



**BY FAX (250) 356-9587**

September 22, 2009

Honourable Kevin Falcon  
Minister of Health Services  
Parliament Buildings  
Victoria BC V8W 1X4

Dear Minister:

**Bill 2—Budget Measures Implementation Act (No. 2) 2009—Continuing Care Act amendments—OIPC File No. F09-39529**

I write to express my concerns regarding amendments to the *Continuing Care Act* (“CCA”) that were introduced in the Legislature on September 1, 2009 as part of Bill 2, the Budget Measures Implementation Act (No. 2), 2009.

According to the explanatory notes in Bill 2, the proposed CCA amendments authorize “the requiring of information necessary to administer the Act” and “the making of regulations respecting rates and payments by clients for continuing care services”.

While I understand and support the need to verify income information for the purpose of calculating subsidy entitlement of clients of health authorities, and the desirability of monitoring and evaluating programs, I do not support these particular amendments for two reasons.

First, I am concerned about the broad and vague wording of the provisions, ss. 6 and 7 of Bill 2. Greater precision is surely possible and desirable.

My second, main, concern is that the government is proposing, through these amendments, to authorize the collection, use, and disclosure of sensitive health and financial information of continuing care clients, and their family members, in a way that fails to use an existing statutory vehicle that would enable the necessary flow of information while appropriately protecting privacy. Specifically, the best way to authorize this sharing of personal information is for the databases that contain the necessary personal information to be designated as health information banks under the *E-Health (Personal Health Information and Protection of Privacy) Act* (“E-Health Act”).

A designation order made under s. 3(2) of the E-Health Act must clearly spell out, in a clear, comprehensive and transparent manner what personal information may be collected, used, and disclosed from, by, and to whom for what purposes. Through a properly drafted designation order, the indirect collection and use of personal information by the Ministry would be explicitly authorized. All designation orders are available to the public and, in fact, must be included in the personal information directory published by the Minister of Citizens' Services, thus providing transparency.

The tabled CCA amendments raise another issue respecting the E-Health Act. I am aware that the Ministry has been collecting clinical information of individual continuing care clients of health authorities in identifiable form, including information disclosing their medications, medical diagnoses and cognitive states, for the purposes of program monitoring and performance evaluation ("Minimum Reporting Requirements"). On February 27, 2009, a ministerial directive was issued by your predecessor, the Hon. George Abbott, compelling health authorities to disclose this personal health information in individually-identifiable form. It is apparent that the CCA amendments are intended to authorize this indirect collection of personal health information by the Ministry and thus supersede the ministerial directive, the statutory authority for which is not apparent.

Information is needed in order to support evaluation and planning, including as regards continuing care services, but I am concerned that the Minimum Reporting Requirements, supported either by the ministerial directive or the CCA amendments, would compel disclosure of personally-identifiable health information without the protections offered by the E-Health Act. I strongly believe the E-Health Act, not the CCA amendments or ministerial 'directive', should be used to acquire personal health information for planning and evaluation uses. The privacy and transparency afforded by the E-Health Act are needed here as well. Further, as I have previously told Ministry officials, personal health information acquired for planning purposes should be provided in linkable form and de-identified, thus reducing privacy risks while still enabling planning and evaluation activities.

I have been supportive of the E-Health Act since it was passed by the Legislature in 2008. Since that time, I have raised the concern on several occasions that the Ministry has not designated existing databases as health information banks where the opportunity and need are in fact clear. Instead, the Ministry is, by pursuing these CCA amendments, resorting to a piecemeal approach that avoids the transparency and privacy protections offered through the E-Health Act. It may be argued that designation of health information banks is complex, but no evidence to support such a claim has ever been offered. The tools are there under the E-Health Act and I urge you to ensure they are used, rather than the expedient of piecemeal amendments to other statutes.

I acknowledge that s. 7(1) of the *Hospital Insurance Act* authorizes the Ministry to collect personal information regarding the delivery of acute care services. This provision predates regionalization of the health care system and enactment of the E-Health Act. In my view, this provision should be repealed in favour of designating the existing discharge abstract database as a health information bank, thus subjecting it to the protections now offered by the E-Health Act. Section 7(1) of the *Hospital Insurance Act* should not, in other words, be seen as a precedent that supports the CCA amendments discussed above.

For these reasons, I urge you to withdraw these CCA amendments and instead use the robust, balanced statutory provisions of the E-Health Act, which offer a proper legislative framework for the sharing of personal health information necessary to verify income for subsidy purposes and for Minimum Reporting Requirements.

Consistent with our longstanding practice when commenting on a Bill tabled in the Legislative Assembly, I am sending a copy of this letter to the Opposition critic for your Ministry. Similarly, a copy of this letter will be posted on my office's website today.

Yours sincerely,

**ORIGINAL SIGNED BY**

David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

Copies: Adrian Dix MLA  
Opposition Critic

John Dyble  
Deputy Minister  
Ministry of Health Services