

Background

Since the government of Nova Scotia announced the passing of the *Personal Health Information Act* in December 2010, there has been consultation to get the regulations completed and in place (including the fees for access to information.) The College was an active participant in these consultations as were all members of the regulated health professions.

The *Personal Health Information Act* sets out the rules for how health information is collected, used, disclosed, retained and destroyed by health care providers in Nova Scotia. It applies to electronic health care records as well as paper records. It defines the health information custodian as **“an individual or organization who has custody or control of personal health information as a result of or in connection with performing...duties of work”** (This includes in part, all regulated health professionals). It will be enacted on June 1 2013.

PHIA brings more consistent privacy protection measures and enhances accountability for Nova Scotia’s health care system.

- The legislation supports collaboration between health providers.
- It supports consistent practices in the collection, use, disclosure and management of patient health information.
- It mandates the development of information practices to better safeguard personal health information.
- It allows information to be collected, used and disclosed to support and manage the health care system in Nova Scotia.
- It provides a fee schedule for custodians in providing an individual’s access to his/her own personal health information.
- Custodians under *PHIA* are subject to independent oversight by the provincial Review Officer.
- *PHIA* is enforceable in the courts of Nova Scotia. Penalties may apply for offences under the *Act*.

Custodian Responsibilities...

- Have written policies and procedures that detail the actions for the collection, use, disclosure, retention, de-identifying, destruction or disposal of Personal Health Information (PHI).
- Prepare notices on these and make them readily available. (see link for example <http://novascotia.ca/dhw/phia/documents//templates/3-2%20Notice%20of%20Purposes.doc>)
- Ensure that the personal health information in your custody is well protected against theft, or loss of information. Have administrative, technical, and physical safeguards and practices in place to maintain that information.
- Have a complaint policy in place for an individual to file complaints under this Act.
- Have the ability to restrict and record user activity for any electronic information system> be able to create a record of user activity when requested.
- Designate a contact person and a written statement of procedures for requesting access to or correction of an individual’s PHI record, as well as on how to make a complaint.

The Department of Health and Wellness has developed a number of tools to help custodians and agents comply with *PHIA*. See <https://www.gov.ns.ca/dhw/phia/>

Access to Health Information

An individual has the right of access to a record of personal health information about that individual that is in the custody or under the control of the custodian.

The custodian can refuse to grant access to the information only if it is reasonable to believe that the information in the record is subject to legal privilege restricting disclosure. A refusal must be given in writing with the reasons stated. The individual is entitled to make a complaint to the Review Officer about the refusal.

The custodian may sever restricted information from the file and allow the individual access to the rest of the information. A person must request in writing to examine the record or obtain a copy. They must be specific about what they require and pay the required fees as estimated in advance by the custodian. The custodian must advise the individual in writing as soon as possible and in no later than 30 days, of their granting or refusing the request. They may extend the deadline if it unreasonably interferes with the activities of the custodian and state their reasons in writing to the individual.

The custodian may waive the requirement for a written request and for fee payment at their discretion.

General Fees

A custodian who provides a copy, or makes a record, or part of a record, of personal health information available to an individual may charge a **general fee not to exceed \$30.00 per request**. The fee is compensation for all of the following:

1. Receiving and clarifying the request
2. Locating and retrieving the record
3. Providing the written estimate of the access fee
4. Review of the record for no longer than 15 minutes by the custodian to determine if any of the record must be severed
5. Severing of the record if necessary

In summary...

If an individual makes written application to access their health information or have a correction of the record, the custodian must respond in writing and comply as appropriate. The custodian must take reasonable steps to ascertain the individual's identity and authority to access the information.

The custodian can charge a fee for access to health information, but must first advise the individual of the estimated cost. The fee must not exceed the prescribed amount.

The custodian has a legal duty to provide personal health information as expediently as necessary for the provision of health care to the individual.

6. Preparation of the record for photocopying for no longer than 30 minutes
7. Preparing a response letter to the requester
8. Supervising the individuals examination of the original record for no longer than 30 minutes
9. The cost of mailing a record by regular mail to a Canadian address.

In addition to the general fee the custodian may charge “**Direct costs**” for charges incurred by the custodian such as expedited retrieval from an offsite storage if required by the individual, courier costs if courier delivery is requested by the individual, mailing costs outside of Canada, and applicable taxes on the services provided.

A **visit history** is a record that can be produced by administrative staff and is a computerized printout of an individual’s visits. If the custodian can produce a visit history for an individual they can charge a fee of **not more than \$10** and may not charge the general fee to produce a visit history.

In addition to the general fees and the Direct costs there may be **specific fees** as set out in the attached table. The fee to be charged is specific to the activity.

Definitions

Custodian: a person authorized under a personal directive to make, on a client’s behalf, decisions regarding the client’s *personal care*.

Statutory decision maker: the nearest relative or the public trustee authorized under Section 14 of the *Personal Directives Act*.

Nearest relative: defined in the *Personal Directives Act* (in order of priority): spouse, child, parent, person standing *in loco parentis* (“in the place of a parent”), sibling, grandparent, grandchild, aunt or uncle, niece or nephew, other relative.

Mature minor: a person under the age of majority who, for purposes of consent to treatment or refusal of treatment, can demonstrate an appreciation for the nature and consequences of his/her decision whether or not to consent to a particular treatment.

Healthcare: defined in the *Personal Directives Regulations* as any examination, procedure, service or treatment that is done for a therapeutic, preventative, palliative, diagnostic or other health-related purpose and includes a course of health care or care plan.

Personal Health Information Act http://nslegislature.ca/legc/bills/61st_4th/1st_read/b076.htm
Personal Health Information Regulations <http://www.gov.ns.ca/just/regulations/regs/217-2012.PDF>

Reference: Adapted from The Personal Health Information Act , Nova Scotia Dept. of Health and Wellness
See Also <http://novascotia.ca/dhw/phia/documents/PHIA-complete-toolkit.pdf> for more resources.

Item	Activity	Fee
1	Making photocopies of a record	20 cents per page
2	Preparation of the record for photocopying, printing or electronic transmission	\$12.00 for every 30 minutes after the first 30 minutes referenced in the general fee
2	Faxing a record	20 cents per page
3	Making a compact disk containing a copy of a record stored in electronic form	\$10.00
4	Making a microfiche copy of a record stored on microfiche	50 cents per sheet
5	Making a paper copy of a record from microfilm or microfiche	50 cents per page
6	Making a copy of an audio cassette recording	\$5.00 per cassette
7	Making and providing a copy of a ¼", ½" or 8mm video cassette: <ul style="list-style-type: none"> a. that is one hour or less in length b. that is more than one hour in length 	<ul style="list-style-type: none"> a. \$20.00 b. \$25.00
8	Making and providing a copy of a ¾" video cassette:	

	a. that is one hour or less in length b. that is more than one hour in length	a. \$18.00 b. \$23.00
9	Producing a record stored on medical film, including x-ray, CT and MRI films	\$5.00 per film
10	Printing a photograph from a negative or from a photograph stored in electronic form, per print: 4" x 6" 5" x 7" 8" x 10" 11" x 14" 18" x 20"	\$10 \$13 \$19 \$26 \$32
11	Review of the record by a health information custodian or an agent of the custodian to determine if the record contains personal health information to which access may be refused under <i>PHIA</i> s. 72(1)	\$ 25.00 for every 15 minutes after the first 15 minutes referenced in the general fee
12	Supervising an individual's examination of original records	\$ 6.00 for every 15 minutes after the first 15 minutes referenced in the general fee