

Succession Planning to Help Prevent Abandoned Records

A change in a health information custodian's practice, if not properly managed, may adversely affect patients' privacy and access rights under the *Personal Health Information Protection Act*.

For example, the unexpected death of a custodian may leave records of personal health information abandoned if there is no succession plan. The administrator of the deceased custodian's estate becomes the custodian of the records until custody or control passes to a successor, but records are put at risk of abandonment if there are no instructions for the administrator or if the succession plan is not clear.

A custodian's retirement, relocation, bankruptcy or incapacitation may also leave records abandoned.

Where health records are abandoned, this could lead to privacy breaches, deprive individuals of their access and correction rights, and result in important health information being unavailable for patients' care.

Custodians have obligations under *PHIPA* to take reasonable steps to ensure personal health information in their custody or control is protected against privacy breaches. Custodians must also ensure that individuals can exercise their access and correction rights. These obligations do not end until a legally authorized successor has custody and control of the records.

Accordingly, custodians may be in contravention of *PHIPA* if they fail to fulfill security, access and correction obligations during a change in practice. Custodians should plan for a change in practice to prevent abandoning records.



The Office of the Information and Privacy Commissioner of Ontario recommends custodians implement the following best practices to prevent abandoned records:

- Create a succession plan that clearly identifies a successor and sets out their responsibilities, and those of any agents (such as a record storage company) who will assist with the retention, transfer or disposal of health records
- Ensure the plan identifies a person who will be responsible during the transfer of records for:
 - maintaining the security of records
 - responding to patients' access requests
 - making agreements with agents (such as a record storage company) setting out their duties concerning the records
 - notifying patients of the transfer
- Review and update the plan on a regular basis and when there is a change in circumstances that could affect the transfer of those records to a successor

To learn about other measures to prevent abandoned records, custodians should refer to, ***Avoiding Abandoned Records: Guidance for Health Information Custodians in the Event of a Change in Practice.***

If you have any questions or concerns about abandoned records or the duties and obligations of custodians, please contact us at info@ipc.on.ca or 1-800-387-0073.