Ontario Reintroduces Patients First Act, 2016 With Important Changes

October 13, 2016

On October 6, 2016, the Ontario Legislature reintroduced the Patients First Act, 2016 as Bill 41. Bill 41 is very similar to its predecessor, Bill 210, which was introduced in June 2016, but makes some important changes to the previous bill.

If passed, the Patients First Act, 2016 will significantly expand the role of Local Health Integration Networks ("LHINs") and the Minister of Health and Long-Term Care ("Minister") in the delivery of health care services in Ontario. Most notably, the Act will:

- Expand the definition of "health service provider" ("HSP") under the *Local Health System Integration Act, 2006*, bringing a variety of additional entities under the LHIN framework;
- Expand LHINs' role with health and social services, physician services and public health, and its ability to provide funding to an HSP outside its geographic area;
- Create a new process for the negotiation and imposition of service accountability agreements;
- Authorize the LHIN to issue operational and policy directives to HSPs (excluding long-term care homes and public hospitals) and the Minister to issue operational and policy directives to HSPs, including hospitals;
- Transfer Community Care Access Corporations' ("CCAC") operations to the LHINs;
- Authorize the Minister to appoint investigators to investigate a LHIN and to appoint a supervisor for the LHIN where appropriate; and
- Authorize a LHIN to appoint investigators to investigate and report on the quality of the management and/or care and treatment provided by a HSP, and to appoint a supervisor of the HSP where appropriate.

Following the initial introduction of Bill 210, the government consulted with stakeholders. Bill 41 addresses a number of issues raised during these consultations, including: clarification of the application of certain provisions, additional notice requirements where the Ministry or a LHIN intends to take certain actions, additional opportunities to raise and resolve issues during the negotiation of service accountability agreements and express protection to religious freedoms. The most significant changes are detailed below.

Definition of a "health service provider"

Bill 210 expanded the definition of “health service provider” under the *Local Health* System Integration Act, 2006 to include non-profit family health teams, nurse-practitioner-led clinics, Aboriginal health access centres, primary and palliative care programs and physiotherapy clinics. For clarity, the definition of HSP in Bill 41 specifically excludes a service provider within the meaning of the *Home Care and* Community Services Act, 1994 that provides a community service purchased by a LHIN (at present, these service providers provide community services pursuant to agreements with CCACs).

Operational and policy directives

Bill 210 proposed that the Minister or a LHIN may issue operational or policy directives to a HSP where it considers it to be in the public interest to do so. What is considered to be relevant to the public interest determination is broad.

Bill 41 adds a requirement for the LHIN to give notice of a "draft directive" to the Minister as well as each HSP to which the directive is intended to be issued.

It is important to note that long-term care homes, public hospitals and the University of Ottawa Heart Institute are exempt from the provision that enables the LHINs to issue directives to HSPs; *only the Minister may issue an operational or policy directive to such entities*.

Bill 41 also clarifies that a directive, whether issued by the Minister or by a LHIN, shall not infringe on the constitutionally-protected religious freedoms of any HSP that is a religious organization.

Negotiation of service accountability agreements with LHINs

Bill 210 proposed to change the process for the negotiation and imposition of service accountability agreements between LHINs and HSPs, including steps to be followed where an agreement or amendment to an agreement cannot be successfully negotiated. Bill 41 includes new opportunities to raise and resolve unsettled issues where the parties reach an impasse, some of which are mandatory and include stated timelines.

Importantly, Bill 41 encourages LHINs and HSPs to continue to agree to the terms and conditions of any agreement or amendment *at any stage* in the process.

Bill 41 continues to enable the LHIN to trigger the process at any time (beginning or mid-year).

Voluntary integration, notice requirements

With respect to the voluntary integration of a HSP that receives funding from a LHIN and any other entity, the Local Health System Integration Act, 2006 requires the HSP to give

60 days' notice of the proposed integration to the LHIN. Bill 41 would permit the LHIN to request additional information from the HSP regarding the proposed integration, which the HSP is required to provide within 30 days. If additional information is requested, the time limit for the LHIN to act on the integration may be extended. Whereas Bill 210 proposed a 90-day extension, not subject to any express limit in terms of the number of extensions available to the LHIN; Bill 41 proposes to extend the time limit only once, by an additional 60 days.

Appointment of Investigators and Supervisors

Bill 210 included amendments to permit a LHIN to appoint one or more investigators to investigate and report on the quality of management or the quality of care and treatment by a HSP or any other matter relating to a HSP where the LHIN considers it to be in the public interest to do so.

Bill 210 also proposed to permit a LHIN to appoint a supervisor in respect of a HSP where it is appropriate and in the public interest to do so. Hospitals were covered by the new LHIN power to appoint an investigator, but exempt from the LHIN's power to appoint a supervisor under Bill 210. The same powers to appoint investigators and supervisors continue under Bill 41; however, the notice requirements have changed. Whereas Bill 210 only required a LHIN to give notice to a HSP of its intent to appoint a *supervisor*, Bill 41 adds a requirement for the LHIN to give notice of its intention to appoint an *investigator* to the HSP as well as the Minister.

Transfer of CCAC assets, etc. to LHIN, immunity from liability

Bill 210 proposed the transfer of CCAC operations to LHINs; the plan for transfer continues under Bill 41. In connection with a claim arising from a transfer of assets, operations, employees, etc. of a CCAC to a LHIN, Bill 210 contained an exemption from liability for a LHIN, its directors, officers and employees arising from the transfer. Bill 41 would expand the exemption from liability to CCACs, its directors, officers and employees.

Information and reports

Bill 210 proposed that the Lieutenant Governor in Council may make regulations "requiring" prescribed persons and entities to provide information and reports to a LHIN about certain practices of the HSP for "planning, performance management and any other duties of a network". The language of Bill 41 is less forceful: the Lieutenant Governor in Council may make regulations "respecting the provision of information" from prescribed persons and entities (which may include HSPs and others, such as physicians) in order to "support collaboration" within the health care system, and to support planning of primary care services to "ensure timely access and improve patient outcomes".

Implications for Health Sector Organizations

Bill 41 remains in the initial stages of development, although a number of significant changes have been made since its first introduction to address stakeholder input. It is clear that the Ontario government remains committed to health sector reform, including increased oversight of HSPs and the development of enhanced accountability mechanisms across the province's publicly-funded health care system.

If you have any questions, please contact the authors.

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