Submission to the Standing Committee

on Finance and Economic Affairs

Regarding Bill 173

(Budget Measures Act)

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Who We Are

The Ontario Health Coalition represents more than 400 member organizations and a network of Local Health Coalitions and individual members. Our members include: seniors' groups; patients' organizations; unions; nurses and health professionals' organizations; physicians and physician organizations that support the public health system; non-profit community agencies; ethnic and cultural organizations; residents' and family councils; student groups; retirees; poverty and equality-seeking groups; women's organizations, and others.

Mission and Mandate

Our primary goal is to protect and improve our public health care system. We work to honour and strengthen the principles of the Canada Health Act. We are led by our shared commitment to core values of equality, democracy, social inclusion and social justice; and by the five principles of the Act: universality; comprehensiveness; portability; accessibility and public administration. We are a non-partisan public interest activist coalition and network.

To this end, we empower the members of our constituent organizations to become actively engaged in the making of public policy on matters related to our public health care system and healthy communities. We seek to provide to member organizations and the broader public ongoing information about our health care system and its programs and services, and to protect our public health system from threats such as cuts, delisting and privatization. Through public education and support for public debate, we contribute to the maintenance and extension of a system of checks and balances that is essential to good decision-making. We are an extremely collaborative organization, actively working with others to share resources and information.

Schedule 15

If passed as is, under Schedule 15 of Bill 173, information and records provided to or prepared by a hospital committee pertaining to assessment of quality of care would be exempted from public access to information.

Schedule 15

Freedom of Information and Protection of Privacy Act

1. Subsection 18 (1) of the Freedom of Information and Protection of Privacy Act is amended by adding the following clause:

(j) 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 the hospital.

Commencement

2. This Schedule comes into force on January 1, 2012.

1. This is not a budget measure

This clause has nothing to do with the provincial budget and should not be contained in an omnibus budget measures bill.

2. The process is undemocratic

The process by which this clause is being rushed into law is undemocratic. There has been no public consultation on such a measure. Ontarians believe that hospitals should be transparent and accountable. The public has an interest in expanded public information about quality of care in hospitals. This clause runs against public values and interests, yet there has been no explanation from the government to the public as to why quality of care information in hospitals should be hidden from public scrutiny. The committee on finance and economic affairs is not the appropriate legislative committee to consider serious and complex questions about public access to hospital quality of care information. One day of hearings in Toronto only, held with very short notice, should not be the first and only chance for public interest groups to intervene on this issue.

3. The terms are extremely broad and undefined

Under this Schedule the head of a hospital may refuse to disclose the following:

- all information and records provided to a hospital committee assessing quality of care
- all information and records prepared by a hospital committee assessing quality of care

A hospital committee is not defined. Quality of care is not defined.

Already, we have seen advice from two law firms to hospitals to shield records from public scrutiny by moving records into Quality of Care Committees or to "cleanse"- ie. destroy – records.

Thus, this extremely broadly-worded clause will enable hospitals to hide a whole range of information that should be in the public purview.

4. Certain quality of care information was already fully excluded from Freedom of Information legislation

The argument that public access to quality information would stifle open discussion in hospitals is false. Hospitals are already totally exempted from sharing certain quality of care information under, the Quality of Care Information Protection Act (QCIPA). There is no public interest rationale for extending hospitals' ability to shield information from public scrutiny even further.

When the amendments to FIPPA were made to bring hospitals under the legislation, the Quality of Care Information Protection Act (QCIPA) was amended to provide that the Freedom of Information and Protection of Privacy Act (FIPPA) does not apply to "quality of care information" under QCIPA. This is an exclusion from FIPPA, which means that an access request under FIPPA cannot be made for any records of quality of care information.

According to the Ministry of Health's QCIPA Overview:

- "QCIPA is designed to encourage health professionals to share information and hold open discussions to improve patient care, without fear that the information will be used against them."
- "QCIPA does this by providing that information prepared by or for a Quality of Care committee designated under the Act is shielded from disclosure in legal proceedings and from most other types of disclosures, with appropriate exceptions."

Hospitals use QCIPA committees to discuss specific medical errors and incidents in private.

Furthermore, information pertaining to patients' health records is not covered by FIPPA. It is covered under the Personal Health Information Protection Act (PHIPA). This issue has no bearing on personal health information.

5. The public interest should supercede hospitals' desire for secrecy

Examples of information that would be shielded from public scrutiny under this clause were provided by a hospital insurance company. They are:

- Do your hospital have a fever protocol for pediatrics?
- Do physicians personally see patients before they're discharged?

These examples makeclear that the type of information that hospitals seek to hide has nothing to do with open discussion regarding specific medical mistakes. It is systemic information pertaining to procedures and practices. There is simply no public interest in giving a blanket exemption for hospitals to hide this information.

6. FIPPA Process is already difficult and time consuming

Understanding access to information legislation in Ontario is already difficult. FIPPA is complex and difficult to understand. Even for organizations, accessing information through FIPPA takes a great deal of time and resources. Under Bill 173, Schedule 15 as proposed, patients, citizens and public interest groups would require the resources and money to go through months of processes under FIPPA and appeal to the Information and Privacy Commissioner to get information disclosed. In our experience, using FIPPA can take up to a year or more. Usually the only group with lawyers is the government department (or in this case, hospital) trying to hide the information. The playing field is already unequal. Allowing an appeal up to the Information and Privacy Commissioner after months or even a year of complex and time consuming processes under FIPPA does not, in our view, comprise a balanced approach.

Recommendation

Schedule 15 should be repealed.

Moreover, the government should take immediate steps to stop hospitals from destroying documents prior to the implementation of the extension of public access to information legislation (FIPPA) to cover hospitals in January 2012.