



Stephen Frank  
President and CEO

June 14, 2019

The Honourable Adrian Dix  
Minister of Health  
Via email: [HLTH.Minister@gov.bc.ca](mailto:HLTH.Minister@gov.bc.ca)

Mr. Michael McEvoy  
Information and Privacy Commissioner for BC  
Via email: [info@oipc.bc.ca](mailto:info@oipc.bc.ca)

Steering Committee  
Feedback on Part Two Cayton Report  
Via email: [PROREGADMIN@gov.bc.ca](mailto:PROREGADMIN@gov.bc.ca)

**Re: Part II Cayton Report Recommendations, PIPA and privacy considerations**

Dear Sirs/Mesdames,

The CLHIA is a voluntary trade association with member companies that account for 99 percent of Canada's life and health insurance business. In BC, at the end of 2017, the life and health insurance industry provided more than 3.2 million British Columbians with private supplementary health insurance coverage and made payments of over \$4.2 billion on health benefits.

We wish to commend Minister Dix for establishing the *Inquiry into the Performance of the College of Dental Surgeons of British Columbia and the Health Professions Act* and subsequently establishing the Steering Committee to consider options on how to modernize and improve the regulatory framework for health professionals in British Columbia.

Private insurers provide a wide range of health and dental benefit coverages, including vision care, mental health services, massage therapy, physiotherapy, and chiropractic services amongst others. These services can prevent illness, contribute to wellness and productivity as well as return individuals to work. In most cases, these services are provided by regulated health professionals. Private insurers are keenly interested in ensuring that such services are provided in a safe manner and that they can be verified by the insurer, when warranted.

**Brief Overview**

Part II of the Cayton Report analyzes and makes recommendations on the statutory framework for the regulation of health professionals in British Columbia. The recommendations seek to reform the Health Professionals Act (HPA) by:

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- making changes to governance,
- providing clarity to the language and meaning within the Act,
- significantly revise the HPA complaints process,
- increase transparency to the public, and
- further develop the role of the Health and Professions Review Board.

The CLHIA strongly supports these objectives and the proposed steps that were specifically identified in the Report, including the establishment of a single register for all regulated health professionals, the creation of a new oversight body as well as the development of a risk assessment model to determine which unregulated bodies should be regulated.

However, we would like to draw your attention to the connection between the Personal Information Protection Act (PIPA) and challenges that private insurers have in obtaining and validating health services that have been claimed through benefit plans so that these considerations can inform the decisions to be made around reform to the Health Professions Act.

Private health insurers have a duty to protect the sustainability of the investments made by BC employers in their health plans. One way insurers do this is by validating the delivery of services. Insurers obtain the consent of the employee to access health records in a number of ways. This includes obtaining consent upon enrollment of that employee into the plan, at time of claim and frequently by express consent upon suspected provider fraud. Our members indicate, though, that even when consent is provided, it is frequently challenged by healthcare providers who cite sections of PIPA, including 12 (1)(c) and 18 (1)(c) as reasons for withholding records from insurers. Both sections apply only when a request for information is made without consent, which is typically not the case when the purpose for the request is for validating health services.

Additionally, healthcare providers appear to be under the impression that the permissive language used ('may only' disclose) allows them to simply make a choice and not provide the requested records even when all the required conditions are met.

Often regulatory bodies will also challenge the provision of records, not clearly understanding the PIPA clauses noted above. The withholding of this information from insurers makes it very difficult for our members to conduct the appropriate due diligence on claims that are submitted to an employer plan. In addition, the *Guide* to PIPA does not provide any clarifying direction.

### **Summary Recommendations**

In addition to the recommendations made by the Cayton Report, we request that the Steering Committee give consideration to the following health insurance industry recommendations, which are in line with the Report findings in Part 2, section 9:

1. that the regulatory framework for health professionals in BC is strengthened and provides guidance to regulatory colleges on Sections 16 (2)(d),(e) and (g) of the *Health Professions Act* with regards to education, monitoring and enforcing professional ethics and reducing conflicts of interest among registrants, and
2. that the OIPC consider providing guidance tools to the regulatory colleges on the interpretation of PIPA.

Additionally, when it comes time for the BC government to consider amendments to the 2003 PIPA, we would like the following to be considered:

1. that the OIPC's mandate be expanded to include the provision of guidance tools as to the meaning of sections 12 (1)(c) and 18 (1)(c) and when they may be relied upon,
2. that, in the same sections, the word 'may only' which is interpreted as permissive be changed to 'shall' to more accurately reflect the fact that the disclosure is subject to meeting the stated conditions rather than being understood as the disclosure being at the choice of the healthcare professional,
3. that PIPA include similar language as to what is included in the *Personal Information Protection and Electric Documents Act*, S.C. 2000 c. 5 section 7(3) (d.2) which allows for disclosure without the knowledge or consent of the individual if the disclosure is:

“(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect, or suppress fraud.”

Thank you for the opportunity to provide comments and the perspective of the private health insurance industry. We look forward to seeing the Steering Committee's review and recommendations, and would be pleased to discuss any of the issues raised in this submission in more detail at your convenience.

Yours sincerely,

*Original signed by Stephen Frank*

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Canadian Life and Health Insurance Association