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Ontario's Bill 210: A Sweeping Expansion of LHIN Powers over Health Service Providers

JULY 28, 2016 4 MIN READ

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Ontario's Bill 210, the *Patients First Act, 2016* passed first reading on June 2, 2016 and, if enacted as drafted, will significantly expand the powers of local health integration networks (LHINs) over "health service providers" in two important ways (and among other things):

- by mandating LHINs to identify and plan for their local health system's needs regarding "physician resources," and
- by empowering LHINs to manage physician resources through Service Accountability Agreements (SAAs) that they will be able to unilaterally impose on "health service providers", as agents of the Minister of Health and Long-Term Care.

This has broad implications for physicians and practitioners who are compensated through alternative funding agreements (AFAs) on a basis other than fee-for-service billings to OHIP, which under a variety of current models may cover or include:

- Family health teams and community health centres,
- Specific communities and under-serviced specialties,
- Individual departments in a single hospital,
- Entire services of all physicians at a single hospital,
- Services of all full-time specialists at an academic health science centre,
- Province-wide gynaecology oncology, radiation oncology and medical oncology services,
- Emergency services in hospitals, specialist services in the north and agreements with specialists and subspecialists associated with academic health science centres,
- Regional trauma hospitals to ensure the 24-hour availability of high-level care for patients with serious trauma (Trauma Team Leader global funding agreements),
- Academic Health Science Centres, for clinical services, education and research, or
- Services such as psychiatry, the Regional Surgical Network, neurosurgery/neurology and anaesthesia in northern regions.

(Source: Health Force Ontario).

This also has broad implications for hospitals where AFAs may be in place in addition to hospital-SAAs or "H-SAAs", because it appears that there will be overlapping responsibility under the *Local Health System Integration Act, 2006* (LHSIA) and the *Public Hospitals Act* for oversight and management of hospital resources and utilization, particularly in emergency departments.

The "Patients First" discussion paper released by the Ministry of Health and Long-Term Care in June 2016 forecasted that "LHINs would take on responsibility for primary care planning and performance improvement, *in partnership with local clinical leaders*" and that the Ministry would give LHINs "additional responsibility for health system planning *of physician resources*".

Bill 210 amends the *Health Insurance Act* to allow the Minister to appoint a LHIN as its agent for the purpose of carrying out any function, obligation or right under any SAA or AFA, provided the Minister gives notice of the appointment to the other parties to the arrangement. The LHIN will have all rights and obligations of the Minister "despite any provision of such arrangements."

Bill 210 also empowers LHINs to direct that providers that receive funding from them (a) engage or permit an auditor to audit their accounts and financial transactions, and (b) engage in or permit an operational review or peer review of their activities. This is in addition to the existing powers of LHINs to require such providers to provide "plans, reports, financial statements and other information" required to carry out the duties and responsibilities under the LHSIA.

The scope of information that could be requested is wide. Bill 210 empowers the Lieutenant Governor in Council (the Premier) to make regulations under the LHSIA requiring "prescribed persons and entities" to provide information and reports to a LHIN about the following:

1. physician resource issues such as *opening and closing of practices, transitions and changes to practices, retirements from practices and change of location of practices*, and
2. physician practices in the local health system such as *policies for accepting and discharging patients, practice profiles, practice wait-times, and practice coverage for after-hours services, vacations, leaves and other absences*.

The LHINs' funding powers under Bill 210 will also allow them to fund providers for services provided in or for their own LHIN *or another LHIN*. Providers will be required to enter into SAAs with the LHIN, the terms of which, failing good faith negotiations, may be "set" by the LHIN on notice to the provider and the Minister. It appears in this regard that all AFAs howsoever termed (AFP, APP, RNGPA, HOCC Funding, etc.) will effectively become SAAs under Bill 210.

Finally, LHINs are granted the power under Bill 210 to appoint investigators or supervisors over providers that have entered into SAAs (but these powers do not apply to long-term care homes or, in the case of supervisors, to hospitals). The only "check" on these powers are the overriding powers granted to the Minister under Bill 210 to issue binding directives to LHINs or appoint investigators or supervisors over LHINs.

This article originally appeared in Hospital News.