



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 054-2016

Saskatchewan Government Insurance

July 20, 2016

Summary:

The Applicant made requests for amendment of his personal health information in the custody of Saskatchewan Government Insurance (SGI). The Commissioner found that the right of amendment provision in Part V of *The Health Information Protection Act* (HIPA) did not apply in this case. However, he found that it would be best practice for SGI to follow the right of amendment provision to fulfil its duty to ensure personal health information is accurate and complete. The Commissioner also found that amendments were not warranted but recommended SGI make notations on the record.

I BACKGROUND

- [1] On January 12, 2016, the Applicant made requests for amendment of his personal health information to Saskatchewan Government Insurance (SGI). On February 23, 2016, SGI responded to the Applicant indicating that his requests were denied. Its response explained why the requests were denied.
- [2] The Applicant was dissatisfied with SGI's response and requested a review by my office on March 8, 2016. On March 21, 2016, my office provided notification to SGI and the Applicant of our intention to undertake the review.

II RECORDS AT ISSUE

[3] The records in question are Independent Medical Examination reports and subsequent letters. This report will deal with five requests for amendment to these records.

III DISCUSSION OF THE ISSUES

1. Does the collection provisions of HIPA apply in this case?

[4] *The Health Information Protection Act* (HIPA) can apply when three elements are present. The first element is personal health information, the second element is a trustee, and the third element is whether the trustee has the personal health information in its custody or control.

[5] The Applicant requested amendments to the Independent Medical Examination reports and subsequent letters. The records and amendments relate to his physical or mental health. This would qualify as personal health information pursuant to subsection 2(m) of HIPA.

[6] SGI qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA which states that government institutions are trustees. SGI is a government institution pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and Part I of the Appendix of the FOIP Regulations. The personal health information in question is under SGI's custody.

[7] Subsections 4(4)(b) and 4(6) of HIPA provides:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...

(b) Part VIII of *The Automobile Accident Insurance Act*;

...

(6) *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* apply to an enactment mentioned in subsection (4) unless the enactment or any provision of the enactment is exempted from the application of those Acts by those Acts or by regulations made pursuant to those Acts.

[8] Part V of HIPA covers an individual's right to amendment to personal health information from which SGI is excluded. Section 40 of HIPA provides:

40(1) An individual who is given access to a record that contains personal health information with respect to himself or herself is entitled:

(a) to request amendment of the personal health information contained in the record if the person believes that there is an error or omission in it; or

(b) if an amendment is requested but not made, to require that a notation to that effect be made in the record.

(2) A request for amendment must be in writing.

(3) Within 30 days after a request for amendment is received, the trustee shall advise the individual in writing that:

(a) the amendment has been made; or

(b) a notation pursuant to clause (1)(b) has been made.

...

(7) An amendment required to be made pursuant to this section must not destroy or obliterate existing information in the record being amended, other than registration information.

[9] As stated, this section does not apply to SGI but it does outline principals that I would hope every trustee and government institution would honor just because it is fair and reasonable.

2. What sections of HIPA do apply?

[10] I have concluded Parts II, IV and V of HIPA do not apply to SGI but Parts I, III, VI, VII and VIII do apply. The following section is relevant to the current case.

[11] Section 19 of HIPA in Part III provides:

19 In collecting personal health information, a trustee must take reasonable steps to ensure that the information is accurate and complete.

[12] It would be reasonable for SGI to have a process in place to respond to individual's requests for amendments, such as the one described in section 40 of HIPA to ensure that personal health information is accurate and complete. SGI should have a policy that describes this process. I note that SGI does this in practice but does not have a policy.

3. Has SGI reasonably responded to the Applicant's request for amendment?

[13] In accordance with subsection 40(1)(a) and (b) of HIPA, it is reasonable to allow an individual the opportunity to request that SGI amend his/her personal health information where the individual believes there has been an error or omission. If a correction was requested but not made it is reasonable to make a notation on the record.

[14] An error is a mistake or something wrong or incorrect. An omission means that something is missing, left out or overlooked.

[15] The following criteria should be considered when an amendment has been requested:

- a. the information at issue must be personal health information;
- b. the information must be inexact, incomplete or ambiguous; and
- c. the amendment cannot be a substitution of opinion.

[16] In this case, I have determined that all of the information at issue qualifies as personal health information.

[17] When the Applicant made the requests for amendment to SGI, it considered each one and provided explanations as to why the amendments were not made.

[18] Three of the five requests were for amendments to assessments made by a physician about the Applicant's pre-existing condition, mental illness and chronic pain. The statements at issue would qualify as an opinion of the physician. I am in agreement with SGI that an amendment cannot be made to the physician's opinions in this case.

- [19] One of the Applicant's other request for amendment was to statements made about the medication the Applicant has taken for chronic pain. These statements use the words "opioids" and "narcotics". The Applicant has taken exception to these terms and asserts that he has not used illegal drugs. SGI has indicated to our office that these terms can be used to describe legal pain killers. It reports that, in the past, it has changed the terminology in certain personal health information at the request of the Applicant to clarify the meaning. However, SGI claims that the use of these terms is not incorrect in the case of the personal health information in question. I am satisfied that there is no error in the record and an amendment is not warranted.
- [20] The final request for amendment relates to a referral made to a certain physician. SGI indicates that the Applicant was referred to this physician. The Applicant indicates he never attended an appointment with this physician. Upon review, the statements in question clearly relate to the writer's anticipation of a report by this physician once the Applicant has had an appointment. For this reason I agree that there is no error and there is no need for an amendment.
- [21] Subsection 40(1) of HIPA outlines the best practice that if an amendment is not made, a notation should be made on the record indicating that an amendment was requested. The best practice is that a notation be placed permanently on the record so that anyone who reads the record in the future will know that an amendment was requested. A notation should include the date, who requested the amendment, what the requested amendment was and a signature of the decision maker. The notation should be made on the record near the information in question. Trustees should build ways to incorporate notations in their electronic record systems. Trustees should also record the reason why the notation instead of the amendment was made.
- [22] My office asked SGI if it would make a notation on the record. It indicated that the Applicant's request and its response and all other documentation related to this review would be kept on the Applicant's file. In the past, my office has also concluded that a permanent notation on a record that refers the reader to the amendment related documents

is also acceptable. I encourage SGI to place permanent notations on the records in question to refer future readers to the amendment documentation.

IV FINDINGS

[23] I find that section 40 of HIPA which describes an individual's right to amendment does not apply to SGI for the purposes of the administration of Part VIII of *The Automobile Accident Insurance Act*.

[24] I find that SGI has a duty to take reasonable steps to ensure personal health information is accurate and complete.

[25] I find a process to consider amendments and notations is a reasonable step to ensure personal health information is accurate and complete.

V RECOMMENDATIONS

[26] I recommend that SGI make notations on the records in question.

[27] I recommend that SGI develop a process to consider requests for amendment to personal health information that follows best practices. I recommend SGI formalize the process in a policy.

Dated at Regina, in the Province of Saskatchewan, this 20th day of July, 2016.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner