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Ontario introduces Bill 74: The People's Health Care Act

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Authors: Michael Watts, Susan Newell, Marty Putyra

The Ontario government introduced Bill 74: *The People's Health Care Act*, 2019 (the Bill) [1] on February 26, 2019.

The Bill will create the legislative framework for the Ontario government to achieve its objective of creating a new model for a patient-centric integrated public health care delivery system.

To accomplish its objective, the Bill creates a new health agency, Ontario Health, and provides Ontario Health and the Minister of Health and Long-Term Care (Minister) the legislative authority to issue "**integration decisions**" to "**health service providers,**" "**integrated care delivery systems,**" persons and entities to "**integrate**" for the purposes of creating or forming an "integrated care delivery system" or to support the provision of a more cost effective and integrated health care system. The Bill also creates a legislative obligation on Ontario Health and each health service provider and integrated care delivery system to 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. [2]

The Bill also provides the Minister with the ability to issue an order to the Ministry's key health agencies, including the local health integration networks (LHINs), Cancer Care Ontario, eHealth Ontario and Ontario Health Quality Council to dissolve and transfer all or part of their assets, liabilities, rights, obligations and employees to Ontario Health, a health service provider or an integrated care delivery system.

New powers of integration for Ontario Health and the Minister

The Bill provides Ontario Health and the Minister broad powers to "integrate the health system." "**Integrate**" is defined as:

1. to co-ordinate services and interactions between different persons and entities,
2. to partner with another person or entity in providing services or in operating,
3. to transfer, merge or amalgamate services, operations, persons or entities,
4. to start or cease providing services, and
5. to cease to operate or to dissolve or wind up the operations of a person or entity.

This is a key definition, as we will highlight below, because Ontario Health has the legislative authority to make "**integration decisions.**"

We have set out the definitions that are highlighted above. The important distinction, as compared to the existing *Local Health System Integration Act,* 2006 (the LHIN Act)[3], is that the

definition of "**health service provider**" includes independent health facilities and Ontario Health's integration powers are much broader than the LHINs' powers.

"**Health service provider**" means the following persons and entities:

1. A hospital within the meaning of the *Public Hospitals Act* or the *Private Hospitals Act*,
2. A psychiatric facility within the meaning of the *Mental Health Act* except if the facility is,
    1. a correctional institution operated or maintained by a member of the Executive Council, other than the Minister, or
    2. a prison or penitentiary operated or maintained by the Government of Canada,
3. The University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa,
4. A licensee within the meaning of the *Long-Term Care Homes Act*, 2007, other than a municipality or board of management described in paragraph (e),
5. A municipality or board of management that maintains a long-term care home under Part VIII of the *Long-Term Care Homes Act*, 2007,
6. A person or entity approved under the *Home Care and Community Services Act*, 1994 to provide community services,
7. A not-for-profit entity that:
    1. operates a community health centre,
    2. provides community mental health and addiction services,
    3. operates a family health team,
    4. operates a nurse practitioner-led clinic,
    5. operates an Aboriginal health access centre, or
    6. provides palliative care services, including a hospice,
8. A person or entity that provides primary care nursing services, maternal care or inter-professional primary care programs and services,
9. A person or entity that provides physiotherapy services in a clinic setting that is not otherwise a health service provider,
10. An independent health facility, and
11. Any other person or entity or class of persons or entities that is prescribed.

An "**integrated care delivery system**" is a group of persons or entities designated as such by the Minister, with the ability to deliver at least three of the following services:

1. hospital services,
2. primary care services,
3. mental health or addictions services,
4. home care or community services,
5. long-term care home services,
6. palliative care services, and
7. any other prescribed health care service or non-health service that supports the provision of health care services.

The term "**integration decisions**" includes both "**facilitation decisions**" and "**integration orders**" described below.

As noted above, Ontario Health may "**integrate**" the health system indirectly by providing or

changing funding to a health service provider or integrated care delivery system. Alternatively, Ontario Health may "**integrate**" the health system directly by issuing a "**facilitation decision**" when Ontario Health facilitates or negotiates:

1. the integration of persons or entities where at least one of the persons or entities is a health service provider or an integrated care delivery system; or
2. the integration of services between health service providers or integrated care delivery systems or between a health service provider or integrated care delivery system and a person or entity that is neither a health service provider nor an integrated care delivery system but which supports the provision of health care and the parties reach an agreement with respect to that integration.[4]

The Minister meanwhile, if in the public interest to do so, is able issue an "**integration order**" which requires one or more health service providers or integrated care delivery systems that receive funding from Ontario Health to do anything to integrate the health system including any of the following:

1. *to provide all or part of a service or to cease to provide all or part of a service;*
2. *to provide a service to a certain level, quantity or extent;*
3. *to transfer all or part of a service from one location to another;*
4. *to transfer all or part of a service to or to receive all or part of a service from another person or entity;*
5. to cease operating, to dissolve or to wind up its operations;
6. to amalgamate with one or more persons or entities that receive funding from Ontario Health under section 21 of the proposed *Connecting Care Act*[5];
7. to co-ordinate services with or partner with another person or entity that receives funding from Ontario Health under section 21 of the proposed *Connecting Care Act*;
8. to transfer all or substantially all of its operations to one or more persons or entities.
9. *to carry out another type of integration of services that is prescribed;* and
10. to do anything or refrain from doing anything necessary for them to achieve anything under any of paragraphs 1 to 9, including to transfer property to or to receive property from another person or entity in respect of the services or operations affected by the decision.[6]

Under the LHIN Act, LHINs were afforded the ability to issue decisions in respect of enumerated items 1 – 4 and 9 above and to do or refrain from doing anything necessary to achieve the foregoing[7] and the Minister was afforded the ability to issue decisions in respect of enumerated items 5, 6 and 8 above and to do or refrain from doing anything necessary to achieve the foregoing.[8]

Any person or entity that is a party to an "**integration decision**" (which, as noted above, includes both a "**facilitation decision**" and an "**integration order**") must comply with it. As currently proposed, the Bill appears to effectively give Ontario Health, via funding authority and the ability to issue a "**facilitation decision**", expansive powers to cause integration which would result in a very similar effect to an "**integration order**" issued by the Minister. It is unclear whether this is an intended consequence of the Bill, given that there are a variety of restrictions that are imposed on the Minister when making an "**integration order**" which are not imposed on Ontario Health when making a "**facilitation decision.**"

Minister ability to "transfer"

The Bill also provides the Minister with the ability to make a "**transfer order**" impacting the following organizations:

1. Cancer Care Ontario;
2. eHealth Ontario;
3. HealthForceOntario Marketing and Recruitment Agency;
4. Health Shared Services Ontario;
5. Ontario Health Quality Council;
6. Trillium Gift of Life Network;
7. Any local health integration network; and
8. Any other prescribed organization that receives funding from the Ministry or Ontario Health and that provides programs or services that are consistent with the objects of Ontario Health.[9]

A "**transfer order**" may include:

1. transferring all or part of the assets, liabilities, rights and obligations, including, for greater certainty, any rights or obligations under a funding agreement or accountability agreement of an organization listed above to Ontario Health, a health service provider or an integrated care delivery system; and
2. transferring all or some of the employees of an organization listed above to Ontario Health, a health service provider or an integrated care delivery system.[10]

While it is anticipated that Ontario Health will subsume the organizations referred to above, the Bill gives the Minister the ability to transfer assets, liabilities, rights, obligations and employees to health service providers or integrated care delivery systems as well as Ontario Health.

The Bill also provides the Minister with the ability to issue an order dissolving any of the organizations listed above.

These provisions are similar to the provisions of Bill 210, *Patient First Act*, 2016, which led to the dissolution of all of the community care access corporations and the transfer of the assets and employees of community care access corporations to the respective LHINs.

Amendments to the *Ministry of Health and Long-Term Care Act*

The Bill also proposes amendments to the *Ministry of Health and Long-Term Care Act* that would provide for an Indigenous health council to advise the Minister of Health and Long-Term Care about health and service delivery issues related to Indigenous peoples. In addition, a French language health services advisory council would be established to advise on issues related to francophone communities.[11] This is in line with a stated objective of the Bill to acknowledge that the public health system should recognize the diversity within all of Ontario's communities and respect the requirements of the *French Language Services Act* in serving Ontario's French-speaking community and recognize the role of Indigenous peoples in the planning, design, delivery and evaluation of health services in their communities.[12]

Next steps

In our view, the foreseeable future will be very similar to the voluntary hospital restructuring that took place in the early 90s prior to the formation of the Health Services Restructuring Commission.

We recommend that health service providers should be proactive in identifying opportunities to create and participate in the formation of integrated care delivery systems, especially given that the Bill specifically contemplates that health service providers have an obligation to identify opportunities to integrate. In the Health Services Restructuring Commission era, the Courts identified that hospitals should view directions from the perspective of a well-intentioned hospital and we expect there is a similar obligation on health service providers to identify opportunities for integration and to co-operate with Ontario Health, the Ministry and other persons in identifying such opportunities.

Information regarding Osler's experience in respect of health care restructuring can be found here: "Osler: Your partner to navigating Ontario's health care system restructuring."

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[1] Bill 74, *An Act concerning the provision of health care, continuing Ontario Health and making consequential and related amendments and repeals*, 1st Sess, 42 Leg, Ontario, 2019. [*Bill 74*]

[2] *Bill 74*, *supra* note 1 at section 30.

[3] *Local Health System Integration Act*, 2006, S.O. 2006, c. 4. [LHIN Act]

[4] *Bill 74*, *supra* note 1 at section 31 – 32.

[5] Section 21 of the proposed *Connecting Care Act* provides that Ontario Health provide funding to a health service provider, integrated care delivery system in respect of health services that the provider or system provides.

[6] *Bill 74*, *supra* note 1 at section 33(1).

[7] *LHIN Act*, *supra* note 3 at section 26(1).

[8] *LHIN Act*, *supra* note 3 at section 28(1).

[9] *Bill 74*, *supra* note 1 at section 40(1) and (2).

[10] *Bill 74*, *supra* note 1 at section 40(1).

[11] *Bill 74*, *supra* note 1 at section 1.

[12] *Bill 74*, *supra* note 1.