

INFORMATION AND PRIVACY COMMISSIONER OF ALBERTA

Investigation into Misdirected Faxes

Investigation Report H2009-IR-004

May 26, 2009

Caritas Health Group

(Investigation H2231)

Introduction

On September 2, 2008, the Information and Privacy Commissioner (the Commissioner) received a letter from a member of the public stating that she had received confidential health information from the Misericordia Hospital (the Misericordia) on her home fax machine. She stated she was not the intended recipient of the health information and that she had received faxes containing health information on other occasions. The recipient concluded her letter by stating that there “must be a more secure way to transmit this information.”

The Commissioner authorized me to conduct an investigation under section 84(a) of the *Health Information Act* (HIA). This provision allows the Commissioner to conduct investigations to ensure compliance with any provision of the HIA.

This report lays out the findings and recommendations resulting from my investigation.

Background

The individual who contacted the Commissioner (the recipient) received a three page fax from the Records Department at the Misericordia Hospital on August 14, 2008. The recipient states she immediately contacted the Records Department and spoke with a supervisor who directed her to send the records back to the hospital. The recipient did not return the records as requested; rather, she forwarded them to this Office.

The records are:

- A two page discharge summary (the discharge summary)
- A “Disclosure of Health Information/Fax Transmission Form” (the disclosure form)

The discharge summary provides a detailed record of birth and subsequent medical treatment for a child at the Misericordia Hospital and given up for adoption. The child is identified by name, date of birth, patient identification number and unique lifetime identifier (ULI). The record indicates the child had positive cocaine toxicology results, demonstrated a reduced Apgar score and was immediately treated for exposure to Hepatitis B at birth. The adoptive parents

and their community of residence are identified, and the report states the child was discharged into their care. The birth mother is not named, although the record states that she has had multiple pregnancies, is a known cocaine user and obtained no prenatal care.

The discharge summary was dictated on July 30, 2008, transcribed on August 6, 2008, and electronically signed by the attending physician on August 11, 2008. It was copied to a general practitioner and a pediatrician.

Reports are sent to the “copied physicians” when they have been transcribed. Caritas advised me that discharge summaries are faxed using an automated faxing system if the physician is in the Edmonton area. When the receiving physician is not in the Edmonton area, the report is printed and mailed. As the pediatrician practices outside the Edmonton area, a copy of the report was mailed to him on August 6, 2008. Some reports from Caritas, including discharge summaries, are also made available in Alberta Netcare¹ shortly after transcription.

The disclosure form indicates that a nurse from the pediatrician’s office contacted the Misericordia Records Department on August 14, 2008, and requested that the child’s health record be faxed “stat”. A note on the disclosure form indicates that staff at the Misericordia were “sending (you) some (documents) twice because the copies are not very good...”.

The first package of records, eleven pages in total and including the discharge summary, was successfully transmitted to the pediatrician’s office in response to the August 14, 2008 request. The second package of records consisted only of an enhanced copy of the discharge summary and was sent to the recipient’s home fax as opposed to the pediatrician. The recipient and pediatricians fax numbers are identical but for one digit.

Application of the HIA

The HIA applies to “health information” in the custody or control of a “custodian”.

The HIA defines health information as “registration information”, “health services provider information” and “diagnostic, treatment and care information.” The discharge summary is made up of a combination of registration information, health services provider information and diagnostic treatment and care information.

Caritas Health Group is a custodian under section 1(1)(f)(i) of the HIA.

¹ Alberta Netcare is Alberta’s electronic health record. The Alberta Netcare Portal provides authorized custodians with the ability to view health information that has been made available through the system. In general, authorized users can view the demographic information (name, health care number, address, date of birth, etc), prescription information, lab test results and diagnostic images of all Albertans. A description of Alberta Netcare is provided in Investigation Report H2008-IR-001.

As the discharge summary disclosed by Caritas contains health information and Caritas is a custodian, I find that the HIA applies to the disclosure of the records at issue.

Issue

The issue to be considered in this investigation is:

Did Caritas take reasonable steps to protect health information against unauthorized disclosure?

Analysis

Did Caritas take reasonable steps to protect health information against unauthorized disclosure?

The protection of health information is addressed in section 60 of the HIA. Section 60(1)(c)(ii) of the HIA specifically speaks to the obligation placed on custodians to protect health information against unauthorized disclosure. It reads:

60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will

...

(c) protect against any reasonably anticipated

...

(ii) unauthorized use, disclosure or modification of the health information or unauthorized access to the health information,

...

Fax machines, desktop fax software, fax modems and fax servers/gateways are common business technologies used to transmit documents. Faxes can be sent from a fax machine to another fax machine over telephone lines. Faxes can also be sent to or from a computer using telephone lines in the same manner that hardware fax machines operate. The uptake of desktop fax software, fax modems and fax gateways has increased the number of devices that are able to send and receive faxes.

There is an acknowledged risk of inadvertent unauthorized disclosure of information when sending documents via fax. The Commissioner recognized that health and/or personal information must sometimes be sent via fax and released his "Guidelines on Facsimile Transmission" (the Guidelines) in October 2002². This document provides custodians, public bodies and organizations with advice on reducing the risk of accidentally disclosing health and/or personal information when sending information via fax. The Commissioner's

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Available online at:
http://www.oipc.ab.ca/Content_Files/Files/Publications/Guidelines_on_Facsimile_Transmission.pdf

recommendations for protecting health and/or personal information when sending information via fax include:

- Limit faxing information to situations where the information must be faxed
- Send the most limited amount of information
- Verify the receiver's fax number before sending information
- Use validated, pre-programmed fax numbers where possible
- Always include a cover sheet when sending a fax that describes what to do if the information is received in error
- Verify that the recipient received the information

These are safeguards that can be implemented to either reduce the likelihood or consequence of health and/or personal information being transmitted in error. Caritas has implemented a number of these safeguards including the use of preprogrammed numbers and automated faxing for common recipients, the development of policies and procedures that guide staff in the use of fax technology, and the mandatory use of a cover page. Regrettably, this incident can be attributed to human error as a staff member dialed the pediatrician's fax number incorrectly.

While Caritas has implemented many important controls to protect health information when it is sent via fax, I learned through my investigation that it does not evaluate if health information is required immediately or is available through a more secure communication mechanism.

This is an important factor for custodians to consider when deciding what is a reasonable course of action when they receive a request for health information to be sent via fax. When one assesses the reasonableness of a risk mitigation strategy, one must consider whether or not other "less risky" mechanisms to achieve the same outcome exist. It is not reasonable for a custodian to assume a high level of privacy risk where the same outcome could be achieved with a substantially reduced risk of privacy breach.

In the case currently before me, the discharge summary became available electronically through Alberta Netcare on or about August 6, 2008. The pediatrician is an authorized Netcare user. Neither the pediatrician nor his staff used Alberta Netcare to review the discharge summary through the Netcare Portal. On determining that a copy of the discharge summary could not be located in their office and that the information was required to provide a health service, staff at the pediatrician's office contacted the Misericordia and requested that a copy be faxed to them. Staff at the Misericordia did not ask whether the pediatrician was a Netcare user, nor did they suggest that the record could be accessed through a more secure mechanism.

The HIA clearly attributes accountability for misdirected faxes to the custodian that disclosed the health information to the unauthorized recipient. It also requires, under section 45, that a custodian take reasonable steps to ensure that health information is disclosed to the authorized and intended recipient. While the HIA lays accountability for this privacy breach with Caritas, the

accountability in this situation must be practically shared with the pediatrician who requested multiple copies of the information. Custodians should, as a best practice, request that health information be faxed only when the information is required immediately and no other means of obtaining secure access to the information is practical.

By the time the discharge summary was faxed in error, it had been sent to the pediatrician on two previous occasions (once via mail on the day it was transcribed and earlier on August 14, 2008 via fax as a part of the complete chart copy). The discharge summary had also been accessible to the pediatrician through Alberta Netcare for approximately eight days. I must emphasize that this inadvertent disclosure of very sensitive health information could have been avoided had the custodians involved relied upon information contained in a secure information system they had ready access to.

While Caritas has adopted some safeguards that would protect health information against unauthorized disclosure via fax, they did not assess if disclosure via fax was reasonable in the circumstances or if a more secure way to transmit the information existed. I therefore find that Caritas failed to meet the requirements of section 60(1)(c)(ii) of the HIA in this case, and failed to take reasonable steps to protect health information against reasonably anticipated unauthorized disclosure.

Recommendations

I recommend that Caritas review their faxing policies and procedures to ensure that these policies and procedures have adequately taken into account that other means to obtain secure access to health information may exist.

I also recommend that Caritas review faxing policies and procedures with staff once this review has been completed.

Conclusion

The practice of faxing health information is well entrenched in the health system, particularly when patient safety needs dictate that information be accessible immediately at the point of care. I remind all custodians of the requirement to take reasonable steps to protect health information against unauthorized disclosure. In many cases, privacy breaches can be avoided by dialing carefully and confirming the fax number before sending the information.

This is not the only case of health information being faxed to public numbers that has been investigated by this Office in the past several months. In those cases, the investigations determined that it was necessary to send the health information immediately via fax to support patient care and as no other more secure mechanism for transmission existed. These are situations where the risk to patient care and safety clearly outweigh any potential privacy risk that may have faced the custodian.

In conducting this investigation, I am mindful of the exponential uptake of information technology solutions in health care over the past five years. These innovations render the practice of manually faxing health information, at best, redundant and, at worst, an unnecessary risk to patient privacy.

This case marks the first time that an investigation has determined that a legitimate need for immediate access to health information was present, but that a more secure and equally timely mechanism for transmission of that information existed. The availability of a system like Alberta Netcare must be factored into a custodian's consideration of risk when disclosing health information. If it is essential that health information be sent immediately to support patient care and two or more mechanisms of transmitting the information are available, a custodian should send health information through the more secure channel unless transmission through the more secure channel would compromise patient safety or there are other mitigating factors.

Submitted by

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