Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers autorisés de l'Ontario

RNAO Submission on Bill 119: *Health Information Protection Act, 2015*

Speaking notes: Standing Committee on Justice Policy

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Good Afternoon. My name is Tim Lenartowych and I am a registered nurse and the director of health and nursing policy at the Registered Nurses' Association of Ontario (RNAO). We are the professional association representing registered nurses, nurse practitioners and nursing students in Ontario. Joining me today is Andrea Baumann, a registered nurse and policy analyst at RNAO. As the largest regulated health workforce, RNs and NPs are deeply affected by Bill 119, which is why we welcome this opportunity to provide input to the Standing Committee.

SCHEDULE 1

RNAO is supportive of many of the proposed amendments to the *Personal Health Information Protection Act, 2004 (*PHIPA) proposed in Schedule 1 of the bill. They will move us one step closer to having a provincial electronic health record. Real-time access to key health information at the point of care means health professionals will be able to provide more co-ordinated, person-centred care with less duplication of services.

Security of Personal Health Information

Whenever personal health information (PHI) is collected, stored, and accessed, security and confidentiality are of paramount importance.

Section 1(2) of the bill amends the definition of "use" of PHI to include viewing. We're aware of several cases where health professionals made unauthorized access to view health records. Although these situations are isolated, Ontarians deserve to have their PHI protected, thus RNAO is in favour of proceeding with greater regulation around the viewing of PHI.

In the event of a privacy breach by means of the EHR, the proposed amendments stipulate that the prescribed organization must notify the health information custodian (HIC) that originally provided the PHI. However, RNAO recommends a requirement be included that the patient whose PHI was involved also be notified in a timely manner, and to specify by whom.

Duty to Report to Regulatory College

RNAO is a strong supporter of Ontario's current self-regulatory system of health professionals under the *Regulated Health Professions Act, 1991*. The sustainability of this model demands strong public trust and the accountability of regulators. Section 8 of Bill 119 mandates that HICs notify regulatory colleges if an employee is terminated, suspended, or subject to disciplinary action related to personal health information, or if the employee resigns and there are grounds to believe that the resignation is related to an investigation or other action with respect to personal health information. While RNAO believes that health professionals must be accountable for their use of PHI, we believe the current reporting requirements under the *Health Professions Procedural Code* are sufficient and question the necessity of Section 8(3) of the bill. We recommend that it be removed to allow further discussion with stakeholders.

Section 23(8) of the Bill would remove a six-month limitation period, specified by the *Provincial Offenses Act* on the prosecution of offenses related to personal health information. In the interest of procedural fairness, we recommend that the government specify an appropriate limitation

period on prosecution of offenses under Section 23(8), of no more than five years after which the offence was alleged to have occurred.

Consent Directives and Sharing of PHI

RNAO is concerned about the possibility that PHI that is collected by a HIC under a consent directive may still be collected for use in the EHR. For example, if a patient, through a consent directive, declines to have their PHI shared with certain health professionals, can they be assured that this PHI will not be shared with the prescribed organizations responsible for the EHR?

RNAO urges the government to ensure mechanisms are in place regarding PHI that is collected under a consent directive that is now part of the EHR, and to ensure that it is only shared with members of the health service team with whom the patient agrees it canbe shared.

Representation by Nurses on Advisory Committee

As set out in Section 55.11, the minister is to establish an advisory committee for the purpose of making recommendations regarding the practices of the prescribed organizations. RNAO supports this recommendation and urges the government to mandate that the advisory committee include at least one RN and one NP, given the trust the public places in nurses, as well as our knowledge and expertise in health service delivery. In addition, we suggest that a member of the public also serve on the committee.

Education for Health Professionals

The issues of privacy and security of PHI are complex, and a provincial EHR adds an additional layer to this complexity. RNAO urges the government to initiate a discussion with stakeholders about how to ensure that health professionals receive the education they need to understand the implications of this legislation. RNAO would be pleased to participate in this discussion, and to bring the perspective of RNs, NPs and nursing students.

SCHEDULE 2

RNAO applauds the efforts to update QCIPA and is supportive of processes that give health facilities the opportunity to review critical incidents so that they can improve quality of care. RNAO strongly believes that the need for confidentiality during the review process must be balanced with the need for transparency—for patients, their families and staff—all of whom deserve to know about the quality of care provided.

Defining When QCIPA Can Be Used

Currently, there is a lack of consistency as to how health facilities apply QCIPA when reviewing critical incidents. The newly added preamble to *QCIPA,* 2015 does well to clarify the spirit and intent of the legislation. However, further clarity is required and RNAO wants to see defined parameters that identify the circumstances under which QCIPA may be applied. This will ensure that critical incidents are reviewed in a consistent manner, and that information is not unnecessarily withheld from patients, families or the public in the name of quality improvement.

Definitions: Section 2(1),(2), and (3)

Following a critical incident, it is understandable that patients and families want to know what happened. RNAO is strongly in favour of measures to increase transparency and prevent the unnecessary shielding of information. That's why RNAO supports the added definition of "Quality of Care Functions", and the revised definition of "Quality of Care Information" (QCI), to help clarify what information can be withheld under QCIPA.

Learning from Past Events: Sharing Quality of Care Information

RNAO applauds new additions to *QCIPA*, 2015 that facilitate sharing of QCI between health facilities. As a next step, RNAO urges the health ministry to work with stakeholders to put forward policy options to support the sharing of QCI among health organizations for maximal benefit. Further, RNAO urges that this section be strengthened to facilitate sharing of QCI not only with other Quality of Care Committees, but also with the public by establishing a publicly available database, as recommended by the QCIPA Review Committee.

Protection and Support for Health Professionals

In addition to the need for transparent processes for reviewing critical incidents, there is also a need to balance this with an appropriate level of protection for the health professionals involved in critical incidents. In the absence of appropriate confidentiality, health professionals may be hesitant to speak openly about the causes of critical incidents. This would also hinder their ability to learn from them. That's why RNAO is supportive of Sections 10 and 11, which provide assurance of non-retaliation for employees who have disclosed information to a quality of care committee.

However, RNAO is concerned that the above protection only exists when QCIPA is applied. It is our view that the same level of protection must be assured when reviewing all critical incidents—both when QCIPA is applied and when it is not—to enable clinicians to discuss critical incidents openly and without fear of repercussions. RNAO believes that this is a necessary step in order to combat a culture of blame and move towards a "just culture". This culture shift should exist at all levels, as we work together towards the provision of safe, quality health care.

In addition, we are in agreement with the QCIPA Review Committee's recommendation to provide support for staff involved in critical incidents, as this can be a difficult experience for staff involved.

Education for Health Professionals re: QCIPA Implementation

Because of the implications of QCIPA, RNAO would like to see necessary training and guidance for all health professionals, including RNs and NPs, to understand the new legislation and to implement necessary changes to their practice. The government has committed to consulting with stakeholders on this issue. Given the central role RNs and NPs play in our health system, we urge the government to consult RNAO on the issue of QCIPA implementation.

Conclusion

Thank you for giving us this opportunity to present our perspective on Bill 119. We believe that the practical and achievable recommendations that we have outlined will strengthen the bill and advance health service delivery to ensure it is of high quality, transparent and respects appropriate privacy and confidentiality. We urge you to implement our recommendations and look forward to answering any questions you may have.