



association of family
health teams of ontario

Overcoming Privacy Issues In Partnership Agreements

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Introduction to Toolkit

The purpose of the toolkit is to provide general information to FHTs about how to best navigate privacy issues when working with QIDS Specialists.

This toolkit answers questions such as:

- What are the permitted activities for data sharing?
- What are the privacy barriers and challenges to data sharing?
- What steps need to be taken if QIDS Specialists are to be shared among multiple FHTs?
 - Sample Collaboration and Data-Sharing Agreement
- Who can make decisions about whether a QIDS Specialist gets access to the eMR?

Overview of AFHTO Toolkit

- Chapter 1 – Introduction
- Chapter 2 – QIDS Program and QIDS Specialists
- Chapter 3 – Privacy
 - General Rules + Privacy Homework
 - Privacy Rules for QI Activities and QIDS Specialists
- Chapter 4 – Sharing a QIDS Specialist
- Appendix I: Template Collaboration and Data-Sharing Agreement
- Appendix II: Privacy Impact Assessment
- Appendix III: Resources
- Appendix IV: Acronyms

Relationship with Physicians

- Throughout the toolkit we have referenced “FHOs*”
- Includes all configurations of physician payment organizations including FHNs, RNPGA, FHGs, APPs
- With respect to decision-making, physician engagement and privacy responsibility, it sometimes matters if physicians are employed by a FHT through a BSM and if the FHT is the HIC

QIDS Specialist Models

■ Sharing Model

- Best practice to have a Collaboration and Data-Sharing Agreement (must have PHIPA content at very least)
- Best practice for each FHT to have PHIPA agency agreement with FHOs*

■ Single FHT Model

- No need for a Collaboration and Data-Sharing Agreement (but still need to sort out privacy issues and may need PHIPA agency agreement with FHOs*)

Privacy Rules for QIDS Program

- PHIPA allows FHTs (and their related FHOs*) to use patient information for the purposes of quality improvement without requiring patient consent
- A QIDS Specialist is an “agent” as that term is understood under PHIPA – the QIDS specialist will perform the quality improvement activities on behalf of the FHT (or FHO*)
 - In a share model, each FHT will consider the QIDS Specialist its agent
- When a QIDS specialist looks at a FHT’s patient information for the purpose of quality improvement, that is considered a “use” under PHIPA

Privacy Rules for QIDS Program

- ❑ FHTs are not required by law to engage in quality improvement plans
- ❑ So, if participating FHTs do not want to use a QIDS specialist, they do not have to.
- ❑ If a FHT does not want to use a QIDS specialist or does not want a QIDS specialist to have access to patient records – that FHT can have someone else do the analysis.
- ❑ However, a FHT is **permitted** to engage a QIDS specialist to do the quality improvement data analysis and is permitted to allow a QIDS specialist to look at patient records in order to get information to do such analysis.

Privacy Rules for QIDS Program

- So long as the participating FHTs do not expect the QIDS Specialist to share identifiable patient information from one FHT with another FHT, the activities of the QIDS specialist will be considered a use and the QIDS specialist activities can occur without consent of the patients of each FHT
- If the QIDS specialist is expected to share patient identifiable information between the FHTs for the purpose of quality improvement – that activity would be considered a “disclosure” under PHIPA and it would require express consent of the patients of each FHT

Privacy Rules for QIDS Program

- Multiple FHTs can share a QIDS specialist to “use” patient information for quality improvement purposes – but there must be an agreement between the FHTs to deal with the PHIPA agency issues and it is best practice to have an agreement to discuss other aspects of the collaboration (such as decision making and liability)

Action Items

- Step 1 (whether Sharing Model or Single FHT Model) = identify the HIC
- Step 2 (whether Sharing Model or Single FHT Model)
 - If physicians are employees and FHT is HIC – FHT decides how and when and for what purposes QIDS Specialist accesses record (that should be explained to QIDS Specialist)

Action Items

- Step 2 (whether Sharing Model or Single FHT Model)
 - If physicians are not employees, FHT and each FHO* should have a PHIPA agency agreement or services agreement to recognize that QIDS Specialists will access records and to what extent

Action Items

- Step 3
 - If Single Model FHT – QIDS Specialist needs a job description and can start to work
 - If Sharing Model – Collaboration decisions need to be made between FHTs (Chapter 4 and template agreement)
 - At minimum, must deal with data-sharing and PHIPA (see s. 9 of template agreement)

Action Items

- Step 4
 - If Sharing Model – QIDS Specialist needs a job description and can start to work

Reasonable Safeguards

- Pages 23-25
- Steps to protect data from loss, theft, unauthorized access
- Also see Limiting Retention – pages 22-23 about where the QIDS Specialist should store information

Top 5 FAQs

- Is it necessary for physicians to sign the MOU, since they are Custodians of the eMR and we need their consent to use it?
 - Yes and No. See pages 31 and 16-18
 - QI is not an activity that is **required by law** – so there is some discretion in whether QIDS Specialists use the eMR to do their work
 - But, FHTs who are not HICs, have legally permissible activities and legitimate reasons to use the eMR for quality improvement purposes
 - The PHIPA agency agreement between FHT and FHOs* should set out what QIDS Specialist can do
 - If HIC wants to limit the access – suggest the QIDS Specialist will only assess FHT staff activities in the eMR

Top 5 FAQs

- What type of wording should exist in a patient rostering document (with the FHO*) to enable the QIDS Specialist role?
 - If FHO* is the HIC – some kind of PHIPA Agency agreement to acknowledge the legitimate activities the QIDS Specialist will need to perform on behalf of the FHT (and for the FHO*)

Top 5 FAQs

- What limits are there to the QIDS Specialist using email to share data?
 - PHIPA does not say email is permitted or restricted – must put in place reasonable safeguards
 - College and association guidelines to follow
 - Contacting patients by email to collect new information must be an approved activity by HIC (see p. 29)

Top 5 FAQs

- In a sharing QIDS Specialist model, if there is a privacy breach at one site by the QIDS Specialist, is only that site liable? That site and the host FHT site? Or all participating FHTs?
 - This may be difficult to answer
 - The HIC
 - Possibly the host FHT as employer (vicarious liability)
 - The exposure could be shared among all partners (not required) see p. 34

Top 5 FAQs

- If the FHT has cyber insurance do the individual physicians also need to carry it?
 - Insurance covers the holder of the policy
 - It depends who is the HIC – the HIC needs to hold the insurance or be “additional insureds” on the policy
 - See pages 15 and 35
- Should we have cyber insurance coverage?
 - Every FHT should speak with its own insurer

And an extra - FAQ

- For standardization and/or cleansing of databases/eMR, who is responsible for the changes and any related errors? What level of expertise is required (summer student, medical student, IHP, eMR lead?)
 - Generally speaking: The HIC and the regulated health professional whose entry it is
 - Liability can be shared by contract – indemnity by provider





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Questions?





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