

Bill 160: Major Initiatives of the Ministry of Health and Long-term Care

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On September 27, 2017, the Ontario Government introduced for first reading Bill 160, *Strengthening Quality and Accountability for Patients Act, 2017*, one of the most far-reaching omnibus bills introduced by the Minister of Health and Long-Term Care. Debate on the Bill commenced on October 4, 2017. If passed, Bill 160 will amend six statutes, enact two new statutes (the *Health Sector Payment Transparency Act, 2017* and *Oversight of Health Facilities and Devices Act, 2017*), repeal and replace one statute (*Medical Radiation and Imaging Technology Act, 2017*) and repeal four statutes (*Independent Health Facilities Act*, *Healing Arts Radiation Protection Act*, the *Private Hospitals Act* and the *Ontario Mental Health Foundation Act*).

The purpose of this article is to provide the highlights of certain schedules of Bill 160; namely, the *Oversight of Health Facilities and Devices Act, 2017*, the *Medical Radiation and Imaging Technology Act, 2017* and the amendments to the *Retirement Homes Act, 2010* and the *Long-Term Care Homes Act, 2007*.

In a separate bulletin, we will provide the highlights of the *Health Sector Payment Transparency Act, 2017*, which would require the pharmaceutical and medical device industries to disclose payments made to health care professionals, health care organizations and other recipients.

1. *Oversight of Health Facilities and Devices Act, 2017*

The *Oversight of Health Facilities and Devices Act, 2017* (OHFDA) will, if passed, establish a single legislative framework for:

- energy applying and detecting medical devices (EADMDs) (e.g. conventional X-rays, CTs and fluoroscopy, MRIs, ultrasounds, nuclear or molecular imaging devices), and
- community health facilities (including independent health facilities (IHF) and other non-hospital medical clinics).

The impetus for the OHFDA is two reports from Health Quality Ontario which recommended the creation of new legislation:

- for non-hospital clinics, to consolidate IHFs and out-of-hospital premises under one regulatory model, and
- for the *Healing Arts Radiation Protection Act* (HARP Act) to be replaced with new legislation which would expand the current scope of regulated devices beyond only x-ray machines to all existing and emerging EADMDs.¹

The OHFDA creates the legislative framework to govern community health facilities (CHFs) and EADMDs under the oversight of an Executive Officer appointed by Cabinet. It sets out a licensing process for CHFs and EADMDs.

It provides for inspections to be carried out by inspectors appointed by inspecting bodies and by the Executive Officer.² The OHFDA also requires every CHF to have a complaints process to receive and respond to complaints from patients and service providers, and

an incident review process and a disclosure of information process related to such incidents. There is authority to make regulations to set out the requirements for both the complaints and incident review processes. These requirements may include informing patients of the need to make a complaint to the relevant health regulatory College if the complaint is about a regulated health professional.

The OHFDA also has an enforcement structure, including compliance orders, cessation orders and administrative monetary penalties.

Much of the legislative framework will only be known once regulations are made. However, it is important to note a few of the definitions and prohibitions set out in the OHFDA.

(a) Community Health Facilities

“Community health facility” is defined as

- place or a collection of places where one or more services prescribed in regulations made by the Minister are provided, and includes any part of such a place, and
- a place or collection of places prescribed in regulations made by the Minister.

It should be noted that the OHFDA prohibits the operation of a CHF without a licence, subject to certain exceptions, and prohibits a person holding themselves out as operating a CHF if the CHF does not have a licence, subject to certain exceptions.

It is difficult to tell from the definition of “community health facility” what premises will be covered under the OHFDA since that depends on Minister’s regulations. It is expected that IHFs, birth centres and out-of-hospital physicians’ offices, where certain types of procedures are performed, will be covered. But will dental offices, for example, be covered?

(b) Energy Applying and Detecting Medical Devices

As indicated above, an energy applying and detecting medical device includes conventional X-rays, CTs, fluoroscopy, MRIs, ultrasounds, and nuclear or molecular imaging devices. Currently, the *HARP Act* governs the use of x-ray machines and, among other things, stipulates that only certain regulated health professionals are authorized to order the use of ionizing radiation on a human being and only certain regulated health professionals are authorized to operate an x-ray machine.

Ionizing radiation is a hazardous substance. It is important that patients not have more exposure to radiation than is medically necessary. Therefore, it is appropriate that only regulated health professionals with the appropriate knowledge, skill and judgment have the authority to order x-ray procedures so that a patient does not undergo procedures using ionizing radiation if they are not medically necessary. Similarly, it is important that x-ray machines only be operated by regulated health professionals who are competent to do so. Otherwise, patients are at risk of serious harm from unsafe or unnecessary exposure to radiation.

The OHFDA prohibits:

- the operation of an EADMD except under the authority of a licence that has been issued with respect to the device, and
- the operation of an EADMD except in accordance with the Act and the regulations and in accordance with the terms and conditions of the licence for the device.

There do not appear to be any restrictions set out in the OHFDA regarding the authority to order x-ray procedures. This appears to be

a feature of the HARP Act (the purpose of which is to protect the public of Ontario) that is not being carried forward into the OHEDA. It is unclear why this is the case.

2. *Medical Radiation and Imaging Technology Act, 2017*

The Medical Radiation and Imaging Technology Act, 2017 (MRITA) repeals and replaces the *Medical Radiation Technology Act, 1991*.

The College of Medical Radiation Technologists of Ontario (CMRTO) currently governs the practice of medical radiation technologists in Ontario in accordance with the *Medical Radiation Technology Act, 1991*.³ The profession of medical radiation technology includes four specialties – radiography, radiation therapy, nuclear medicine and magnetic resonance. These are the regulated health professionals who perform medical imaging procedures (such as x-rays, MRIs and nuclear medicine procedures) and perform radiation therapy and nuclear medicine procedures to treat cancer.

The government has directed the CMRTO to regulate diagnostic medical sonographers as part of the CMRTO. Diagnostic medical sonographers are those practitioners who perform ultrasound procedures for diagnostic purposes. They are not currently a regulated health profession in Ontario. Currently anyone can perform an ultrasound procedure provided there is an order from a physician or certain other regulated health professionals for certain procedures and other conditions are met. This direction from the government is currently being implemented through proposed regulatory changes by the CMRTO and the government.

In addition to these proposed regulatory changes, the MRITA, if enacted, will change the name of the CMRTO to the College of Medical Radiation and Imaging Technologists of Ontario and will describe the scope of practice of medical radiation and imaging technology as the “use of ionizing radiation, electromagnetism, soundwaves and other prescribed forms of energy for the purposes of diagnostic or therapeutic procedures, the evaluation of images and data relating to the procedures and the assessment of an individual before, during and after the procedures”. The MRITA will restrict the use of the title “diagnostic medical sonographer” to members of the new College of Medical Radiation and Imaging Technologists of Ontario. This will mean that no person, other than a member of the new College, will be permitted to use that title or hold themselves out as qualified to practise in the specialty of diagnostic medical sonography. The Health Professions Regulatory Advisory Council recommended to the government that these changes be made.

3. *Amendments to the Retirement Homes Act, 2010 and Long-Term Care Homes Act, 2007*

Bill 160 amends the *Long-Term Care Homes Act, 2007* (LTCHA) and the *Retirement Homes Act, 2010* (RHA). The LTCHA governs long-term care homes. These homes receive government funding and are subject to government regulation. A person must also meet eligibility requirements for admission. The RHA governs retirement homes. These type of homes do not receive government funding, and do not have eligibility requirements for admission. Retirement homes are regulated by Retirement Homes Regulatory Authority (Authority), which is independent of government. In both cases, Bill 160 bolsters enforcement powers of the regulator and revises the existing frameworks for admitting residents to secure units, and for caring for residents in such units.

What is likely of interest to regulators are the changes to enforcement powers in both the LTCHA and RHA. With respect to the LTCHA, the Director who oversees the regulation of long-term care homes will have the power to suspend a licence, in addition to the current power to revoke a licence. The Minister of Health and Long-Term Care will also have the power to suspend a licence, and to issue operational and policy directives to homes. A major change relating to enforcement and long-term care homes is that the Director and inspectors will have the power to issue administrative penalties (fines) of up to \$100,000.00. The process for determining the amount of the penalty will be set out in regulation. In contrast, the maximum fine under the RHA is \$10,000.00.

In the context of retirement homes, the Authority will have more powers to deal with unlicensed homes. Changes to the RHA will allow inspectors to enter an unlicensed retirement home to ensure compliance with a Registrar’s order to cease to operate. Inspectors

may also enter the home if they suspect there may be harm to residents resulting from a home's failure to obtain a licence or comply with the RHA. In addition, the Registrar may apply to the Superior Court of Justice for an order directing a person to comply with the RHA or a Registrar order.

An interesting amendment to the RHA relates to confidentiality and information sharing. Bill 160 introduces a new exception to the RHA's confidentiality provision. The Authority will have the ability to disclose information to a person that administers or enforces another Act (for example, a health regulatory College). The disclosure must be to aid that person in an inspection, investigation or enforcement. The information must relate to compliance with the RHA or a serious incident relating to a home.

Those who follow trends in regulatory accountability will be interested to learn that Bill 160 amends the RHA to make the Authority subject to the Auditor General. Other changes to government oversight of the Authority include the power of the responsible Minister to require governance or financial reviews of the Authority, and public access to compensation information relating to the Authority.

4. Conclusion

This article is not intended to be a full description of Bill 160. There may be amendments to Bill 160 through the legislative process of the Ontario legislature. The full impact of the Bill will not be known until the Cabinet or the Minister makes regulations. One thing, however, is certain. This Bill includes significant changes for the health care system as a whole, health care professionals and health regulatory Colleges.

For More Information or Inquiries

For more information or inquiries, please contact Debbie Tarshis at dtarshis@weirfoulds.com.

[1]The OHFDA will repeal the *Independent Health Facilities Act*, the *Healing Arts Radiation Protection Act* and the *Private Hospitals Act*.

[2]It is expected that the inspecting bodies will be the College of Physicians and Surgeons of Ontario (CPSO) with respect to premises that are currently licensed by IHFs, the College of Midwives of Ontario with respect to birth centres and the CPSO with respect to out of-hospital premises where a physician performs procedures involving certain types of anaesthesia or sedation.

[3]Medical radiation technology is one of the 28 health professions regulated under the *Regulated Health Professions Act, 1991* and a health profession Act (the *Medical Radiation Technology Act, 1991*).

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.

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