

PRIVACY AND CONFIDENTIALITY	Digital Health I-PH4-200-2003-002
Approver(s)	Karen Stone, Chief Executive Officer Signed by Karen Stone Dated: October 8, 2024
Portfolio/Program/Department of Administrative Responsibility	Privacy & Access to Information
Author(s)	Alissa Setliff, Provincial Senior Director Health Information Services and Information Management and Chief Privacy Officer
Level	One (I)
Original Approval Date	October 8, 2024
Effective/Posted Date(s)	October 11, 2024
Scheduled Review Date(s)	October 11, 2025
Date(s) Versions Signed	NA

Purpose

To communicate obligations, expectations, and requirements with respect to protecting the privacy and Confidentiality of Personal Information (PI), Personal Health Information (PHI) and Business Information (collectively referred to as Information) in the custody and control of the Provincial Health Authority, operating as Newfoundland and Labrador Health Services (NLHS).

To provide guidance on the handling (i.e., collection, use, access, and disclosure) of Information in support of NLHS's ongoing commitment to privacy and Confidentiality and in compliance with statutory obligations set out in legislation, including, but not limited to, the **Access to Information and Protection of Privacy Act, 2015 (ATIPPA)** and the **Personal Health Information Act (PHIA)**.

To provide a consistent framework in the administration of an Oath/Affirmation of Privacy and Confidentiality within NLHS.

Scope

This document applies to:	<input checked="" type="checkbox"/> Provincial	<input type="checkbox"/> Labrador	<input type="checkbox"/> Western	<input type="checkbox"/> Central
	<input type="checkbox"/> Eastern Rural	<input type="checkbox"/> Eastern Urban	<input type="checkbox"/> Other (as specified below)	

This policy applies to NLHS employees; officers; associates; affiliates; Agents; contractors; subcontractors; student placements; community placements; volunteers; contractors and subcontractors; suppliers; regional health councils and their members;

boards and commissions and their members; and Health Care Professionals with the right to treat patients at NLHS facilities, any individuals or corporations either directly or indirectly associated with NLHS, as well as any other entities established by NLHS (collectively referred to as NLHS Employees and Others).

Definitions & Acronyms

Agent	<p>"Agent", in relation to a custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect to Personal Health Information for the purposes of the custodian, and not the Agent's purposes, whether or not the Agent has the authority to bind the custodian, is paid by the custodian or is being remunerated by the custodian.</p> <p>PHIA Section 2 (1) (a)</p>
Affirmation of Privacy and Confidentiality	<p>A solemn declaration made by those who object to taking an Oath to avoid the religious implications of an oath. An Affirmation has the same legal effect as an Oath.</p>
Business Information	<p>Proprietary, commercially sensitive, and other information in any format with respect to NLHS' business that is not generally Disclosed publicly by the organization. NLHS Employees and Others may come in contact with such information that is not generally known to the public as they perform their duties. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • legal matters involving the organization; • financial information that is not available in the annual report; • information about intellectual property such as development of new technology or treatments or unpublished reports; and • information pertaining to NLHS information technology access and security system.
Client	<p>A person who avails him/herself of the services of an authority and includes a patient and/or resident.</p>
Confidentiality	<p>The duty to protect, respect and maintain the privacy of Personal Information, Personal Health Information and Business Information, and the obligation to refrain from Disclosing this Information to others not permitted to access the information in the normal course of their authorized work.</p>
Disclose/Disclosure	<p>"Disclose", in relation to Information in the custody or control of a custodian or other person, means to make the Information available or to release it but does not include a use of the Information, and "Disclosure" has a corresponding meaning.</p>



Execute	Execute means (1) to carry out, perform, or complete as required, usually to fulfill an obligation, such as executing a contract or order; (2) to sign or complete all formalities necessary to make a contract or document effective, such as signing, stamping, or delivering.
Health Care Professional	<p>A person, including a corporation, that is licensed or registered to provide health care by a body authorized to regulate a Health Care Professional under one of the following enumerated Acts but does not include an employee of a Health Care Professional when acting in the course of his or her employment:</p> <ul style="list-style-type: none"> (i) Chiropractors Act, (ii) Dental Act, (iii) Denturists Act, 2005, (iv) Dieticians Act, (v) Dispensing Opticians Act, 2005, (vi) Hearing Aid Practitioners Act, (vii) Licensed Practical Nurses Act, 2005, (viii) Massage Therapy Act, 2005, (ix) Medical Act, 2005, (x) Occupational Therapists Act, 2005, (xi) Optometry Act, 2012, (xii) Pharmacy Act, 2012, (xiii) Physiotherapy Act, 2006, (xiv) Psychologists Act, 2005, (xv) Registered Nurses Act, and (xvi) Social Workers Association Act <p>PHIA Section 2 (1) (j)</p>
Oath	A promise or a statement of fact calling upon something or someone that the Oath maker considers sacred, usually a God, as a witness to the binding nature of the promise of the statement.
Personal Health Information (PHI)	<p>Identifying information in oral or recorded form about an individual that relates to:</p> <ul style="list-style-type: none"> a. the physical or mental health of the individual, including information respecting the individual's health status and history and the health history of the individual's family; b. the provision of health care to the individual, including information respecting the person providing the health care; c. the donation by an individual of a body part or bodily substance, including information derived from the testing or examination of a body part or bodily substance;

	<p>d. registration information;</p> <p>e. payments or eligibility for a health care program or service in respect of the individual, including eligibility for coverage under an insurance or payment arrangement with respect to health care;</p> <p>f. an individual's entitlement to benefits under or participation in a health care program or service;</p> <p>g. information about the individual that is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service;</p> <p>h. a drug as defined in the Pharmacy Act, 2012, a health care aid, device, product, equipment, or other item provided to an individual under a prescription or other authorization issued by a Health Care Professional; or</p> <p>i. the identity of a person referred to in section 7 of PHIA.</p> <p>PHIA Section 5 (1)</p>
<p>Personal Information (PI)</p>	<p>Recorded information about an identifiable individual, including:</p> <p>a. the individual's name, address, or telephone number,</p> <p>b. the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,</p> <p>c. the individual's age, sex, sexual orientation, marital status, or family status,</p> <p>d. an identifying number, symbol or other particular assigned to the individual,</p> <p>e. the individual's fingerprints, blood type or inheritable characteristics,</p> <p>f. information about the individual's health care status or history, including a physical or mental disability,</p> <p>g. information about the individual's educational, financial, criminal or employment status or history,</p> <p>h. the opinions of a person about the individual, and</p> <p>i. the individual's personal views or opinions, except where they are about someone else.</p> <p>ATIPPA, 2015 Section 2 (u)</p>
<p>Privacy Breach</p>	<p>A privacy breach occurs when there is unauthorized access, collection, Use, Disclosure, or disposal of Personal Information/Personal Health Information. Such activity is "unauthorized" if it occurs in contravention to laws such as ATIPPA, 2015 or PHIA. This includes Personal Health Information or Personal Information that is lost or stolen.</p>

Policy Statements

- It is the responsibility and obligation of all NLHS Employees and Others to ensure that Information to which they have access is kept private and confidential and handled in a manner consistent with statutory obligations; NLHS policy, practice, procedure, and directives; professional standards, scope of practice or responsibility; and codes of ethics.
- Information must only be handled on a need-to-know basis by NLHS Employees and Others and only where the handling of that information is authorized and a function of their roles and responsibilities with NLHS.
- The handling of Information must be limited to the minimum amount necessary to achieve the purpose for which it is being handled and, in the case of PI or PHI, should occur only where other information is insufficient to fulfill the purpose, unless required or permitted by law.
- Unauthorized or inappropriate handling of Information, whether intentional or unintentional, is a breach of NLHS policy and/or applicable legislation and may result in the restriction of access to Information and Information systems and may lead to penalty or discipline up to and including cancellation of contract or services; termination of the employment, appointment, affiliation, or arrangement with NLHS; withdrawal of privileges; and/or legal action. Where applicable, reporting to a professional regulatory body may also be considered and occur.
- Direct access to one's own PHI that is not expressly authorized or made available through means not generally accessible to the public is deemed to be an unauthorized or inappropriate handling of PHI for the purposes of this policy and may lead to penalty or discipline up to and including cancellation of contract or services; termination of the employment, appointment, affiliation, or arrangement with NLHS; withdrawal of privileges; and/or legal action. Where applicable, reporting to a professional regulatory body may also be considered and occur.
- Upon conclusion of employment, contract/services, appointment, affiliation or arrangement with NLHS, as applicable, NLHS Employees and Others have an on-going obligation to maintain the Confidentiality of Information in accordance with this policy and must not Disclose it to any third party, for any reason, unless having first received written authorization from NLHS or, if required by law, provided prior notice to NLHS of the legal requirement to Disclose to provide NLHS a reasonable opportunity to investigate the requirement.

Recognition of Professional Standards/Regulations:

- NLHS Employees and Others may have Disclosure/advocacy obligations arising from professional standards and regulations and/or concerns regarding the safety of clients and services delivered. NLHS acknowledges the responsibility of NLHS Employees and Others for appropriate Disclosure of safety-related concerns to regulatory bodies or other relevant third parties; however, safety concerns must first be directed through the operational departments and programs of NLHS as the initial step toward resolution.

Reasonable Limits:

- Every reasonable effort must be made to maintain privacy and Confidentiality while recognizing that, in practice, the facilities and dynamic environments in which NLHS operates (e.g., 4-bed patient rooms, crowded emergency departments, home visit environments) can limit the degree to which privacy and Confidentiality can be protected.
- Notwithstanding the environmental limitations inherent in health care settings in which NLHS operates, Information that is considered private and Confidential is not to be discussed in any public location (e.g., elevators, lobbies, cafeterias, off premises, etc.) where others, not entitled to receive that information, are present and may overhear.

Legal Limits:

- Protection of privacy and Confidentiality may be subject to law, statutory, regulatory and/or ethical obligations that permit or require the production of Information, including, but not limited to, the Disclosure of PHI without client consent to a third party (e.g., police or other authorities) to prevent risks or harm to that individual or another person. For example, the law may permit or require the Disclosure of PHI without consent to avert a serious risk of harm to an identifiable person. Also, the law may require Disclosure of specific events or circumstances, such as suspected child abuse or a gunshot or stab wound. These exceptions and obligations can arise in many circumstances and legal advice should be sought.

Oath/Affirmation of Privacy and Confidentiality:

- All NLHS Employees and Others must take an Oath/Affirmation of Privacy and Confidentiality (herein referred to as the Oath). Refusal to sign the Oath will result in penalty or discipline up to and including cancellation of contract or services; termination of the employment, affiliation, appointment or arrangement with NLHS; and/or withdrawal of privileges.

Procedures and Accountabilities

Prior to or upon commencement of employment, contract/services, appointment, affiliation or arrangement with NLHS, as applicable, all NLHS Employees and Others who may have access to Information in the context of those duties or services must:

- complete the **PHIA** education session and any other privacy education sessions deemed necessary by NLHS;
- read this policy; and
- sign the Oath, available from your manager or Sourcing and Contracts, Human Resources, and /or Privacy and Access to Information Programs, among others.

Oath/Affirmation of Privacy and Confidentiality:

- All NLHS Employees and Others must take an Oath in a format provided by NLHS. The Oath must be Executed prior to assuming duties for, or providing services to, NLHS where the NLHS Employees and Others may have access to Information in the context of those duties or services. A copy of the Oath must be provided to the NLHS Employees and Others. This copy of the Oath document does not have to be signed.
- The Oath must be signed and witnessed in person by a Commissioner for Oaths or a Notary Public or executed remotely using audio-visual technology in accordance with applicable law. From time to time, NLHS Employees and Others may be required to sign a new Oath at the discretion of the VP of Digital Health and Chief Information Officer or the Chief Privacy Officer (e.g., for reasons including, but not limited to, changes to an individual's role with NLHS; changes to provision of services; changes to legislation or Oath format; responding to recommendations of applicable authorities, etc.). In such cases, the new Oath, once signed, shall replace the prior Oath.
- A confirmation of the Oath must be signed by NLHS Employees and Others not later than three (3) years after the execution of the Oath and every three (3) years thereafter unless this requirement is altered at the discretion of the VP of Digital Health and Chief Information Officer or the Chief Privacy Officer. This confirmation serves as a reminder of one's legal, privacy, and confidentiality obligations as set out in the Oath and does **not** replace the Oath or require a witness's signature.
- The Oath, once executed, must be kept on file in perpetuity by the applicable program area (e.g., Human Resources Program; Provincial Supply Chain, Procurement and Contracts Program), as appropriate. The executed Oath must be available for review by the NLHS Privacy and Access to Information Program and/or Legal Services upon request.

Returning of Information to NLHS upon Conclusion of Employment:

- Upon conclusion of employment, contract/services, affiliation, appointment or arrangement with NLHS, as applicable, NLHS Employees and Others are required to return to NLHS all Information covered in this policy or destroy the Information in a manner authorized by NLHS, subject to applicable legislation and other processes so defined in the contract or agreement between the parties.

Breach of Confidentiality and/or Privacy:

- NLHS Employees and Others must report breaches, or suspected breaches, of Confidentiality and/or privacy. If a Confidentiality or Privacy Breach has occurred or is suspected, it must be reported to one's immediate supervisor, NLHS Privacy and Access to Information staff member and/or NLHS contact, as applicable, as soon as possible, as per the **Privacy Breach Management and Notification Policy** I-PH4-200-2003-001, unless otherwise expressly agreed in writing with NLHS by contract.

Referenced and Sourced Materials

- **Access to Information and Protection of Privacy Act**, 2015 SNL2015, c.A-1.2. Retrieved from House of Assembly website:
<https://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm>.
- Bill 23, Alternate to Witnessing to Documents Act
<https://www.assembly.nl.ca/housebusiness/bills/ga50session2/bill2323.htm>
- “Duty to report”, The Canadian Medical Protective Association, <https://www.cmpa-acpm.ca/en/education-events/good-practices/medico-legal-matters/duty-to-report>
- Government of Newfoundland and Labrador ATIPP Office, Office of Public Engagement. Protection of Privacy – Privacy Breach Protocol [2015]. Retrieved from <https://www.gov.nl.ca/atipp/files/info-privacy-breach-protocol.pdf>.
- Newfoundland and Labrador Regulation 38/11. Personal Health Information Regulations. [March 2011]. Retrieved from
- [NLR 38/11 - Personal Health Information Regulations under the Personal Health Information Act \(assembly.nl.ca\)](https://www.assembly.nl.ca/legislation/sr/statutes/p12-3.htm).
- **Personal Health Information Act (PHIA)** education sessions online at <http://nlchi.skillbuilder.ca/home>
- **Pharmacy Act, 2024** SNL2024 c.P-12.3
www.assembly.nl.ca/Legislation/sr/statutes/p12-3.htm
- **Personal Health Information Act**, SNL2008, c. P-7.01, s. 15.
<https://assembly.nl.ca/Legislation/sr/statutes/p07-01.htm#4>

Related Resources

- I-PH4-200-2003-001 Privacy Breach Management and Notification Policy
- GP-04 Board of Trustees Privacy and Confidentiality Policy
- Attestation of Confidentiality
- Newfoundland and Labrador Regulation 38/11. **Personal Health Information Regulations**. [March 2011]. Retrieved from
[NLR 38/11 - Personal Health Information Regulations under the Personal Health Information Act \(assembly.nl.ca\)](https://www.assembly.nl.ca/legislation/sr/statutes/p12-3.htm).
- Oath or Affirmation of Privacy/Confidentiality
- Province of Newfoundland and Labrador: **Personal Health Information Act**, SNL2008, c. P-7.01, s. 15.

Cross-Reference

Health Organization	Document Reference	Document Name	Date Rescinded / Archived / NA
Central Health	BRD-0260	Confidentiality Policy	October 11, 2024
Eastern Health	ADM-030	Privacy and Confidentiality	October 11 2024
Labrador-Grenfell Health	PA-9-10	Privacy and Confidentiality	October 11, 2024
NLCHI	IP-25	Confidentiality	October 11, 2024
NLCHI	IP-20	Respect for Privacy	October 11, 2024
Western Health	2-03-10	Privacy and Confidentiality	October 11, 2024