New QCIPA and hospital management regulations changes: Coming into force July 1, 2017

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On July 1, 2017, the new *Quality of Care Information Protection Act, 2016* (QCIPA 2016) will come into force. Following the recommendations of the QCIPA Review Committee, the prior legislation (QCIPA 2004) was changed in an effort to facilitate greater transparency with respect to quality of care reviews and encourage patient participation.

QCIPA was designed to encourage health care professionals to share information and have open discussions about improving the quality of health care. However, since it came into force, concerns had been raised with respect to a lack of information shared with patients and their families.

The lengthy preamble for QCIPA 2016 sets the expectations for the legislation — stating clearly that "The people of Ontario and their Government ... Believe that quality health care and patient safety is best achieved in a manner that supports openness and transparency to patients and their authorized representatives regarding patient health care"; but then balance this with "Recognize that health care providers and other staff in health facilities sometimes need to hold confidential discussions to identify and analyze errors affecting patients, systemic problems and opportunities for quality improvement in patient health care."

Noteworthy amendments include:

- Critical incidents are now defined in QCIPA 2016, and include any unintended event that occurs when a patient receives health care from a health facility that results in death, or serious disability, injury or harm to the patient, and does not result primarily from the patient's underlying medical condition or from a known risk inherent in providing the health care. This is in line with the definition of a critical incident already in the Hospital Management Regulation of the *Public Hospital's Act*.

- A 'health facility' has been expanded and redefined to include a prescribed entity that provides health care. Already, Ontario regulation 483/16 made under QCIPA 2016 on December 20, 2016 has prescribed long term care homes pursuant to the *Long-Term Care Homes Act*, 2007 and a laboratory or a specimen collection centre pursuant to the *Laboratory and Specimen Collection Centre Licensing Act* as 'health facilities' subject to QCIPA 2016.
- Information collected or prepared by a quality of care committee for the sole or primary purpose of carrying out its functions as well as discussions and deliberations of a quality of care committee in carrying out its functions remain protected by the QCIPA 2016.
- However, the definition of quality of care information specifically excludes the following information, which is not protected by the QCIPA 2016:

  1. Information contained in a patient record.

  2. Information contained in a record that is required by law to be created or to be maintained.

  3. Information relating to a patient in respect of a critical incident that describes,

  i. facts of what occurred with respect to the incident,

  ii. what the quality of care committee or health facility has identified, if anything, as the cause or causes of the incident,

  iii. the consequences of the critical incident for the patient, as they become known,

  iv. the actions taken and recommended to be taken to address the consequences of the critical incident for the patient, including any health care or treatment that is advisable, or

  v. the systemic steps, if any, that a health facility is taking or has taken in order to avoid or reduce the risk of further similar incidents.

  4. Information that consists of facts contained in a record of an incident involving the provision of health care to a patient.

  5. Information that a regulation specifies is not quality of care information and that a quality of care committee collects or prepares after the day on which that regulation comes into force.

  On Dec. 20, 2016, Ontario regulation 482/16 made under QCIPA 2016 set out that the fact that a quality of care committee met or conducted a review and when the meeting or review took place is not quality of care information. This is the same as the previous regulation under QCIPA 2004.

  Complementary amendments have also been made to the Hospital Management Regulation made under the *Public Hospitals Act* with Ontario regulation 484/16. The amendments require that, within the system for reviewing critical incidents in hospitals, a designated patient relations person must participate in each critical

incident review and a person acting on behalf of the hospital must offer to interview the affected patient, the patient's estate or the person who has authority to make decisions if the patient is incapable as part of the critical incident review.

Presently, the hospital must disclose to patients affected by critical incidents the *material facts* of what occurred with respect to the critical incident, the *consequences for the patient* of the critical incident, and the *actions taken and recommended* to be taken to address the consequences to the patient of the critical incident, including any health care or treatment that is advisable. Pursuant to the amendment to the Hospital Management Regulation, hospitals will also be required to disclose a description of the *cause(s)* of the critical incident.

The new legislation and regulations attempt to strike a balance between protecting quality of care information from disclosure in litigation while affording patients and patient families greater participation in the process and transparency with respect to the results. In order to ensure compliance with the new legislation, hospitals and other healthcare facilities should review their policies and protocols with respect to critical incidents and QCIPA.

If you have any questions regarding QCIPA and how it may impact your organization, reach out to your BLG lawyer or any of the contacts listed below.

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