrees, diplomas or certificates completed;*
- (x) *continued competencies, skills and accreditations, including any specialty or advanced training acquired after completion of the education referred to in subclause (ix), and the dates they were acquired;*
- (xi) *restrictions that apply to the health services provider's right to provide health services in Alberta;*

- (xii) *decisions of a health professional body, or any other body at an appeal of a decision of a health professional body, pursuant to which the health services provider's right to provide health services in Alberta is suspended or cancelled or made subject to conditions, or a reprimand or fine is issued;*
- (xiii) *business arrangements relating to the payment of the health services provider's accounts;*
- (xiv) *profession;*
- (xv) *job classification;*
- (xvi) *employment status;*
- (xvii) *number of years the health services provider has practised the profession;*
- (xviii) *employer;*
- (xix) *municipality in which the health services provider's practice is located,*  
  
*but does not include information that is not written, photographed, recorded or stored in some manner in a record;*
- (v) *"research" means academic, applied or scientific health-related research that necessitates the use of individually identifying diagnostic, treatment and care information or individually identifying registration information, or both;*

**3** Section 3 presently reads in part:

*3 This Act*

- (b) *does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents, and*

**4** Section 27 presently reads in part:

*27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*

- (d) conducting research*
  - (i) if the custodian has submitted a proposal to an ethics committee in accordance with section 49,*
  - (ii) if the ethics committee is satisfied as to the matters referred to in section 50(1)(b),*
  - (iii) if the custodian has complied with or undertaken to comply with the conditions, if any, suggested by the ethics committee, and*
  - (iv) where the ethics committee recommends that consents should be obtained from the individuals who are the subjects of the health information to be used in the research, if those consents have been obtained;*

**5** Section 35 presently reads in part:

*35(1) A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information*

- (a) to another custodian for any or all of the purposes listed in section 27(1) or (2), as the case may be,*
- (i) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or*

*with a rule of court that relates to the production of information,*

*(i) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information,*

*(q) to its successor where*

*(i) the custodian is transferring its records to the successor as a result of the custodian ceasing to be a custodian, and*

*(ii) the successor is a custodian.*

*(4) A custodian may disclose individually identifying diagnostic, treatment and care information to a health professional body for the purpose of an investigation, a discipline proceeding, a practice review or an inspection if*

*(b) the health professional body agrees in writing*

*(i) not to disclose the information to any other person except as authorized by or under the Act governing the health professional body, and*

*(ii) to destroy the information*

*(A) at the earliest opportunity if the investigation, discipline proceeding, practice review or inspection is abandoned, or*

*(B) at the earliest opportunity after a final decision has been made relating to the investigation, discipline proceeding, practice review or inspection, including any decision made by a body authorized to hear appeals.*

**6** Section 37 presently reads in part:

*(2) A custodian may disclose the health services provider information described in section 1(1)(o)(i) to (iii), (vii), (xiv), (xv), (xviii) and (xix), other than home address, telephone number and licence number, to any person for any purpose without the consent of the individual who is the subject of the information, unless the disclosure*

- (a) would reveal other information about the health services provider, or*
- (b) could reasonably be expected to result in
  - (i) harm to the health services provider's mental or physical health or safety, or*
  - (ii) undue financial harm to the health services provider.**

**7** Disclosure to prevent or limit fraud or abuse of health services. Disclosure to prevent or limit fraud or abuse of health services by health services provider. Disclosure to protect public health and safety.

**8** Section 41 presently reads:

*41(1) A custodian that discloses a record containing individually identifying diagnostic, treatment and care information under section 35(1) or (4) must make a note of the following information:*

- (a) the name of the person to whom the custodian discloses the information;*
- (b) the date and purpose of the disclosure;*
- (c) a description of the information disclosed.*

*(2) The information referred to in subsection (1) must be retained by the custodian for a period of 10 years following the date of the disclosure.*

*(3) An individual who is the subject of information referred to in subsection (1) may ask a custodian for access to and a copy of the information, and Part 2 applies to the request.*

**9** Section 42 presently reads in part:

*(2) Subsection (1) does not apply where the disclosure is*

- (a) to another custodian under section 35(1)(a),*
- (b) to the Minister or the Department under section 46, or*
- (c) to another custodian under section 47.*

**10** Section 46 presently reads in part:

*46(1) The Minister or the Department may request another custodian to disclose individually identifying health information for any of the purposes listed in section 27(2)*

- (a) if the Minister or the Department, as the case may be, is authorized by an enactment of Alberta or Canada to obtain the information from the other custodian, or*
- (b) if the information requested relates to a health service provided by the other custodian*
  - (i) that is fully or partially paid for by the Department, or*
  - (ii) that is provided using financial, physical or human resources provided, administered or paid for by the Department.*



**11** Section 49 presently reads:

*49 A person who intends to conduct research may submit a proposal to an ethics committee for review by that committee.*

**12** Section 50 presently reads:

*50(1) The ethics committee must*

*(a) consider whether the researcher should be required to obtain consents for the disclosure of the health information to be used in the research from the individuals who are the subjects of the information, and*

*(b) assess whether, in the opinion of the ethics committee,*

*(i) the proposed research is of sufficient importance that the public interest in the proposed research outweighs to a substantial degree the public interest in protecting the privacy of the individuals who are the subjects of the health information to be used in the research,*

*(ii) the researcher is qualified to carry out the research,*

*(iii) adequate safeguards will be in place at the time the research will be carried out to protect the privacy of the individuals who are the subjects of the health information to be used in the research and the confidentiality of that information, and*

*(iv) obtaining the consents referred to in clause (a) is unreasonable, impractical or not feasible.*

*(2) In making an assessment under subsection (1)(b), the ethics committee must consider the degree to which the proposed research may contribute to*

- (a) *identification, prevention or treatment of illness or disease,*
- (b) *scientific understanding relating to health,*
- (c) *promotion and protection of the health of individuals and communities,*
- (d) *improved delivery of health services, or*
- (e) *improvements in health system management.*

(3) *The ethics committee must prepare a response setting out*

- (a) *its recommendation under subsection (1)(a),*
- (b) *its assessment of the matters set out in subsection (1)(b), and*
- (c) *any conditions that the ethics committee considers should be imposed on the researcher.*

(4) *The ethics committee must send a copy of the response required in subsection (3) to the Commissioner.*

**13** Publication of research ethics board response.

**14** Sections 51 to 54 presently read:

*51 If the ethics committee is not satisfied as to any of the matters referred to in section 50(1)(b), the researcher may not apply to a custodian under section 52.*

*52 If the ethics committee is satisfied as to the matters referred to in section 50(1)(b), the researcher may forward to one or more custodians*

- (a) *the response of the ethics committee to the researcher's proposal, and*

- (b) *a written application for disclosure of the health information to be used in the research.*

*53(1) A custodian who has received the documents referred to in section 52 may, but is not required to, disclose the health information applied for.*

*(2) If the custodian decides to disclose the health information,*

*(a) the custodian*

- (i) must impose on the researcher any conditions suggested by the ethics committee, and*
- (ii) may impose other conditions on the researcher,*

*and*

- (b) the researcher must obtain the consents referred to in section 50(1)(a), if recommended by the ethics committee, prior to the disclosure.*

*54(1) If the custodian decides to disclose health information to a researcher, the researcher must enter into an agreement with the custodian in which the researcher agrees*

*(a) to comply with*

- (i) this Act and the regulations made under this Act,*
- (ii) any conditions imposed by the custodian relating to the use, protection, disclosure, return or disposal of the health information, and*
- (iii) any requirement imposed by the custodian to provide safeguards against the identification, direct or indirect, of an individual who is the subject of the health information,*

- (b) *to use the health information only for the purpose of conducting the proposed research,*
  - (c) *not to publish the health information in a form that could reasonably enable the identity of an individual who is the subject of the information to be readily ascertained,*
  - (d) *not to make any attempt to contact an individual who is the subject of the health information to obtain additional health information unless the individual has provided the custodian with the consent referred to in section 55,*
  - (e) *to allow the custodian to access or inspect the researcher's premises to confirm that the researcher is complying with the enactments, conditions and requirements referred to in clause (a), and*
  - (f) *to pay the costs referred to in subsection (3).*
- (2) *When an agreement referred to in subsection (1) has been entered into, the custodian may disclose to the researcher the health information requested under section 52*
- (a) *with the consent of the individuals who are the subjects of the information, where the ethics committee recommends that consents should be obtained, or*
  - (b) *without the consent of the individuals who are the subjects of the information, where the ethics committee does not recommend that consents be obtained.*

**15** Section 87 presently reads:

*87 At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8(1) or 13(1) if*

- (a) *because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests, or*
- (b) *one or more of the requests are frivolous or vexatious.*

**16** Section 91 presently reads in part:

*91(1) The Commissioner and anyone acting for or under the direction of the Commissioner must not disclose any information obtained in performing their duties, powers and functions under this Act, except as provided in subsections (2) to (5).*

**17** Section 107 presently reads in part:

*(4) No information manager shall knowingly breach the terms and conditions of an agreement entered into with a custodian pursuant to section 66.*

*(5) No person to whom non-identifying health information is disclosed and who intends to use the information to perform data matching shall fail to comply with section 32(2).*

*(6) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$50 000.*

**18** Section 108 presently reads in part:

*108(1) The Lieutenant Governor in Council may make regulations*

- (f) *respecting the disclosure of individually identifying registration information by custodians to persons who are not custodians for the purposes of section 36(c);*

*(2) The Minister may make regulations*

*(a) designating committees as ethics committees  
for the purposes of sections 48 to 56;*

**19** Amends chapter P-13 of the Revised Statutes of Alberta 2000. Section 47.1 presently reads:

*47.1 The Health Information Act is amended in the following provisions by striking out “Pharmaceutical Profession Act” and substituting “Pharmacy and Drug Act”:*

*section 1(1)(f)(x);  
section 1(1)(f)(xi);  
section 1(1)(i)(iv);  
section 1(1)(m)(ii).*

**20** Coming into force.