FTR Now

Ontario Introduces New Healthcare Accountability Legislation for Hospitals

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On May 3, 2010, the Ontario government introduced Bill 46, the *Excellent Care for All Act, 2010* (the "Act"). The Act would, if passed, make healthcare providers and executives accountable for improving patient care and enhancing the patient experience. Although aimed at the hospital sector specifically, the government has indicated that following an assessment of its impact, these requirements may be extended to other health sectors as well. In this *FTR Now*, we provide an overview of this important new draft legislation.

QUALITY COMMITTEE

The Act would require a healthcare organization to establish and maintain a quality committee and to prepare annual quality improvement plans (discussed below). The quality committee would be responsible for the following:

- monitoring and reporting to the board of directors on quality issues and on the overall quality of services provided in the healthcare organization;
- considering and making recommendations to the board of directors regarding quality improvement initiatives and policies;
- ensuring that best practices information is translated into materials that are distributed to employees and persons providing services within the healthcare organization, and to subsequently monitor the use of these materials by these people;
- overseeing the preparation of annual quality improvement plans; and
- carrying out any other responsibilities provided for in the regulations.

SURVEYS

The Act would require surveys to be conducted, at least annually, of persons who received services in the last 12 months and their caregivers to collect information about satisfaction with the services provided. In addition, the Act would require that employees of the organization be surveyed to assess employment satisfaction and to solicit their views about the quality of care provided by the organization.

PATIENT RELATIONS PROCESS AND PATIENT DECLARATION OF VALUES

The Act would require healthcare organizations to have in place a patient relations process to address patient, client and caregiver relations. The patient relations process would reflect the organization's patient declaration of values. The Act would require a healthcare organization to hold public consultations on a draft patient declaration of values within six months of becoming subject to the Act, and to finalize the patient declaration of values within 12 months of becoming subject to the Act. The Act would require that both the patient relations process and patient declaration of values be made available to the public. The healthcare organization would be free to amend the patient declaration of values after its public consultation, however, every amendment must be available to the public.

ANNUAL QUALITY IMPROVEMENT PLAN

The Act would require healthcare organizations to develop a quality improvement plan for each fiscal year and make the

quality improvement plan available to the public. The quality improvement plan must be developed having regard to the following factors:

- the results of the surveys;
- data relating to patient relations process;
- in the case of public hospitals, the aggregated critical incident data and information concerning indicators of the quality of healthcare provided by the Hospital, as disclosed pursuant to the *Public Hospitals Act*; and
- any other factors provided for in regulations.

The quality improvement plan must contain annual performance improvement targets and the justification for those targets, information concerning the manner and extent to which healthcare organization executive compensation is linked to the achievement of those targets and anything else provided for in the regulations. The local health integration network can request that the healthcare organization provide it with a draft quality improvement plan for review before it is made available to the public.

PERFORMANCE BASED COMPENSATION

The Act would require healthcare organizations to ensure the payment of compensation for any executive of the organization, which is defined as the Chief Executive Officer or anyone who holds a position equivalent to Chief Executive Officer regardless of the title, members of the healthcare organization's administrative and clinical executive staff that are provided for in the regulations, and any other person provided for in the regulation, under a compensation plan is linked to the achievement of the performance improvement target set out in the annual quality improvement plan. The Act would prevail over the provisions of the compensation plan, if there is a conflict between the two. Every healthcare organization is required to provide reports to the Minister confirming compliance of the compensation plan with the provisions of the Act.

The Act also provides that the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* ("PSCRPPSA") would apply to the compensation plans of executives during the period specified in that Act (you will recall that the PSCRPPSA froze the compensation of certain public sector employees until March 2012). Where the compensation plan is subject to the PSCRPPSA, the Act would require that, where a portion of the executive compensation is based on performance, in conducting a performance assessment, the achievement of performance improvement targets set out in the annual quality improvement plan be a factor that is considered.

The Act also provides that where an executive's compensation plan which is subject to the PSCRPPSA does not provide for payments based on an assessment of performance, the organization must modify the executive compensation plan so that the payment of a portion of the executive compensation under the plan is made contingent on the achievement of the performance improvement targets set out in the annual quality improvement plan. The resulting compensation must not exceed what was available to the executive on March 24, 2010.

ONTARIO HEALTH QUALITY COUNCIL

The Act would extend the mandate of the Ontario Health Quality Council. Currently, the Ontario Health Quality Council's mandate is to monitor and report to Ontarians on access to publicly funded health services, health human resources in publicly funded health services, consumer and population health status and health systems outcomes, and to support continuous quality improvement.

The proposed legislation would expand the above mandate to include providing recommendations to the health system on clinical practice guidelines and protocols and providing recommendations, in consultation with the public, to the Minister concerning the Government of Ontario's provision of funding for healthcare services and medical devices. The Minister is not required to act on the Council's recommendations.

OFFENCES

The Act provides for penalties for those who contravene the Act or its regulations. Every person who contravenes the Act would be liable, upon conviction, to a fine not exceeding $10,000 in the case of an individual and a fine not exceeding $25,000 in the case of the corporation.

CONCLUSION

Bill 46 is presently being debated at Second Reading.

As outlined above, the Act imposes significant new measures aimed at increasing accountability in the healthcare sector. For more information about what these changes could mean for your organization, please contact Aida Gatfield at 519.931.5605 or your regular Hicks Morley lawyer.

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