HR HealthCheck

CMOH Issues New Directive #5 on PPE, And More

Date: October 7, 2020

In this edition of *HR Healthcheck*, we discuss the newly revised Directive #5 issued by Ontario's Chief Medical Officer of Health (CMOH) with respect to personal protective equipment use in public hospitals and long-term care homes. We also discuss a new regulation filed under the *Personal Health Information Protection Act* which expands administrative responsibilities under that statute. Finally, we mention Ontario's recent announcement limiting visitors to long-term care homes in Toronto, Ottawa and Peel Region.

New Directive #5 on PPE Requirements Issued by CMOH

By Sarah Eves

On October 5, 2020, the CMOH issued a revised "Directive #5 for Public Hospitals within the meaning of the *Public Hospitals Act* and Long-Term Care Homes within the meaning of the *Long-Term Care Homes Act, 2007*" (Directive). *(Editor's Note: On October 8, 2020, the CMOH issued a newly revised Directive with slight changes made to the section pertaining to Aerosol Generating Medical Procedures*.)

The current practice of providing health care workers with access to personal protective equipment (PPE) following a point-of-care risk assessment (PCRA) from a regulated health professional is set out in the Directive. However, the Directive now provides that a health care worker does not need to rely on a PCRA to obtain a fit-tested N95 or approved equivalent or better protection if involved in activities within 2 metres of a patient or resident.

Changes to the Directive from its last version (April 10, 2020) include the following (unless otherwise indicated, the changes are in *italics*):

- clarifies the persons to whom the Directive applies: *regulated health professionals under the Regulated Health Professions Act, 1991 (RHPs) and health care workers (defined as "any other individual employed by or in public hospitals and long-term care homes")*
- where a shortage of PPE will occur, the government and employers must now *communicate PPE supply levels* and, as was previously the case, develop a contingency plan in consultation with applicable unions to ensure the safety of RHPs and health care workers
- where an RHP determines, based on their professional and clinical judgment, and *proximity to the patient or resident*, that an N-95 respirator may be required in the delivery of care *or services (including interactions)* to the patient or resident, the public hospital or long-term care must provide the applicable RHP and health care worker *present for that patient or resident interaction* with a fit-tested N95 respirator or approved equivalent or better protection
- *in cases where a COVID-19 outbreak has been declared, a health care worker who comes into contact with a suspected, probable or confirmed case of COVID-19 in a patient or resident and a 2 metre distance cannot be maintained, the health care worker can determine if a fit-tested N95 or approved equivalent or better protection is needed and they must receive this additional precaution*
- In long-term care homes:
    - all staff must wear surgical/procedure masks at all times, whether or not there is an outbreak in the home (*no longer applies to essential visitors*)
    - staff may remove their surgical/procedure mask *when not in contact with residents or in resident areas during their breaks* but must remain 2 metres away from other staff to prevent staff-to-staff transmission of COVID-19
    - *visitors to the home should use a face covering if the visit is outdoors; where the visit is inside, a*

surgical/procedure mask must be worn at all times

- all RHPs and health care workers who *interact* with suspected, *probable* or confirmed COVID-19 patients or residents where a *2 metre distance cannot be maintained* must be provided access to appropriate PPE
- *users should refer to the updated Technical Brief "Updated IPAC Recommendations for Use of Personal Protective Equipment for Care of Individuals with Suspect or Confirmed COVID-19" dated July 27th, 2020.*

The Directive prevails over any earlier versions.

(Editor's Note: On October 8, 2020, the CMOH published a Q & A with respect to the revised Directive #5.)

New Regulation Expands Administrative Responsibilities under the PHIPA

By Matin Fazelpour

Health Information Custodians under the *Personal Health Information Protection Act* (PHIPA) should be aware that the government of Ontario has filed a new regulation that expands administrative responsibilities under the PHIPA. The new responsibilities take effect on the same yet to be determined day that subsection 1(11) of Schedule 1 of the *Health Information Protection Act, 2016* comes into force.

The regulation includes changes to the reporting requirements of all Health Information Custodians (HICs), reporting requirements to the Office of the Information and Privacy Commissioner (IPC), as well as new administrative requirements for Ontario Health and Coroners who access personal health information from an Electronic Health Record (EHR).

The existing requirements for HICs to notify the IPC of contraventions of PHIPA is amended by requiring HICs to report breaches "at the first reasonable opportunity," which creates an onus on HICs to report PHIPA breaches shortly after becoming aware of the contravention. The new regulation also introduces a requirement that HICs report unauthorized accesses of personal health information in an EHR as part of their annual report to the IPC and articulates the information that must be included in a mandatory breach notification to individuals for statutory violations relating to personal health information obtained from an EHR.

This regulation also requires Ontario Health to establish practices and procedures to manage the application of consent directives to personal health information in an EHR. The provisions introduced by this regulation state that

Where an individual makes a consent directive, it applies to all of the individual's personal health information that is accessible by means of the electronic health record, unless it is reasonably possible for the prescribed organization to apply the consent directive only to the specific personal health information that has been identified by the individual, in which case the consent directive applies only to that personal health information.

As such, when this regulation takes effect, HICs ought to ascertain whether a consent directive applies to information in an EHR so as to avoid contravening PHIPA rules for the collection, use and disclosure of personal health information.

Finally, this regulation introduces rules for Coroners who need to access personal health information in an EHR to carry out their duties. When the regulation takes effect, Coroners will be subject to the PHIPA rules relating to the collection, use, retention and disclosure of personal health information obtained from an EHR and imposes the PHIPA mandatory breach reporting obligations for contraventions of those rules.

Province Limits Visitors to Long-Term Care Homes in Toronto, Peel Region and Ottawa

By Sarah Eves

On October 5, 2020, the Ontario government announced additional measures to be taken at long-term care homes to protect residents and staff.

Effective October 7, 2020, only essential visitors (including up to one caregiver per resident) will be allowed in long-term care homes in Toronto, Ottawa and Peel Region. General visitors will not be permitted to visit.

The listed areas may change depending on whether higher community spread exists.

Should you have any questions about any of the articles in this update, please contact the author or your regular Hicks Morley lawyer.