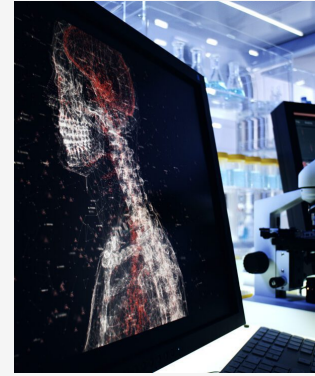


Canada introduces sweeping bill to mandate tech and data interoperability in healthcare

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On June 6, 2024, the federal Minister of Health introduced Bill C-72 — *An Act respecting the interoperability of health information technology and to prohibit data blocking by health information technology vendors*. If passed, the bill would enact the *Connected Care for Canadians Act*^[1] (the Act).

What is the purpose of the Act?

The stated purpose of the Act is to facilitate access to and use and exchange of electronic health information and to prohibit data blocking by health information technology vendors. The Act also reflects the government's plan to "enable a modern, connected care system, in which health information can be securely accessed by patients and shared between providers, when needed."^[2]

Why is the Act being advanced now?

The Government of Canada's news release introducing the Act stated "Enabling timely and secure access to personal health information is critical to saving lives and improving health care for Canadians... Delayed access to personal health information causes harm to patients — it can result in unnecessary or duplicative tests, longer wait times and hospital stays, and medication errors."^[3]

More broadly, it is well acknowledged that health information in Canada is often managed in a siloed manner, with patients and healthcare providers facing barriers and delays in accessing the information that is needed to manage care. This lack of interoperability compounds other major challenges with respect to the delivery of healthcare, including

- an estimated four million Canadian adults not having a primary care provider in 2023^[4]
- many Canadians suffering on waitlists to obtain medically necessary surgeries for many months^[5]

- 70% of Canadians being worried that they will not be able to receive good quality medical attention if they need it^[6]

What are the key provisions of the Act?

The Act aims to accelerate adoption of common interoperability and data standards and enable secure information sharing across platforms. If enacted, the Act will require “health information technology vendors” to

- ensure that “health information technology” that is licenced, sold or supplied as a service is “interoperable”
- not engage in “data blocking”

Significantly, the term “health information technology” is broadly defined to encompass hardware, software, integrated technologies, intellectual property and upgrades that are designed for creating, maintaining, accessing, using or exchanging electronic health information or that support such activities. Health information technology will be considered “interoperable” only if it allows the user to access and use all electronic health information, allows the user to exchange all electronic health information with other health information technologies, and meets prescribed standards, specifications and requirements that will be set out in future regulations. “Data blocking” is also defined broadly and captures any practice or act that prevents, discourages or interferes with access to or the use or exchange of electronic health information.

Why is the Act noteworthy?

While the goal of enhancing access to electronic health information is laudable, the scope of the legislative regime raises significant issues. These issues include the following:

1. Rather than recognizing that interoperability can be achieved only through collaboration between vendors and deployers of technology, the Act imposes obligations solely on vendors.
2. Rather than targeting specific categories of vendors (such as electronic medical record services, physician, dental and pharmacy management software providers or virtual health platforms), the Act applies more broadly and may cover a broad range of technology providers that have historically not been considered part of the health system and are not directly subject to health privacy statutes (such as vendors of activity trackers or smartphone apps designed to enhance an individual’s physical or mental health). The Act may also apply both to technology vendors that do not themselves process health information, but support other technology vendors that do, and to retailers of off-the-shelf technology services.
3. Rather than focusing on technology deployed in connection with the delivery of health services, the Act applies to anyone engaged in supplying any health information technology regardless of how or by whom it is deployed, and extends to health information technology used by individuals to access their own information.
4. Rather than target prescribed categories or types of interoperability, the Act introduces a general requirement that health information technology vendors enable universal

interoperability with all other health information technologies.

5. Rather than target organizations in the business of providing technology services, due to the broad definition of “health information technology vendor”, the Act may also apply to healthcare service providers, including public hospitals and medical clinics, and other intermediaries that supply technology to other healthcare providers.

It is unclear how the Act can be implemented in practice. Until internationally recognized standards and specifications for interoperability emerge, the Act may lead to many vendors of health information technology withdrawing from the Canadian market, and to healthcare service providers being unwilling to make technology services available to other healthcare providers.

Will the Act apply in every jurisdiction of Canada?

The Act will only apply in provinces or territories where the Governor in Council determines that the local law requirements are *not* substantially similar to the Act. Although this is an unusual mechanism for the application of federal legislation, it is similar to the approach found in Canada’s federal privacy law, the *Personal Information Protection and Electronic Documents Act* (or PIPEDA).

What will be the penalties for failing to comply?

The Minister of Health will have responsibility for oversight of the Act, meaning that Health Canada will likely be the government authority responsible for its enforcement. Given that regulations may be enacted to create a system of administrative monetary penalties, there likely will be fines imposed on organizations that fail to comply.

What should you do next?

In addition to monitoring Bill C-72 as it advances through the legislative process, health service providers and health information technology vendors may wish to review the Shared Pan-Canadian Interoperability Roadmap published by Canada Health Infoway in May 2023^[7] and stay current on related efforts to develop broadly accepted standards for interoperability and any relevant provincial or territorial laws.

In addition

- health service providers will want to take the Act into account when making procurement decisions and negotiating related contracts pursuant to which they obtain health information technology
- health service providers that currently make technology services available to other health professionals will want to ensure they remain apprised of any developments under the Act in order to make adjustments to product design and product roadmaps
- technology vendors providing services in Canada or planning to enter the Canadian market will want to consider how the Act may be applicable to them, even if they are not directly involved in providing technology services to the health industry

[1] Bill C-72, *Connected Care for Canadians Act*, 1st Sess, 44th Parl, 2024 (first reading 6 June 2024).

[2] [Government of Canada News Release](#), June 6, 2024.

[3] Government of Canada, "[The Government of Canada introduces the *Connected Care for Canadians Act*.](#)"

[4] Canadian Institute for Health Information, "[International survey shows Canada lags behind peer countries in access to primary health care](#)," dated March 21, 2024.

[5] Canadian Institute for Health Information, "[Wait times for priority procedures in Canada, 2024](#)," dated April 4, 2024.

[6] Leger, "[Healthcare in Canada](#)," dated January 24, 2024.

[7] Canada Health Infoway, "[Shared Pan-Canadian Interoperability Roadmap](#)" [PDF].