

Hamilton Family Health Team

Lockbox Policy

Ontario's health privacy law, the *Personal Health Information Protection Act* (PHIPA), provides individuals¹ the right to make choices about, and control how, their personal health information (PHI)² is collected, used, and disclosed. As part of our mission, the Hamilton Family Health Team and our related Family Health Organizations are committed to promoting patient privacy and protecting the confidentiality of the PHI we hold.

PHIPA gives patients the opportunity to restrict access to any or their entire PHI by one or more Hamilton Family Health Team staff³ or by external health care providers. Although the term "lockbox" is not found in PHIPA, lockbox is commonly used to refer to a patient's ability to withdraw or withhold consent for the use or disclosure of their PHI for health care purposes. The lockbox provisions of PHIPA are found in sections 37(1)(a), 38(1)(a), and 50(1)(e). The lockbox does not extend to other uses or disclosures that are permitted or required under PHIPA or other legislation.

This policy will help Hamilton Family Health Team staff understand and fulfill their role when addressing lockbox requests and providing care to patients who have implemented a lockbox. Lockboxes may affect clinical practice at Hamilton Family Health Team because access to information about patients may be restricted, and Hamilton Family Health Team health care providers may be asked not to share PHI with other health care providers.

Requests for a Lockbox

Any current or former Hamilton Family Health Team patient⁴ may request a lockbox to restrict sharing of all or some of their PHI by one or more Hamilton Family Health Team staff or by external health care providers.

When patients ask about lockboxes, it is important for Hamilton Family Health Team staff to address their concerns about the confidentiality and privacy of their PHI. Note that some patients may want to control who can access their PHI, but may not know to use the term "lockbox." Patients may want a lockbox when they use words such as "restrict," "limit," "don't tell," "exclude," "shield," or "block" when talking about their PHI. For example, patients may want a lockbox if they ask Hamilton Family Health Team staff:

- Not to tell their specialist that they are being treated at Hamilton Family Health Team
- To exclude certain Hamilton Family Health Team clinical staff from seeing their information

¹In our context, "individuals" will mainly relate to Hamilton Family Health Team patients and we have used the term "patient" throughout the policy. It is possible that we hold PHI about individuals who are not Hamilton Family Health Team patients, and the lockbox policy would apply equally to those individuals.

²"PHI" is broadly defined under PHIPA. In our context it will mainly relate to a patient's health record and we have used "health record" interchangeably with PHI throughout the policy. It is possible that Hamilton Family Health Team holds other PHI about an individual outside the health record and the lockbox policy would apply equally to that information.

³We refer throughout to the "Hamilton Family Health Team" and staff – but this policy applies to all Family Health Organization members and staff equally.

⁴An individual's substitute decision-maker may also request a lockbox and such requests are processed in the same manner.

- To “shield” their information
- To “restrict” their health record
- Not to let their family members or neighbours who work with Hamilton Family Health Team look at their health record

Patients may initiate the process for a lockbox by speaking to their primary care provider or by contacting a Hamilton Family Health Team Privacy Officer (either the Executive Director of the Hamilton Family Health Team or the Lead Physician from the applicable Family Health Organization). Patients must submit their request for a lockbox in writing. Patients will be asked to complete a “Patient Lockbox Request” form. The completed form must be submitted to a Privacy Officer or designate.

Hamilton Family Health Team's “Patient Lockbox Information” brochure should be given to patients who want more information. This brochure discusses the purpose, implications, and limitations of implementing a lockbox.

Lockbox requests can vary considerably. A patient may request that:

- Only some of the documents in their health record be locked
- All of their health record be locked
- All documentation created in the future be locked
- Only one Hamilton Family Health Team staff be restricted from accessing PHI
- Several Hamilton Family Health Team staff be restricted from accessing PHI
- All Hamilton Family Health Team staff be restricted from accessing PHI
- One or more external health care providers not be given their PHI

Although PHIPA does not require that Hamilton Family Health Team lock documentation that does not yet exist, in practice, refusing to lock future documents may result in frequent lockbox requests to Hamilton Family Health Team from a patient if a lockbox will be requested every time a new document is created. For this reason, Hamilton Family Health Team will, where appropriate and if requested, lock documents as they are created. An example might be where a patient requests a future lockbox because one of their family members (or former spouse or partner) is a Hamilton Family Health Team employee.

When patients request a lockbox, it often means they have concerns about their PHI and how it is being used and/or disclosed. Patients should be reminded that:

- Hamilton Family Health Team takes privacy seriously and keeps all PHI confidential and secure
- PHI is only accessed by Hamilton Family Health Team staff on a need-to-know basis
- Hamilton Family Health Team conducts privacy audits regularly to ensure compliance with the need-to-know policy
- Where PHI is accessed without authorization, Hamilton Family Health Team will take appropriate steps to prevent a reoccurrence and there would be disciplinary consequences

- PHI is disclosed only to external health care providers with whom the patient wants their PHI shared (unless the disclosure is otherwise permitted or required under PHIPA without consent, or by another law)

Sometimes a patient requests a lockbox when a lockbox is not necessary to resolve the patient's concern. For example, a lockbox is not necessary to restrict the sharing of PHI with non-health care providers (e.g., family, employers, insurers) because Hamilton Family Health Team needs the patient's express consent (either in writing or if verbal, as documented by Hamilton Family Health Team) to share information with such recipients. If a patient does not want the Hamilton Family Health Team to share information with non-health care providers – we will not do so unless there is legal authority to do so.

As another example, if patients disagree with the information in their health records they can ask for a correction and/or append a statement of disagreement to the record. For that reason, they may not need a lockbox to solve their concerns about the accuracy of the information in their health record.

Implications of Implementing a Lockbox

If a patient chooses to move forward with a lockbox request, it is important that they understand the possible implications of the lockbox. There may be implications and risks to the patient and to their care. A Privacy Officer or designate or the patient's primary care provider should discuss implications and risks with the patient. Examples may include:

- The patient not receiving the best possible service because health care providers may not have access to PHI that they need in order to provide the best possible care in a timely manner.
- The patient may have to undergo duplicate tests, procedures and health history questions if existing information is unavailable.
- At Hamilton Family Health Team we use a multi-disciplinary team approach to providing care. Although each lockbox request is considered on a case-by-case basis, generally, a patient's choice to implement a lockbox should not prevent a team from providing care as per their standards of practice.
- There may be circumstances where Hamilton Family Health Team health care providers cannot provide care in a manner that meets professional standards of practice if they do not have sufficient information. Hamilton Family Health Team may have to assess whether they can continue to provide care to a patient if there is insufficient information. However, the decision to discontinue care to a patient is a significant one and would only be made after thorough consideration of all the relevant information. Hamilton Family Health Team will try to maximize patient choice about how their PHI is used and disclosed while at the same time allowing Hamilton Family Health Team health care providers to uphold their commitments to deliver a high quality patient care and to meet their obligations to their regulatory colleges.

There may be other risks specific to particular patients, which should be explored and discussed with patients directly.

Decisions to Implement a Lockbox

The Hamilton Family Health Team Privacy Officer or designate will review, respond to, implement, and administer lockbox requests on behalf of Hamilton Family Health Team. Because the choice to implement a lockbox may have implications to the patient's care, the patient's primary care provider may be involved in processing the request as appropriate.

The practical methods of implementing lockboxes are varied; therefore, lockbox requests are considered on a case-by-case basis. Hamilton Family Health Team's decision to implement a lockbox will be based on the practicality of the solution, technological feasibility, and the specific circumstances.

A Privacy Officer or designate will notify in a timely manner any patient who made a lockbox request of the Hamilton Family Health Team's decision. If the Hamilton Family Health Team's decision is to deny a lockbox request, the patient will be informed of the right to make a complaint to the Information and Privacy Commissioner/ Ontario.

Lockbox Exclusions

Because the patient's physician is the health information custodian for purposes of PHIPA, a lockbox cannot be used to prevent the patient's physician from accessing the Hamilton Family Health Team record.

A lockbox cannot be used to prevent Hamilton Family Health Team from fulfilling its administrative functions and using and disclosing PHI for other authorized purposes. For example, a patient's request for a lockbox does not restrict Hamilton Family Health Team from using or disclosing PHI for the following purposes (which are permitted in PHIPA in sections 37-50):

- Obtaining or processing payments
- Planning services
- Quality improvement
- Disposing of information
- Complying with a court order
- Litigation
- Research (with research ethics board approval)
- Teaching staff to provide health care

A lockbox does not prevent Hamilton Family Health Team from using or disclosing PHI where there is a legal obligation to do so (for example, to fulfill mandatory reports to the Children's Aid Society or to the Ontario Ministry of Transportation). Hamilton Family Health Team may also use or disclose PHI if there are reasonable grounds to believe that using or disclosing the information is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. There may be other circumstances where the use or disclosure of PHI is required or permitted by law. Hamilton Family Health Team staff should consult with a Hamilton Family Health Team Privacy Officer when in doubt.

Identifying a Lockbox

Before reviewing a patient's PHI, Hamilton Family Health Team staff must always check to see if a lockbox has been applied.

Electronic Records:

If a patient has implemented a lockbox, a lockbox message will appear when a user attempts to access PHI through the electronic medical record (eMR). A "Lockbox Notification Alert" form will be on the eMR and will identify whether all or a portion of the health record is locked. If the lockbox applies to all Hamilton Family Health Team staff, then the electronic system will restrict access to that patient's PHI. If a lockbox restriction pertains to specific Hamilton Family Health Team staff, their access will be restricted. A list of unauthorized or "locked" persons will appear in the eMR.

Paper Records

If the entire health record is subject to a lockbox, it will be in a sealed envelope (signed across the seal by a Privacy Officer or designate) with a label affixed to it that reads "Lockbox" and a "Lockbox Notification Alert" form will be apparent and will include a list of unauthorized or "locked" persons.

If a portion of the health record is subject to a lockbox, the relevant portion will be in a sealed envelope (signed across the seal by a Privacy Officer or designate) with a label affixed to it that reads "Lockbox" and a "Lockbox Notification Alert" form will be apparent and will include a list of unauthorized or "locked" persons.

"Breaking" the Lockbox

If a Hamilton Family Health Team staff member is authorized to access information that is otherwise "locked", the following instructions explain how to access the PHI.

Electronic Record

To "break" a lockbox, a Hamilton Family Health Team staff would click "yes" when the pop up screen appears and asks whether you are permitted to continue. Access to the health record is then available.

Paper Record

To "break" a lockbox, a Hamilton Family Health Team staff member would open the sealed envelope and remove the paper records. Access to the health record is then available.

Any Hamilton Family Health Team staff who accesses PHI that is protected by a lockbox must document on the patient's health record the reason and authorization for "breaking" the lock. All information subject to a lockbox will be monitored and there will be random audits of such files. If Hamilton Family Health Team staff are in doubt about whether they are legally permitted to break a lockbox, they should contact a Hamilton Family Health Team Privacy Officer.

For paper health records, if the lockbox restrictions continue after the lock has been broken for a specific purpose, the PHI should be "locked" again in another sealed and signed envelope by a Privacy

Officer or designate. The electronic record will continue with the assigned lockbox restrictions until they are removed.

Of course, a patient may choose to withdraw a lockbox request or unlock PHI in a lockbox. That decision must be in writing and must be documented on the health record.

Notice to External Health Care Providers

If a patient's lockbox instructions state that the patient does not want all or some PHI shared with an external health care provider, Hamilton Family Health Team will not disclose PHI to the restricted external health care provider unless:

- We are permitted or required by law to do so (for example, we need to disclose the PHI to the external health care provider in order to reduce or eliminate a significant risk of serious bodily harm to the patient or to another person or persons)
- The external health care provider has provided us with written proof of the patient's express consent to the disclosure.

If Hamilton Family Health Team is prevented because of a lockbox from disclosing PHI relevant to the provision of care to an external health care provider, Hamilton Family Health Team has an obligation to notify the receiving health care provider that not all the relevant PHI has been provided. As a note, the receiving health care provider is then able to explore the matter of the "locked" information with the patient and seek consent to have the locked information shared.

Audits

A Hamilton Family Health Team Privacy Officer or designate will conduct audits of locked health records to ensure compliance with patient lockbox instructions and to determine whether there has been inappropriate access to locked information. Any apparent unauthorized access to locked information will be investigated.

Breach of Privacy

Unauthorized access by a Hamilton Family Health Team staff to a patient's health record constitutes a breach of privacy and may result in disciplinary action up to and including termination of employment or contract with the Hamilton Family Health Team.

If there is a lockbox on a patient's health record and a Hamilton Family Health Team staff member is excluded from accessing the PHI, it is considered a breach for that staff to access the PHI without specific authorization from a Privacy Officer or designate or unless otherwise permitted or required by law to use or disclose the information (such as in an urgent situation in order to prevent a significant risk of serious bodily harm).

Hamilton Family Health Team is obliged to notify any affected patient(s) of a privacy breach and their rights and will do so in accordance with the requirements of PHIPA.

References

Personal Health Information Protection Act, 2004 (PHIPA)

Centre for Addiction and Mental Health Lockbox Guidelines (2010)