

The Excellent Care for All Act, 2010

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Bill 46, the [Excellent Care for All Act, 2010](#) (the “ECFAA”) became law in Ontario on June 8, 2010. The ECFAA creates a number of new obligations for Ontario “health care organizations” within the meaning of the Act. Currently, hospitals subject to the *Public Hospitals Act* are the only health care organizations to which the ECFAA applies; however the government has indicated an intention to look at expanding the scope in the future.

The ECFAA was established to support the government’s stated strategy of “putting patients first by improving the quality and value of the patient experience through the application of evidence-based health care”. The Act itself focuses on the two separate heads of quality improvement and performance review.

Regulations providing further detail on the requirements for Quality Committees and the Ontario Health Council, as well as defining who is considered an "executive" within the meaning of the Act, were filed on December 2, 2010 and are to come into force January 1, 2011. Although we won’t have the full picture until all expectations have been set out in regulations or otherwise communicated, clear deadlines are established under the Act for the implementation of certain requirements, and hospitals are expected to have already begun working on strategies for compliance.

The ECFAA was passed into law quite quickly, and the government has established what could be considered to be very short timelines for implementation, particularly in light of the significant changes it brings to the operation of hospitals and the multitude of other new statutory requirements and legislative amendments applicable to Ontario’s health care sector, which we discuss below.

Briefly speaking, over the next 6 months, hospitals are expected to have:

(1) A patient declaration of values

The patient declaration of values must have been developed with consultation from the public.

For hospitals that do not already have a patient declaration of values or have one that was developed without public consultation, public consultation on a draft must occur by December 8, 2010 and the patient declaration of values must be finalized by June 8, 2011.

The Ministry issued a "[Guidance Document for Declaration of Values ECFAA requirement](#)" in November, 2010 to assist hospitals in assessing compliance and in their efforts to update or create their patient declaration of values.

(2) Quality Improvement Plan (for 2011/2012)

The ECFAA requires that hospitals develop a Quality Improvement Plan (“QIP”) on an annual basis. The first QIP must be in place for the fiscal year commencing April 1, 2011 and must contain, at a minimum, annual improvement targets for the hospital and justification for those targets and information concerning the manner in and extent to which executive compensation is linked to the achievement of those targets. The Act requires that the QIP take into account the results of satisfaction surveys, data relating to the patient relations program, and aggregate critical incident data and information concerning indicators of the quality of health care as provided for under the regulations to the *Public Hospitals Act*. Further requirements for content or considerations may be provided for in regulation.

(3) Satisfaction Surveys

The ECFAA requires satisfaction surveys of patients, caregivers and service providers in order to collect information concerning satisfaction with the services provided by the hospital, as well as survey the satisfaction of employees and other persons with their experience working for or providing services within the organization and their views on the quality of care provided by the hospital.

The first surveys must be completed prior to April 1, 2011, in order to inform the first QIP.

(4) A Quality Committee

All hospitals are required to establish a Quality Committee which meets statutory requirements and which is accountable to the hospital board.

The Quality Committee is responsible for the monitoring of the overall quality of services provided in the hospital; for ensuring that best practices information, supported by available scientific evidence, is translated into materials that are distributed to employees and persons providing services within the hospital and to subsequently monitor the use of these materials by these people; and for making recommendations to the hospital board regarding quality improvement initiatives and policies. It is also responsible for overseeing the preparation of the annual QIP for the hospital.

[Regulation 445/10](#) is extremely prescriptive in terms of the composition of the Quality Committee, requiring that one-third of the Committee must be voting members of the hospital’s board, and that the Committee include one member of the hospital's Medical Advisory Committee, the Chief Nursing Executive, the hospital's Chief Executive Officer/Administrator, one person who works in the hospital and is not a member of the College of Physicians and Surgeons or the College of Nurses of Ontario, and such other persons as are approved by the Board. Further, the Chair of the Quality Committee must be appointed by the Board and must be a voting member of the Board.

Hospitals will be required to have their Quality Committees in place on January 1, 2011.

(5) Executive compensation that meets the requirements under the ECFAA

Hospitals are required to identify the manner and extent to which executive compensation will be tied to the performance improvement targets set out in the QIP, and will need to structure executive compensation accordingly. In addition to the Chief Executive Officer (or equivalent) as stipulated under the Act, "executive" is extended under [Regulation 444/10](#) to include members of the senior management team who report to the hospital's Chief Executive Officer or equivalent position, the Chief of Staff (where there is one), and the Chief Nursing Executive. The ECFAA also makes it clear that the new *Public Sector Compensation Restraint to Protect Public Services Act, 2010* (the "Wage Restraint Act"), which is also discussed below, applies to the compensation plans of executives.

The QIP must contain certain information relating to the hospital's executive compensation, and in this respect any negotiation and finalization of changes to executive compensation plans will need to be completed in advance of the 2011/2012 fiscal year.

(6) A patient relations process

This process must reflect the hospital's patient declaration of values and must be made available to the public.

Commentary

It is important for hospitals to ensure they understand the new requirements under the ECFAA and consider how these requirements will relate to existing processes and structures.

For example, the distinctions between the Quality Committee and other hospital committees which may have a quality function (such as a Quality of Care Committee under the *Quality of Care Information Protection Act, 2004*) must be recognized. While a Quality of Care Committee acting within the scope of QCIPA enjoys protection from the disclosure of "quality of care information" within the meaning of that Act, information generated by or for the Quality Committee or otherwise collected or created under the ECFAA will not be protected. In our view, this can have significant implications for a hospital's ability to appropriately manage risk, particularly in light of the extension of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to public hospitals, which will expand hospital obligations for providing access to records.

In this respect, hospitals will need to address the status of the Quality Committee. Although the Act suggests that the Quality Committee's function is operational and advisory, with at least one-third of its composition being "voting" directors, significant issues could arise with respect to the relationship between governance and management.

Timely implementation of requirements may also present a challenge for some hospitals, particularly since the government is still in the process of identifying and communicating specific expectations. As well, to date, the government has not identified any additional funding for hospitals to assist them in implementing the requirements of the ECFAA, nor to support hospitals in meeting the objectives established by the Act.

Miller Thomson is closely monitoring the ECFAA, its regulations and other related information, and will continue to communicate new developments.