

## HEALTH LAW GROUP BULLETIN

January 2004

### AN AMBITIOUS FUTURE FOR ONTARIO HEALTH CARE

#### **BILL 8: COMMITMENT TO THE FUTURE OF MEDICARE ACT**

Cost and access are commonly identified as major impediments to the provision of health care services in Ontario. On November 27, 2003, the Ontario government initiated a campaign to overcome these obstacles by strengthening prohibitions against two-tier medicine and enhancing accountability in the health sector. Bill 8, entitled *Commitment to the Future of Medicare Act* (the “Bill”), is the first step towards achieving this goal. This bulletin describes the Bill and provides an overview of its potential impact on hospitals and other health service providers.

Bill 8 consists of five discrete parts. Part I establishes the Ontario Health Quality Council (the “Council”). This nine to twelve member panel, which may not include an active hospital board member or senior hospital staff, is mandated to support continuous quality improvement. The Council will monitor and report to the public and to the Minister of Health and Long-Term Care (the “Minister”) on matters related to: access to publicly funded health services; health human resources in publicly funded health services; the status of health care consumers and Ontarians in general; and health system outcomes. While the Council may report on a broad range of issues, and can recommend areas to monitor and report on in future years, it may not make substantive recommendations to the Minister.

Part II of the Bill addresses accessibility of health services. It prohibits hospitals and other health service providers from accepting payment for any service currently insured under the Ontario *Health Insurance Act* unless such a payment is permitted by this Act. Charging patients block or annual fees for services such as telephone prescription renewals and physician letters will no longer be allowed, except as provided for in the regulations. Acceptance of an unauthorized payment is an offence under the Bill and carries a fine of up to \$50,000 for the first offence and up to \$200,000 for subsequent offences to any offending corporation – including hospitals. The Bill also introduces fines and a prison term of up to twelve months for individual offenders.

An important thrust of the Bill is enhancing accountability for hospitals and health service providers. Part III is designed to enhance accountability by creating new, and somewhat onerous, obligations for health service providers. In particular, the Bill creates a mandatory requirement for “health resource providers”, including hospitals and community care access centres, to enter into accountability agreements with the Minister. These agreements are intended to establish performance goals and objectives related to quality and accessibility of services, value for money and consistency, and to set out reporting requirements and time frames for achieving the goals of each participant.

Part III also empowers the Minister to issue compliance directives. The Minister may order health resource providers to either take, or refrain from taking, a specific “action”. Based on the current language of the Bill it is unclear what an “action” may encompass. Similarly, the Minister may order compliance with a provision of an accountability agreement.

Although Part III references a requirement to comply with regulations under the legislation, no such regulations have been drafted to date.

Part IV amends the *Health Insurance Act* to bring it into compliance with the Bill, and Part V repeals the *Health Care Accessibility Act*, as Part II substantively replaces it.

The Minister's ability to direct hospitals to take certain actions is not new. For example, Section 6 of the *Public Hospitals Act* empowers the Minister to direct hospitals on specific issues, including ceasing to operate as a public hospital, the provision of services and amalgamation. Bill 8, however, grants the Minister the power to direct hospitals on a broader range of matters and imposes sanctions for failing to enter into, or comply with the terms of, an accountability agreement, or failing to comply with a directive. Specifically, the Bill allows the Minister to order one or more "prescribed measures", which will eventually be found in the regulations. These may include:

- ordering a hospital that employs or has a service contract with an offender to reduce the compensation or benefits provided to the offender according to the terms of an order,
- reducing, varying or discontinuing funding to a hospital, and
- varying any term of any agreement or contract between the Crown and a hospital.

While the exact scheme for implementation and enforcement cannot be determined at this stage, it is interesting that the provisions create a relatively broad scope for the Minister to regulate with discretion. The Bill's stated purpose is to continue to support the prohibition of two-tier medicine, extra billing and user fees in accordance with the *Canada Health Act*.

With Bill 8 on the legislative horizon, Ontario policy makers are no doubt carefully watching the progress of the *Jacques Chaoulli* case originating in Quebec, which is to be heard at the Supreme Court of Canada this Spring. This case champions the ability of Quebec residents to forego public health insurance in favour of a private plan. If successful, physicians and other health service providers may be permitted to accept payment for services currently covered by Quebec's provincial health insurance program. Although unsuccessful at the Quebec Superior Court and Court of Appeal, the Supreme Court will hear arguments on whether prohibiting private health insurance and medical services in hospitals by physicians not participating in the provincial insurance scheme violates a physician's right to life, liberty and security of the person. Ontario policy makers will have to consider the Supreme Court's decision in this matter. In the event that the Quebec legislation is found to violate individual rights, Bill 8 and the Ontario *Health Insurance Act* may need to be revisited.

The Justice and Social Policy Committee will soon examine Bill 8, and stakeholders such as the Ontario Medical Association and the Ontario Hospital Association may have the opportunity to offer input into the further development of the legislation. The second reading of the Bill is anticipated in early spring. Until the draft is in final form it is difficult to predict the precise impact of Bill 8 on hospitals and other health service providers. The Bill is broadly worded, but its aims are clearly and openly ambitious. Regulations, once drafted, may provide better guidance, but until then health service providers should be aware of the potential obligations the Bill creates and begin to prepare for the future.

The health law group at McMillan Binch LLP frequently advises hospitals and other health service providers on regulatory matters such as those arising from Bill 8. Our extensive specialized knowledge and experience in the health care industry, combined with our progressive approach and responsible business practices, ensures that we provide cost-effective legal services that meet the needs and exceed the expectations of our clients. If you have any concerns with how Bill 8 may impact you do not hesitate to contact us.

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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