



Information Sharing Initiatives

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Agenda

1. What is information sharing?
2. Who are the stakeholders?
3. How to structure your information sharing initiatives?
4. When do you need a datasharing agreement?

What is Information Sharing?

- Service providers within a defined service system sharing personal health information of their mutual patients/residents/clients to facilitate health care delivery

What is Information Sharing?

- What are you doing with the PHI?
 - Allowing agent, HIC or electronic provider to access PHI for specific purposes
 - Sharing (disclosing) PHI with other HICs and/or non-HICs

Who are the Stakeholders?

- Funder/Paymaster
- Lead/Host
- Participant/Recipient/Partners
- Technology Provider

How to Structure Your Information Sharing Initiative?

- Contractual agreements needed to set out the responsibilities and accountabilities of all stakeholders

Funding Arrangements

- Funding for administration and for technology
- Various funding sources – Ministry, LHIN, Canada Health Infoway, eHealth, Ontario MD etc.
- Funding may be available to the lead/host
- Funding may be available to the participant/recipient
- Funding relationships will drive governance model of the initiative
- Ensure funding arrangements are documented and clear on what is covered and what is not

Lead/Host Organization

- One organization will often be identified as the lead/host of the initiative
- The lead/host will be responsible for management/administration of the data sharing operations, procurement of necessary goods and services, relationships with third parties
- The lead/host may be the only party accountable to the paymasters
- The lead/host may be an agent of the group of participants OR may purely provide service to participants

Lead/Host Organization

- If you are the lead/host acting on behalf of the participant group ensure agreement with the group that
 - Sets out your authority to act as agent
 - Defines the obligations of participants
 - Shares/distributes risk among the participant group for actions taken as agent on behalf of the group
 - Outlines governance framework for group decision-making
 - Outlines process for participants to join, withdraw, be terminated

Lead/Host Organization

- If you are the lead/host providing services to participants then ensure a service agreement with each participant that
 - Sets the terms of the service delivery
 - Defines the obligations of the participant
 - Allocates risks between the lead and the individual participant
- Much simpler arrangement

Participant/Recipient

- Very different roles depending on relationship with lead organization
- Always responsible for own site and site access/use of data

Where Does Datasharing Fit In?

- Starting point – what is status under PHIPA?
 - Health information custodian (HIC)
 - Agent
 - Electronic provider
 - Health information network provider (HINP)
 - Recipient
- Status will drive relationships/rules
- May have more than one role

Determining Status Under PHIPA – Health Information Custodian (HIC)

- Person or organization (in one of the enumerated groups) who has custody or control of PHI as a result of or in connection with performing their powers or duties (i.e. provision of health care)

Determining Status Under PHIPA – Health Information Custodian (HIC)

- Health practitioner or person who operates group practice
- Home or community care service provider
- Person who operates:
 - a public or private hospital
 - psychiatric facility
 - independent health facility
 - long term care home
 - retirement home
 - pharmacy
 - ambulance service
 - laboratory
 - home for special care
 - centre, program or service for community health or mental health (primary purpose is health care)
- Medical officer of health
- The Ministry

Agent

- “Agent“ means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of PHI for the purposes of the custodian, and not the agent's own purposes ...
- May be context specific i.e. independent practice versus organizational based practice

Status is Not Always Clear

- Family health teams – FHT, doctors, combination
- Multi-practitioner clinics – each practitioner/operator of group practice
- Ministry programs
- Occupational health / vocational health
- HICs working for non-HICs

Implications for Information Sharing ...

- **Who** is the HIC?
 - PHIPA does **NOT** always prescribe, but responsibilities must still be met
 - Custody **or** control of PHI
 - Ownership vs. custody
 - Ownership is not determinative of status under PHIPA, but important consideration
- **NOT CLEAR** under PHIPA, therefore, **must** set out in contractual agreements

Implications for Information Sharing

- Type of Consent
 - certain specified HICs entitled to *assume* implied consent for the collection, use or disclosure of PHI for the purposes of health care or assisting with health care (s. 20(2) PHIPA)
 - does not apply to all HICs (i.e. Ministry)
 - Express consent necessary to share with non-HICs

Elements of Datasharing Agreement

- Compliance with privacy laws
- Roles under PHIPA (i.e. information practices, contact person, access and correction requests, disposal, retention etc.)
- Ownership, transfer and termination
- Operational issues (i.e. access management, audit, monitoring, privacy breach, lock box)
- Privacy and security framework – common rules/minimum standards

When Do You Need a Datasharing Agreement?

- Recommended
 - When you are sharing PHI among more than one HIC (or combination of HICs and non-HICs)
 - When a HIC will be given access to PHI of your patients/residents/clients
- Required
 - HINP must enter into a written agreement with each HIC

Providers to Custodians

- Person who provides goods or services for the purpose of enabling a HIC to use electronic means to collect, use, modify, disclose, retain or dispose of PHI (s. 10(4))
- Must comply with prescribed requirements

General Provider Requirements

- PHI to be used only as necessary to perform the services
- No disclosure permitted by provider
- Agents of provider only permitted access to PHI if they agree to be bound by same obligations
- Notification requirement (to custodian) if general requirements are not met or there has been access by unauthorized persons

Health Information Network Provider

- a person who provides services to two or more HICs where the services are provided primarily to custodians to enable the custodians to use electronic means to disclose PHI to one another

→ IT, operational, privacy support services as a HINP

HINP Obligations

- Description of Services
- Audit Trail
- Threat and Risk Analysis and Privacy Impact Assessment
- General Compliance Provisions
- Written agreement with HIC → Depending on context, may be incorporated into datasharing agreement or may be contained in a separate agreement

When do you need a Privacy Agreement?

- Any time vendor/supplier/third party will have access to PHI
- Should set out:
 - What access is authorized and for what purposes
 - General provider/HINP requirements (where applicable)
 - Safeguards and protections
 - Storage and access to PHI (consider *USA Patriot Act* and access by foreign jurisdictions)
 - Audit and inspection rights
 - Indemnification and risk protection

Thank You!

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