

Guidelines For Agreements **Between Trustees And Information Management Service Providers**

Section 18 of *The Health Information Protection Act* (HIPA) requires that trustees enter into written agreements with information management service providers (IMSP) before providing personal health information to the IMSP. This guideline can be used by trustees and IMSPs to review existing agreements or to draft new agreements.

An information management service provider is an individual, an organization or a company that processes, stores, archives, destroys or combines personal health information on behalf of a trustee. The following are examples of IMSPs:

- an information network provider such as the Saskatchewan Health Information Network (SHIN) Agency;
- a records warehouse storing traditional paper, microfilmed or other records;
- an archive providing long term historical preservation of records;
- a data processing company.

A trustee does not require an agreement under Section 18 for internal information management services. For example, if a regional health authority maintains its own information technology branch, there is no requirement for the IT branch to have an agreement with the health region for these services.

A legally binding agreement should benefit both the trustee and the IMSP. On the one hand, the agreement can specify the exact requirements of the trustee to ensure its duties and obligations are met. On the other hand, a clearly written agreement will allow the IMSP to operate with certainty as to its requirements and will offer significant protection for the trustee and the IMSP provided the terms of the agreement are fully met.

In general, the agreement should make it clear what services the IMSP is providing and, in particular, should set limits on the access to, use and disclosure of the information.

***N.B.** These are guidelines only. All parties to an agreement should consider legal advice from their own solicitor before completing and signing an agreement.*

The following list contains suggestions for what to include in an agreement between a trustee and an IMSP.

Scope of Agreement

- In general terms, state the reason the trustee is entering into an agreement with the IMSP.

Statement of Custody and/or Control

- The agreement should contain a statement indicating that the trustee retains control of all information placed with the IMSP and that decisions in regard to that information are the trustee's to make.
- If the agreement is for a trustee that is transferring custody and control of the records in accordance with Section 22 of HIPA (i.e. the trustee ceases to be a trustee), the agreement should specify that is the case.

List records/data

- List the records/data of personal health information to be placed with the IMSP and for what purpose.

Use of Information by the Trustee

- The agreement should identify what access the trustee has to the information it places with the IMSP. For example, it might require full access to all information it places with the IMSP on a 24 hour, 7 days per week basis.
- If necessary, the agreement can also identify which employees of the trustee can use the information and for what purpose. This could be accomplished through an attached schedule identifying specific employees or locations where access to records or parts of records is to be provided by the IMSP. For example, the agreement could specify that the IMSP will provide access to laboratory staff on the direction of the trustee for the purposes of performing lab services.

Disclosure

- Identify all circumstances where a prior approval exists to disclose information to a third party. Cite the HIPA clause (or other legislative clause) allowing the disclosure. For example, a trustee may grant prior disclosure of information if it is required in an emergency situation - this must be identified in the agreement, or the trustee would have to make the decision at the time of the emergency.
- Include a statement limiting the IMSP from any other disclosure unless specifically directed by the trustee.

Overriding Clause

- The agreement should contain a clause preventing information from being used or disclosed or otherwise manipulated for any purpose not identified in the agreement.

Confidentiality Clause

- The agreement should contain a clause requiring the IMSP to maintain the confidentiality of the information that it holds on behalf of the trustee. This would include identifying what information can be accessed by the IMSP for what purpose and placing a durable duty on the IMSP that the information of the trustee can not be used or disclosed except in accordance with this agreement.

Consent

- The agreement should address the issue of consent, including who must obtain the consent. This will remove any question of the IMSP being responsible for issues related to consent.

Retention and Destruction

- The agreement should indicate how long the information must be maintained as a record by the IMSP and should identify the process that must be followed when records are no longer required and have met their retention period. For example, that all records must be returned to the trustee or securely destroyed subject to prior approval of the trustee.

Ability to Prevent Access to Comprehensive Health Records on SHIN

- If the records are to be combined into a comprehensive health record which are created and controlled by SHIN or by a person prescribed in the regulations, the agreement should:
 - a) Identify for what purposes the comprehensive health record can be accessed by another trustee; and
 - b) Include a requirement that SHIN or the prescribed person is to prevent access to that comprehensive health record if given a written direction in the prescribed form by the individual to do so.

Access to Records by Individuals

- Agreements could note that the right of access to personal health information must be exercised through the trustee, not the IMSP.

Audit Trails

- The agreement should specify the need for an audit trail for use and disclosure of the information. The trustee must be able to comply with Section 10 of HIPA giving individuals the right to information about disclosures without consent.

Authorities

- The agreement should identify who has the authority for making decisions for the trustee. For example, within a regional health authority it might be the CEO. In a group practice an individual could be named or each practitioner could be required to make decisions for the records they place with the IMSP.

Duty to Protect

- The agreement should have a clause requiring the IMSP to take all reasonable steps (these could be specified) to ensure that all of the trustee's duties under Section 16 of HIPA are met. For example, providing for secure storage and migration of data through technology upgrades.

Termination of Agreement

- The agreement should include a termination clause, renewal clause and an amending clause. The termination clause should identify what happens to the data upon termination of the agreement by any party.

Public Disclosure of Agreement

- There should be a clause allowing the trustee to disclose a copy of the agreement if requested by a member of the public.