

Quality of Care Information Protection Act (QCIPA): A Summary for Individuals Planning M&M Rounds

A Document for Faculty, Staff and Residents

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What is QCIPA?

QCIPA has been enacted as Schedule B to the Health Information Protection Act, 2004. It took effect as of November 1, 2004.

“The Quality of Care Information Protection Act, 2004 (QCIPA) came into force on November 1, 2004. Under the legislation, information provided to hospital quality of care committees and other designated quality of care committees that deal with quality improvement would be shielded from disclosure in legal proceedings. The legal protections for quality of care information cannot be used as a shield to prevent the disclosure to the patient of facts of any adverse medical event related to the patient. However, the protections do not apply to such facts unless they are recorded in the patient's file, which is accessible to the patient. The Act promotes the sharing of information and open discussions among health professionals, which can lead to improved patient care and safety. For example, more openness about errors can result in potential solutions to ensure they do not recur. QCIPA is a key component of the Ministry's patient safety agenda.”

Cited from Quality Of Care Information Protection Act, 2004
(http://www.health.gov.on.ca/english/providers/project/priv_legislation/quality_info.html).

Under QCIPA...

Quality of care information may not be accessed by patients or anyone else.

Quality of care information may not be disclosed except as permitted by QCIPA. Privilege protection given to quality of care information is as follows:

No person shall ask a witness and no court or other body holding a proceeding shall permit or witness in the proceeding to disclose quality of care information.

Quality of care information is not admissible in evidence in a proceeding.

This section clearly and concisely provides legislated protection to Ontario health care providers from disclosure of quality of care information. “Proceeding” has been defined very broadly to include any proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, tribunal, commission, justice of the peace, coroner, College committee, arbitrator or mediator.

Contravention of the QCIPA is a serious matter. Inquiries about requests for information in

“proceedings” should be directed to legal counsel.

What is Quality of Care Information?

Quality of care information is defined in the legislation as:

Information collected by or prepared for a quality of care committee for the sole or primary purpose of assisting the committee in carrying out its functions;

Information that relates solely or primarily to any activity that a quality of care committee carries on as part of its functions.

What Quality of Care Information is NOT

Information contained in a patient’s chart.

Information found in a record that was generated as a requirement of law.

Factual information contained in an incident report regarding the provision of health care to a patient (unless the facts are fully recorded in the patient’s health record). Example: When a fact is *not* “quality of care information:” where there is no entry in a patient’s chart that a nurse contacted a physician, but this is disclosed in a review, this is a fact that is not quality of care information, and may later be disclosed in a proceeding.

Further exceptions may be adopted in future regulations, but cannot have a retroactive effect.

What is a Quality of Care Committee?

It is a committee specifically designated as a quality of care committee by the hospital and its function is to:

Carry on activities for the purpose of studying, assessing or evaluation of health care with a view to improving or maintaining the quality of the level of skill, knowledge, and competence of the persons who provide the health.

Personal health information can be disclosed **without the patient’s consent** to a care committee for the purposes of the committee.

Regulations under QCIPA specify:

Before acting as a quality of care committee, the committee must be designated in writing as a quality of care committee for the purposes of the Act.

The terms of reference of the committee and its designation must be available on request to members of public.

QCIPA does not specifically limit a hospital to only one quality of care committee. It is therefore possible to have more than one quality of care committee provided that they meet the criteria set out in QCIPA and its regulations.

What is Protected Under QCIPA?

QCIPA protects the quality assurance/peer review process only if it is conducted by or for a hospital committee designated specifically as a quality of care committee to carry out the functions described by QCIPA. This includes information prepared by others for a quality of care committee.

QCIPA can be used to review any type of incident – not just critical ones – so they are not one in the same.

Critical incidents are defined under Reg 965 of the Public Hospitals Act. The definition is specific – death or severe injury caused by an unexpected event caused during treatment. There is lots of debate about how the definition applies to various situations (e.g. bad surgical outcomes are not necessarily “unexpected” in the eyes of some surgeons). The application of the definition drastically impacts the number of critical incidents reported. E.g. A hospital can choose to define suicides that occur while an in-patient or within 24 hours of discharge as a critical incident.

QCIPA does not protect a hospital from the reporting of critical incident as required by the PHA, but the reporting of critical incidents is to the family/patient NOT the media. There is no requirement anywhere to publicly disclose critical incidents.

What is NOT Protected Under QCIPA?

Reviews carried out by individuals or groups in hospitals which have not been properly designated as a quality of care committee or which are not acting on a referral from a quality of care committee.

Reviews by a properly designated Quality of Care Committee for some purpose other than improving/maintaining quality of care as set out by QCIPA.

Information generated in these or other situations, outside of the QCIPA framework, would be protected if it was privileged under one of the traditional categories discussed above.

What Are the Rules for Disclosure of Quality of Care Information?

Quality of care information may only be disclosed:

To management of the hospital, if the committee considers it appropriate for the purpose of improving or maintaining the quality of healthcare provided in the hospital. E.g. Where a process in the hospital was the subject of a quality of care review and was found to need improvement in some way.

If the disclosure is necessary for the purposes of eliminating or reducing a significant risk to a person or group of persons. E.g. this would permit disclosure if there are issues raised by the review about the competence of members of the hospital staff and physicians that raise a significant risk of serious bodily harm to a person or persons. Otherwise, it is an offence to disclose Quality of Care information to the patient/SDM/Family or the Coroner/regulated colleges/media/public. The following info can be disclosed to patients/SDMs:

Patient chart info, factual info, notification a quality of care review has taken place, any steps that have been taken by the hospital after a quality of care review, changes to hospital policy or practice, educational session that have been held, equipment changes

Quality of care information may also only be disclosed in other circumstance permitted by QCIPA regulations. No person shall disclose quality of care info in any other circumstances.

What Should You Know About Documentation Of Quality Care Reviews?

Reviews conducted under QCC under QCIPA:

All interviews with staff and documentation that is created in the process is privileged and confidential; it should be clearly stated that is quality of care review documents.

Only reviews (and related documents) conducted for or by the appointed Quality of Care Committee as per QCIPA are protected by QCIPA. Reviews can be delegated to occur by the QCC but the results of them have to flow back in in order to be QCIPA

protected. Eg. If the M&M rounds were struck as being a standing QCIPA committee that ultimately reported into the QCC, the created documents would be protected under QCIPA. The process would require regular reporting of the MMR review and that the QCC be involved in the dissemination of the recommendations.

Other forms of non-QCC case review (e.g. educational M&M rounds) only have the possibility of protection through a common law privilege. A common law privilege is one that is made up in the courts rather than through legislation. It is applied on a case by case basis and is not very reliable.

Advice: For non-QCIPA reviews limit the documentation produced and/or mark it clearly “confidential – for quality assurance purposes” and indicate that it is not for circulation. If the group developed recommendations, you would circulate them with the same wording.

Resources

Quality Of Care Information Protection Act, 2004. Schedule B under the Patient Health Information Act.

K.L. Taylor, “Quality Assurance Reviews, An Update: Quality of Care Information Act, 2004” (Ontario Hospital Association Conference: Hospitals and Ontario Legislation: Bill 31, Ottawa, 8 June 2004); also available at http://www.blgcanahealthlaw/healthlaw_publication.asp (last modified: 24 June 2004).

Quality of Care Information Protection Act Toolkit. September 2004. Ontario Hospital Association.

Review with K.L. Taylor (Legal, CAMH). March 2015.