

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **232**, Approved and Ordered **May 13, 2015**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders the following:

- 1 Effective June 1, 2015,
 - (a) the Access to PharmaNet Regulation, B.C. Reg. 117/2009, is repealed,
 - (b) the Information Management Regulation, except sections 3, 4 (1) and (6) (a) (ii), 8 (3) (a) and 18 (3) (c), as set out in the attached Schedule 1, is made,
 - (c) the Disclosure Directive Regulation, B.C. Reg. 172/2009, is amended as set out in the attached Schedule 2, and
 - (d) the Provider Regulation, B.C. Reg. 222/2014, is amended as set out in the attached Schedule 3.
- 2 Effective June 1, 2016, sections 3, 4 (1) and (6) (a) (ii), 8 (3) (a) and 18 (3) (c) of the Information Management Regulation, as set out in the attached Schedule 1, are made.


Minister of Health


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Pharmaceutical Services Act*, S.B.C. 2012, c. 22, s. 63 (2) (b), (d) and (f) and (4) (b) and (c) and 65 (4) and (5);
E-Health (Personal Health Information Access and Protection of Privacy) Act, S.B.C. 2008, c. 38, s. 26 (2) (c) and (d)

Other: OIC 222/2009; OIC 354/2009; OIC 661/2014

April 16, 2015

R/223/2015/3

SCHEDULE 1

INFORMATION MANAGEMENT REGULATION

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PART 1 – DEFINITIONS

Definitions

- 1 In this regulation:

“**Act**” means the *Pharmaceutical Services Act*;

“**claims history**” means information recorded in PharmaNet about an identifiable individual that is related to one or more of the following:

- (a) the submission of claims made by or on behalf of the individual in respect of drugs, devices and substances dispensed, and related services provided, to that individual;
- (b) co-payments paid or payable by the individual;
- (c) the assessment of claims referred to in paragraph (a);

“**device provider**” means a person enrolled in the device provider class under the Provider Regulation;

“**electronic system**” means an electronic system that is used, by a person who is authorized to access an individual’s claims history or medical history, for the purpose of accessing that history;

“**medical history**” means information recorded in PharmaNet about an identifiable individual that is related to one or both of the following, except to the extent that the information is part of the individual’s claims history:

- (a) the individual’s health;
- (b) the provision to the individual of drugs, devices, substances and related services;

“**PharmaNet**” means the information management technology prescribed under section 2 [*prescribed information management technology*].

PART 2 – PHARMANET

Prescribed information management technology

- 2 The computerized networks and associated databases operated and maintained by the ministry of the minister, collectively known as “PharmaNet”, are prescribed information management technology for the purposes of the Act.

Grant required before accessing PharmaNet

- 3 (1) A pharmacist, a medical practitioner, a nurse practitioner, a device provider or a person acting on behalf of any of them must not access an individual’s claims history or medical history unless
 - (a) the person is first granted access under this section, and
 - (b) the grant of access has not been suspended or cancelled.
- (2) On receiving an application for access, the minister may do the following:
 - (a) grant access without specifying terms or conditions;
 - (b) for any reason for which the minister could take action under section 7 [*minister may suspend access*],
 - (i) grant access subject to specified terms and conditions, or
 - (ii) refuse to grant access.
- (3) Only individuals may be granted access to PharmaNet under this section.
- (4) The minister must not refuse to grant access to a pharmacist, a medical practitioner, a nurse practitioner or a device provider unless the minister first gives to the person notice and an opportunity to be heard.
- (5) Unless the minister permits otherwise, a hearing must be in writing.

Access to PharmaNet generally

- 4 (1) This section applies to persons granted access to PharmaNet under section 3 [*grant required before accessing PharmaNet*].
- (2) A pharmacist and a medical practitioner who may receive payments for claims under section 18 of the Provider Regulation may access an individual’s claims history or medical history, or both.

- (3) A medical practitioner other than one referred to in subsection (2) and a nurse practitioner may access an individual's medical history only.
- (4) A device provider may access an individual's claims history only, and only in respect of devices and related services provided to the individual by the device provider.
- (5) A person acting on behalf of a person described in any of subsections (2) to (4) may access an individual's claims history or medical history
 - (a) only if the person on whose behalf he or she is acting may do so, and
 - (b) subject to the same terms, conditions and limits that apply to the person on whose behalf he or she is acting.
- (6) A person described in any of subsections (2) to (5) may access PharmaNet only
 - (a) in accordance with the terms and conditions, if any, imposed by the minister
 - (i) under the Act, and
 - (ii) on granting access under section 3 of this regulation,
 - (b) in accordance with all applicable limits set out in this section, and
 - (c) to the extent necessary to provide health services to, or to facilitate the care of, the individual whose personal information is being accessed.

Recording information in PharmaNet

- 5 For the purposes of section 27 (4) of the Act, a person having access to PharmaNet under section 4 [*access to PharmaNet generally*] is prescribed as a person who may record in PharmaNet information relevant to the provision of a drug, device, substance or related service.

Access to PharmaNet for technical purposes

- 6 (1) A person may access PharmaNet if all of the following conditions are met:
 - (a) access is under a contract made for the purpose of taking an action described in paragraph (b);
 - (b) access is necessary
 - (i) to install, implement, maintain, repair, troubleshoot or upgrade an electronic system or equipment that includes an electronic system, or
 - (ii) to recover data after the failure of an electronic system;
 - (c) access is limited to the minimum time necessary to complete the work described in paragraph (b);
 - (d) if applicable, access to recover data under paragraph (b) (ii) occurs only after the system failure has occurred.
- (2) A person who is authorized to access PharmaNet under this section must not access the claims history or medical history of any individual.

Minister may suspend access

- 7 Without giving notice or an opportunity to be heard, the minister may suspend a person's access to PharmaNet if the minister has reason to believe that any of the following circumstances apply:

- (a) the person may have done or failed to do anything that could result in
 - (i) administrative, disciplinary or enforcement action, under an enactment of any jurisdiction, in relation to the improper collection, use or disclosure of personal information, or
 - (ii) the personal information of any individual, or the integrity of PharmaNet or the provincial drug program, being compromised;
- (b) the personal information of any individual, or the integrity of PharmaNet or the provincial drug program, may be compromised by
 - (i) a technical issue affecting PharmaNet or the person's electronic system, or
 - (ii) unauthorized access, by the person or by any other person, to PharmaNet or to the person's electronic system.

After suspending access

- 8 (1) As soon as reasonably practical after suspending access to PharmaNet under section 7 [*minister may suspend access*], the minister must
 - (a) reinstate access for a reason referred to in subsection (3) (c) of this section, or
 - (b) give notice of the suspension and an opportunity to be heard.
- (2) Unless the minister permits otherwise, a hearing must be in writing.
- (3) Following a hearing, the minister may do any of the following:
 - (a) revoke a grant of access issued under section 3 (2) [*grant required before accessing PharmaNet*];
 - (b) prohibit further access to PharmaNet;
 - (c) reinstate access, with or without terms and conditions, if the minister determines that
 - (i) the grounds for suspending access no longer exist, or
 - (ii) prohibiting access is not required to protect the personal privacy of any individual or the public interest.
- (4) If a person does not respond to the minister within 21 days after notice is given under subsection (1) (b), the following apply:
 - (a) the person is not entitled to further notice or an opportunity to be heard;
 - (b) the person's grant of access is revoked;
 - (c) the person is prohibited from further access to PharmaNet.

Giving notice of ministerial action

- 9 (1) The minister may give a notice required under this regulation
 - (a) personally,
 - (b) by registered mail or electronically, to the last known business address of the intended recipient, or
 - (c) in an alternative fashion, if the minister is of the opinion that it is not reasonably practical to give notice in accordance with paragraph (a) or (b).

- (2) Despite section 3 (4) [*grant required before accessing PharmaNet*] or 8 (1) (b) [*after suspending access*], the minister may waive a requirement for notice if the minister is of the opinion that giving notice is not reasonably practical.
- (3) A notice given by the minister under this regulation is deemed to have been received as follows:
 - (a) if sent by registered mail or any other form of delivery other than personally or electronically, 3 days after the date the notice was sent;
 - (b) if sent electronically, 24 hours after the time the notice was sent.

PART 3 – PROTECTIVE WORDS

Definitions

10 In this Part:

- “**adult**” means a person who is at least 19 years of age;
- “**CareCard**” means a card issued by the Medical Services Commission under the *Medicare Protection Act* that shows the identity number referred to in section 15 of the *Pharmaceutical Services Act*;
- “**guardian**” means a guardian has the same meaning as in the *Family Law Act*;
- “**minor**” means a person who is under 19 years of age;
- “**non-photo BC services card**” means a non-photo BC services card within the meaning of the Identification Card Regulation, ~~B.C. Reg. 4/2013~~;
- “**photo BC services card**” means
 - (a) a photo BC services card within the meaning of the Identification Card Regulation, or
 - (b) a driver’s licence that
 - (i) is issued under section 25 (1.3) of the *Motor Vehicle Act*, and
 - (ii) indicates that the holder is a beneficiary under the *Medicare Protection Act*;
- “**photocopy**”, in relation to a non-photo BC services card and a photo BC services card, means a photocopy of both the front and back of the card;
- “**satisfactory identification**” means identification that is
 - (a) issued by the government of Canada or a province, and
 - (b) satisfactory to the minister.

Attaching or removing protective words at pharmacy

- 11** (1) An adult may attach or remove a protective word on his or her own behalf by
 - (a) making a request to a pharmacist at a pharmacy, and
 - (b) showing to the pharmacist
 - (i) the adult’s photo BC services card, or
 - (ii) satisfactory identification and either the adult’s CareCard or non-photo BC services card.

- (2) A pharmacist who receives a request under subsection (1) must,
 - (a) if satisfied of the adult's identification,
 - (i) comply with a request to attach a protective word and provide notice of the attachment to the minister, or
 - (ii) forward to the minister notice of a request to remove a protective word, or
 - (b) if in any doubt of the adult's identification, refuse the request.

Attaching or removing protective words through the minister

- 12** (1) An adult may request the minister to attach or remove a protective word on behalf of
- (a) himself or herself,
 - (b) a person in respect of whom the adult has authority under the common law or an enactment to make decisions, or
 - (c) a minor, if the adult is the minor's guardian and that minor
 - (i) has not made a request ~~on his or her own behalf~~ under subsection (2), or
 - (ii) made a request ~~on his or her own behalf~~ under subsection (2) but was refused.
- (2) A minor may request the minister to attach or remove a protective word on his or her own behalf.
- (3) ~~The minister may comply with the request of a minor~~ a request by a minor, made under subsection (2), if satisfied that the minor understands the nature and consequences of attaching or removing a protective word.

How to make a request to the minister

- 13** (1) A request made to the minister to attach or remove a protective word must be
- (a) in writing,
 - (b) signed by the person making the request, and
 - (c) accompanied by
 - (i) information satisfactory to the minister, and
 - (ii) the proof described in subsection (2), (3) or (4), as applicable.
- (2) A request made by a person on the person's own behalf must be accompanied by a photocopy of
- (a) that person's photo BC services card, or
 - (b) satisfactory identification and either that person's CareCard or non-photo BC services card.
- (3) A request made by a person on behalf of an adult must be accompanied by a photocopy of
- (a) either
 - (i) the adult's photo BC services card, or

- (ii) satisfactory identification for the adult and either the adult's CareCard or non-photo BC services card,
 - (b) satisfactory identification for the person making the request, and
 - (c) evidence satisfactory to the minister that the person making the request has authority to make decisions on the adult's behalf.
- (4) A request made by a guardian on behalf of a minor must be accompanied by a photocopy of
- (a) the minor's photo BC services card, CareCard or non-photo BC services card,
 - (b) satisfactory identification for the guardian, and
 - (c) the minor's birth certificate.

Effect of protective words

- 14** For the purposes of section 29 of the Act and the collection, use and disclosure of personal information to which a protective word is attached, persons having access to PharmaNet under section 4 [*access to PharmaNet generally*] are prescribed.

Keywords attached to personal information

- 15** If, before this section comes into force, a person has what is commonly known as a "keyword" attached to the person's personal information in PharmaNet, the keyword
- (a) is deemed to be a protective word for all purposes of the Act and this regulation, and
 - (b) continues as a protective word until removed under this Part.

PART 4 – FURTHER PURPOSES

Further use and disclosure of personal information

- 16**
- (1) A person who practises a health profession and who has access to PharmaNet under section 4 [*access to PharmaNet generally*] may use personal information obtained from that access for the purpose of monitoring his or her practice of that health profession.
 - (2) Subject to section 25 (3) of the Act, a person to whom the minister discloses personal information obtained under the Act may use and disclose the information for any purpose to which the subject of the personal information consents.
 - (3) For the purpose of subsection (2), the person giving consent must specify, in writing, all of the following:
 - (a) the personal information in respect of which the person is providing consent;
 - (b) the purpose for which the information may be used or disclosed;
 - (c) who may use or disclose the information;
 - (d) the date on which the consent is effective;
 - (e) the date on which the consent expires, if applicable.

- (4) A person who uses or discloses information under subsection (2) must keep a copy of the written consent referred to in subsection (3) for at least 4 years.

Audits and inspections

- 17 Audits and inspections may be conducted to determine compliance with the Act and this regulation, including audits and inspections of each instance that a person
- (a) accessed PharmaNet,
 - (b) used or recorded information in PharmaNet, or
 - (c) disclosed information that the person obtained from PharmaNet.

PART 5 – TRANSITION

Transition – access to PharmaNet

- 18 (1) Despite section 3 [*grant required before accessing PharmaNet*] but subject to subsections (2) and (3) of this section, a person who was authorized to access an individual's claims history or medical history in PharmaNet on May 31, 2016, continues to be authorized to access PharmaNet without making an application under that section.
- (2) Access under subsection (1) is subject to the following:
- (a) the terms and conditions, if any, to which the person was subject as of May 31, 2016;
 - (b) all applicable limits under section 4 [*access to PharmaNet generally*];
 - (c) a suspension under section 7 [*minister may suspend access*].
- (3) Access by a person under subsection (1) of this section ends on the earliest of the following dates:
- (a) the date the person is prohibited from accessing PharmaNet under section 8 (3) (b) [*after suspending access*];
 - (b) the date established under subsection (4) of this section that is applicable to the person;
 - (c) the date that the minister, on receiving an application made by the person under section 3, grants or refuses to grant access to the person;
 - (d) June 1, 2018.
- (4) The minister may make an order as follows:
- (a) establishing classes of those persons to whom subsection (1) applies;
 - (b) establishing, for each class, the date by which members of the class must make an application under section 3.
- (5) This section is repealed effective June 1, 2018.

SCHEDULE 2

- 1 *Section 1 of the Disclosure Directive Regulation, B.C. Reg. 172/2009, is amended*
- (a) *by adding the following definition:*
 “guardian” means a guardian as defined in the *Family Law Act*; , and
- (b) *by repealing the definition of “parent”.*
- 2 *Section 2 is amended by repealing subsections (2) and (4) and substituting the following:*
- (2) Subject to subsections (3) and (4), a minor’s guardian may make or revoke a disclosure directive on behalf of the minor.
- (4) A disclosure directive made by a guardian on behalf of a minor ceases to be effective on the minor’s 19th birthday.
- 3 *Section 3 (c) (ii) is amended*
- (a) *by striking out “parent” in both places and substituting “guardian”,*
- (b) *by striking out “minor child,” and substituting “minor,”*
- (c) *in clause (A) by striking out “of the child” and substituting “of the minor”, and*
- (d) *in clause (C) by striking out “the child’s” and substituting “the minor’s”.*
- 4 *Section 3 (c) (iii) (A) and (B) is repealed and the following substituted:*
- (A) either the photo BC services card of the person on whose behalf the directive is made or revoked, or that person’s British Columbia CareCard or non-photo BC services card and other satisfactory identification for that person; .

SCHEDULE 3

- 1 *Section 16 (4) (b) of the Provider Regulation, B.C. Reg. 222/2014, is amended by striking out “the information technology commonly known as PharmaNet.” and substituting “PharmaNet, as that term is defined in the Information Management Regulation.”*