

FTR Now

Ontario Announces Significant Health Care Reform

Date: February 28, 2019

On February 26, 2019 the Ontario government tabled Bill 74, [*The People's Health Care Act, 2019*](#) which includes the introduction of the *Connecting Care Act, 2019*. If passed, the legislation will allow for the creation of a central agency, Ontario Health, to oversee the health care system across the province, as well as the creation of integrated care delivery systems. In this *FTR Now* we provide an overview of the proposed legislation, with an emphasis on the labour and employment implications for health service providers.

Connecting Care Act, 2019

Ontario Health

If passed, Bill 74 would enact the *Connecting Care Act, 2019* (Act). The Act would authorize the Minister of Health and Long-Term Care (Minister) to create Ontario Health, a corporation without share capital, that would be responsible for managing health services across the province. It would also be responsible for supporting or providing supply chain management services to health service providers and implementing and promoting the integration of health services.

Ontario Health would have the authority to provide funding to Integrated Care Delivery Systems (ICDS) and Health Service Providers (HSPs). HSPs are defined to include: hospitals; long-term care homes; psychiatric facilities; not-for-profit entities that operate community health centres, community mental health and addiction services, family health teams, nurse practitioner-led clinics, Aboriginal health access centres or palliative care services; primary care nursing services; maternal care or inter-professional primary care programs and services; physiotherapy clinics; independent health facilities; and other persons or entities as prescribed. HSPs and ICDS would be required to enter service accountability agreements with Ontario Health.

The government has announced its intention to dissolve and amalgamate the Local Health Integration Networks, along with several other organizations such as Cancer Care Ontario and eHealth Ontario, into Ontario Health. In order to facilitate this, the Minister would have the authority to dissolve these organizations and/or to transfer all or part of the assets, liabilities, rights and obligations from these organizations to Ontario Health. The transfers may also include transferring some or all of the employees from these organizations to Ontario Health.

The Act specifically stipulates that any such transfer would be deemed not to constitute a breach or termination of any agreement, including an employment agreement or collective agreement. If employees are transferred to Ontario Health, their employment would be deemed to continue for all purposes under the same terms and conditions and such transfers are deemed not to constitute a 'change in control'.

The Act would also give Ontario Health the authority to appoint one or more investigators to investigate or report on an HSP or ICDS (except for long-term care homes and hospitals) with respect to the quality of the management of an HSP or ICDS, the quality of the care and treatment of persons by an HSP or ICDS, or any other matter relating to an HSP or ICDS. Investigators would have broad powers to enter and inspect premises without a warrant, to obtain, review or copy documents, and to interview employees. They would be required to prepare written reports of their findings, which would be made publicly available. The Minister would have the authority to appoint a supervisor to exercise all powers of an HSP or ICDS (except with respect to long-term care homes and hospitals) when the Minister considers it in the public system to do so. The Lieutenant Governor in Council, on the advice of the Minister, would have the authority to appoint a supervisor for a long-term

care home or hospital.

Integrated Care Delivery Systems

A key component of the proposed legislation is the creation of ICDS. An ICDS may be designated by the Minister, provided the person or entity, or groups of persons or entities, have the ability to deliver, in an integrated and coordinated manner, at least three of the following types of services:

- Hospital services
- Primary care services
- Mental health or addiction services
- Home care or community services
- Long-term care home services
- Palliative care services
- Any other prescribed health care service or non-health service that supports the provision of health care services.

Ontario Health, along with every HSP and ICDS, must separately and in conjunction with those entities, identify opportunities to integrate services to provide appropriate, coordinated, effective and efficient services. Integrations can occur in three ways:

1. An integration facilitated or negotiated by Ontario Health
2. An integration by the HSPs or ICDS themselves, or
3. An integration required by the Minister.

Further, Ontario Health would have the authority to integrate the health system by providing or changing funding to an HSP or ICDS.

Where the integration is considered to be in the public interest, the Minister may order one or more HSPs or ICDS to integrate, which would include any or all of the following:

- To provide all or part of a service or to cease to provide all or part of a service
- To provide a service to a certain level, quantity or extent
- To transfer all or part of a service from one location to another
- To transfer all or part of a service to, or to receive all or part of a service from, another person or entity
- To cease operating, to dissolve or to wind up its operations
- To amalgamate with one or more persons or entities that receive funding from Ontario Health
- To coordinate services or partner with another person or entity that receives funding from Ontario Health
- To transfer all or substantially all of its operations to one or more persons or entities
- To do anything or refrain from doing anything necessary to achieve the above, 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.

The Minister would be required to provide 30 days' notice of any proposed order and any person may make written submissions about the proposed order in the 30 days following posting of the notice. The Minister may issue an integration order provided 30 days have passed since the notice was posted and any written submissions have been considered.

Application of *Public Sector Labour Relations Transition Act, 1997*

Similar to current provisions in the *Local Health System Integration Act, 2006* (LHSIA), and subject to the exceptions listed below, the provisions of the *Public Sector Labour Relations Transition Act, 1997* (PSLRTA) would apply in the following circumstances:

- The transfer of all or part of a service of a person or entity under a facilitation decision of Ontario Health or a required integration order of the Minister
- The transfer of all or substantially all of the operations of an HSP or an ICDS under a facilitation decision or required integration order
- The amalgamation of two or more persons or entities under a facilitation decision or required integration order.

Also, an HSP, or an ICDS, would have authority to integrate its services with those of another person or entity, subject to a 90-day notice requirement to the Minister if the integration relates to services that are funded, in whole or in part, by Ontario Health. In such a case, and if the Minister considers it in the public interest to do so, the Minister would have authority to issue a decision ordering the HSP or the ICDS to not proceed with the integration or with part of the integration. Integrations initiated by an HSP or an ICDS would be subject to PSLRTA, in accordance with the terms of PSLRTA.

Only certain limited provisions of PSLRTA would apply where a successor employer under a facilitation decision or required integration order is not an HSP or an ICDS, or if the primary function of the successor employer is not the provision of services within or to the health services sector.

Parties affected by a facilitation decision or a required integration order may still apply to the Ontario Labour Relations Board (OLRB) for a determination that PSLRTA does not apply, upon the OLRB's consideration of the following factors currently provided for in PSLRTA, and such other matters as it considers relevant:

- The scope of agreements under which services, programs or functions are or will be shared by employers subject to the health services integration
- The extent to which employers subject to the health services integration have rationalized or will rationalize the provision of services, programs or functions
- The extent to which programs, services or functions have been or will be transferred among employers subject to the health services integration
- The extent of labour relations problems that have resulted or could result from the health services integration.

The OLRB would be granted authority to make interim orders with respect to PSLRTA proceedings under the Act.

Similar to the current provisions of the LHSIA, the Act would permit successor employers and bargaining agents affected by a facilitation decision or required integration order to reach an agreement that PSLRTA does not apply.

Other Statutes Affected

1. LHSIA

Bill 74 would repeal the *LHSIA* and its regulations in phases, to be proclaimed at different dates.

2. *Broader Public Sector Accountability Act, 2010* (BPSAA)

Bill 74 would amend various provisions of the BPSAA in phases – initially to add Ontario Health as being an organization subject to the Act, and subsequently to delete references to local health integration networks (presumably if they are ultimately dissolved).

3. *Ministry of Health and Long-term Care Act*

Bill 74 would require the Ministry of Health and Long-term Care to establish an Indigenous health council and a French language health services advisory council.

4. Miscellaneous



Bill 74 would make consequential amendments to a number of other statutes, including the *Excellent Care for All Act, 2010*, *Home Care and Community Services Act, 1994*, *Long-Term Care Homes Act, 2007*, *Personal Health Information Protection Act, 2004*, and *Employment Standards Act, 2000*, among others.

Next Steps

Bill 74 was introduced and passed first reading on February 26, 2019.

We will continue to monitor the progress of the Bill and will report back on any notable changes or developments.

Should you have any questions or require further information, please contact Sarah Eves at 416-864-7254, Stephanie Jeronimo at 416-864-7350 or [your regular Hicks Morley lawyer](#).

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