

Regulated Health Professionals are Open for Business

April 20, 2020

Introduction

Ontario is under a state of emergency in response to the COVID-19 pandemic. Can regulated health professionals provide services remotely during the state of emergency? Our answer is yes. But we understand there is some confusion in the sector about this issue. The purpose of this bulletin is to clarify the issue and provide some guidance to regulators of health professionals whose members are providing services remotely during the emergency.

Conclusion

A regulated health professional's place of business may stay open for urgent care and these businesses may also operate online, by telephone or through other remote means during the state of emergency.

Discussion

On April 14, the Ontario Government extended a Declaration of Emergency under the *Emergency Management and Civil Protection Act* (the "Act") for 28 more days (until May 12, 2020). During the state of emergency, the government will be able to enforce emergency orders that it makes under the Act. You can find the list of emergency orders [here](#) (by clicking "Regulations under this Act").

The relevant order is O. Reg. 82/20 (the "Order"). You can find it [here](#). The current version of the Order requires places of businesses that are not set out in Schedule 2 of the Order to close as of 11:59 p.m. on Saturday, April 4, 2020. There are some exceptions to closure.

One of those exceptions is contained in subsection 1 (3) of the Order, which states that businesses that are not set out in Schedule 2 of the Order may operate remotely without attending at the place of business, for the purpose of providing services online, by telephone or other remote means. These businesses may also provide goods by mail or other forms of delivery or make goods available for pick-up.

The closing requirement and the ability to operate remotely relates to businesses that are **not** set out in Schedule 2. Let's look at Schedule 2, and specifically paragraph 38. It provides that the following is an essential business.

Regulated health professionals (urgent care only) including dentists, optometrists, chiropractic services, ophthalmologists, physical and occupational therapists and podiatrists.

This might cause some confusion. One could say that regulated health professional businesses are set out in Schedule 2 and that this would mean that they don't 'qualify' for the remote work exception under subsection 1 (3) of the Order. In other words, because

regulated health professionals are set out in Schedule 2, they cannot provide care through remote means.

We don't see it this way. Schedule 2 qualifies "regulated health professionals" by the words "(urgent care only)". We read this to mean that regulated health professionals who are **not** providing urgent care are **not** set out in Schedule 2. The result is that they do come under the subsection 1 (3) exception and may operate remotely.

It is also worthwhile to note that the Order relates to the closure of **places** of business. The Order does not stop a business set out in Schedule 2 (or any other business) from operating by remote means. The place of a health professional business (a clinic or office) may remain open for urgent care. But the business may also provide non-urgent (and urgent) care by remote means that do not involve attendance at the office or clinic.

There are some contextual facts that strongly support our interpretation. One is that the Ontario Minister of Health made an order under the *Health Insurance Act* for temporary OHIP billing codes for patient assessments and counselling by telephone or video. It makes little sense to introduce new billing codes if the intent of the Order was to prevent a physician or other regulated health professional from providing the service.

But most importantly we believe the government has no intent to prevent health professionals from providing services remotely during the COVID-19 pandemic. These professionals play a critical role in maintaining health and well-being during the public health crisis. Telehealth and remote services allow isolated patients and clients to connect safely with their care providers, without the risk of spreading the virus. It also helps to prevent patients getting to a point where urgent or emergency care or hospitalization is needed. This protects communities and supports sheltering in place. The [news release](#) accompanying the Order stated that "teleworking, online commerce and other innovative ways of working remotely are permitted at all times and are strongly encouraged for all businesses". We believe this applies to regulated health care professionals and their businesses.

For more information please feel free to reach out to a member of our [Regulated Professions and Industries](#) practice group.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035