

CODE OF PRIVACY

INTRODUCTION

The following Code of Privacy is intended to outline the privacy rules to which Essex Windsor EMS and its staff are subject. Staff are expected to review and understand the obligations imposed on the EMS under the *Personal Health Information Protection Act* ("PHIPA"). Failure to comply with the terms of the Code of Privacy may result in legal liability for both the Essex Windsor EMS and/or the affected staff member and may result in corrective action up to and including discharge.

I. General Overview

Essex Windsor EMS is subject to Ontario's PHIPA. The *Act* imposes rules on how Essex Windsor EMS and its staff may collect, use and disclose the "personal health information" of individuals obtained in the course of providing EMS services. It also imposes rules governing the security, accuracy, retention of and access to an individual's personal health information.

II. What is Personal Health Information?

Personal Health Information is information that identifies an individual (in oral or written form) if it falls within one or more of the following categories:

- Information about mental or physical health of an individual (including the individual's family health history);
- Information relating to the providing of health care to an individual (including identification of a health care provider);
- A plan of service under the *Long Term Care Act*;
- Information relating to eligibility for health care or payments for health care;
- Information relating to donation of body parts or substances (or that is derived from the testing of such parts or substances);

- The individual's health number;
- The individual's substitute decision maker.

Normally information collected to assess and treat an individual requiring EMS services will fall within the category of personal health information.

III. What restrictions are placed on the collection, use and disclosure of Personal Information?

a) Consent – Implied or Express

Normally Essex Windsor EMS may only collect, use or disclose an individual's personal health information if the individual has consented to the particular purpose for its use or disclosure. In some cases, express consent will be required. In other situations consent may be implied by staff. These circumstances are described below.

Implied consent exists if the personal health information is to be used by EMS for one of the purposes located on the public notice located in each ambulance and on the Essex Windsor EMS website unless circumstances suggest otherwise (i.e. the individual explicitly indicates that they are not consenting to a particular use of personal health information).

Implied consent may be assumed in order to disclose personal health information to other health information custodians provided the information is disclosed to provide health care or assist in providing health care. Health information custodians include health care practitioners (including physicians and nurses), hospitals, and psychiatric facilities, homes for the aged, and charitable homes for the aged, nursing homes, service providers under the *Long-Term Care Act*, Community Care Access Centres and Medical Officers of Health. If the status of a person or institution as health information custodian is unclear, staff are directed to contact Essex Windsor EMS where time and circumstances permit and to do so will not jeopardize the health of the individual.

Subject to several exceptions (described below), in most other instances, personal health information may only be used or disclosed after express consent is obtained from the individual.

b) Consent -- Who May Consent for an Individual?

Normally consent to collect, use or disclose personal health information should be obtained directly from the individual requiring EMS services. Consent can be provided directly by the individual regardless of age, provided they have the capacity to provide consent. (The test for assessing capacity is described in the following paragraph).

If the individual is at least 16 years old he or she may designate in writing an individual to consent on his or her behalf provided the designate is at least 16 years old.

If the child is less than 16 years old, a parent, children's aid society or person lawfully entitled to give or refuse consent may provide or refuse consent unless:

- The information related to treatment as defined under the Health Care Consent Act about which the child has already made a decision in accordance with that Act.

If a person is determined to be incapable of providing consent a substitute decision maker under s.9 of the Health Care Consent Act may give or refuse consent to treatment as defined under that act or, in descending order of priority, one of the following substitute decision makers:

- A guardian (who has the authority to make such decisions)
- Attorney for personal care or attorney for property (who has the authority to make such decisions)
- Representative (appointed by the Consent and Capacity Board under the Health Care Consent Act who has the authority to make such decisions)
- Spouse or partner

- Child, custodial parent, children's aid society or other person legally entitled to give consent in place of a parent (if another entity is entitled to give consent - the parent may not give consent)
- Parent with access rights
- Brother or sister
- Any other relative (by blood, marriage or adoption)
- The estate trustee or person in charge of administering the estate (if deceased)

In order to give consent the substitute decision maker must be (a) capable themselves, (b) at least 16 years of age (or the individual's parent), (c) willing to assume the responsibility for giving or refusing consent, free of any court order or separation agreement prohibiting access to or consent for the individual and the highest ranked person on the priority list.

References to individual consent found in this Code of Privacy are deemed to include consent obtained from others lawfully acting on behalf of the individual as described above.

c) Consent -- Capacity to Consent

Individuals are capable of consenting if they are assessed by staff as able to understand:

- The information needed to decide whether to consent to the collection, use or disclosure, and
- The reasonably foreseeable consequences of giving or not giving consent

d) Consent - Withdrawal of Consent

Individuals may withdraw consent (whether such consent is express or implied), in whole or in part, at any time to most uses or disclosures of their personal information. If consent is withdrawn by an individual who is assessed as having the capacity to do so, staff may generally not use or disclose the personal health information for the purpose for which consent was withdrawn.

However there are several exceptions to the general rule:

- Once personal information is collected individuals cannot restrict staff from recording personal health information as required by law, established standards of professional practice or EMS institutional practice.
- If an individual places restrictions on the disclosure of personal health information to another health information custodian (i.e. a hospital), and such information is believed to be reasonably necessary to provide health care EMS staff must notify the custodian that they do not have consent to release all relevant personal health information.
- Personal health information may still be used or disclosed by EMS staff if one or more if circumstance which permit use of disclosure without consent (described in paragraphs (t) and (g) below) exist.

e) Collection of Personal Health Information - Direct or Indirect

Normally personal health information should be collected directly from the individual requiring EMS services. Personal health information may be directly collected even if the individual is assessed as not capable of consenting if the collection is reasonably necessary to provide health care and it is not otherwise possible to get consent in a timely manner.

Indirect collection is only permitted in limited circumstances including where:

- The individual consents to indirect collection
- The information is reasonably necessary to provide health care or to assist in providing health care and it is not reasonable to directly collect:
 - Information which can reasonably be assumed to be accurate; or
 - Information in a timely manner
- The information is being collected to investigate the breach of an agreement or an alleged contravention of the law

- The information is collected from a person who is required or permitted by law or by an agreement or arrangement under an Act to disclose it to a custodian.

f) Use of Personal Information

Normally, staff should only use personal information for the purposes which the individual consented (either expressly or implicitly as permitted). In limited cases personal health information may be used without consent including:

- For planning or delivering EMS programs or
- For allocating resources to EMS programs or services
- For evaluating or monitoring EMS programs
- For risk or error management activities or for activities intended to improve the quality of care
- For educating EMS students or staff to provide health care
- For the purposes of disposing information of or modifying information to conceal identity
- For the purpose of obtaining additional consent providing only the individual name and contact information are used
- For the purpose of a legal proceeding or anticipated proceeding in which the EMS or its staff are expected to be a party or witness if the information relates to the proceeding
- For the purpose of obtaining payment for the provision of health care
- For research conducted by the EMS provider (subject to certain legal requirements)
- If permitted or required by law or by agreement made under an Act

Staff are directed to consult with Essex-Windsor EMS prior to using personal health information without consent under one of the enumerated exceptions.

g) Disclosure of Personal Health Information

Normally personal health information may only be disclosed with the consent of the individual (either express or implied where

appropriate). In limited cases, personal health information may be disclosed without consent including:

- To certain health information custodians if disclosure is reasonably necessary to provide health care and consent can't be obtained in a timely fashion including the following circumstances:
 - A health care practitioner
 - A service provider under the long Term Care Act
 - A community care access centre
 - A hospital
 - A psychiatric facility
 - An institution under the *Mental Health Act*
 - A nursing home, charitable home for the aged, or a home for the aged
 - A centre, program or service for community health or mental health whose primary purpose is providing health care
- If the individual is deceased information may be disclosed to identify the individual.
- To inform any individual whom it is reasonable in the circumstances to inform of the status of the individual as deceased and the circumstances of the death if appropriate
- To the spouse, partner, sibling or child of a deceased individual if reasonably necessary for such person to make decisions about their own or their children's health care
- To determine eligibility to receive health care funded in whole or in part by a municipal or provincial government or by the federal government
- To a person conducting audit or conducting a review for accreditation if it relates to services provided by the EMS and the records are not removed from the premises
- To the Chief Medical Officer of Health for the purposes of the Health Protection and Promotion Act

- If disclosure is reasonably necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons
- To the head of a penal or other custodial institution where an individual is being detained for certain limited purposes including the provision of health care
- For the purposes of a legal proceeding or anticipated proceeding in which the EMS or its staff are expected to be a party or witness if the information relates to a matter in issue in the proceeding
- To comply with a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel production
- To comply with a procedural rule relating to the production of information in a proceeding
- To a law enforcement agency to aid in an investigation undertaken with a view to a law enforcement proceeding (MFIPPA institutions only)
- To the Ministry of Health, the upper tier municipality (or the local municipality or delivery agent as the case may be), or the medical director for purposes relating to the discharge or exercise of EMS staff duties or powers under the Ambulance Act.

Staff are directed to seek clarification with respect to the application of the disclosure without consent rules from Essex-Windsor EMS where time and circumstances reasonably permits and where to do so will not jeopardize the health of an individual.

Staff are expected to notify Essex-Windsor EMS immediately of any unauthorized use of disclosure of personal information of which they become aware.

IV. What are the Rules Governing Security of Personal Information?

According to PHIPA, Essex-Windsor EMS is required to implement security measures appropriate to the sensitivity of the personal health information.

Personal Health Information is stored in the following manner. [Describe how personal health information is to be stored including physical security measures, electronic security and protocols and administrative protocols)

Staff who become aware of loss, theft or unauthorized accessing of personal information should report such incidents to their immediate supervisor.

V. What are the Rules Governing Accuracy of Personal Information?

Under the law, Essex-Windsor EMS must keep personal information as accurate and up to date as is necessary for the purposes for which it has been collected. Any inaccuracies discovered should be corrected promptly. Requests received to correct personal health information should be forwarded immediately to Essex-Windsor EMS.

VI. What are the Rules Governing Retention of Personal Information?

Under the law, Essex-Windsor EMS may not destroy personal health information if an individual has requested access until after the access process (and any right of appeal regarding an access decision) has been completed. Existing retention standards are not otherwise affected by the *Act*.

VII. Challenging Compliance

Under the law, members of the public may raise concerns or complaints about Essex-Windsor EMS privacy practices. Inquiries about Essex-Windsor EMS privacy practices which cannot be answered by reference to our privacy statement should be referred to the privacy officer.

Similarly, any complaints received about Essex-Windsor EMS privacy practices should be forwarded to the privacy officer.

VIII. Access

The law normally permits individuals to access their own personal health information in the custody or control of Essex-Windsor EMS. Normally, Essex-Windsor EMS is required to respond to such requests (either denying or granting access) normally within 30 days of receiving the request. In appropriate circumstances Essex-Windsor EMS may charge a reasonable fee for responding to the request.

Any requests to access personal information in the custody or control Essex-Windsor EMS by a member of the public should be immediately referred to the privacy officer for response.