Ministry Focuses on Transparency in the Ontario Health Care Sector

December 15, 2017

Undisclosed benefits in the health care sector are the focus of the new *Health Sector Payment Transparency Act* (the "Act").On December 12, 2017, the Act received Royal Assent but has not yet been proclaimed in force. The full scope of application of the Act is not yet known as the accompanying regulations, which will prescribe key details, have not been released. The Act is Schedule 4 of omnibus Bill 160,*Strengthening Quality and Accountability for Patients Act, 2017.*For an overview of the proposed amendments to health care legislation under Bill 160, read our previous bulletin.

Purpose of the Act

This Act requires the reporting of information about financial relationships that exist within Ontario's health care system — including within health care research and education — to enable the collection, analysis and publication of that information by the Minister of Health and Long-Term Care ("Minister") and others, in order to:

- strengthen transparency and patient trust in health care providers and the health care system,
- enable patients to make informed decisions about their health care, and
- promote health system research and evaluation, planning and policy analysis.

The Act is the first of its kind in Canada, and is similar to the U.S.' *Physician Payments Sunshine Act*.

Key Players

The Act requires a "payor" to report to the Minister, information on a "transfer of value" provided to a "recipient", whether directly or indirectly through an intermediary. Intermediaries and affiliates may also be required to make reports, if requested by the Minister.

- "Payor" means a manufacturer, fabricator, wholesaler, distributor, importer or broker of a drug, medical device or other prescribed product used in the health care system, a marketing firm or person who markets or promotes such a medical product, a person who organizes continuing education events for

members of a health profession on behalf of a manufacturer of such a medical product, and other prescribed persons and entities.
- "Transfer of value" means a transfer of value of any kind, including a payment, benefit, gift, advantage, perquisite or any other prescribed benefit.
- "Recipient" will be defined in the regulations and will likely include physicians, pharmacists and other health professionals.

The reporting requirement will not apply to:

- a transfer of value falling below a monetary threshold, or
- to other exceptions,

as set out in the regulations.

Reporting Requirements

Where the requirement applies, the payor must report:

- the names and business addresses of the parties to the transaction;
- in the case of an intermediary or affiliate, the source of the transfer of value;
- the date and dollar value of the transfer of value;
- a description of the transfer of value, including the reasons for it; and
- any other prescribed information.

The reporting must take place at the time and in the manner to be provided in the regulations.

Publication

The Minister must analyze the information in the reports received for the purposes of health system research and evaluation, planning and policy analysis. The Minister must also publish the information collected, which may include personal information, on a website at least once per calendar year.

Inspection Authority

The Act provides the Minister with the power to require additional information from payors and recipients to supplement the report provided. The Act also provides the Minister with broad inspection powers, including the power to enter a premises without a warrant, if there is a reasonable belief that a record relating to the transfer of value is located there, demand the production of a record, examine and make copies of it, remove it for the purpose of making a copy, question any person, and audit the accounts and financial transactions of a payor and a recipient. An inspector may only enter a dwelling with consent.

Penalties

Significant monetary penalties are prescribed for non-compliance, which, depending on the number of previous offences, range from $10,000 to $25,000 for individuals, and $50,000 to $100,000 for corporations for each day or part of a day on which the offence

occurs or continues. A due diligence defence is available where a person took all reasonable steps to prevent the contravention, or at the time of the contravention, had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

Recommendations

Before providing or accepting a benefit in relation to health care, potential "payors" and "recipients" should ensure that they comply with the requirements of the Act. It is important that all potential parties, including intermediaries and affiliates, keep up to date with regulatory changes to understand the full scope of the Act.

By

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