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

RNAO Bill 173 Submission: Preserve Access to Quality of Health Care Information

Speaking Notes:
Standing Committee on Finance and Economic Affairs

Thursday, April 21, 2011

158 Pearl Street, Toronto, ON M5H1L3 Ph. 416 599 1925 Toll-free 1 800 268 7199 Fax 416 599 1926 www.RNAO.org

RNAO Bill 173 Submission: Preserve Access to Quality of Health Care Information

Good afternoon. My name is Rhonda Seidman-Carlson, and I am the President-elect of the Registered Nurses' Association of Ontario (RNAO). With me today is Kim Jarvi, of RNAO's Policy department. RNAO is the professional association for registered nurses who practise in all roles and sectors in Ontario. Our mandate is to advocate for healthy public policy and for the role of registered nurses in enhancing the health of Ontarians.

The 2011 Budget was a cautious budget, and RNAO greeted it with qualified approval. There was limited new spending and no new taxes. The resulting budget deficit was projected to drop to 2.5 per cent of GDP in the coming fiscal year, compared to 3.3 per cent and 2.7 per cent in the previous two years. In those years, the government had responded to the economic crisis by deficit spending in order to help avert a full-blown collapse. There was broad domestic and international consensus on the necessity of deficit spending under the circumstances and nurses supported the approach. Given that unemployment in Ontario and Canada remain stubbornly high in spite of some economic recovery we caution our provincial and federal governments to be careful to avoid tipping their economies back into recession by prematurely cutting deficits.

Accordingly, the government has made some effort to protect program spending, but it is projected to drop from 18.5 per cent to 17.7 per cent of GDP in the coming year.

Revenues are also projected to lag, dropping from 17.3 per cent to 16.9 per cent of GDP.

RNAO cited a number of features of the Budget in its response, a copy of which we have provided to Committee members. We applauded the government decision to fund a mental health and addictions strategy, and we urged the funding be strengthened to cover all Ontarians needing such services in addition to children and youth. We ask in particular that Aboriginal people receive needed attention given the extent to which many Aboriginal communities are being devastated by high addiction rates.

We also acknowledged the modest improvement in social assistance rates, but note that the cumulative improvement since 2003 of just 13.7 per cent lags inflation meaning that recipients will actually be able to buy less in 2011 than they could in 2003 with their social assistance cheques. As we stated in our media release on the day the budget was unveiled, instead of investing taxpayer dollars by replacing existing jails that had the capacity to serve up to 400 inmates with two new mega-jails and financing these through expensive public-private partnerships, attention must be given to social determinants of health such as investing in affordable housing and increasing the minimum wage. The reason for this is simple: crime in Ontario is decreasing and poverty is not. The minimum wage, affordable housing and social assistance are the principled investments for a government that says it doesn't want to leave anyone behind. Mega jails will only put more people behind bars.

With respect to nursing human resources, RNAO urges the government to meet its commitment of 9,000 additional nursing positions in its 2007-2011 mandate, and to ensure the outstanding number of positions (an estimated 3,421) are RN positions. As we have shared previously, the number of additional registered nurse (RN) positions created in Ontario for the past three years has lagged growth in registered practical nurse (RPN) positions. As a result, the province's own report predicts a shortage of 30,000 RNs, as compared to 1,500 RPNs by 2020. It's also worth noting that Ontario has the second lowest proportion of RNs per population in the country! The creation of 60,000 post-secondary spaces, of which we understand 15 per cent are allocated to nursing, is a welcome step in the right direction to meeting the coming need. We must be assured that all 9,000 new post-secondary spaces created for nursing will be allocated to RN education. We recommend that it be dedicated to three streams: 1) Compressed RN program, 2) second entry RN, and 3) RPN to RN bridging programs.

Our 2011 pre-budget submission, a copy of which we have also provided for committee members, details needed spending on social determinants of health, environmental determinants of health, and on health and nursing. The 2011 Budget fell short of our expectations, but at least it did not slash social programs in an ill-advised rush to cut deficits.

We do wish to point to an alarming feature of Bill 173. It is not a budgetary item at all, and we question why it should appear in this or any other Bill. I'm referring to Schedule 15, which would amend the *Freedom of Information and Protection of Privacy Act* (also

known as FIPPA) to allow hospitals to exclude the following material from freedom of information requests:

> "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."

As currently worded, the exemption could be used to exclude any and all quality of health-care information or records. That is because the term "hospital committee" is not defined in the legislation. Thus, any conversation on quality could be defined as occurring between members of a hospital committee. And indeed, that appears to be the intent of the Ontario Hospital Association (OHA), which has proposed this exemption.

According to the Minister of Health, this exclusion was put in at the request of the hospital sector to "allow improvements in quality to continue." We do know that the Ontario Hospital Association (OHA) had requested a blanket exclusion for all quality of care information in its submission last Fall on the *Broader Public Sector Accountability Act* (Bill 122). It acknowledged that an existing amendment to the *Quality of Care Information Protection Act* (QCIPA) will exempt quality of care information if it is prepared by or for quality of care committees. The OHA submission continued: "QCIPA is a useful piece of legislation. Its focus, however, is actually quite narrow. QCIPA allows for discussions and review of serious incidents involving the harm or death of a

patient, and protects those discussions from ever being used in litigation or other disciplinary proceedings."

RNAO agrees there is a need for protecting the identity of hospital staff when engaged in quality of care discussions, as the threat of disciplinary proceedings could indeed hamstring such discussions. On the other hand, it would not inspire great confidence in the hospital or the health-care system if hospitals refuse to release quality of care information for fear of litigation. This approach is very different to the one the Ontario Hospital Association and its members demonstrated when they participated in the important and popular hospital report card series, allowing many facility-level quality indicators to be released publicly. That showed bold leadership. Unfortunately, the public no longer enjoys access to this window on the hospital system, as it was terminated in 2008.

Limiting the public's access to information flies in the face of the *Broader Public Sector Accountability Act* that the government said at the time would "set the bar high" for transparency and accountability. We'd like to help hospitals get back on track to giving the public access to information it needs. Schedule 15 would take them in the wrong direction, potentially removing from public access all quality of care information. The government must consider whether there are less restrictive ways to encourage active review of quality of care, such as suppressing only that information that could serve to identify individuals. That would apply both to Schedule 15 and to the *Quality of Care Information Protection Act* (QCIPA).

The existing and proposed exclusions would also seem to be inconsistent with the stated purposes of the *Freedom of Information and Protection of Privacy Act, which are*:

> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be ***limited and specific***, (emphasis added) and
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> (iii) decisions on the disclosure of government information should be reviewed independently of government; and
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> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. F.31, s. 1.

In particular, the existing and proposed exemptions on quality of care are very broad, vaguely defined and NOT "limited and specific" as required by the Act.

RNAO acknowledges that covering hospitals under FIPPA was a significant step forward in transparency and accountability, even though that step was then qualified by simultaneous exemption of information from or for the quality of care committees. Like many others, the RNAO applauded the government at the time.

However, taking away access to the remaining quality of care information in the custody of hospitals would be a serious step backward, removing much of the gain of including hospitals under FIPPA. People legitimately want and need to know about the quality of care in their hospitals, and that is getting harder now that the Ontario hospital reports are no longer being created. Those reports were a laudable expansion of transparency and accountability, and afforded an excellent opportunity for quality improvement. Finally it should be noted that, unlike other provinces, Ontario already exempts hospitals from the purview of the Ontario Ombudsman, and this proposed amendment to FIPPA would give Ontarians even less access to the information that they require about hospitals.

RNAO believes that patients and the public have the right to know about quality of care in their hospitals. Thus, we urge the language on the exclusion be sharpened so that it only allows for exclusions in limited, justifiable circumstances. It must fall on proponents, not the public, to demonstrate why on balance the public interest is served by further exclusions.

To be clear, RNAO did not support the identically-worded amendment when originally introduced as Government Motion 48 on November 29, 2010 and we remain firm in our position of not supporting this amendment now. We strongly believe that the public has every right to know financial and quality issues in their hospitals – after all, it is the public who through their taxes foot the bill!

RNAO's Recommendations are as follows:

- That the Finance and Economic Affairs Committee reject Schedule 15 and oppose blanket exemptions of hospital health quality information and records from freedom of information requests.
- That the Finance and Economic Affairs Committee recommend that the government empower the Ontario Ombudsman to investigate individual complaints about hospitals.

Thank you again for giving us the opportunity to present the views of the Registered Nurses' Association of Ontario.