

Ontario introduces “hospital secrecy clause”

The Ontario government plans to exempt hospitals from being obliged to respond to freedom-of-information requests related to quality of care on the grounds that doing so will encourage more frank discussion of medical errors.

But critics say the “hospital secrecy clause,” as they call it, is entirely unjustified.

“This clause excludes any quality information produced for or by a committee in a hospital from public access,” says Natalie Mehra, director of the Ontario Health Coalition, a patient advocacy group. “Information that is in the interest of the public, of physicians and of health professionals could be denied under this and very likely will be denied.”

Mehra also takes issue with how the government tucked the hospital exemption under the Freedom of Information and Protection of Privacy Act into the provincial budget. “In terms of process, it was introduced in the budget bill but has nothing to do with the budget,” she says. “The budget is time-allocated, so moves quickly. But this is a social policy and it’s a complex social policy with an array of competing interests, and there has not been proper time to hear various perceptions on this issue.”

The Ontario Nurses’ Association (ONA), among other health groups, also expressed dismay at the government’s decision. “ONA believes that information about quality of care should be accessible to people,” Vicki McKenna, the association’s first vice-president, writes in an email. “That pretty much sums it up.”

The Ministry of Health and Long-Term Care notes that Ontario residents can still request information on quality of care, and if a hospital refuses to release it under the exemption, they can appeal to the province’s Information and Privacy Commissioner, who acts independently of government and is appointed for five-year terms by the Lieutenant Governor in Council. Fur-

thermore, the government did not grant a full exclusion as was requested by the Ontario Medical Association and the Ontario Hospital Association. Under an exclusion, residents would not even be permitted to request information on quality of care, let alone launch appeals.



© 2011 Thinkstock

Public health advocates say hospitals are seeking to pull the curtain over their miscues.

“To foster quality improvement, it’s important that hospital staff can have open and honest discussions about quality,” Neala Barton, a spokesperson for Health Minister Deb Matthews, writes in an email. “The Budget Bill Amendment restricts the disclosure of some quality of care information for that very reason.”

But the Ontario Medical Association backs the hospital exemption on the grounds that it will allow health professionals to have frank discussions on quality of care without fear of future repercussions.

“Improvements in patient safety come most quickly when physicians, nurses, and other health professionals feel they can raise and discuss issues of

quality and patient safety without being ‘blamed or shamed’,” Dr. Stewart Kennedy, the association’s president, wrote in a statement released to reporters upon request. “It’s unfortunate that some have chosen rhetoric and politics, over fact, on this important and sensitive issue.”

According to the Ontario Hospital Association, the amendment to the Freedom of Information and Protection of Privacy Act is narrow and similar to legislation in other parts of Canada and other countries, such as the United Kingdom and Australia. The association claims the amendment is important to ongoing quality improvement efforts in Ontario hospitals, and has set up a website to provide facts on the matter to counter statements from public interest groups that have “attempted to grossly mislead the public about what the proposed amendment would do and not do” (www.oha.com/currentissues/issues/pages/thetruthaboutfoiandhospitals%E2%80%99qualityofcarerecords.aspx).

The amendment was introduced by the government in Schedule 15 of Bill 173, Better Tomorrow for Ontario Act (Budget Measures), 2011 (www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2475). It is to be added to the Freedom of Information and Protection of Privacy Act in section 18(1), which lists exemptions (www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f31_e.htm).

The hospital amendment, which will be the 10th exemption in this section, will provide privacy to “information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.” — Roger Collier, *CMAJ*

CMAJ 2011. DOI:10.1503/cmaj.109-3894