



May 1, 2012

Honourable Michael de Jong
Minister of Health
Room 337, Parliament Buildings
Victoria BC V8V 1X4

Dear Minister de Jong:

Re: Bill 35 – 2012 *Pharmaceutical Services Act*; OIPC File F12-49078

I am writing to comment on Bill 35 - *Pharmaceutical Services Act*, which your ministry tabled before the Legislative Assembly.

The purpose of this Bill is to provide statutory authority for the PharmaCare program, and to amend existing provisions of the *Pharmacy Operations and Drug Scheduling Act* pertaining to PharmaNet. I understand and support the need to provide British Columbians with an efficient and affordable pharmacare system. However, I have concerns about the reduced transparency of government's decision-making and the infringement of personal privacy that will result from this Bill.

The *Freedom of Information and Protection of Privacy Act* ("FIPPA") provides my office with the responsibility to comment on the implications for access to information or for protection of privacy of proposed legislative schemes. FIPPA seeks to balance the need for government to efficiently conduct its operations against the protection of citizens' personal privacy by providing a balanced set of authorizations for the collection, use, and disclosure of personal information. Where these are not sufficient to accomplish the objective of government, FIPPA allows for additional authorizations to be set out in legislation. To respect the objects and purposes of FIPPA, such authorizations should be narrowly focussed and address specific needs. FIPPA also sets out a comprehensive regime for access to government information. This increases the accountability and transparency of government by giving the public a right of access to records, subject to a carefully balanced set of exceptions.

Protection of Privacy

Bill 35 enumerates overly broad and permissive purposes for the collection, use, and disclosure of personal information that the ministry has neither focussed nor targeted at a specific need. The broadest of these purposes authorizes you to use or disclose personal information not only to administer Bill 35, but also for any other enactment for which you are responsible. Extending use and disclosure beyond the administration of the Bill to the administration of *any other enactment* raises privacy concerns in that it allows the ministry to put personal information towards uses other than that for which it was originally provided by the individual.

In addition to the inclusion of these broad authorizations, the Bill allows you to add further authorizations by regulation. This regulation-making power is unnecessary and reduces the accountability of the ministry with respect to the protection of personal privacy.

As you are aware, I am of the view that FIPPA does apply to Bill 35, despite the offence provision that makes any collection, use or disclosure other than as permitted under the Bill illegal. Therefore, your ministry already has extensive authority for collection, use and disclosure under FIPPA. This existing authority should greatly reduce the need of the ministry to add further authorizations by regulation.

The accountability of the ministry is best achieved when citizens are confident that the Legislative Assembly has put their collective mind to the protection of their personal information. This is accomplished where the authorization for collection, use, and disclosure are narrowly described and enumerated within an enactment and not within subsequent regulation or through overly broad authorizations.

Access to Information

I am opposed to the override of FIPPA in s. 7 of the Bill. It is in the public interest that decision-making processes about coverage of medications under PharmaCare be transparent. These government decisions are critical to many individuals and the public should have the ability to access information as to why those decisions have been made, subject to the exceptions from disclosure permitted in FIPPA.

Given the authority that FIPPA already provides, I respectfully ask you to amend Bill 35 to remove ss. 7, 22(1)(c), 22(2)(k), and also remove the reference to “or another enactment for which the minister is responsible” from s. 22(2)(a).

I do recognize the unique challenges faced by the health sector. The long-term solution to the matter may lie in a new legislative framework which rationalizes this growing patchwork of health privacy provisions.

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.

Sincerely,



Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

pc: Mike Farnworth
Opposition Critic for Health
New Democrat Caucus

Graham Whitmarsh
Deputy Minister
Ministry of Health