

Ontario introduces legislation to overhaul health care – lays foundation for health “Super Agency”

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On February 26, 2019 the Ontario government introduced Bill 74, *An Act concerning the provision of health care, continuing Ontario Health and making consequential and related amendments and repeals*. Short titled “*The People’s Health Care Act, 2019*”, the legislation is intended to improve Ontario’s health care services by integrating service providers and coordinating the delivery and accessibility of health services. The most salient features of the proposed legislation relate to the creation of the new health agency, Ontario Health, and the broad authority of the Minister of Health and Long-Term Care (the “Minister”) to “integrate” health service providers.

If passed, Bill 74 will implement the *Connecting Care Act, 2019*. The *Connecting Care Act* will authorize the Minister of Health and Long-Term Care to create Ontario Health. Dubbed by the media as the new “Super Agency”, Ontario Health is afforded a broad mandate in the proposed legislation. This mandate includes:

- implementing health system strategies developed by the Ministry;
- managing health service needs across Ontario through:
 - health system operational management and co-ordination;
 - health system performance measurement and management, evaluation, monitoring, and reporting;
 - health system quality improvement;
 - clinical and quality standards development for patient care and safety;
 - knowledge dissemination;
 - patient engagement and patient relations;
 - digital health, information technology and data management services;
 - support of health care practitioner recruitment and retention.
- supporting or providing supply chain management services to health service providers and related organizations; and
- promoting health service integration to enable appropriate, co-ordinated and effective health service delivery.

Ontario Health will be authorized to provide funding to Integrated Care Delivery Systems (ICDS) and Health Service Providers (HSP). HSPs include hospitals; psychiatric facilities; long-term care homes; not for profit entities that operate community health centres, community mental health and addiction centres, family health teams, nurse practitioner-led clinics, and Aboriginal health access centres; primary care nursing services, maternal care or inter-professional primary care programs and services; palliative care services; physiotherapy services; independent health facilities; and any other person or entity or class of persons or entities that is prescribed.

Under the legislation, the Minister may designate a person or entity, or a group of persons or entities, as an ICDS - provided the person or entity, or groups of persons or entities, have the ability to deliver, in an integrated and coordinated manner, at least three of the following types of services:

- hospital services;
- primary care services;
- mental health or addictions services;
- home care or community services;
- long-term care home services;
- palliative care services;
- any other prescribed health care service or non-health service that supports the provision of health care services.

Ontario Health would be composed of a board of directors, not to exceed 15, appointed by the Lieutenant Governor in Council. The board will appoint and employ a chief executive officer who will be responsible for the affairs of Ontario Health subject to the board's oversight.

Proposed Bill 74 would give the Minister the ability to make orders to transfer to Ontario Health the assets, liabilities and employees of various specified organizations, including the 14 Local Health Integration Networks. Similar powers would be provided to both the Minister and Ontario Health to do various things to "integrate" health service providers that receive funding from Ontario Health.

Ontario Health, and each HSP and ICDS must separately and in conjunction with each other identify opportunities to integrate the services of the health system to provide appropriate, co-ordinated, effective and efficient services.

Where an integration is considered to be in the interest of the public, the Minister may order one or more HSP or ICDS to integrate. Such integration could require a health service provider to do almost anything in terms of its operations, including to transfer its services to another entity, to cease providing services, or to amalgamate with another service provider. The proposed legislation also permits health service providers to themselves integrate with other health service providers.

The Minister will be required to provide at least 30 days' notice before issuing an order. Any person may make written submissions about a proposed order to the Minister not later than 30 days after the Minister posts the notice. The Minister may issue an integration order if at least 30 days have passed since the Minister gave notice and the Minister has considered any written submissions.

Application of the *Public Sector Labour Relations Transition Act, 1997*

The proposed legislation is clear that the *Public Sector Labour Relations Transition Act, 1997* (“PSLRTA”) applies to most of the various integrations contemplated in the Bill. Specifically, PSLRTA will apply in the following situations:

- the transfer of all or part of a service of a person or entity under a facilitation decision of the Agency or a required integration order of the Minister;
- the transfer of all or substantially all of the operations of a health service provider or integrated care delivery system under a facilitation decision of the Agency or a required integration order of the Minister;
- the amalgamation of two or more persons or entities under a facilitation decision of the Agency or under a required integration order of the Minister.

For the purposes of the PSLRTA, the changeover date would be the effective date of the integration; the predecessor employer would be the transferor of services or operations; while the successor employer would be the recipient of those services or operations. In the case of an amalgamation of service providers, the predecessor employers are the amalgamated entities with the successor employer being the entity that exists after the amalgamation.

Proposed Bill 74 provides the Minister with the authority to issue directives to Ontario Health, to provide it with funding, and to require plans, reports, financial statements etc. as the Minister may require. Ontario Health, in turn is authorized to provide funding to various health service providers and to negotiate “service accountability agreements” with any entity that it provides funding to. The proposed legislation states that these agreements are to be negotiated and agreed upon by the agency and the service provider. However, in the event that agreement is not reached, there is a deemed acceptance provision which would operate to impose the terms and conditions set by Ontario Health. The agency would also have the authority to conduct financial audits and operational reviews of any entity that it funds, as well as to require the provision of various types of financial information and reports.

Proposed Bill 74 would also provide Ontario Health with the ability to appoint investigators to investigate and report on the quality of management and care of a health service provider that receives funding from Ontario Health. The proposed legislation affords such investigators broad powers to require production of various types of records while service providers are required to cooperate and provide assistance to investigators. Any reports prepared by an investigator are to be made public.

If passed into law, Bill 74 would also provide the Minister with authority to appoint a person as a supervisor of a health service provider if the Minister considers it in the public interest to do so. This authority would not extend to licensees under the *Long-Term Care Homes Act, 2007* or to a hospital within the meaning of the *Public Hospitals Act*. In the case of the latter, Bill 74 does permit the Lieutenant Governor in Council to appoint a supervisor to a hospital on the recommendation of the Minister. Supervisors appointed under Bill 74 would be afforded the exclusive right to exercise

all of the powers of the health service provider or those of its officers and board in the case of a corporate service provider.

In various press releases accompanying proposed Bill 74, the government has also discussed the use of “Ontario Health Teams” to promote more integrated service delivery at the patient level. Although there are few details at this point, the underlying idea is that hospitals, primary care givers, community and home care organizations will work more closely together to provide a more seamless delivery of a variety of health services. This more coordinated approach will be facilitated by the expansion of digital tools such as on-line consultations, and more accessible electronic health records.

In our view

While Bill 74 provides few details in terms of the exact nature of the integrations which will occur after it is enacted, what is clear is that the labour relations consequences will be significant. The merger of various unionized and non-union entities into Health Service Providers will require reconfigurations of bargaining units and consolidations of collective agreements. The resulting changes to the labour relations frameworks will parallel the experience of hospital mergers in the 1990’s. As noted above, Bill 74 was recently introduced and therefore could be changed as it passes through the various readings. We will keep Focus readers updated as further detail becomes available.

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