

ONTARIO NURSES' ASSOCIATION

Submission on Bill 173 – An Act respecting 2011 Budget measures, interim appropriations and other matters

Standing Committee on Finance and Economic Affairs

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INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing 55,000 front-line registered nurses and allied health professionals and more than 12,000 nursing student affiliates providing care in Ontario hospitals, long-term care facilities, public health, the community and industry.

ONA welcomes the opportunity to provide comments to the Standing Committee on Finance and Economic Affairs on Bill 173, particularly in response to Schedule 15 that proposes a broad amendment to the coverage of hospitals under the *Freedom of Information and Protection of Privacy Act* (FIPPA) by exempting information related to the quality of health care provided by hospitals.

This exemption of quality of health care information is reappearing in Bill 173 after an identical clause was not passed during committee hearings into Bill 122, *An Act to Increase the Financial Accountability of Organizations in the Broader Public Sector*.

ONA's submission on Bill 122 indicated our support for the expansion of FIPPA to hospitals. ONA supported this feature of Bill 122 in the name of transparency and the disclosure of information in publicly-funded hospitals that is clearly in the public interest. We continue to believe that public interest must overrule exempting information related to quality of health care in our hospitals from disclosure under FIPPA. The general public, and staff working within hospitals, are entitled to greater transparency and disclosure of information in our public hospitals.

ONA did not support the government's attempt to introduce an amendment during the committee clause-by-clause stage of Bill 122 to exempt hospital information on quality of health care from release under freedom of information (FOI) requests. Now, the government is attempting under Bill 173 to exempt the same hospital quality of health care information that they were unable to achieve under Bill 122. We find the proposed amendment contained in Schedule 15 of Bill 173 highly problematic for three main reasons.

First, frontline nurses should be an integral part of discussions related to quality patient care in hospitals, yet are excluded from sitting on newly-created hospital Quality Committees, and Bill 173 appears to further restrict disclosure of information arising from such committees.

Second, frontline nurses already are faced with lack of transparency and non-disclosure of information from committees within hospitals, even though Regulation 965 under the *Public Hospitals Act* (PHA) provides for frontline nurses to be represented on a number of hospital committees, including hospital Fiscal Advisory Committees (FACs).

Third, frontline nurses face similar issues of liability as do physicians when discussing incidents related to quality patient care, yet the Minister of Health and Long-Term Care, physician groups, the Ontario Hospital Association and others want to restrict the release of any and all information related to quality of health care within hospitals. We believe hospitals will therefore adopt a broad interpretation of information related to quality of health care that will be excluded and will not be disclosed under FOI requests. Frontline nurses do not support this exclusion as it is not in the public interest.

Nurses strive first and foremost to provide quality patient care. The government, however, appears to have consulted only with physicians and the Ontario Hospital Association. This lack of respect for frontline nurses has been occurring far too often and for far too long. Frontline nurses must be treated as equal partners in the delivery of quality patient care in our hospitals.

Our submission will expand on why exempting information on quality of health care in public hospitals from public disclosure is the wrong approach, if the government is dedicated to quality improvement, transparency and accountability in our public hospitals.

FREEDOM OF INFORMATION – WHAT’S IN AND WHAT’S OUT

Bill 173 proposes an amendment to subsection 18(1) of FIPAA to exempt the following information from disclosure:

information provided to, or records prepared by, a hospital committee for the purpose of assessing or evaluating the quality of health care and directly related programs and services provided by hospitals.¹

First, you will notice that “a hospital committee” is undefined. This appears to mean any and all hospital committees that may discuss the quality of health care provided with respect to any program or service. Second, the specific type of information and records on the quality of health care also remains undefined.

Therefore, this broadly worded and undefined amendment seems to allow hospitals to refuse to disclose any and all information related to quality of health care in their institution.

This proposed amendment is surprising given that Ontario's Information and Privacy Commissioner's representative expressed full support for the expansion of FIPPA to include hospitals because it would provide "transparency and access to general records, such as those related to the procurement of goods and services, as well as matters of governance, such as budgets and cost of facilities, programs and services offered by hospitals."² In addition, designating hospitals under FIPPA "would not interfere with the effective and efficient delivery of health care."³ This is because disclosure of personal health information continues to be governed by the *Personal Health Information and Protection Act* so that the privacy and security of health information of patients is not at risk. In addition, existing protections limit the disclosure of quality-of-care information as defined under the *Quality of Care Protection Information Act*.

Who, then, is behind the push to exempt hospital quality of health care information from public disclosure? The Ontario Hospital Association (OHA) specifically does not want "any records prepared for or used by a hospital to evaluate and to discuss quality, safety and risk management" to be subject to FIPPA and to be subject to public disclosure.⁴ The OHA believes such public disclosure "would almost certainly undermine that culture of openness, honesty and candour about patient safety that hospitals have worked so hard to establish."⁵ However, the OHA is unable to provide any specific examples where public disclosure of such records has undermined a so-called culture of patient safety. On the other hand, we have recent examples where disclosure of adverse events in our hospitals has been made public precisely in the name of patient safety.

The other organization speaking out in support of restricting public access to hospital quality of health care information is the Healthcare Insurance Reciprocal of Canada (HIROC), which is Canada's largest malpractice insurance company. HIROC argues that without restrictions on information that can be disclosed "quality improvement and risk management information is exposed."⁶ In particular, HIROC does not want "system-wide reviews, looking at extensive practice issues in hospitals"⁷ to be subject to public disclosure because if disclosed, "it would have a chilling effect on risk management and quality improvement programs."⁸ Examples of the kind of information that HIROC is talking about here includes: "Do you have a fever protocol for pediatrics? Do you have physicians personally see patients before they are discharged?"⁹

HIROC does not believe that this type of information that appears to be particularly relevant to patient safety in hospitals should be subject to public disclosure.

HOSPITAL QUALITY COMMITTEES

Section 3(1) in the *Excellent Care for All Act* provides that every public hospital “shall establish and maintain a quality committee.” Further, every quality committee shall report to the hospital board under section 3(3).

However, the regulations under this legislation have excluded a frontline registered nurse from the proposed membership of the Quality Committee. This is a glaring shortcoming in terms of representation from registered nurses – the largest group of frontline health professionals delivering health care to patients. It seems obvious to us that it is important to have a frontline registered nurse represented on a hospital Quality Committee. It seems incongruent with the concept of quality care for patients, the purpose of the Quality Committee, to exclude a frontline representative for the largest group of health professionals who provide patient care.

Now, Bill 173 appears to also exempt from disclosure information and records from hospital committees such as Quality Committees, where it seems obvious that there would be information and records relating to the purpose of assessing or evaluating the quality of health care and directly related programs and services provided by hospitals. The intent of Schedule 15 in Bill 173 appears to be counterproductive to the government’s intent to move forward with a quality agenda in Ontario hospitals.

HOSPITAL COMMITTEES UNDER THE *PUBLIC HOSPITALS ACT*

Regulation 965 under the *Public Hospitals Act* currently sets out that every hospital board shall pass by-laws that provide for “the participation of the chief nursing executive, nurses who are managers and staff nurses in decision-making related to administrative, financial, operational and planning matters in the hospital.” Regulation 965 also provides for participation by the same group of nurses as above at the “committee level” as well.¹⁰

In addition, Regulation 965 provides that every hospital board “shall establish a fiscal advisory committee,” comprised of “one person representing staff nurses” in addition to other staff, and

that "the fiscal advisory committee shall make recommendations to the board with respect to the operation, use and staffing of the hospital."

Fiscal Advisory Committees (FACs) for hospitals were set up in regulation to ensure the involvement of staff nurses in a decision-making capacity on hospital committees. The former Minister of Health, Elinor Caplan, introduced FACs on February 15, 1989 (highlighting added):

It is my pleasure to announce today amendments to the regulations governing the administration of Ontario's public hospitals which will give both nursing administrators and staff nurses a greater voice in decision-making in their institutions....Under the amendments, staff nurses and nurses who are managers will be represented on committees involved in the hospital's administration. These include, among others, the patient care committee, the utilization review committee, the occupational health and safety program and the health surveillance program. **In fact, nurses will have an active voice in administrative, financial, operational and planning decisions in their hospitals....**I am also announcing today the establishment of a fiscal advisory committee on hospitals. This committee will be composed of representatives from the administration, the medical staff and the nursing staff. The fiscal advisory committee arose from the Conjoint Review Committee which looked into hospital operations last summer....It was the consensus of this committee that hospitals needed to develop strength in financial planning. The fiscal advisory committee will make that possible. Its mandate is to make recommendations to the hospital board on a wide range of subjects which will affect the operation of the hospital, how it is used and how it is staffed. I used the word "partnership" a moment ago. The Conjoint Review Committee also used this word. It felt that our hospitals need to foster a sense of partnership among their administrators and their staff who are involved in giving care to patients. The more co-operation there is among nurses, physicians, administrators and all of the people who perform their services in a hospital setting, the better the care their patients will receive and the more effective hospital administration will be. The membership on the fiscal advisory committee was designed to foster this partnership. However, we recognize that these initiatives are only part of the solution. **They are but the first steps on the way to improving the quality of worklife for our nurses and involving them more fully in decision-making so that the entire hospital operation may benefit from their participation....**

Not only do we agree that it is important to actively consult with nurses in hospitals, in a decision-making capacity, especially in the context of the impacts on quality patient care prior to any planned nursing and clinical service changes or reductions being contemplated or implemented, but we also believe it is important for such deliberations to be subject to public disclosure under FIPPA. Schedule 15 in Bill 173 puts up barriers to disclosure of information related to quality of health care provided in our hospitals.

FIPPA does provide for an appeal process and does provide in Section 11 the requirement to “disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.”

However, the process to put in an appeal of a decision to not disclose information under FIPPA is a lengthy and litigious one that many organizations and most members of the public simply will not undertake. In effect, information on quality of health care in our hospitals that is discussed in important committees named in Regulation 965 is unlikely to be disclosed under the Schedule 15 exemption.

Further, many hospitals do not have functioning and effective Fiscal Advisory Committees. Although aware of the facts, to date the Ministry of Health and Long-Term Care has not enforced this violation of Regulation 965. We believe that FACs are an important part of ensuring quality care in hospitals as this committee is responsible for making recommendations on the operation, use and staffing of the hospital. Yet, the information and records provided to this important hospital committee seem to be exempted from public disclosure under Schedule 15 in Bill 173. This means that information relating to restructuring of services and programs within Ontario hospitals, since it can be said to relate to the quality of health care provided, would also be restricted from disclosure.

In addition, the 2007 coroner’s inquest into the death of ONA member Lori Dupont, RN, recommended that a review of the *Public Hospitals Act* be “conducted on a priority basis:”

Ensure that patient and staff safety, as well as patient care, must be the most important factors and not be superceded by a physician’s right to practice and that hospitals be able to exercise the appropriate degree of authority over physicians working within their institutions consistent with that of other regulated health professionals.

We agree that quality patient care is the most important factor, and information and records related to quality of health care provided in hospitals should be subject to public disclosure under FIPPA.

Finally, hospitals are currently relying on information and recommendations from consultants promoting the substitution of registered nurses and changes to the model of nursing care

provided. Does Schedule 15 also restrict access to information and records related to these decisions on the quality of health care provided in hospitals? Certainly the public has a right to know about why these decisions are being made when the evidence in the literature shows better outcomes for patients with *more* hours of nursing care,¹¹ and when inadequate nurse staffing directly impacts on quality patient outcomes.¹²

CONCLUSION

Quality care is a fundamental concern for nurses. Restrictions on access to information and records on quality health care provided in hospitals is a concern not only to nurses but to our patients. Schedule 15 in Bill 173 must not be passed since it will exempt the disclosure of information from many important hospital committees related to the quality of health care provided by our hospitals. This is not in the public's interest, nor in the interest of the public's right to know about quality issues in our hospitals. We respectfully submit this recommendation and request that it be given serious consideration by the Standing Committee so that patients in hospitals not only receive the quality care they deserve, but are able to access information and records related to the provision of that quality care.

ENDNOTES

¹ See Schedule 15, Bill 173.

² Hansard of Standing Committee on Social Policy hearings into Bill 122 conducted on November 22, 2010.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Hansard of Standing Committee on Social Policy hearings into Bill 122 conducted on November 23, 2010.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ See Regulation 965, *Public Hospital Act*, section 4(1)(f) (i) and (ii).

¹¹ See the literature cited in Tourangeau, Anne E. et al., "Impact of hospital nursing on 30-day mortality for acute medical patients." *Journal of Advanced Nursing* 57(1):33, 2007.

¹² See Aiken et al. "Hospital Nurse Staffing and Patient Mortality, Nurse Burnout, and Job Dissatisfaction." *Journal of the American Medical Association* 288(16): 1987-1993, 2002. Adding one patient to a nurse's average caseload in acute care hospitals is associated with a 7 per cent increase in failure to rescue (complications), a 7 per cent increase in patient mortality, a 23 per cent increase in nurse burnout, and a 15 per cent increase in job dissatisfaction.