Newfoundland Labrador

PHIA:
The *Personal Health Information Act*

Department of Health and Community Services
June, 2011

Newfoundland Labrador

Objectives of presentation:

1. Introduce the *Personal Health Information Act* (*PHIA*)

2. Provide an overview of resources available to those subject to *PHIA*

Why do we need *PHIA*?

Privacy in the health care sector is <u>critical</u>:

- Extreme sensitivity of personal health information
- Historically, a patchwork of rules across the health sector
- Increasing use of technology, including computerized patient records
- Increasing electronic exchanges of personal health information
- Multiple providers involved in providing care to an individual

Why do we need *PHIA*?

Newfoundland Labrador

Personal health information is unique:

- Highly sensitive and personal in nature
- Must be shared without delay among a range of health care providers for individuals' benefit
- Widely used and disclosed for secondary purposes that are in the public interest (*e.g.*, research, planning, fraud investigation, quality assurance, etc.)

Newfoundland Labrador

The *Personal Health Information Act* became law on April 1st, 2011

What is *PHIA*?

The *Personal Health Information Act (PHIA)*:

- *PHIA* is new health-sector specific provincial privacy law
- Applies to "personal health information" (PHI)
- Governs the actions of "custodians" of personal health information

Why do we need *PHIA*?

Purpose / objectives of *PHIA*:

- *PHIA* creates consistent rules for the protection of personal health information in both public and private settings
- Supports transparency and accountability practices
- *PHIA* strikes a balance between (1) protecting individuals' privacy and (2) using personal health information for legitimate health-related purposes – for example:
    - *Delivering primary health care*
    - *Planning and monitoring of the health system*
    - *Public health and safety*
    - *Health research (Research Ethics Board)*
    - *Criminal investigations*

An overview of *PHIA*

Application – Who?

- *PHIA* applies to "custodians" of personal health information
- Custodians are identified in the Act
- Examples of custodians under *PHIA*:
    - *Regional Health Authorities*
    - *Department of Health and Community Services*
    - *Workplace Health, Safety and Compensation Commission*
    - *Regulated health professionals: Physicians, pharmacists, dentists, optometrists, etc.*
    - *Health care providers (unregulated)*
    - *Others deemed to be custodians via regulations in future*

An overview of *PHIA*

Application – What?

- *PHIA* establishes a comprehensive set of rules for the collection, use and disclosure of "personal health information"

    - *"Personal health information" is defined in the Act*
    - *The definition is broad*
    - *Includes identifiable information about physical and mental health, family history, organ donation, insurance coverage, prescriptions*
    - *Includes information both in oral and recorded form*

An overview of *PHIA*

Application – Where?

- *PHIA* applies to custodians involved in the delivery of health care services in both the public *and* the private sectors in Newfoundland and Labrador

- *ATIPPA* – provincial public-sector privacy law

- *PIPEDA* – federal private-sector privacy law

- Ultimately, *PHIA* will take the place of both *ATIPPA* and *PIPEDA* in respect of personal health information

An overview of *PHIA*

Collection, use and disclosure of PHI:

- Custodians may not collect, use or disclose personal health information UNLESS:

    1. The individual consents, OR
    2. The collection, use or disclosure is permitted or required by the Act without consent

- Custodians may not collect, use or disclose personal health information if other information will serve the purpose

- Custodians may not collect, use or disclose more personal health information than reasonably necessary (general limiting principle)

An overview of *PHIA*

Security obligations:

- Custodians must take steps that are reasonable in the circumstances to ensure that:
    - Personal health information is protected against theft, loss and unauthorized access, use or disclosure
    - Records are protected against unauthorized copying or modification; and,
    - Records are retained, transferred and disposed of in a secure manner
- Custodians must notify individuals if their personal health information is lost, stolen, disposed of or disclosed in an unauthorized manner (with limited exceptions)
- Custodians must notify the Privacy Commissioner in the event of a material breach

An overview of *PHIA*

Security obligations:

- Custodians must implement physical, administrative and technical safeguards to ensure that the PHI in their custody or control is safeguarded:

Physical safeguards Include:

- Securing physical premises appropriately
- Retaining records of PHI in a secure area

Administrative safeguards Include:

- Requiring employees and agents to sign confidentiality agreements
- Requiring agents to attend privacy and security training
- Developing, monitoring and enforcing privacy and security policies
- Conducting privacy impact assessments on information systems, technologies or programs that involve personal health information

Technical safeguards Include:

- Instituting strong authentication measures
- Implementing encryption where appropriate
- Implementing detailed audit monitoring systems

An overview of *PHIA*

Consent:

- The default position of PHIA is that consent is required for the collection, use, disclosure of personal health information

- The requirement to obtain consent is subject to certain specific exceptions set out in the Act

- Where consent is required, consent must:
    - be a consent of the individual
    - be knowledgeable
    - relate to the information
    - not be obtained through deception or coercion

- Generally, consent may be either **express** or **implied**, subject to certain restrictions

An overview of *PHIA*

Express consent:

- Express consent: consent that is obtained as a result of an individual positively indicating, either verbally or in writing that they agree to a stated purpose

- Under *PHIA*, consent must be express and cannot be implied when:

    1. A custodian discloses to a custodian for a purpose other than providing health care

    2. A custodian discloses to a non-custodian for a purpose other than providing health care

- There may be exceptions set out in the Act – where no consent is required.

An overview of *PHIA*

Implied consent:

- Implied consent: consent that that may be *reasonably* inferred from signs, actions or facts, or by inaction or silence

- Certain custodians may assume implied consent, but only when disclosing PHI to custodians or other persons *for the purpose of providing health care* – i.e., within the "circle of care"

- As with express consent, implied consent requires that individuals be notified at the point of collection of the intended uses and disclosures of their personal health information:
  - Verbal notification, discussion
  - Pamphlets, posters

- Implied consent ends if individual expressly withdraws consent

An overview of *PHIA*

Newfoundland Labrador

Withdrawal of consent – "lock box":

- Where consent is required for a collection, use or disclosure, consent may be withdrawn – applies to situations involving both express and implied consent
- Withdrawal of consent does not prevent custodians from using or disclosing PHI where uses or disclosures without consent are authorized by *PHIA*
- Balancing provisions:
  - **Notification** – if a disclosing custodian believes that all information necessary for the provision of health care has not been disclosed, the custodian must notify the recipient of that fact
  - **Override** – a custodian may disclose if disclosure is necessary to prevent significant risk of serious bodily harm to a person or a group of persons

An overview of *PHIA*

Access and correction

- An individual has the right to access their personal health information – *with exceptions*: if harm to the individual or another person might result; where a legal investigation is underway; frivolous or vexatious request; etc.
- *PHIA* identifies the process and timelines for accessing personal health information files and requesting corrections or annotations
- *PHIA* identifies the responsibilities of custodians regarding access and correction

An overview of *PHIA*

Oversight by Privacy Commissioner

- *PHIA* identifies the powers, responsibilities and accountabilities of the Office of the Information and Privacy Commissioner (OIPC)

- The OIPC can investigate any alleged breach of the Act, inform the public about the Act and make recommendations to ensure compliance.

- If the matter involves access to or correction of a record of personal health information, an individual may make an appeal directly to the Supreme Court, Trial Division or following a review by the OIPC

An overview of *PHIA*

PHIA – Compliance essentials for custodians include:

- A contact person must be designated (s. 18)
- Confidentiality agreements for all employees, agents, contractors and volunteers (s. 14)
- Agreements with “information managers” (s. 22)
- Detailed privacy and security policies and procedures (s. 13, s. 15)
- Privacy and security training program (s. 14)
- Written statement of information practices, available to the public (s. 19)
- Notice of purposes for which personal health information is collected, used and disclosed for posting or providing to clients (ensures that consent is knowledgeable) (s. 20)
- Records / logs of disclosures (s. 48)
- Process for managing limited consent / lock box requests (s. 37)
- Privacy breach management protocol (s. 14)

Resources for Custodians

Resources for custodians:

Now available on the Department's website -

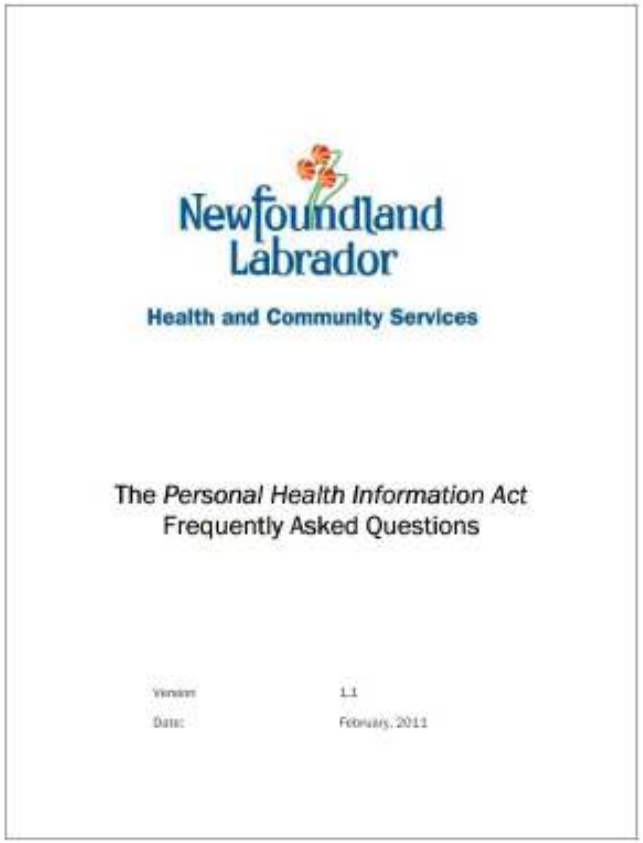
- *PHIA* FAQs
- *PHIA* Online Education Program
- *PHIA* Risk Management Toolkit
- *PHIA* Policy Development Manual

www.health.gov.nl.ca/health/PHIA

Resources for Custodians

PHIA FAQs

- Frequently asked questions about the Act
- Great place to start when learning about *PHIA* or when there is a question
- Useful reference tool
- Assistance for custodians in understanding the requirements of *PHIA*
- Help for residents of the province in understanding their rights under *PHIA*



Resources for Custodians

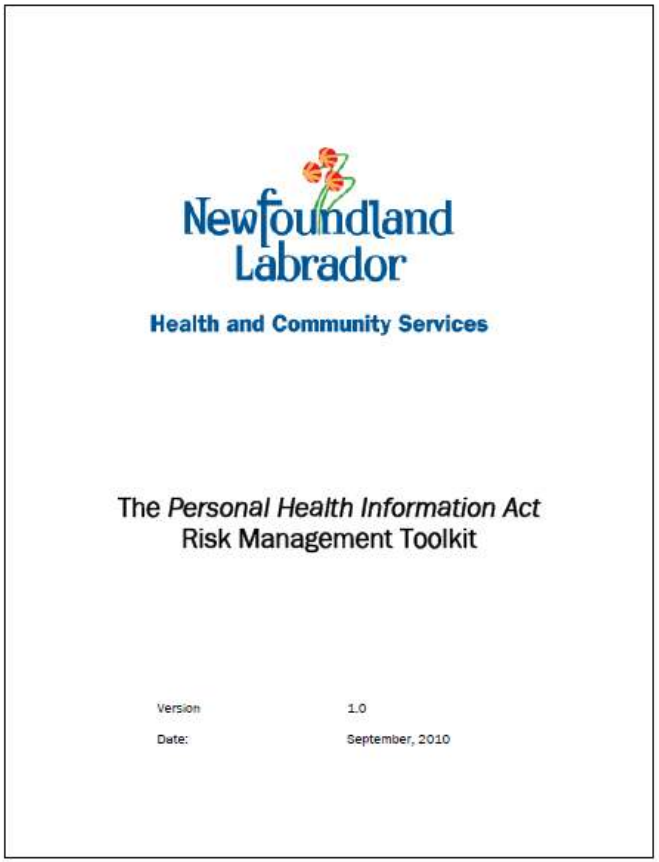
PHIA Online Education Program

- An introduction to *PHIA*
- Three versions of the course – for custodians, for those who work with PHI and for other employees / persons who don't work with PHI.
- May be taken by custodians to familiarize themselves with the Act
- Custodians can have employees, contractors, etc., take the course
- Can complete course over several sessions
- Certificate awarded on completion
- Accredited by College of Family Physicians of Canada and by the NL Pharmacy Board

Resources for Custodians

PHIA Risk Management Toolkit

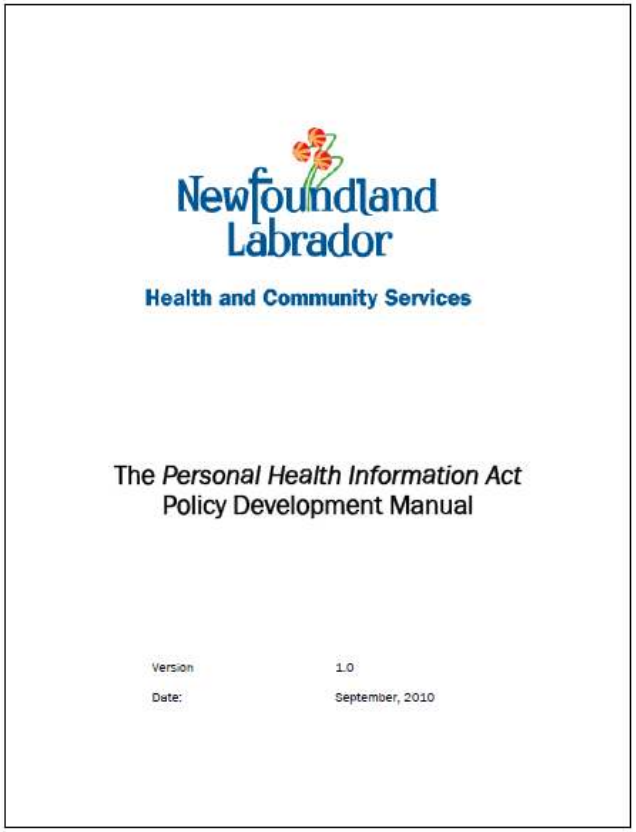
- Assistance for custodians in understanding their legal obligations under *PHIA*
- Assist custodians in assessing their current state of compliance with *PHIA*
- Identify and mitigate risks / gaps in security measures
- The Risk Management Toolkit contains several tools, including:
  - Privacy checklist
  - Short-form PIA
  - Long-form PIA
  - Privacy Audit
  - Privacy Breach Guidelines



Resources for Custodians

PHIA Policy Development Manual

- Assistance for custodians in establishing information policies and procedures as required under *PHIA*
- Arranges the legal requirements of the Act into a policy development framework
- Provides users with sample language for policies and procedures
- Custodians must adapt the sample language to their specific activities / lines of business



Contact information

Brian Bennett, B.A., LL.B., CIPP/C
Privacy Manager,
Department of Health and Community Services,
Division of Legislative and Regulatory Affairs

West Block, Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6

T. (709) 729-7007
F. (709) 729-5824
E. BrianDBennett@gov.nl.ca