Legislative Assembly of Alberta

The 27th Legislature
Second Session

Standing Committee
on
Health

Bill 52, Health Information Amendment Act, 2009

Wednesday, May 13, 2009
6:17 p.m.

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Standing Committee on Health

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6:17 p.m. Wednesday, May 13, 2009

[Mr. Horne in the chair]

The Chair: Good evening, colleagues. As we have limited time, I'd like to start the meeting. First of all, just a note for the record, we have three members substituting for other members this evening: Ms Blakeman is substituting for Dr. Swann, Mr. Johnson substituting for Mr. Denis, and Mrs. Leskiw substituting for Mr. Fawcett.

Just before we begin, I'll ask us to go quickly around the table and introduce ourselves for the record.

Ms Pastoor: Bridget Pastoor, Lethbridge-East, deputy chair.

Mrs. Leskiw: Genia Leskiw, Bonnyville-Cold Lake, subbing for Kyle.

Mr. Vandermeer: Tony Vandermeer, Edmonton-Beverly-Clareview.

Ms Blakeman: Laurie Blakeman, and I'd like to welcome each and every one of you to my fabulous constituency of Edmonton-Centre.

Dr. Massolin: Philip Massolin, committee research co-ordinator, Legislative Assembly Office.

Ms Friesacher: Melanie Friesacher, communications consultant, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Dean: Shannon Dean, Senior Parliamentary Counsel.

Mr. Chamberlain: Martin Chamberlain, Alberta Health and Wellness.

Mr. Brisson: Mark Brisson, Alberta Health and Wellness.

Mr. Quest: Dave Quest, Strathcona.

Dr. Sherman: Raj Sherman, Edmonton-Meadowlark.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

Mr. Olson: Verlyn Olson, Wetaskiwin-Camrose.

Mr. Dallas: Cal Dallas, Red Deer-South.

Mr. Johnson: Jeff Johnson, Athabasca-Redwater.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: I'm Fred Horne, MLA, Edmonton-Rutherford, and chair of the committee.

The agenda for this evening's meeting was posted to the internal website. May I ask for a motion, please, to approve the agenda? Moved by Mr. Olson. Discussion? Those in favour? Opposed, if any? That's carried. Thank you.

We'll then move to item 3, business arising from our meeting on May 11, 2009. Item 3(a) is with respect to draft amendments, and you'll recall that proposed amendments to Bill 52 were put forward by Mr. Denis and Mr. Olson for the committee's consideration at our last meeting. The committee passed motions directing Senior Parliamentary Counsel to draft the appropriate wording for these amendments.

As I understand it, Parliamentary Counsel and legal counsel for the Department of Health and Wellness have worked together on the drafts. They were delivered to us this afternoon. So I'd like to ask Ms Dean and Mr. Chamberlain to quickly review the proposed amendments with the committee.

Ms Dean.

Ms Dean: Thank you, Mr. Chair. I will call upon Mr. Chamberlain to interject as he sees fit. Just some introductory comments. The draft was prepared by the office of Legislative Counsel on instructions from Mr. Chamberlain and his staff, and the instructions were based on the motions that were passed by the committee on Monday. Both Ms LeBlanc and myself have been consulted and have reviewed the draft that has been distributed to you.

If I can just briefly go through the draft, part A on page 1 deals with the committee recommendation to reinstate the requirement for privacy impact assessments, and these are to be prepared when the minister or department is requesting health information from custodians. The reference in terms of the motion that was passed on Monday is part 2 of Mr. Denis's motion.

Moving on to part B, most of the amendments outlined in the first part of part B address the committee's recommendation that colleges have the authority to direct their members to disclose certain information to the EHR. These provisions also make the colleges responsible for ensuring that their members comply with a direction to provide information to Alberta Netcare. For committee members' reference this was laid out in the third paragraph of Mr. Olson's motion from Monday night.

On page 2 the proposed section 56.3 outlines a substantive change to give effect to, again, Mr. Olson's motion. Subsection (1) authorizes the college to direct its members to provide certain information to the EHR. Subsection (2) enables the minister to require health professionals to disclose certain information to the EHR subject to the following requirements: first, that it's in the public interest; secondly, that a privacy impact assessment has been conducted and that the relevant health professional body has been consulted.

On page 3 the substantive provision is outlined in subsection (4). This is the enforcement mechanism that has been provided for the health professional bodies to deal with the circumstance where a regulated member fails to comply with a direction to make certain information accessible to the EHR. Again, this goes back to Mr. Olson's motion.

On page 4 the proposed section 56.31 addresses the committee's recommendation that the bill reimplement the concept of expressed wishes of the patient, and this was addressed in part 3 of Mr. Denis's motion on Monday night.

On the bottom of page 4 and continuing on page 5 the proposed section 56.41 addresses the committee recommendation that authorized custodians be required to maintain an access log. On page 5 subsection (3) sets out the right of the patient to access the log in connection with information that has been accessed pertaining to them.

Again on page 5 the proposed section 56.42 addresses the committee recommendation regarding the creation of a data stewardship committee with public representation. This was paragraph 4 of Mr. Olson's motion from Monday night.

Finally, on page 6 part C of the amendments before you provides for the offence provision in the bill to be struck out. That offence

provision, you may recall, dealt with authorized custodians who fail to comply with section 56.3. This was a recommendation that stemmed from Mr. Olson's motion, paragraph 5.

Those are my comments, Mr. Chair. If the committee members wish to ask any questions, now may be the appropriate time.

The Chair: I'm sure there may be a few. Are there any questions?

Mr. Quest: No questions, Mr. Chair. I'd just move that
the Standing Committee on Health recommend Bill 52 proceed with the amendments as distributed to the committee.

The Chair: Okay. Well, thank you. We'll take that as a motion, then, but subject to discussion, which could include any questions, of course, on what Ms Dean has just presented.

I just wanted to note as well that since Monday's meeting I have been notified that other members of the committee wish to propose amendments as well, and we'll of course be dealing with them in due course, but we'll deal with this set first since it emanates from our meeting on Monday night.

Any questions, then?

Ms Notley: I'm struggling to catch up here. Just hold on a second.

6:25

The Chair: Just in the absence of any hands raised quite yet, I suppose what we're doing here is just ensuring – and Ms Dean's role, of course, is to ensure – that the amendments that were passed by the committee on Monday evening are accurately reflected in the legal form that has been drafted here for us tonight.

Ms Notley: Chair, do we have any extra copies of Bill 52? I don't appear to have mine with me.

Ms Blakeman: Mr. Chair, my brain hadn't quite engaged when you started. Would you mind repeating what the very first section is? Section A.

Ms Dean: That deals with the committee's recommendation to reinstate the requirement for privacy impact assessments to be prepared.

Ms Blakeman: Got it. Thank you.

The Chair: Well, just given the time, I'd like to call the question on this. It wouldn't prohibit us from coming back and asking questions for clarification later. I'm going to call the question, then. Those in favour of the motion? Those opposed?

Ms Notley: Sorry. I'm not trying to be difficult. Honestly, it takes a little bit of time to read an amendment to a statute which is amending another statute, and I don't have all three in front of me.

The Chair: I understand that.

Ms Notley: So I can't really speak to whether these are getting satisfactorily towards what we need.

Ms Blakeman: I'm in the same position. I was on duty last night, this afternoon, and again tonight. I'm just receiving these on a two and a half inch screen of a BlackBerry. I just can't read them from that; sorry.

The Chair: Well, time permitting, if you identify further questions around this, we'll certainly come back to it or at a subsequent meeting of the committee.

All right. So that motion is carried.

The next item on the agenda is the response to issues raised during deliberations. As you'll recall, there were a number of issues raised during our last meeting that the Department of Health and Wellness agreed to address this evening. I'm going to ask Mr. Chamberlain and Mr. Brisson to proceed with their response to those questions, and I'll just note that there is also a written copy of responses that's provided to members for their reference both now and after the meeting today. With that, I'll turn it over to Mr. Chamberlain and Mr. Brisson.

Mr. Chamberlain: Thank you, Mr. Chair. We have provided a written response to the committee which tried to address, as we understood, the questions that were asked. Essentially, they were around custodian and the potential expansion of scopes of custodian. I won't bother reading the written response because you've all got it.

The first issue, as we understood it, was the expansion of scope to include employers. The primary changes in Bill 52 were done to affect the scope of health information so that we were covering not just publicly funded but all health information. If you were getting WCB coverage or if you were going to a dentist and getting prescriptions from dentists or whoever, all of that information is deemed to be health information covered under the act. There were not any changes made with respect to expanding to employers or any of that intent. They were simply changes to get rid of the restriction on health services that they be publicly funded so that we could have a common Health Information Act regime that applied to all health information. Those were the changes that were made. There was no change in scope to the act to deal with employers or insurance companies or any of the other issues that have been raised.

The second issue, as we understood it, was whether we were talking about expansion to all health care providers and what that meant. The reality is that that change would allow us to expand to additional providers, including people like dentists, who are in the privately funded world, or physicians or nurses who are providing services in a corporate area but only in their capacity as professionals and only with respect to the health services they're providing. So we haven't really changed the rules at all.

It would be the professionals who would become custodians, not their employers. They'd still only be able to provide information to their employers with consent of the employee. If they're, in fact, employee-type information, that's not included within the Health Information Act.

In fact, I've answered both questions. The final point was: are there any limitations on who could be designated a custodian? The act deals with health service providers. The intent that we had in making the change in the bill was simply to catch all health service providers by expanding the definition of health service to get rid of that publicly funded provision. We're still intending to catch all health services, but it is still restricted to health services. Our intent is to phase in custodians with appropriate consultation with those custodians as we move forward and as they're ready to come on stream and have their information included in the record. It's not intended to expand to anybody and everybody. It's going to be a time function. We're going to be consulting with the privacy commission, and we'll be consulting with the affected colleges as we move forward.

There is no substantive change in the act as a result of this. Again, the only changes that were made were with respect to removing that

concept of publicly funded in the definition of health services. The regulation provisions that allow the adding of custodians have always been there. There are no changes there. It's only the one substantive change that was made. The other changes are simply consequential.

The Chair: Okay. Thank you, Mr. Chamberlain. We have a number of questions for you, I think.

Ms Blakeman, followed by Ms Notley.

Ms Blakeman: Thanks. Two questions. Would staff from, for example, the Copeman clinic be captured in either of the responses you've given to issue 1 or issue 2 or, I suppose, issue 3? Those are professionals: doctors, nurses, various other health professionals. They are not being paid through the health system when they're doing that sort of advanced, CEO preventative workup. Do they get captured under any of these categories now?

Mr. Chamberlain: To the extent that they're providing diagnostic care, treatment information, the type of thing that falls within a health service, if they're added as custodians, that would be health information and then caught. The intent, again, is to ensure that the electronic health record is as complete and accurate as possible so that if they are providing – and the example you gave was private services. If those are not medical services, they're not care or diagnostic treatment information, that may well not be health information. You know, a nutrition plan may not be health information.

To the extent that they are providing health information, the intent here is to catch things like WCB services, that are provided outside the health care insurance plan, or dental payments or other services that aren't publicly funded now, to make sure that to the extent that it's health information, allergy information, prescribing information, things that are provided both inside and outside the publicly funded plan are in the EHR so that information is available to all custodians as and when needed.

Ms Blakeman: Yes. It would capture the custodians. I'm interested in if the Copeman clinic and its staff would now be considered custodians and would therefore be in the arena as a result of the changes to paid/not paid under the Alberta health care insurance plan.

Mr. Chamberlain: The answer is that to the extent that they are providing health services, that provision of those health services and the documents and information generated from that would be health information. So they are custodians, but what they're doing may not be health information, in which case it wouldn't be caught by this legislation. It would in that case be caught by PIPA.

Ms Blakeman: Okay. Under issue 3 where does the information from drug tests go? If it's health information collected for the primary purpose of managing or administering personnel, it's not considered a health service. So where does that information go, then?

6:35

Mr. Chamberlain: That information, if it's not a health service, would be governed by PIPA or FOIP, depending on what the agency was.

Ms Blakeman: And would a drug test be considered health information, particularly if it was positive?

Mr. Chamberlain: A drug test? It would depend on the circumstances it was done in. If it was done by an employer in an employee consent position.

Mr. Brisson: I think it would depend on the purpose of why they were drawing the drug test. If it was for care and treatment purposes, then it is health information. If they're doing it for insurance purposes, then it wouldn't be considered.

Ms Blakeman: They tend to do it as a prescreen or when you're coming back on a job site. So you would consider that as employment and not health information?

Mr. Chamberlain: I believe that's correct.

Ms Blakeman: Thank you.

Ms Notley: A few questions just to clarify it. So you're saying that the amendment allows for WCB to come into the arena?

Mr. Chamberlain: The amendment hasn't changed who can be custodians. The Health Information Act has always provided that any individual entity, corporation could be added as a custodian by regulation. That hasn't changed in these amendments. The only substantive change that was effected was that removal of the concept of publicly funded in the definition of health services. The other amendments were consequential to effect that change throughout the defined terms.

Ms Notley: So was WCB considered publicly funded in terms of that?

Mr. Chamberlain: WCB in the Health Information Act world, no, because it's not covered under the health care insurance plan.

Ms Notley: So now they would be because you're saying they don't need to be a publicly funded provider.

Mr. Chamberlain: No. What we're saying is the health services that they fund, so the physicians who are providing health services under contract or whatever arrangement with WCB, would be health services. Their charts, their records with respect to that would be health information caught by the Health Information Act, so the physicians' charts, the nurses' charts, the physiotherapists' charts.

Ms Notley: Who are paid for by WCB.

Mr. Chamberlain: Who would in that circumstance be paid for by WCB, yes.

Ms Notley: In that case, then, what is to stop a WCB physician who is providing care, if they now can get access to this and their information goes in and they also are in, from going on a little fishing trip with respect to the medical records of someone they're treating?

Mr. Chamberlain: The Health Information Act prohibits fishing trips in any circumstance. Anyone who is accessing health information is bound by the general overriding provisions of the act to access only what they need to access and the least information necessary to provide the care, treatment, whatever it is that they're doing.

Ms Notley: Right. But I saw the picture up on the wall yesterday, you know, with respect to what it looked like online. There is a lot of information there, and giving a WCB doctor a pass into that information is deeply problematic.

Mr. Chamberlain: I can't speak for all, but most of the physicians who are providing WCB services are also providing services in the publicly funded arena, so they are custodians now and have access to the EHR because they need to to provide treatment and care to their patients, and they would need that same access to provide treatment and care in a WCB-funded setting. The fact that it's paid for by WCB versus the health care insurance plan doesn't change the level of care and treatment that's required.

Ms Notley: Yeah. I'm a bit concerned about that because I don't think it's that black and white with the physicians that are funded by WCB. I think that there is a real concern about their capacity to distinguish between what is a provision of health services versus what ultimately turns into an adjudicative process two steps down the road. Yeah, I have some real concerns about that.

The other question I had. Basically, somebody is now coming into the arena that provides privately funded health services. Let's say it's somebody like the day clinics, someone that does hip replacements for a fee. What limits are there on that person's ability to use the information that they get access to to somehow market what has now become a for-profit service?

Mr. Chamberlain: Same answer I gave before. The overriding principles in the Health Information Act require that anybody accessing health information, whether it be electronically, in paper form, can only do so to the extent necessary, can only use it for the purposes permitted under the act, and must collect and use the least information necessary to carry out the care, treatment, diagnosis, whatever it is that they're doing, for the patient.

Ms Notley: Yeah. I have some real concerns about this as it relates to private-sector health providers who are going to be driven by that model of care at a certain point. That's a real concern.

Mr. Chamberlain: I understand.

Ms Notley: Now, I've got a proposed amendment that may deal with that, but the way it stands right now, I don't think there's enough clarity with respect to that.

The Chair: Any other questions, Ms Notley, or do you want to go back on the list?

Ms Notley: No. Sorry.

The Chair: That's fine.

Dr. Sherman: Since we're on the WCB issue, I recently had a constituent who has been waiting months for a claim, but it has been difficult getting medical information. So with the WCB physicians who have to assess the patients, if that information is readily available about all of the patient's history – X-rays, labs and what not, and a history of injury – would it be conceivable that this would help those who require WCB to speed up their claims? If that information was ready, is that possible?

Mr. Chamberlain: The uses permitted under the act are primarily for care and treatment purposes. There are also some provisions with research, but primarily it's care, treatment, diagnostic provisions. If you're dealing with an insurance scheme, which is essentially what WCB is – I understand WCB works this way: if you're making a claim to WCB, you have to consent to WCB having access to the information in their adjudication process just like you would with your insurance company who's providing coverage. So, in fact, that's done through the consent provisions of the HIA, not through custodian accessing the electronic health record or paper records through the custodian-controlled arena provision. It would be done with consent. That's my understanding of how the system works.

Dr. Sherman: So if a patient gives a consent, will it help speed up their WCB claims and their assessment process?

Mr. Chamberlain: I don't want to speculate, but the intent here is to make sure we have as complete and accurate a record as possible so that practitioners, health providers, whether they're providing publicly funded or privately funded services, have access to a complete and accurate record to provide the best quality of care to patients.

Dr. Sherman: Thank you.

Ms Pastoor: Actually, I've had this question asked to me. When someone is aware that this is going on without, really, all the background, how do I opt out and still get care from a doctor?

Mr. Brisson: You can't opt out from the data being used in the electronic health record other than the masking functionality that we presented two nights ago. There is no opt-out clause within the care and treatment portion of HIA.

Ms Pastoor: So even if you would go with cash in your hand to a private doctor, all that information still hits the electronic record?

Mr. Chamberlain: No. Not all of the information hits the electronic health record. All of the information becomes health information and is governed by the Health Information Act scheme.

Ms Pastoor: It goes into the pot.

Mr. Chamberlain: Exactly.

Mr. Brisson: I guess, really, to clarify here, the restriction on funding from just being publicly funded to those that are also captured in other ways they're funded is to have a complete record for the patient. When a patient shows up at emergency, it doesn't really matter if they had a procedure over here that the system paid for and a private one there that they paid for. If it impacts the care and treatment of that person, we want to make sure that we have full information on the patient so that they get that continuum of care service.

6:45

Ms Pastoor: Right. But the way it was presented to me was that they want out. They want to be able to opt out and take their chances on just working with their doctor or however they wanted to do it. They wanted to take that chance that all of their information wasn't out there.

Mr. Chamberlain: You've understood correctly. It would all be health information caught by the Health Information Act scheme.

The Chair: Okay. Are there any further questions on this document?

Well, thank you very much, Mr. Chamberlain and Mr. Brisson, for this. If the committee has other questions, I'm sure we'll forward them to you, and I appreciate your co-operation in providing the answers.

We're actually doing quite well as far as time is concerned. I have been advised that there are two other members of the committee that have amendments that they would like to propose. Before we go too far down this road, I will be talking about the process for reporting on the review of the bill at the end. I just want to make sure that I've signalled to everybody correctly that it is the chair's intention to propose another meeting of the committee. I want to make sure that people are aware of that.

I'll just ask either of the members that spoke to me before if you want to proceed now with presenting some amendments, either Ms Blakeman or Ms Notley. They have been distributed to members.

Ms Blakeman: Thank you. I had time to write one of them up in the proper form, and the other two I didn't, so you'll have to forgive me on that. Although, of course, I'm always open to advice and correction from Parliamentary Counsel.

The first one was to give, essentially, an appeal process for correction of information that's held by health information repositories, for people to get access to what information is held on them or has been data-matched for them and to be able to correct it and, if they're not successful, to go through the commissioner to review a decision relating to that request. We know that there is a huge amount of inaccurate data that's held in people's health information files and not for lack of trying. This is not a comment on the health professionals, but data entry, Friday afternoons, mistakes are made, and there's inaccurate information in people's accounts. It's important that it gets found and corrected. That was the first one.

The second one. I haven't been able to read the amendments proposed by the Member for Edmonton-Strathcona. It may have been captured there. But if there's a concern that's being consistently brought to my attention around the health information repositories, it's the fear that either direct information about them or data-matched information about individuals ends up being sold for commercial purposes. I think people are quite supportive of research, but the fear is that a secondary use of the information is for commercial purposes. People are really concerned about that. If for no other reason than public trust and public support of the system, I would recommend that we have something in there that the information cannot be sold or used for commercial purposes.

Finally, I've gone back and looked at all of the information on the masking. I actually went back to the original notes from the introductory remarks made by the department of health staff. The masking, I think – just let me find the original wording on that – gives people a false idea that somehow that information cannot be looked at. It offers false security in that it doesn't really mask. As we saw demonstrated yesterday, once you're in the system, you've actually got a drop-down menu; pick which reason you want to use today for why you're unmasking people's information. So saying to people that their masked information is now safe and nobody else can see it and you don't have to worry about anybody looking over anybody's shoulder or your sister finding out or your boss: I think I cannot reassure people with confidence that that's the case.

I think we need to offer a lockbox provision, and I would argue that there needs to be fairly good reason why you could get into a lockbox situation. I think the lockbox needs to be offered because the masking doesn't do it. If you're really trying to hold that information aside and not have it be fairly readily accessed by a health professional in the custodial circle, masking doesn't do that.

Those are my recommendations.

The Chair: Just in terms of process before I turn it to Ms Notley, what I'd suggest, Ms Blakeman, if it's all right with you, is that we'll let Ms Notley get hers on the record, and then there will be some opportunity between now and the next meeting for you to work with Parliamentary Counsel to get these drafted in a form that is acceptable to you and then have a fuller discussion at the next meeting.

Ms Blakeman: Oh, yeah. We have a duplicate.

Okay, yeah. Thank you.

The Chair: Ms Dean, is that a reasonable way to proceed?

Ms Dean: That's fine.

The Chair: Okay. Thanks.

Ms Notley.

Ms Notley: Yeah. I think, actually, that all of my amendments refer to the health information repository.

I do have the act in front of me. If you go to the act, it basically sets out under 72.3 that "a health information repository has the powers, duties and functions given to it by this Act and the regulations." The first amendment suggests one of two things. One, that the powers, duties, and obligations of the health information repository are actually set out in the statute. Right now we have no idea what the powers, duties, and obligations of the health information repository are. We're trying to have a policy discussion on the advisability of how this operation should work, and we don't really have a clear picture of what it is. So the first piece was to have that set out clearly in the regulation.

Now, what I then said was: or amend that section of the act, 72.3 – this is, I suppose, a bit of a fallback position – to suggest that as those duties, functions, and obligations are set out in regulation, the regulation must be drafted in consultation with the Privacy Commissioner, to set that out in the act itself about that regulatory process.

I've had some conversations with people from that office, and I know that the chair has as well, and there is also the possibility of suggesting in text that we would recommend that the commissioner play that role. I guess my concern is that if all we do is recommend it, it might get lost. If we can actually recommend an amendment that we have consensus on that would see that set out in the regulation, then the odds are much better that that amendment would pass when Bill 52 made it to the Assembly, and we wouldn't be, you know, finding out – I mean, there have been a lot of great legislative committee recommendations in the past that have never been acted on notwithstanding that there was consensus on the part of the committee. So to me, actually including it in the regulation is a better way to make sure it happens. That's what I'm getting at with my first amendment.

The second one also relates to the health information repository. The idea is to characterize it in that section as a custodian for the purposes of the act. The way the language is drafted right now, the health information repository is not treated as a custodian. The implications of that are that the Privacy Commissioner has much less jurisdiction over it.

It actually kind of gets at one of the amendments that Ms Blakeman put forward, the first one, where you were talking about having the ability to make a request to the commissioner and all that kind of stuff. If the health information repository were a custodian under the act, all the jurisdiction of the commissioner, I believe, would be in play with respect to the health information repository. So you could appeal to the commissioner. You could ask for, you

know, all the various things that the commissioner has jurisdiction over, that everything else under the HIA would apply to the HIR. Without characterizing the HIR as a custodian, then you're quite limited. That's what the second idea was.

6:55

The third one, again, is very similar to what was proposed by Ms Blakeman with respect to commercial purposes. I had included in my document just an example of a similar provision in the Manitoba legislation dealing with the same issue. So it is possible to do it. We're not the tinfoil-hat-wearing crazies that it might appear because we're worried about that issue. Other legislatures have turned their mind to it and actually made the effort to put it into legislation. So that's where I'm going there.

The final thing. In Manitoba – and I realize that their health research centre is not exactly the same as our health information repository, but nonetheless, you know, just because we're ahead in one sense doesn't mean that there aren't certain models that we can rely on in others. Under the same act that I referenced, there is actually a section that talks about having a committee that governs how the health information repository operates, sets out the components of membership for that committee. Subsequently, again, I've just attached information about how that committee functions to oversee the use of information within the health information repository.

Those are my four proposals.

The Chair: Okay. Ms Dean has a comment. I just have a question first: there are four?

Ms Notley: Yes. Four is halfway down.

The Chair: My apologies. I should leave the glasses on.

Ms Dean: I wanted to comment on the proposals from both Ms Blakeman and Ms Notley in connection with prohibiting commercial use of health information. There is a provision in the existing health legislation, section 107(2)(f), that already prohibits use for commercial purposes unless the person who is the subject of the information has consented. So it would appear that that's already addressed.

Ms Notley: But does that apply to the health information repository?

Ms Dean: It catches any person. "No person shall knowingly . . . use individually identifying health information to market any service for a commercial purpose."

Ms Blakeman: The issue with the health repositories is that it may not always be identifying, but if the data matching is successful, it becomes identifying.

Thank you for finding this, by the way. I would have to go away and think about this.

The Chair: Can I suggest, then, that we're going to have that opportunity. We can consult with Parliamentary Counsel. I guess that the question may be, then: do the existing provisions satisfy the intent of the amendments that you're contemplating? I'll just leave it with each of you to confer with counsel, as you wish, to confirm that.

I'd like to ask one question if I could. It's kind of along the same lines. I'd just like to understand. In terms of the jurisdiction of the Information and Privacy Commissioner, Ms Notley raised the question about whether his jurisdiction would apply equally to part 6.1 of this bill. I'm just wondering if you can address that, Mr. Chamberlain.

Mr. Chamberlain: I actually believe it does. Under section 84 of the act the Privacy Commissioner has responsibility for monitoring the administration of the entire act, and that would certainly include the health information repository part, which is part of the act. That kicks in a number of the powers with respect to oversight and his inquiry powers for compliance with the act. So I believe it does, Mr. Chair.

Ms Notley: I will just say that I'm not sure that that belief is entirely shared by the commissioner's office. The way it was explained to me was that it's the custodial status which triggers the full range of their oversight and that the health information repository is not necessarily considered a custodian.

The Chair: Do you have a further comment?

Mr. Chamberlain: Yeah. I'll read to you section 84.

> The Commissioner is generally responsible for monitoring how this Act is administered to ensure its purposes are achieved, and may
>
> (a) at the request of the Minister or otherwise, conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records set out in an enactment of Alberta.

I would argue that his authority is over the entire act. There certainly are some provisions where if a custodian is doing something or not doing something, the commissioner has powers, but his general power is over the entire act and its compliance regardless of whether its a custodian or some other player, for example an information manager.

The Chair: Okay. Well, I'll leave that, perhaps in a similar vein, Ms Notley, for you to confirm whether or not that would satisfy your concern.

I don't believe there's anything further in terms of proposed amendments. We might actually be able to finish this meeting a few minutes early here. I have item 4 for us to address, and then I have just one other item under other business.

Item 4. I wanted to spend a minute talking about the final process for reporting on the review of the bill. As you know, we've received and reviewed written submissions, we've heard oral presentations, we've had the benefit of research materials analyzing and summarizing the various issues, and we've adopted a motion that Bill 52 proceed with certain amendments. I believe as the chair that the committee should be able to complete its deliberations respecting the bill at the next meeting. At that point the committee should be in a position to provide the necessary direction to the research staff for the drafting of our final report.

We've had some proposed additional amendments tonight. Ms Dean, I just wanted to ask you, in terms of turning these over in the legal form after you've had a chance to confer with the various members, if there is anything further in writing that you need from the members that have proposed these. When would you need that by?

Ms Dean: I can certainly confer with both members in the next day or so, and if there's anything required – I mean, I'm sure we can handle this before next week.

The Chair: Okay. Thank you. I just wanted to make sure.

This, I guess, then brings us to the question of a next meeting. I am hoping that we can arrange a meeting next week. Mr. Dallas.

Mr. Dallas: Sure. Mr. Chairman, with the understanding that the legal work can be prepared on the amendments, I would be prepared to move that

> the next meeting of the Standing Committee on Health be scheduled for Wednesday, May 20, from 2:30 to 4:30 p.m. and that this meeting constitute the final review of Bill 52 by this committee.

The Chair: Okay. We have a motion. Any discussion?

Ms Blakeman: One more time: 2:30, did you say?

Mr. Dallas: Yes. May 20, Wednesday, 2:30 to 4:30 p.m.

The Chair: I'm sorry, Ms Blakeman. I didn't get a chance to consult with you on the date we were looking at. I did with a number of the other members.

All right. We'll hold that meeting at that time. We will consider and vote on the additional proposed amendments. I will also at that meeting provide the direction to staff for the preparation of the report, and then I'll ask for a motion that the chair and deputy chair be authorized to review and finalize the report on behalf of the committee. Obviously, its contents will be the amendments that are approved here.

7:05

I guess we should vote on that motion from Mr. Dallas. Those in favour? Opposed, if any? That's carried. Thank you very much.

Under other business I just wanted to note that since the last meeting the committee has received three letters commenting on, I guess, our deliberations on Monday. One is from the Information and Privacy Commissioner, one is from the Alberta Medical Association, and the third is from the College of Physicians and Surgeons of Alberta. I had asked the clerk to e-mail these as they were received. You know, I realize how busy people are; you may not have found it in your inbox. There are copies at the table here for you as well. They are expressing various comments. It looks like primarily support with respect to some of the direction that we've been talking about and some of the amendments that we've since approved. I just wanted to note those letters for the record.

Any other business? If not, then the committee will hold its final meeting on the bill on Wednesday, May 20, from 2:30 to 4:30 p.m.

Motion to adjourn? Mr. Olson. In favour? Carried. Thank you very much for making the time this evening.

[The committee adjourned at 7:06 p.m.]

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