

BILL 31- HEALTH INFORMATION PROTECTION ACT, 2003

Presentation to Hearings of the Standing Committee on General
Government by Minister George Smitherman,
Ministry of Health and Long-Term Care

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Good morning. It's a pleasure to be here for the first day of the public hearings for the Health Information Protection Act, Bill 31, and it's a privilege to be the first person to address this Committee on this bill.

The Standing Committee on General Government performs extremely important work, and I'm pleased to recognize my colleague Jean-Marc Lalonde, who serves as Chair of the Committee, as well as the Committee's Vice-Chair, Vic Dhillon.

I'm also very pleased to recognize all members of this Committee, from all parties. The non-partisan spirit of productivity which is evident on this Committee was, I believe, also present in the drafting of this piece of legislation.

Before I spend some time discussing the details of Bill 31, let me also take a moment to commend all others who will speak to this Committee in the coming weeks. Hearings such as this are a vital part of our democracy — and are something I take very seriously.

One of the most important aspects of these hearings is the opportunity for us — all of us — to learn. None of us have all of the answers. I certainly don't. And, over the coming days and weeks, these hearings will, I hope,

provide us with an opportunity to refine and improve this Bill. I welcome that input.

Enough of my ‘preamble.’ Let me spend a few minutes telling you about this bill; the principles which guide it and the values that shaped it.

The bill currently before this Committee is an important part of our commitment to improve and protect Ontario’s public health care system – a system which I believe is the best expression of Canadian values. This is a commitment which this government takes very seriously. And I can assure you, it’s a commitment this Minister takes very seriously.

This Bill, Bill 31, is a central part of this effort. Specifically, it is a bill to protect the privacy of the personal health information of Ontarians, while ensuring that the information is used judiciously to improve health care.

Information about our health is extremely sensitive. It’s highly personal. It’s something people have a right to be protective of. After all, it’s their information.

Ontarians deserve health care privacy legislation. And health care providers have been asking for health information privacy legislation for some time now. Health providers need clear rules about personal health information to enable them to deliver high quality health care, in every health setting and every situation.

We intend to deliver. And this bill does deliver.

Let me also give credit where credit is due. In drafting this legislation, we did not start from scratch. Much important work was done by the previous government, and many of the elements of their bill remain in this current bill.

When it comes to issues like privacy and confidentiality, I believe there's very little room for partisanship. And I'm certainly not embarrassed to say that the previous government's work was extremely valuable to us.

I also want to thank the stakeholders who gave important insights and input into the Bill.

Bill 31 would – for the first time ever in Ontario – provide broad legislative protections for the privacy, confidentiality and security of personal health information. It also provides consistent, comprehensive rules governing the collection, use, and disclosure of personal health information. It will codify, in law, many of the current practices and codes of conduct of health care providers in Ontario.

Bill 31 provides individuals with the right of access to their own health information and the right to require correction of their health records where the information is incomplete or inaccurate. And it provides for oversight and enforcement of these rights and effective remedies when these rules are contravened.

Fundamental to the proposed legislation is the guiding principle that personal health information should only be collected, used or disclosed in the most limited way necessary.

Furthermore, individual consent will be necessary for such collection, uses and disclosures, except in strictly limited circumstances.

Bill 31 contains two separate components: the Personal Health Information Act, 2003; and the Quality Of Care Information Protection Act, 2003.

Let me tell you about the first component: the Personal Health Information Protection Act, 2003.

There has long been a need for privacy protection for personal health information. Ontarians deserve to know that their health care information is secure.

With online technologies and increasing flows of information in health care, the need for clear rules for personal health information is even more critical. The patient needs to trust that the providers in their “circle of care” are protecting their personal health information and using it only in limited situations.

In this context, let me also note that the federal privacy legislation, Personal Information Protection and Electronic Documents Act, (PIPEDA), came into force on January the first of this year and deals with the transfer of personal information in the commercial private sector within the province.

But the federal legislation was developed to support and promote electronic commerce. It wasn't developed with the health system in mind.

Ontario's legislation would apply to the collection, use and disclosure of identifying personal health information by specified "health information custodians" including hospitals, physicians and other health care providers, as well as the Ministry of Health and Long-Term Care.

Our Bill allows health care providers to rely on implied consent where personal health information is needed for health care purposes. But, the patient must be knowledgeable about how this information will be used.

Individuals will have the right to expressly state when their personal health information cannot be shared within the circle of health care. This right, known as the "lock-box", was included after careful consideration of the concerns many Ontarians and our health care partners have expressed about the sharing of sensitive personal health information. Patients need to trust that they have control over the disclosure of their personal health information. Public trust is the foundation of our health privacy legislation.

We've also listened to the concerns of police about public safety. With this new legislation, a doctor could disclose personal health information about a patient to reduce or eliminate a significant risk of serious bodily harm to an individual or to the public.

Bill 31 enhances the powers of the Information and Privacy Commissioner, creating a strong oversight and enforcement mechanism

for the act.

The Commissioner will be responsible for overseeing the legislation and ensuring compliance with it. And we will ensure that the Commissioner will have the support and resources to carry out this important function.

The legislation will ensure people can have access to their own personal health information, and have the opportunity to correct it when needed.

Where the request for access or correction is refused by the custodian, Bill 31 enables the individual to complain to the Information and Privacy Commissioner.

This Bill also contains extremely tough penalties: fines of \$50,000 for individuals and \$250,000 for organizations.

Also, where the Commissioner has made an order, or where a person has been convicted of an offence under the Act, an individual who is affected by the order or offence may sue for damages. No other provincial health privacy legislation explicitly provides for this.

Another important component of health information protection is the creation of a secure health data institute. This is an organization at arm's length from government whose information practices and privacy protections have been approved by the Information and Privacy Commissioner.

Where information is required by the Ministry for health planning and management, this information would go to a secure data institute. This institute would undertake the required analysis and release it in non-identifiable form to the ministry. Minimal identifiers can be released to the Ministry in certain cases, only if the Information and Privacy Commissioner approves.

To those people concerned about government snooping through their personal data, let me say that I find this as objectionable as you do. It will not happen.

Unlike other provinces with health privacy legislation, Ontario's Bill 31 provides rules for those who receive personal health information from a physician or other custodians, such as insurers, employers and other organizations outside of health care.

These organizations are subject to restrictions on the use and disclosure of that information. And patients must provide express consent to their doctors before personal health information is provided to such organizations.

Additionally, personal health information cannot be collected, used or disclosed for fundraising or marketing purposes without a person's express consent.

Health information, as I said at the outset, is uniquely sensitive. It is also collected in circumstances of trust and vulnerability. This vulnerability, this power imbalance, should not play any role in fundraising. Of course individuals are free to indicate that they would like to receive fundraising or marketing requests or materials. Charitable giving, particularly to health care facilities, is to be commended. But it must be consensual.

Now let me turn to the Quality Of Care Information Protection Act, 2003, the second part of Bill 31.

The McGuinty government is particularly aware of the need to encourage health professionals to share information and hold open discussions that can lead to improved patient care and safety.

That's why Bill 31 has been drafted with protections for quality of care information generated by hospital committees that deal with quality improvement.

When a medical error occurs in a hospital or other health care setting, open disclosure and discussion of the facts surrounding the incident is critical. Without this, the institution will not be able to analyze the root causes or gaps that led to the incident, and health providers couldn't identify and implement changes to avoid similar problems in the future.

This legal protection for quality-of-care information is available only if the facts of a medical incident are recorded in the patient's file.

The information provided to the quality of care committee and the opinions of committee members would be shielded from disclosure in legal proceedings as well as most other disclosures outside the hospital.

In this way, we have carefully balanced the need to promote quality care with the need to ensure accountability.

So, there you have the nuts and bolts of Bill 31.

It's a strong bill. It's an effective bill. It will serve the needs of patients, as well as health-care providers giving them for the first time, clear and consistent rules for collecting, using, storing and sharing personal health information.

Once Bill 31 becomes law, Ontario will have the toughest rules and limits ever on how health information is gathered and used. Indeed, I believe we will have the gold standard in health-information protection in Canada...protection to which all Ontarians are entitled. Thank you.

But, while I'm extremely proud of this piece of legislation, I cannot stand before you and say that it is perfect.

So, let me thank you in advance for the careful scrutiny you will give to this bill in the coming days. By working together, and by listening to the people of Ontario, I'm confident that we can produce legislation that we can all be proud of, and that will serve the people of this great province well.

