PRIVACY PROTECTION AND HEALTH MANAGEMENT: A CONTRADICTION IN TERMS?

Summary

What do people value more – their privacy, or their health? The province of Ontario has recently passed legislation that attempts to answer this question, at least for its residents. The Personal Health Information Protection Act (PHIPA) recognizes that most individuals would prefer not to sacrifice one at the expense of the other, and at the same time that such sacrifices are inevitable. It sets out therefore to perform a delicate balancing act, and time will tell its degree of success. There are of course many stakeholders in the health-care sector that cannot afford to wait for history’s judgement. Charged (at least up until now, primarily) with the task of providing efficient, high-quality health-care they wonder how compatible their old responsibilities are with their new obligations as laid out by PHIPA.

We do not presume in this paper to attempt to answer such concerns. What we will attempt is to offer a contrast, useful we hope to health-care managers, between the path Ontario (and more generally Canada) has chosen to follow, and the path down which the U.S. seems to be headed when balancing health-care and privacy. Reconciling privacy protection and health-care management is a particularly difficult exercise from the American point of view, due, not only to the private management of health care, but also due to the prevailing conception of privacy protection in the U.S. which tends to focus on protection of individuals from government, and less on their protection from the activities of the private sector.

Accordingly, this paper is divided into a number of sections. The first surveys the legislative framework for the protection of health information privacy in Canada, emphasizing Ontario. The second similarly surveys the U.S. The third discusses briefly Australia’s approach to health information privacy protection. Australia’s health-care system, which allows residents to choose between public and private health care is significant not only as a possible future for Canadian health care, but also because of the Australian push to completely digitize its health information, a move that may create unique privacy considerations.

We find, as the paper will reveal, that the legislated privacy protection of health information is a ‘mess’, regardless of the jurisdiction surveyed. There are many purported reasons for this legislative state of affairs, but within the scope of this paper we will focus on one of them – that the protection of privacy, and the provision of health care, are largely incompatible social constructs, to the point that they are almost mutually conceptually exclusive. This paper’s fourth section is devoted therefore to the conceptual examination of privacy, and to a lesser degree, health-care. Finally, we point out the implications of such a conceptual incompatibility to health-care managers. If our understanding of health information privacy is correct then health-care
managers are indeed caught between the rock of providing quality health care and the hard place of personal information protection.