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# Bill 160

**An Act to amend, repeal and enact various Acts  
in the interest of strengthening quality and accountability for patients**

**The Hon. E. Hoskins**

Minister of Health and Long-Term Care

## Government Bill

1st Reading      September 27, 2017

2nd Reading      October 26, 2017

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on General Government  
and as reported to the Legislative Assembly December 7, 2017)*

*(The provisions in this Bill will be renumbered after 3rd Reading)*





This reprint of the Bill is marked to indicate the changes that were made in Committee.  
The changes are indicated by underlines for new text and a ~~strikethrough~~ for deleted text.

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## EXPLANATORY NOTE

### **SCHEDULE 1 AMBULANCE ACT**

Amendments are made to the *Ambulance Act* in respect of directives by the Minister, the appointment of Directors, the powers of inspectors and investigators, who may make disclosures to whom, who can hold themselves as a paramedic and rules regarding fees. Other amendments are made to definitions and regulation-making authority.

### **SCHEDULE 2 EXCELLENT CARE FOR ALL ACT, 2010**

The *Excellent Care for All Act, 2010* is amended to,

- (a) allow the Ontario Health Quality Council (the “Council”) to lease office space reasonably necessary for its purposes without the need to obtain Lieutenant Governor in Council approval;
- (b) permit the Council to collect, use and disclose personal health information for purposes to be prescribed by regulation in accordance with any conditions, restrictions or requirements that may also be prescribed; and
- (c) create an exemption from the application of the *Freedom of Information and Protection of Privacy Act* for records in the custody or control of the Council that were prepared or obtained by the patient ombudsman in the course of conducting an investigation within the meaning of section 13.3 of the *Excellent Care for All Act, 2010*.

### **SCHEDULE 3 HEALTH PROTECTION AND PROMOTION ACT**

The Schedule amends the *Health Protection and Promotion Act*. The principal amendments include:

1. Replacing the term “guideline” with “public health standard” and the term “reportable disease” with “disease of public health significance”.
2. Adding the Ontario Agency for Health Protection and Promotion as a recipient of reports regarding diseases and events.
3. Extending the dismissal notice and attendant rights of medical officers of health to associate medical officers of health.
4. Removing approval requirements for an acting medical officer of health appointed by a board of health.
5. Providing that the Minister may, in certain circumstances and subject to limitations, issue orders relating to new or emerging diseases and provisions related to such orders.
6. Amending matters subject to Lieutenant Governor in Council and Minister regulations.
7. Removing transition provisions.
8. Adding prohibitions respecting tattoos and jewellery of the eye.

### **SCHEDULE 4 HEALTH SECTOR PAYMENT TRANSPARENCY ACT, 2017**

The Schedule enacts the *Health Sector Payment Transparency Act, 2017*.

The purpose of the Act, as set out in section 1, is to require the reporting of information about financial relationships that exist within Ontario’s health care system, including within health care research and education, and to enable the collection, analysis and publication of that information in order to, among other things, strengthen transparency. The Act requires that certain transactions be reported to the Minister who shall analyse and publish the information. The Act establishes a framework for inspections and other compliance mechanisms. The Act provides for periodic review by the Minister.

### **SCHEDULE 5 LONG-TERM CARE HOMES ACT, 2007**

A number of Acts related to long-term care homes are amended.

#### ***Long-Term Care Homes Act, 2007***

A number of amendments are made to this Act. Some of them are set out below.

The provisions of the Act dealing with “secure units” are repealed. Instead, a system is enacted to deal with both the restraining and confining of residents.

A system of administrative penalties is provided for.

The Director is given the power to suspend a licence, in addition to the existing power to revoke one. Provisions are also added permitting the Minister to suspend a licence, and to make operational and policy directives in respect of long-term care homes.

[The powers of certain boards of management to borrow for operating and capital costs are expanded.](#)

Courts are given additional authority in making probation orders in prosecutions under the Act. The Crown is given the ability to require a trial to be conducted by a judge rather than a justice of the peace.

A number of amendments of a technical nature are made, as well as amendments respecting the French version of the Act.

#### ***Health Care Consent Act, 1996***

This Act is amended to provide for rules with respect to confining in a care facility, including rules for who may give consent to confining on behalf of an incapable person, and respecting reviews by the Consent and Capacity Board.

Related amendments are made to the *Personal Health Information Protection Act, 2004* and the *Substitute Decisions Act, 1992*.

### **SCHEDULE 6 MEDICAL RADIATION AND IMAGING TECHNOLOGY ACT, 2017**

The *Medical Radiation Technology Act, 1991* is repealed and replaced.

The *Medical Radiation and Imaging Technology Act, 2017* governs the practice of medical radiation and imaging technology, which is defined 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 College to govern the profession and its Council are provided for, as are restricted titles.

### **SCHEDULE 7 ONTARIO DRUG BENEFIT ACT**

The *Ontario Drug Benefit Act (ODBA)* is amended to specify that regulations are not required in order for the Minister and the executive officer to disclose personal information.

Clause 23 (3) (b) of the ODBA is repealed and replaced to make a change relating to establishing reimbursement criteria for certain drug benefits listed on the Ontario Drug Benefit Formulary. Currently, section 23 of the ODBA indicates that the reimbursement criteria for these benefits could include a requirement that the use of a drug be prescribed by a physician or member of a class of physicians specified by the executive officer. The amendment provides that the executive officer may establish reimbursement criteria relating to any prescriber or class of prescribers, and not only physicians.

### **SCHEDULE 8 ONTARIO MENTAL HEALTH FOUNDATION ACT**

The *Ontario Mental Health Foundation Act* is repealed. Consequential amendments are made to other Acts.

### **SCHEDULE 9 OVERSIGHT OF HEALTH FACILITIES AND DEVICES ACT, 2017**

A regulatory system is established for community health facilities and energy applying and detecting medical devices.

The position of executive officer for community health facilities and energy applying and detecting medical devices is created and the functions and responsibilities of the executive officer are provided for.

Provision is made for inspecting bodies to carry out functions with respect to community health facilities.

A wide range of enforcement tools, including compliance orders, cessation orders and administrative monetary penalties are provided for.

Provision is made for the Minister of Health and Long-Term Care to provide funding for some community health facilities and inspecting bodies and to take action where payment should not have been made.

The *Independent Health Facilities Act*, the *Healing Arts Radiation Protection Act* and the *Private Hospitals Act* are repealed.

[Provision is made for governing community health facilities that were formerly licensed under the \*Private Hospitals Act\*.](#)

A range of consequential amendments are made to other Acts. In addition, the existing provision in the *Independent Health Facilities Act* providing for disclosure of personal information by the Minister is amended to establish that regulations are not required to be made imposing conditions on the release.

**SCHEDULE 10**  
**RETIREMENT HOMES ACT, 2010**

The Schedule amends the *Retirement Homes Act, 2010*. The amendments include the following:

If the Minister considers it reasonable to do so in the public interest, the Minister may unilaterally amend the memorandum of understanding between the Minister and the Retirement Homes Regulatory Authority after giving the Authority the notice that the Minister considers reasonable in the circumstances.

The Minister may require the Authority to establish advisory committees. The Minister may require that policy, legislative or regulatory reviews related to the Authority be carried out.

The Minister may require the Authority to make available to the public certain information relating to the compensation for members of its board of directors or officers or employees of the Authority.

The Auditor General may conduct an audit of the Authority.

Section 70 of the Act, on the permitted confinement of residents of a retirement home, is made more specific, for example, in the explanation that is required to be given to a resident before confinement is done. A licensee of a retirement home must ensure that no device prohibited for use in any applicable regulations is used to restrain or confine a resident of the home.

The powers of an investigator under section 80 of the Act to conduct an investigation under a warrant are expanded.

The Registrar may apply to the Superior Court of Justice for an order directing a person to comply with a provision of the Act or the regulations made under it or with an order made under the Act. Upon the application, the court may make any order that the court thinks fit.



**An Act to amend, repeal and enact various Acts  
in the interest of strengthening quality and accountability for patients**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Strengthening Quality and Accountability for Patients Act, 2017*.**

**SCHEDULE 1  
AMBULANCE ACT**

**1 (1) The definition of “base hospital program” in subsection 1 (1) of the *Ambulance Act* is amended by striking out “pre-hospital” wherever it appears.**

**(2) The definition of “Director” in subsection 1 (1) of the Act is repealed and the following substituted:**

“Director” means the person appointed under section 17.2 as the Director and, where more than one person has been appointed, means the person who is the Director for the purposes of the provision in which the term appears; (“directeur”)

**(3) The definition of “Minister” in subsection 1 (1) of the Act is amended by striking out “Minister of Health” and substituting “Minister of Health and Long-Term Care”.**

**(4) The definition of “Ministry” in subsection 1 (1) of the Act is amended by striking out “Ministry of Health” and substituting “Ministry of Health and Long-Term Care”.**

**2 The Act is amended by adding the following section at the end of Part IV.1:**

**Directives by Minister**

**7.0.1 (1)** The Minister may issue operational or policy directives to the operator of a land ambulance service where the Minister considers it to be in the public interest to do so.

**Binding**

(2) An operator shall comply with every directive of the Minister.

**General or particular**

(3) An operational or policy directive of the Minister may be general or particular in its application and may include, but is not limited to,

- (a) conveyance of persons by ambulance to destinations other than hospitals; and
- (b) responsibilities in addition to the provision of ambulance services, including,
  - (i) providing treatment by paramedics to persons who may not require conveyance by ambulance,
  - (ii) ensuring treatment provided by paramedics is in accordance with the prescribed standard of care, and
  - (iii) other responsibilities to facilitate the adoption of treatment models for persons with lower acuity conditions.

**Non-application of the *Legislation Act, 2006, Part III***

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to operational or policy directives.

**Public availability**

(5) The Minister shall make every directive under this section available to the public.

**Law prevails**

(6) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the Act or rule prevails.

**3 The Act is amended by adding the following section:**

**Director — appointment**

**17.2** The Minister shall appoint one or more employees in the Ministry of Health and Long-Term Care as Director for the purposes of any provision of this Act and the regulations.

**4 (1) Subsection 18 (2) of the Act is amended by adding “or any other vehicles” after “premises or conveyances” and by adding “or to any current or former employees” after “pertaining to the ambulance service”.**

**(2) Section 18 of the Act is amended by adding the following subsection:**

**Same**

(2.0.1) An inspector or investigator, upon the production of his or her appointment under subsection (1), may at any time enter any workplace where an ambulance, a vehicle or any supply or equipment for use by an ambulance service or paramedic is located and may, for the purpose of determining compliance with this Act or the regulations,

- (a) examine and inspect any ambulance, vehicle, supply or equipment;
- (b) examine and inspect any workplace in which the ambulance, vehicle, supply or equipment is located;
- (c) examine, inspect, extract information from and make copies of any records or other documents relating to the ambulance service, paramedic, ambulance, vehicle, supply or equipment; and



(d) make inquiries of any person.

**(3) Subsection 18 (2.1) of the Act is amended by adding “or (2.0.1)” after “subsection (2)” and by striking out “an operator or the employee of an operator” and substituting “an operator, an employee or former employee of an operator, or any other person”.**

**(4) Subsection 18 (2.2) of the Act is amended by striking out “An operator or an employee of an operator” at the beginning and substituting “An operator, an employee or former employee of an operator, or any other person”.**

**(5) Section 18 of the Act is amended by adding the following subsection:**

**Definition**

(3) In this section,

“workplace” means any land, premises, location or thing at, upon, in or near which a paramedic works, other than any part of the land, premises, location or thing used as a dwelling. (“lieu de travail”)

**5 (1) Subsection 19 (2) of the Act is amended by adding the following paragraphs:**

7. The Minister and a prescribed person.

8. A prescribed person and any other prescribed person.

**(2) Subsection 19 (3) of the Act is amended by adding “or to any other prescribed purpose” after “the regulations” at the end.**

**6 The Act is amended by adding the following section:**

**Holding out**

**20.0.1** No person other than a paramedic acting in the course of or in relation to his or her duties as a paramedic for an ambulance service shall hold himself or herself out as a paramedic or emergency medical attendant.

**7 Section 20.1 of the Act is amended by striking out the portion before clause (a) and substituting the following:**

**Prohibition, fees**

**20.1** No person shall charge a fee or a co-payment for or in connection with the provision of ambulance services or a class or kind of service provided by the operator of an ambulance service authorized by this Act, whether or not the person is transported by ambulance, unless the fee or co-payment is,

**8 (1) Subsection 22 (1) of the Act is amended by striking out “Subject to the approval of the Lieutenant Governor in Council, the Minister” at the beginning and substituting “The Lieutenant Governor in Council”.**

**(2) Clause 22 (1) (a) of the Act is amended by striking out “the standards of ambulances and equipment for ambulance services” and substituting “the standards of ambulances, vehicles and equipment for ambulance services and paramedics”.**

**(3) Subsection 22 (1) of the Act is amended by adding the following clause:**

(f) exempting any class of persons, services, conveyances, vehicles or equipment from any provision of this Act or the regulations and attaching any conditions to any such exemption, including exemptions for the purpose of pilot projects;

**9 Subsection 22.0.1 (1) of the Act is amended by striking out “Subject to the approval of the Lieutenant Governor in Council, the Minister” at the beginning and substituting “The Lieutenant Governor in Council”.**

**10 Subsection 22.1 (2) of the Act is repealed and the following substituted:**

**Non-application of the *Legislation Act, 2006*, Part III**

(2) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a fee set under this section.

**11 The Act is amended by adding the following section:**

**Fees**

**22.2 (1)** The Minister may, by regulation, establish fees that may be charged for each class or kind of service provided by the operator of each class of ambulance services, may determine the methods and times for payment of such fees, may determine by whom such fees may be charged and may determine the classes of persons to whom the fees may be charged.

**Regulations**

(2) The Minister may make regulations prescribing fees for the purposes of this section.

**12 Clause 25 (1) (a) of the Act is amended by adding “7.0.1 or” before “7.2”.**

**Commencement**

**13 (1) Subject to subsection (2), this Schedule comes into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(2) Subsection 1 (1), sections 2, 4, 5, 6 and 7, subsection 8 (2) and sections 11 and 12 come into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 2  
EXCELLENT CARE FOR ALL ACT, 2010**

**1 Clause 10.2 (4) (a) of the *Excellent Care for All Act, 2010* is repealed and the following substituted:**

- (a) acquire, dispose, lease, mortgage, charge, hypothecate or otherwise transfer or encumber any interest in real property, except for leasing office space that is reasonably necessary for the purposes of the Council;

**2 The Act is amended by adding the following section before the heading “Patient Ombudsman”:**

**Personal health information**

**13.0.1** (1) Despite any other Act, the Council may only collect, and use personal health information,

- (a) as provided for in section 13.6; or
- (b) for prescribed purposes.

**Disclosure**

(2) Despite any other Act, the Council may only disclose personal health information,

- (a) as provided for in section 13.6;
- (b) where it is required by law or by an agreement or arrangement made under the authority of a statute of Ontario or Canada; or
- (c) for prescribed purposes.

**Conditions, etc.**

(3) In collecting, using or disclosing personal health information, the Council and any person acting on behalf of the Council shall comply with any conditions, restrictions or requirements that may be provided for in the regulations.

**Restrictions**

(4) In exercising their powers under this Act, the Council and any person acting on behalf of the Council,

- (a) shall not collect, use or disclose personal health information if other information will serve the purpose for which the information was collected, used or disclosed; and
- (b) shall not collect, use or disclose more personal health information than is reasonably necessary for the purpose for which the information was collected, used or disclosed.

**3 Section 13.6 of the Act is repealed and the following substituted:**

**Personal health information and the patient ombudsman**

**13.6** (1) The Council may collect personal health information where the patient ombudsman collects that information in exercising the patient ombudsman’s powers under this Act.

**Same**

(2) The Council may use personal health information for purposes related to the functions of the patient ombudsman.

**Same**

(3) The Council may disclose personal health information for purposes related to the functions of the patient ombudsman.

**Application of *Freedom of Information and Protection of Privacy Act***

**13.6.1** The *Freedom of Information and Protection of Privacy Act* does not apply to records in the Council’s custody or control that contain information obtained or prepared by the patient ombudsman in the course of conducting an investigation under section 13.3.

**4 Clauses 16 (1) (m) and (m.1) of the Act are repealed and the following substituted:**

- (m) respecting and prescribing purposes for which personal health information may be collected, used or disclosed by the Council;
- (m.1) respecting and providing for conditions, restrictions or requirements that apply to the Council and persons acting on its behalf in the collection, use and disclosure of personal health information;

**Commencement**

**5 This Schedule comes into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**SCHEDULE 3  
HEALTH PROTECTION AND PROMOTION ACT**

**1 (1) The *Health Protection and Promotion Act* is amended by striking out “guideline” wherever it appears in subsections 7 (3), (4), (5) and (6) and substituting in each case “public health standard”.**

**(2) The Act is amended by striking out “guidelines” wherever it appears in the following provisions and substituting in each case “public health standards”:**

1. Subsection 7 (2).
2. Section 8.
3. Clause 72 (2) (a).
4. Clause 82 (3) (a).
5. Clause 83 (1) (a).
6. Clause 84 (1) (a).

**(3) The Act is amended by striking out “reportable disease” wherever it appears in the following provisions and substituting in each case “disease of public health significance”:**

1. Subsection 25 (1).
2. Subsection 27 (1).
3. Subsection 27 (2).
4. Subsection 29 (1).
5. Section 30.
6. Subsection 32 (1).
7. Subsection 39 (1).
8. Subsection 95 (4).
9. Subsection 100 (2).

**(4) The Act is amended by striking out “and the County of Oxford” wherever it appears in the following provisions:**

- 1. Clause (a) of the definition of “board of health” in subsection 1 (1).**
- 2. Clause 49 (9) (a).**
- 3. Clause 55 (a).**
- 4. Subclause 96 (5) (d) (v).**

**2 (1) The definition of “communicable disease” in subsection 1 (1) of the Act is amended by striking out “specified” and substituting “designated”.**

**~~(2) The definition of “food premise” in subsection 1 (1) of the Act is amended by striking out “a private residence” at the end and substituting “a room of a private residence actually used as a dwelling”.~~**

**(2) The definition of “food premise” in subsection 1 (1) of the Act is amended by striking out “a private residence” at the end and substituting “a room actually used as a dwelling in a private residence”.**

**(3) The definition of “guidelines” in subsection 1 (1) of the Act is repealed.**

**(4) Subsection 1 (1) of the Act is amended by adding the following definitions:**

“disease of public health significance” means a disease designated as a disease of public health significance by regulation made by the Minister; (“maladie importante sur le plan de la santé publique”)

“personal service setting” means a premises at which personal services are offered where there is a risk of exposure to blood or body fluids and includes premises at which hairdressing and barbering, tattooing, body piercing, nail services, electrolysis and other aesthetic services are offered; (“établissement de services personnels”)

“public health standard” means a standard published by the Minister under section 7; (“norme de santé publique”)

**(5) The definition of “virulent disease” in subsection 1 (1) of the Act is repealed and the following substituted:**

“virulent disease” means a disease designated as a virulent disease by regulation made by the Minister. (“maladie virulente”)

**3 Paragraph 2 of section 5 of the Act is amended by striking out “reportable diseases” and substituting “diseases of public health significance”.**

**4 (1) Subsection 7 (1) of the Act is repealed and the following substituted:**

**Public health standards**

(1) The Minister may publish public health standards for the provision of mandatory health programs and services and every board of health shall comply with them.

(2) **The English version of subsection 7 (2) of the Act is amended by striking out “in the Ministry” at the end and substituting “at the Ministry”**

**4.1 The Act is amended by adding the following section:**

**Tattoos and jewellery of the eye**

**18.1 (1) No person shall sell, offer for sale or provide, any of the following:**

1. Scleral tattooing.
2. Implantation of eye jewellery under the conjunctiva.

**Exception**

**(2) Subsection (1) does not apply to a member of a health profession set out in Schedule 1 of the *Regulated Health Professions Act, 1991*, as long as the person is complying with all requirements provided for in the regulations under this Act.**

**5 Section 31 of the Act is repealed the following substituted:**

**Reports by M.O.H. re diseases**

**31 (1) Every medical officer of health shall report to the Ministry and the Ontario Agency for Health Protection and Promotion in respect of diseases of public health significance and in respect of deaths from such diseases that occur in the health unit served by the medical officer of health.**

**Reports by M.O.H. re events**

(2) Every medical officer of health shall report to the Ministry and the Ontario Agency for Health Protection and Promotion within seven days after receiving a report concerning a reportable event under section 38 that occurs in the health unit served by the medical officer of health.

**Definition**

(3) In this section,

“Ontario Agency for Health Protection and Promotion” means the Ontario Agency for Health Protection and Promotion established under section 3 of the *Ontario Agency for Health Protection and Promotion Act, 2007*.

**6 Subsection 35 (1) of the Act is amended by striking out “make an order in the terms specified in subsection (3)” at the end and substituting “make an order specified in subsection (3)”.**

**7 (1) The definition of “immunizing agent” in subsection 38 (1) of the Act is repealed and the following substituted:**

“immunizing agent” means a vaccine or combination of vaccines administered for immunization against any disease specified in this Act or the regulations; (“agent immunisant”)

~~**(2) Subsection 38 (3) of the Act is amended by striking out “A physician, a member of the College of Nurses of Ontario or a member of the Ontario College of Pharmacists” at the beginning and substituting “A physician, a member of the College of Nurses of Ontario, a member of the Ontario College of Pharmacists or a prescribed person”.**~~

**(2) Subsection 38 (3) of the Act is amended by striking out “A physician, a member of the College of Nurses of Ontario or a member of the Ontario College of Pharmacists” at the beginning and substituting “A physician, a member of the College of Nurses of Ontario, a member of the Ontario College of Pharmacists or a prescribed member of a health profession set out in Schedule 1 to the *Regulated Health Professions Act, 1991*”.**

**8 Subsection 66 (2) of the Act is repealed and the following substituted:**

**Notice and attendance**

(2) A board of health shall not vote on the dismissal of a medical officer of health or an associate medical officer of health unless the board has given the officer,

- (a) reasonable written notice of the time, place and purpose of the meeting at which the dismissal is to be considered;
- (b) a written statement of the reason for the proposal to dismiss the officer; and
- (c) an opportunity to attend and to make representations to the board at the meeting.

**9 Subsections 69 (3) to (8) of the Act are repealed.**

**10 The Act is amended by adding the following section:**

**Order to provide information, new or emerging disease**

**77.7.1** (1) Where the Minister is of the opinion that there exists or there may exist an immediate risk to the health of persons in Ontario from a new or emerging disease, the Minister may issue an order directing any health care provider or health care entity specified in subsection 77.7 (6) or any other prescribed person to supply the Minister or his or her delegate with any information provided for in the order.

**Comply with order**

(2) A health care provider or health care entity that is served with an order under subsection (1) shall comply with it.

**Personal information, personal health information**

(3) A health care provider or health care entity, in complying with an order under subsection (1), shall not include personal health information within the meaning of the *Personal Health Information Protection Act, 2004* or personal information within the meaning of the *Freedom of Information and Personal Protection Act* when supplying information to the Minister or his or her delegate.

**Duration**

(4) An order under this section is in force for the period set out in the order.

**11 Subsection 81.1 (3) of the Act is repealed and the following substituted:**

**Qualifications**

(3) No person is qualified to be or to act as the Associate Chief Medical Officer of Health unless he or she is a physician and possesses the qualifications of the position of medical officer of health prescribed by the regulations.

**12 Subsection 82 (1) of the Act is amended by striking out “shall” and substituting “may”.**

**13 (1) Clause 96 (3) (a) of the Act is repealed and the following substituted:**

- (a) in respect of any matter related to the health or safety of persons in, on or about public pools, whirlpools and spas, splash pads, spray pads, wading pools and water slide receiving basins and requiring owners and operators of public pools, whirlpools and spas, splash pads, spray pads, wading pools and water slide receiving basins to comply with such regulations, including, but not limited to,
  - (i) governing the construction, alteration, repair, location, operation, maintenance and use, or prohibiting any of them, of such public pools, whirlpools and spas, splash pads, spray pads, wading pools and water slide receiving basins and related buildings, appurtenances and equipment,
  - (ii) requiring the installation and maintenance of safety equipment,
  - (iii) requiring the presence of lifeguards and other staff, and
  - (iv) prescribing standards and requirements in respect of lifeguards and staff and requiring compliance with such standards and requirements;

**(2) Clause 96 (3) (j) of the Act is repealed and the following substituted:**

- (j) in respect of any matter relating to the health and safety of personal service settings including establishing requirements and standards with which operators of personal service settings must comply;

**(3) Subsection 96 (3.1) of the Act is repealed.**

**(4) Clause 96 (4) (i) of the Act is amended by striking out “reportable diseases” and substituting “diseases of public health significance”.**

**14 Clause 97 (a) of the Act is repealed and the following substituted:**

- (a) designating diseases as communicable diseases, diseases of public health significance and virulent diseases for the purposes of this Act;

**14.1 Subsection 100 (3) of the Act is amended by striking out “18” and substituting “18, 18.1”.**

**15 Part X of the Act is repealed.**

**Commencement**

**16 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 4  
HEALTH SECTOR PAYMENT TRANSPARENCY ACT, 2017**

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21.	Short title

**Purpose**

**1** The purpose of this Act is to require the reporting of information about financial relationships that exist within Ontario’s health care system, including within health care research and education, and to enable the collection, analysis and publication of that information in order to,

- (a) strengthen transparency in order to sustain and enhance the trust that patients have in their health care providers and in the health care system;
- (b) provide patients with access to information that may assist them in making informed decisions about their health care;
- (c) provide the Minister and others with information for the purposes of health system research and evaluation, planning and policy analysis; and
- (d) provide for the collection, use and disclosure of personal information for these purposes.

**Definitions**

**2** In this Act,

“affiliate” has the same meaning as in the *Business Corporations Act*; (“membre du même groupe”)

“drug” means,

- (a) subject to the regulations, a substance or a preparation containing a substance referred to in clauses (a) to (d) of the definition of drug in subsection 1 (1) of the *Drug and Pharmacies Regulation Act* for human use, but does not include,
  - (i) a substance or preparation referred to in clause (e) of that definition, or
  - (ii) a natural health product within the meaning of the *Natural Health Products Regulation* made under the *Food and Drugs Act* (Canada), and
- (b) any other prescribed substance or preparation; (“médicament”)

“intermediary” means a person or entity who provides or facilitates a transfer of value to a recipient on behalf of a payor; (“intermédiaire”)

“medical device” means,

- (a) a device as defined in section 2 of the *Food and Drugs Act* (Canada) that is intended for human use other than a prescribed device, and
- (b) any other prescribed instrument, apparatus, contrivance or similar article intended for human use; (“instrument médical”)

“medical product” means,

- (a) a drug,
- (b) a medical device, and
- (c) any other prescribed product used in the health care system; (“produit médical”)

“Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“payor” has the meaning set out in section 3; (“payeur”)

~~“personal information” has the same meaning as in section 2 of the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)~~

“personal information” has the same meaning as in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act* other than personal information that is personal health information within the meaning of the *Personal Health Information Protection Act, 2004*; (“renseignements personnels”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“recipient” means a prescribed person or entity that receives a transfer of value from a payor; (“bénéficiaire”)

“regulations” means the regulations made under this Act; (“règlements”)

“transfer of value” means a transfer of value of any kind and includes a payment, benefit, gift, advantage, perquisite or any other prescribed benefit. (“transfert de valeur”)

### **Interpretation, “payor”**

**3** Any of the following persons is a payor for the purposes of this Act if the person provides a transfer of value to a recipient:

1. A manufacturer that sells a medical product under the manufacturer’s own name or under a trade-mark, design, trade name or other name or mark that is owned or controlled by the manufacturer and that fabricates, produces, processes, assembles, packages or labels the product, even if those tasks are performed by someone else on the manufacturer’s behalf.
2. A person who fabricates, produces, processes, assembles, packages or labels a medical product on behalf of a manufacturer described in paragraph 1.
3. A wholesaler, distributor, importer or broker that promotes or facilitates the sale of a medical product.
4. A marketing firm or person who performs activities for the purposes of marketing or promoting a medical product.
5. A person who organizes continuing education events for members of a health profession on behalf of a manufacturer described in paragraph 1.
6. A prescribed person or entity.

### **Reporting obligations**

**4** (1) Subject to subsection (2), a payor shall report to the Minister the information set out in subsection (5) with respect to the following transactions:

1. A transfer of value provided directly by a payor to a recipient.
2. A transfer of value provided indirectly by a payor to a recipient through an intermediary.

### **Exceptions**

- (2) A payor is not required to report a transaction that,
- (a) has a dollar value that is less than the prescribed threshold; or
  - (b) is otherwise prescribed.

### **Report by intermediaries, affiliates**

(3) If requested by the Minister, an intermediary in a transaction, an affiliate of the intermediary or an affiliate of a payor shall, in the manner and the timeframe set out in the request, report to the Minister the information set out in subsection (5) that the Minister may request with respect to a transaction that is required to be reported under subsection (1).

### **Requests by party to transaction**

(4) A party or an affiliate of a party to a transaction that is required to be reported under subsection (1), other than a recipient or an affiliate of a recipient, shall obtain from any other party or affiliate of a party to the transaction, other than a recipient or



an affiliate of a recipient, any information that the party or affiliate requires in order to comply with subsection (1) or (3), and a party or affiliate that receives a request for the information shall comply with it.

**Information to be reported**

(5) Subject to the regulations, the following information, which may include personal information, shall be reported:

1. The name of the parties to the transaction including,
  - i. if a party is a business, its legal and operating names,
  - ii. if a party is an individual, the individual's name, profession or title and any other prescribed identifying information.
2. If requested by the Minister from an intermediary or an affiliate of an intermediary under subsection (3), the source of the transfer of value.
3. The parties' respective business addresses.
4. The date of the transfer of value.
5. The transfer of value's dollar value or, in the case of a non-monetary transfer of value, its approximate dollar value.
6. A description of the transfer of value, including the reasons for it.
7. Any other prescribed information.

**Notice required by s. 39 (2) of FIPPA**

(6) If the Minister collects personal information indirectly under this section, the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on the Ministry or the Government of Ontario's website; or
- (b) any other method that may be prescribed.

**Manner and frequency of reporting**

(7) A payor shall report to the Minister at the prescribed times and in the prescribed manner.

**False or misleading statements**

(8) No payor, intermediary or affiliate shall report any information that is false or misleading.

**Retention of records**

(9) A party to a transaction described in subsection (1) shall retain any records that the party creates or receives with respect to the transaction for the prescribed length of time.

**Definition**

(10) In this section,

“party” means, in respect of a transaction that is required to be reported to the Minister under subsection (1), the recipient and the payor and includes any intermediary in the case of an indirect payment.

**Use of information for analysis**

5 The Minister shall analyse the information reported under this Act, including any personal information, for the purposes of health system research and evaluation, planning and policy analysis.

**Publication of information**

6 (1) The Minister shall, in any format the Minister considers appropriate, disclose the information reported under this Act, which may include personal information, on a website and in any other manner that the Minister considers appropriate at least once in a calendar year and at any other time as the Minister considers appropriate.

**Publication of analysis**

(2) If the Minister determines it is appropriate to do so, the Minister shall publish the results of any analysis conducted using information collected under this Act at the time and in the manner that the Minister considers appropriate.

**Request for correction**

7 A prescribed person may, in accordance with the regulations, request that the Minister correct information reported to the Minister under this Act, and the Minister shall deal with the request in accordance with the regulations.

**Requests for information**

8 (1) The Minister may request that a recipient, a payor, an intermediary or an affiliate of a payor or an intermediary provide any information, including personal information, to the Minister that the Minister requires to determine compliance with this Act and the regulations.

**Compliance required**

(2) A recipient, payor, intermediary or affiliate shall comply with any request from the Minister within the timelines specified in the request.

**Inspectors**

9 (1) The Minister may appoint, in writing, any person as an inspector for the purposes of this Act.

**Inspection**

(2) An inspector may, without a warrant and at any reasonable time, enter a premises or any part of a premises if the inspector reasonably believes that a record relating to a transaction that is required to be reported under subsection 4 (1) may be located there, in order to conduct inspections for the purpose of determining compliance with the requirements under this Act.

**Dwellings**

(3) No inspector shall enter a premises or any part of a premises that is being used as a dwelling, except with the consent of the occupier of the premises.

**Identification**

(4) The Minister shall issue to every inspector a certificate of appointment which the inspector conducting an inspection shall produce, upon request, when acting in the performance of the inspector's duties.

**Powers of inspector**

(5) An inspector conducting an inspection may, with respect to any record or other thing the inspector determines relevant to the inspection,

- (a) examine and make copies of it;
- (b) demand its production; and
- (c) remove it for the purpose of making a copy.

**Same, questioning any person**

(6) An inspector conducting an inspection may question any person on matters the inspector determines relevant to the inspection and the person shall co-operate fully with the inspector.

**Same, audit**

(7) An inspector conducting an inspection may audit the accounts and financial transactions of a recipient, a payor, an intermediary or an affiliate of a payor or an intermediary in order to determine compliance with this Act.

**Obligation to produce and assist**

(8) If an inspector demands that a record or other thing be produced under this section, the person who has access to the record or thing shall produce it within the time provided for in the demand and shall, on request, provide any assistance that is reasonably necessary to copy it, interpret it or produce it in a readable form.

**Documents and things removed from place**

(9) An inspector shall return, as promptly as reasonably possible, a record or thing that the inspector removes.

**Certificate of evidence**

(10) A copy of a record or other thing that appears to be certified by an inspector as being a true copy of the original is admissible in evidence in any proceeding to the same extent as the original and has the same evidentiary value as the original, without proof of the signature or official character of the person appearing to have certified the copy.

**No obstruction**

(11) No person shall,

- (a) hinder, obstruct or interfere with or attempt to obstruct, hinder or interfere with an inspector conducting an inspection or an audit;
- (b) destroy or alter a record or other thing that has been demanded under clause (5) (b);
- (c) fail to do anything required under subsection (6) or (8); or

(d) provide the inspector with false information on matters relevant to the inspection.

**Definition of record**

(12) In this section,

“record” means any document or record of information, in any form, including a record that contains personal information.

**Production order**

**10** (1) On application, without notice by an inspector, a justice may issue a production order to a person, other than a person being investigated, requiring the person to,

- (a) produce data, a document or a copy of a document certified by affidavit to be a true copy; or
- (b) prepare and produce data or a document based on documents or other things already in existence.

**Contents of order**

(2) A production order shall set out the time at which, the form and manner in which and to whom the data, document or copy of a document shall be produced.

**Grounds**

(3) A justice may make a production order if the justice is satisfied, by information given under oath or affirmation, that there are grounds to believe that,

- (a) an offence under this Act has been or is being committed;
- (b) the data or document will provide evidence respecting the offence or suspected offence; and
- (c) the person who is subject to the order has possession or control of the data or document.

**Conditions**

(4) A production order may contain any conditions the justice considers advisable.

**Evidence**

(5) A copy of data or a document produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in any proceeding under this Act to the same extent as the original data or document and has the same evidentiary value as the original data or document would have if it had been proved in the ordinary way without proof of the signature of the person appearing to have provided the affidavit.

**No return of data, copies**

(6) Data or copies of documents produced under this section are not required to be returned to the persons who provided them.

**Compliance required**

(7) A person to whom a production order is directed shall comply with the order according to its terms.

**Definition of justice**

(8) In this section,

“justice” means a justice under the *Provincial Offences Act*.

**Compliance orders**

**11** (1) If the Minister or an inspector has grounds to believe that a person has failed to comply with this Act or the regulations, the Minister or the inspector may serve on the person a compliance order requiring the person to do anything, or refrain from doing anything, in order to comply with this Act and the regulations.

**Submissions**

(2) The person to whom the order is directed may, within 14 days after the order is served, provide submissions to the Minister as to how the person has complied with the Act and the regulations.

**Reconsideration by Minister**

(3) After considering the submissions, the Minister shall confirm or rescind the compliance order and serve on the person a notice of the decision.

**Compliance**

(4) A person to whom a compliance order is directed shall comply with it unless the Minister rescinds it.

**Service of order**

(5) A compliance order shall be served in accordance with the regulations.

**Proof of service**

(6) A certificate of service that appears to have been signed by the person who effected service of a document is evidence of service and the facts contained in it without proof of the signature, if the person,

- (a) certifies that the copy of the document is a true copy of it;
- (b) certifies that the document was served on the person; and
- (c) sets out in it the method of service used.

**Non-application of SPPA**

(7) The *Statutory Powers Procedure Act* does not apply to the making, confirmation or rescission of a compliance order under this section.

**Court order to comply**

**12** If it appears to the Minister that a person is not complying with this Act or the regulations, the Minister may apply to the Superior Court of Justice, on notice to the person, for an order directing the person to comply and, on the application, the court may make the order that the court thinks fit.

**Publication re orders**

**13** (1) The Minister shall publish on a website the following information about a compliance order issued under section 11 or a court order issued under section 12:

1. The name of the person or entity to whom the order is directed.
2. A description of the non-compliance that gave rise to the order.

**Limitation**

(2) The Minister shall not publish information about a compliance order issued under section 11 unless,

- (a) 14 days have elapsed since the Minister or inspector served the order and the person to whom the order is directed has not provided submissions under subsection 11 (2); or
- (b) the Minister has confirmed the order under subsection 11 (3).

**Delegation**

**14** The Minister may delegate in writing any of the Minister's powers or duties under this Act to any person.

**Liability**

**15** (1) No action or other proceeding for damages may be instituted against the Minister, an employee or agent of the Ministry, a person to whom a power or duty of the Minister under this Act is delegated or an employee or agent of that person for any act done in good faith in the execution or intended execution of the person's powers or duties under this Act or for any alleged neglect or default in the execution in good faith of the person's powers or duties under this Act.

**Liability in certain cases**

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of any liability to which it would otherwise be subject.

**Obligation of directors and officers**

**16** Every director and officer of a corporation to which this Act applies shall ensure that the corporation complies with this Act and the regulations.

**Offences**

**17** (1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable,

- (a) in the case of an individual's first offence, to a fine not exceeding \$10,000 for each day or part of a day on which the offence occurs or continues;
- (b) in the case of an individual's second or subsequent offence, to a fine not exceeding \$25,000 for each day or part of a day on which the offence occurs or continues;
- (c) in the case of a corporation's first offence, to a fine not exceeding \$50,000 for each day or part of a day on which the offence occurs or continues; or
- (d) in the case of a corporation's second or subsequent offence, to a fine not exceeding \$100,000 for each day or part of a day on which the offence occurs or continues.

**No imprisonment or probation**

(2) A person convicted of an offence under this Act is not liable to imprisonment or to a probation order under subsection 72 (1) of the *Provincial Offences Act* as a result of the conviction or a result of default in payment of the fine resulting from the conviction.

**Due diligence, mistake of fact**

(3) Subject to subsection (4), it is not a defence to a charge under this Act that,

- (a) the person took all reasonable steps to prevent the contravention; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts which, if true, would have resulted in there not being any contravention.

**Defence**

(4) It is a defence to a charge related to a contravention of subsection 4 (8) that,

- (a) the person took all reasonable steps to prevent the contravention; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

**No limitation**

(5) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act.

**Compliance order not necessary**

(6) A person may be prosecuted under this Act whether or not a compliance order has been made in respect of the alleged contravention.

**Copy of order**

(7) In a prosecution for failing to comply with a compliance order, a copy of the order that appears to have been signed by the Minister or an inspector is evidence of the order and the facts contained in it without proof of the signature.

**Presiding judge**

(8) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of a prosecution under this Act.

**Copy of record**

(9) In a prosecution under this Act, a copy of a record or thing made under subsection 9 (5) that appears to be certified as a true copy of the original by an inspector is admissible as evidence of the record or thing and of the facts appearing in it without further proof.

**Review of the Act**

**18** (1) The Minister shall periodically conduct a review of this Act.

**Written report**

(2) The Minister shall prepare a written report respecting the review and make it available to the public on a website and in any other manner that the Minister considers appropriate.

**Period for review**

(3) The first review shall be completed and the report made available to the public within five years after the day this section comes into force.

**Same**

(4) Each subsequent review shall be completed and the report made available to the public within five years after the day the report on the previous review has been made available to the public.

**Regulations**

**19** The Lieutenant Governor in Council may make regulations,

- (a) respecting any matter that this Act describes as being prescribed by or provided for in the regulations;
- (b) defining or clarifying any word or expression used in this Act but not otherwise defined;
- (c) prescribing substances or preparations that are not a drug for the purposes of the definition of “drug” in section 2;
- (d) further defining, specifying or clarifying the meaning of “intermediary” or “transfer of value” in section 2;

- (e) respecting the correction of information under section 7, including prescribing procedures for requests for corrections, procedures for making a correction and procedures that apply if the Minister does not make a requested correction;
- (f) governing the service of a compliance order under subsection 11 (5);
- (g) exempting a person or a class of person from the application of this Act or any provision of it, subject to any prescribed conditions;
- (h) prescribing processes, requirements or conditions related to the collection of personal information under this Act and the use or disclosure of that information;
- (i) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable for carrying out the purposes and provisions of this Act.

**Commencement**

**20 The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**Short title**

**21 The short title of the Act set out in this Schedule is the *Health Sector Payment Transparency Act, 2017*.**

**SCHEDULE 5  
LONG-TERM CARE HOMES ACT, 2007**

**1 (1) The French version of the definition of “abuse” in subsection 2 (1) of the *Long-Term Care Homes Act, 2007* is amended by striking out “psychologique” and substituting “affectif”.**

**(2) Subsection 2 (1) of the Act is amended by adding the following definition:**

“confine”, except with respect to the common law duty of a caregiver to confine a person as referred to in section 36, has the meaning provided for in the regulations; (“confiner”)

**(3) The definition of “requirement under this Act” in subsection 2 (1) of the Act is repealed and the following substituted:**

“requirement under this Act” means a requirement contained in this Act, in the regulations, or in an order or agreement made under this Act, and includes a condition of a licence under Part VII or an approval under Part VIII, a condition to which funding is subject under section 90 and, subject to subsection 174.1 (7), an operational or policy directive issued by the Minister under section 174.1; (“exigence que prévoit la présente loi”)

**(4) The definition of “secure unit” in subsection 2 (1) of the Act is repealed.**

**2 (1) Subparagraph 11 iii of subsection 3 (1) of the Act is amended by striking out “or a secure unit”.**

**(2) Paragraph 13 of subsection 3 (1) of the Act is amended by striking out “restrained” and substituting “restrained or confined”.**

**3 Section 19 of the Act is amended by adding the following subsection:**

**Offence**

(3) Every licensee who contravenes subsection (1) is guilty of an offence.

**4 (1) Paragraph 7 of subsection 25 (1) of the Act is amended by adding “that resulted in harm or risk of harm to a resident” at the end.**

**(2) Paragraphs 1 and 2 of subsection 25 (2) of the Act are repealed and the following substituted:**

1. Anything described in paragraph 1, 2 or 3 of subsection (1) that resulted in serious harm or a significant risk of serious harm to a resident.

**5 (1) The heading before section 29 of the Act is amended by striking out “Restraining” and substituting “Restraining and Confining”.**

**(2) Subsection 29 (1) of the Act is repealed and the following substituted:**

**Policy to minimize restraining and confining of residents, etc.**

- (1) Every licensee of a long-term care home,
  - (a) shall ensure that there is a written policy to minimize the restraining and confining of residents and to ensure that any restraining or confining that is necessary is done in accordance with this Act and the regulations; and
  - (b) shall ensure that the policy is complied with.

**6 Section 30 of the Act is repealed and the following substituted:**

**Protection from restraining and confining**

**30 (1) Every licensee of a long-term care home shall ensure that no resident of the home is:**

1. Restrained or confined, in any way, for the convenience of the licensee or staff.
2. Restrained or confined, in any way, as a disciplinary measure.
3. Restrained by the use of a physical device, other than in accordance with section 31 or under the common law duty referred to in section 36.
4. Restrained by the administration of a drug to control the resident, other than under the common law duty referred to in section 36.
5. Confined, other than in accordance with section 30.1 or under the common law duty referred to in section 36.

**Devices that resident can release**

(2) The use of a physical device from which a resident is both physically and cognitively able to release himself is not a restraining of the resident.

### Use of PASD to assist resident

(3) The use of a personal assistance services device (“PASD”), within the meaning of subsection 33 (2), to assist a resident with a routine activity of living is not a restraining of the resident.

### Administration of drugs, etc., as treatment

(4) The administration of a drug to a resident as a treatment set out in the resident’s plan of care is not a restraining of the resident.

### Confining of resident

**30.1** (1) A resident may be confined as described in paragraph 5 of subsection 30 (1) if the confining of the resident is included in the resident’s plan of care.

### Provision in plan of care

(2) The confining of a resident may be included in a resident’s plan of care only if all of the following are satisfied:

1. There is a significant risk that the resident or another person would suffer serious bodily harm if the resident were not confined.
2. Alternatives to confining the resident have been considered, and tried where appropriate, but would not be, or have not been, effective to address the risk referred to in paragraph 1.
3. The method and degree of confining are reasonable, in light of the resident’s physical and mental condition and personal history, and the method and degree are the least restrictive of the reasonable methods and degrees that would be effective to address the risk referred to in paragraph 1.
4. A physician, registered nurse or other person provided for in the regulations has recommended the confining.
5. The confining of the resident has been consented to by the resident or, if the resident is incapable, by a substitute decision-maker of the resident with authority to give that consent.
6. The plan of care provides for everything required under subsection (3).

### Requirements if resident is confined

(3) If a resident is being confined under subsection (1), the licensee shall ensure that,

- (a) the resident’s condition is reassessed and the effectiveness of the confining evaluated, in accordance with the requirements provided for in the regulations;
- (b) the resident is confined only for as long as is necessary to address the risk referred to in paragraph 1 of subsection (2);
- (c) the confining is discontinued if, as a result of the reassessment of the resident’s condition, one of the following is identified that would address the risk referred to in paragraph 1 of subsection (2):
  - (i) an alternative to confining, or
  - (ii) a less restrictive method of confining or a less restrictive degree of confining that would be reasonable in light of the resident’s physical and mental condition and personal history; and
- (d) any other requirements provided for in the regulations are satisfied.

### Notice and advice if substitute consent to confining

(4) The following apply if the substitute decision-maker of a resident has given consent on the resident’s behalf to the confining of the resident:

1. The licensee of the home shall,

i. ensure that the resident is promptly given a written notice that complies with subsection (6),

~~ii. ensure that the resident is promptly provided with a verbal explanation of the written notice that complies with the requirements, if any, provided for in the regulations, and is asked whether he or she wishes to meet with a rights adviser, and~~

~~iii. ensure that, if the resident wishes to meet with a rights adviser or expresses disagreement with the confining, a rights adviser is promptly notified in accordance with the requirements, if any, provided for in the regulations.~~

ii. ensure that the resident is promptly provided with a verbal explanation of the written notice, the verbal explanation complies with the requirements, if any, provided for in the regulations and the resident is asked whether he or she wishes to meet with a rights adviser, and

iii. ensure that, if the resident wishes to meet with a rights adviser or expresses disagreement with the confining, a rights adviser is promptly notified and the notification is provided in accordance with the requirements, if any, provided for in the regulations.



2. The rights adviser notified under subparagraph 1 iii shall promptly meet with the resident and explain,
  - i. the right of the resident or any person acting on his or her behalf to apply to the Consent and Capacity Board, under section 54.18 of the *Health Care Consent Act, 1996*, for a determination as to whether the substitute decision-maker complied with section 54.7 of that Act, and
  - ii. any other matters that may be provided for in the regulations.
3. At the resident's request, the rights adviser shall assist him or her in making an application to the Consent and Capacity Board and in obtaining legal services.
4. The rights adviser shall comply with the regulations, if any, providing for how the rights adviser satisfies the requirements of paragraphs 2 and 3.
5. Paragraphs 2 and 3 do not apply if the resident refuses to meet with the rights adviser.
6. The licensee shall ensure that the resident is not confined until after,
  - i. the requirements of paragraph 1 have been satisfied,
  - ii. the requirements of paragraph 2, if applicable, have been satisfied or the licensee is advised by the rights adviser that the resident refuses to meet with the rights adviser, and
  - iii. the requirements, if any, provided for in the regulations have been satisfied.
7. For greater certainty, paragraph 6 does not affect any further restrictions on the licensee under Part III.1 of the *Health Care Consent Act, 1996*.

#### **Rights adviser to notify licensee**

- (5) The rights adviser ~~shall promptly notify the licensee~~ shall promptly notify the licensee, and shall do so in accordance with the requirements, if any, provided for in the regulations,
- (a) that the meeting with the resident has occurred, or that the resident refused to meet with the rights adviser, as the case may be; and
  - (b) if the rights adviser is aware that the resident or any person acting on the resident's behalf intends to make an application to the Consent and Capacity Board referred to in section 54.10 of the *Health Care Consent Act, 1996* or that another person intends to apply to the Consent and Capacity Board to be appointed as the representative to give or refuse consent to the confining on the resident's behalf.

#### **Contents of notice to resident**

- (6) The written notice given to the resident under subparagraph 1 i of subsection (4) shall be in accordance with the requirements, if any, provided for in the regulations and shall inform the resident,
- (a) of the reasons for the confining;
  - (b) that the resident has the right to meet with a rights adviser, together with the contact information for the rights adviser;
  - (c) that the resident, or any person acting on his or her behalf, is entitled to apply to the Consent and Capacity Board, under section 54.18 of the *Health Care Consent Act, 1996*, for a determination as to whether the substitute decision-maker complied with section 54.7 of that Act;
  - (d) that the resident has the right to retain and instruct counsel without delay; and
  - (e) of any other matters provided for in the regulations.

#### **Placement co-ordinator recommendation**

- (7) If the placement co-ordinator has, under subsection 44 (2.1), recommended that a resident be confined in the home, the licensee,
- (a) shall consider the recommendation; and
  - (b) in considering the recommendation shall comply with the requirements provided for in the regulations, if any.

#### **Elements of consent for confining**

- (8) Section 46 applies, with necessary modifications, with respect to consent to the confining of a resident in a home. When obtaining consent to confining, the licensee shall ensure that the resident or substitute decision-maker is informed that consent may be withdrawn at any time.

#### **Requirements under this section**

- (9) The licensee of the home shall ensure that the requirements under this section are satisfied,
- (a) when a resident is initially confined under subsection (1); and

(b) at any other times and under any other circumstances provided for in the regulations.

**7 Section 32 of the Act is repealed.**

**8 Paragraph 1 of section 34 of the Act is repealed and the following substituted:**

1. The restraining of a resident.

**9 Section 35 of the Act is amended by adding the following subsection:**

**Same, confinement**

(2) Every licensee of a long-term care home shall ensure that no device provided for in the regulations is used to confine a resident.

**10 (1) Subsections 36 (2), (3) and (4) of the Act are amended by striking out “described in” wherever it appears, and substituting “referred to in” in each case.**

**(2) Section 36 of the Act is amended by adding the following subsection:**

**Confinement**

(5) If a resident is being confined pursuant to the common law duty referred to in subsection (1), the licensee shall ensure that the confining is in accordance with any requirements provided for in the regulations and that any other requirements provided for in the regulations are satisfied.

**11 Subsection 38 (2) of the Act is amended by adding the following clause:**

- (i.1) governing the confining of residents, including the setting of requirements in addition to those set out in this Part;

**12 (1) Subsection 39 (2) of the Act is amended by striking out “even if the specialized unit is also a secure unit” at the end.**

**(2) Subsection 39 (3) of the Act is amended by striking out “but does not include a secure unit unless the secure unit is designated as a specialized unit by regulation” at the end.**

**13 (1) Section 44 of the Act is amended by adding the following subsections:**

**Confinement to be considered**

(2.1) The placement co-ordinator who determined that the applicant is eligible for long-term care home admission shall consider whether the applicant may need to be confined in the home and shall make a recommendation to the licensee after considering,

- (a) whether there would be a significant risk that the applicant or anyone else would suffer serious bodily harm if the applicant were not confined;
- (b) whether confining the applicant would be reasonable in light of the applicant’s physical and mental condition and personal history; and
- (c) whether a physician, registered nurse in the extended class or other person provided for in the regulations has recommended the confining.

**Advising of confinement recommendation**

(2.2) If the placement co-ordinator intends to recommend to the licensee that the applicant be confined in the home, the placement co-ordinator shall advise the applicant, and if the applicant is incapable, a substitute decision-maker of the applicant, of the recommendation and of anything else that may be provided for in the regulations, prior to authorization of the admission and at such other times as may be provided for in the regulations.

**Compliance with regulations**

(2.3) The placement co-ordinator shall, when acting under subsections (2.1) and (2.2), comply with the requirements, if any, provided for in the regulations.

**(2) Subsection 44 (7) of the Act is repealed and the following substituted:**

**Licensee consideration and approval**

(7) The appropriate placement co-ordinator shall give the licensee of each selected home copies of the assessments and information that were required to have been taken into account under subsection 43 (6) as well as any recommendation made under subsection (2.1), and the licensee shall review the assessments, information and recommendation and shall approve the applicant’s admission to the home unless,

- (a) the home lacks the physical facilities necessary to meet the applicant’s care requirements;
- (b) the staff of the home lack the nursing expertise necessary to meet the applicant’s care requirements; or
- (c) circumstances exist which are provided for in the regulations as being a ground for withholding approval.

**14 Section 45 of the Act is repealed.**

**15 Paragraph 9 of subsection 57 (1) of the Act is amended by adding the following subparagraph:**

- i.1 a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 153 (1) (b) following a referral under paragraph 4 of subsection 152 (1),

**16 Paragraph 7 of subsection 60 (1) of the Act is amended by adding the following subparagraph:**

- i.1 a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 153 (1) (b) following a referral under paragraph 4 of subsection 152 (1),

**17 (1) Subsection 69 (1) of the Act is repealed and the following substituted:**

**Duties of directors and officers of a corporation**

(1) Where a licensee is a corporation, every director and every officer of the corporation shall ensure that the corporation complies with all requirements under this Act.

**(2) Section 69 of the Act is amended by adding the following subsection:**

**Corporate prosecution not necessary**

(4) A person may be prosecuted and convicted under this section even if the corporation has not been prosecuted or convicted.

**18 (1) Paragraph 6 of subsection 76 (2) of the Act is amended by striking out “restraining” and substituting “restraining and confining”.**

**(2) Paragraph 4 of subsection 76 (7) of the Act is repealed and the following substituted:**

- 4. How to minimize the restraining and confining of residents and, where restraining or confining is necessary, how to do so in accordance with this Act and the regulations.

**19 Section 77 of the Act is amended by striking out the portion before clause (a) and substituting the following:**

77 Every licensee of a long-term care home shall develop and implement an orientation program for volunteers that includes information on,

~~**20 Clauses 78 (2) (f) and (g) of the Act are repealed and the following substituted;**~~

- ~~— (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;~~
- ~~— (g) notification of the long-term care home’s policy to minimize the restraining and confining of residents and how a copy of the policy can be obtained;~~

~~**20 (1) Clause 78 (2) (f) of the Act is repealed and the following substituted:**~~

- ~~— (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;~~

~~**(2) Clause 78 (2) (g) of the Act is repealed and the following substituted:**~~

- ~~— (g) notification of the long-term care home’s policy to minimize the restraining and confining of residents and how a copy of the policy can be obtained;~~

~~**21 (1) Clauses 79 (3) (f) and (g) of the Act are repealed and the following substituted**~~

- ~~— (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;~~
- ~~— (g) notification of the long-term care home’s policy to minimize the restraining and confining of residents, and how a copy of the policy can be obtained;~~

~~**21 (1) Clause 79 (3) (f) of the Act is repealed and the following substituted:**~~

- ~~— (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;~~

~~**(1.1) Clause 79 (3) (g) of the Act is repealed and the following substituted:**~~

- ~~— (g) notification of the long-term care home’s policy to minimize the restraining and confining of residents, and how a copy of the policy can be obtained;~~

**(2) Subsection 79 (3) of the Act is amended by adding the following clause:**

(1.1) a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 153 (1) (b) following a referral under paragraph 4 of subsection 152 (1);

**22 Subsection 83 (2) of the Act is amended by striking out “or transfer to a secure unit” at the end.**

**23 Subsection 101 (3) of the Act is amended by striking out “every order made” and substituting “every directive issued, order made”.**

**24 Subsection 107 (2) of the Act is repealed and the following substituted:**

**Application of Act if management contract used**

(2) If a person exercising a security interest enters into a contract under section 110, then, subject to the regulations, if any, this Act applies, with necessary modifications, to that person as though that person were acting as the licensee.

**25 The French version of clause 117 (2) (g) of the Act is amended by striking out “conditions” and substituting “durées”.**

**25.1 Subsections 126 (3) to (6) of the Act are repealed and the following substituted:**

**Operating reserve**

(3) In preparing the estimates, the board may provide for a reserve for working funds, but the amount of the reserve in a year shall not exceed the higher of,

- (a) 15 per cent of the total estimates of the board for the year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

**Power of district homes to borrow for operating costs**

(4) Subject to subsections (5) and (6) and to any restrictions or requirements that may be prescribed by regulation, the board of management may borrow from time to time by way of a promissory note, or such other means as may be prescribed by regulation such sums as the board considers necessary to meet the operating costs of the board.

**Maximum borrowings**

(5) Subject to any restrictions or requirements that may be prescribed by regulation, the amount that may be borrowed at any one time for the purpose mentioned in subsection (4) together with the total of any other borrowing for operating costs that have not been repaid shall not exceed the higher of,

- (a) 25 per cent of the estimated current revenue of the board for the year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

**Same**

(6) Until the estimated current revenue of the board for the year has been determined, the limitation upon borrowing set out in subsection (5) shall be temporarily calculated based upon the higher of,

- (a) 25 per cent of the revenue of the board determined for the previous year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

**Security for borrowing**

(7) In the circumstances prescribed by regulation and subject to any restrictions and requirements that may be prescribed by regulation, if the board is permitted to borrow under this section it may pledge security for the permitted borrowing from the real or personal property of the board.

**25.2 Section 127 of the Act is amended by adding the following subsections:**

**Power of district homes to borrow for capital costs**

(3) In the circumstances prescribed by regulation and subject to any restrictions or requirements that may be prescribed by regulation, a board that meets the prescribed requirements may borrow such sums as the board considers necessary to meet the capital costs it estimates under subsection (1).

**Security for borrowing**

(4) In the circumstances prescribed by regulation and subject to the restrictions and requirements that may be prescribed by regulation, if the board is permitted to borrow under this section it may pledge security for the permitted borrowing from the real or personal property of the board.

**26 Paragraph 1 of subsection 139 (1) of the Act is repealed and the following substituted:**

1. The Director has all of the powers of the municipality, municipalities or board of management, as the case may be, to occupy, manage, operate and administer the home, and they do not have those powers.

**26.1 Clause 140 (2) (d) of the Act is repealed and the following substituted:**

- (d) prescribing the percentage or limit for the purpose of subsections 126 (3), (5) and (6);
- (d.1) respecting the specification of times by which payments required under sections 126 and 127 must be made;
- (d.2) prescribing any circumstances, restrictions or requirements related to borrowing under sections 126 and 127;
- (d.3) providing for and governing any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with borrowing under sections 126 and 127;

**27 (1) Clauses 147 (1) (c) and (d) of the Act are repealed and the following substituted:**

- (c) may demand the production of records or other things that the inspector believes are relevant to the inspection from any person;
  - (d) may question a person;
- (2) Clause 147 (1) (g) of the Act is amended by striking out “systems at the premises” and substituting “systems located at the premises”.**

**(3) Section 147 of the Act is amended by adding the following subsection:**

**Assistance**

(3.1) Every person shall give all reasonable assistance to an inspector in the exercise of the inspector’s powers or the performance of the inspector’s duties under this Act or the regulations.

**(4) Subsection 147 (4) of the Act is repealed and the following substituted:**

**Power to exclude persons**

(4) An inspector who questions a person under clause (1) (d) may exclude any person from the questioning.

**28 Section 150 of the Act is repealed.**

**29 (1) Clause 151 (a) of the Act is repealed and the following substituted:**

- (a) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with an inspector conducting an inspection, or otherwise impedes an inspector in carrying out the inspector’s duties;
- (2) Clause 151 (c) of the Act is amended by adding “or (3.1)” at the end.**

**30 (1) Section 152 of the Act is amended by adding the following paragraph:**

3.1 Issue a notice of administrative penalty under section 156.1.

**(2) Section 152 of the Act is amended by adding the following subsection:**

**Vicariously liable**

(2) Where an inspector finds that a staff member has not complied with subsection 24 (1) or 26 (1), the licensee shall be deemed to have not complied with the relevant subsection and the inspector shall do at least one of the actions set out in subsection (1) as the inspector considers appropriate.

**31 Clause 153 (1) (b) of the Act is amended by striking out “a plan” and substituting “a written plan”.**

**32 The French version of clause 154 (1) (a) of the Act is amended by striking out “contractants” and substituting “entrepreneurs”.**

**33 (1) Clause 155 (1) (a) of the Act is repealed and the following substituted:**

- (a) that a specified amount of funding provided to or collected by the licensee under this Act be returned or paid by the licensee;
- (2) Subsection 155 (3) of the Act is amended by striking out “returned or withheld” and substituting “returned, paid or withheld”.**
- (3) Subsection 155 (4) of the Act is amended by striking out “returned or withheld” wherever it occurs and substituting in each case “returned, paid or withheld”.**
- (4) Clause 155 (5) (c) of the Act is amended by striking out “returned or withheld” and substituting “returned, paid or withheld”.**

**34 The Act is amended by adding the following section:**

**Notice of administrative penalty**

**156.1** (1) An inspector or the Director may issue a notice in writing requiring a licensee to pay an administrative penalty in the amount set out in the notice if the inspector or Director is of the opinion that the licensee has not complied with a requirement under this Act.

**Purpose of administrative penalty**

- (2) A notice of administrative penalty may be issued under this section for the purpose of,
- (a) encouraging compliance with a requirement under this Act; or
  - (b) preventing a licensee from deriving, directly or indirectly, any economic benefit as a result of not complying with a requirement under this Act.

**Amount of administrative penalty**

- (3) Subject to subsections (4) and (5), the amount of an administrative penalty in respect of a failure to comply,
- (a) shall not exceed \$100,000;
  - (b) shall be determined by the inspector or Director in accordance with the regulations; and
  - (c) shall reflect the purpose referred to in subsection (2).

**Same, reduction**

(4) The inspector or Director shall reduce the amount of an administrative penalty determined under clause (3) (b) if the inspector or Director determines that the amount is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances.

**Same, considerations**

(5) In determining the amount of an administrative penalty under clause (3) (b), the inspector or Director may consider whether an order has been previously made under section 153 or 154 in respect of the licensee not complying with the same requirement under this Act, including an order made before this section came into force.

**Two-year limitation**

(6) A notice of administrative penalty shall not be issued under this section more than two years after the day the most recent failure to comply on which the notice is based first came to the knowledge of an inspector or Director.

**Payment to Minister of Finance**

(7) A licensee who is required to pay an administrative penalty under this Act shall pay the penalty to the Minister of Finance.

**Enforcement of administrative penalty**

(8) Subject to subsection (9), if a licensee who is required to pay an administrative penalty fails to pay it within the time specified in the notice, a copy of any of the following may be filed with a local registrar of the Superior Court of Justice and on filing is deemed to be an order of that court and is enforceable as an order of that court:

1. A notice of administrative penalty under subsection (1).
2. A decision of the Director under subsections 163 (6) or (7).
3. A decision of the Appeal Board under subsection 169 (2).

**Same**

(9) The notice of administrative penalty or decision filed under subsection (8) may only be filed upon the expiry of the period for reviewing the notice under subsection 163 (2) or appealing the notice or decision under sections 165 or 170, as the case may be.

**Post-judgment interest**

(10) Section 129 of the *Courts of Justice Act* applies in respect of a notice of administrative penalty or decision filed with the Superior Court of Justice under subsection (8) and, for the purpose, the date on which the notice of administrative penalty or decision is filed under subsection (8) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

**Crown debt**

(11) An administrative penalty issued under this Act that is not paid within the time set out in the notice of administrative penalty is a debt due to the Crown and enforceable as such.

**35 (1) Subsection 157 (1) of the Act is repealed and the following substituted:**

### **Suspension or revocation**

- (1) The Director may make an order suspending or revoking a licence.
- (2) Subsection 157 (2) of the Act is amended by striking out “may be revoked” in the portion before clause (a) and substituting “may be suspended or revoked”.**
- (3) Subsection 157 (2) of the Act is amended by striking out “or” at the end of clause (d) and by adding the following clause:**
- (d.1) a person has acquired control over the operation of the long-term care home by exercising a security interest in accordance with section 107, and the conditions provided for in the regulations apply; or
- (4) Subsections 157 (3) and (4) of the Act are repealed and the following substituted:**

#### **When order effective**

- (3) An order suspending or revoking a licence takes effect upon the expiry of the period for appealing the order under section 165, subject to section 25 of the *Statutory Powers Procedure Act* if the order is appealed.

#### **Interim management**

- (4) If the Director has made an order suspending or revoking a licence, the Director may also make an order providing for the long-term care home to be occupied and operated by an interim manager,
- (a) for a period of time specified in the suspension order, subject to the regulations, if any; or
- (b) until the revocation of the licence becomes effective and the residents of the home are relocated.
- (5) The French version of subsection 157 (5) of the Act is amended by striking out “contractant” and substituting “entrepreneur”.**
- (6) Paragraph 1 of subsection 157 (6) of the Act is repealed and the following substituted:**
1. The interim manager has all of the powers of the licensee to occupy, manage, operate and administer the home, and the licensee does not have those powers.

#### **36 Subsection 158 (1) of the Act is repealed and the following substituted:**

##### **Interim manager, rules relating to employees**

- (1) This section applies,
- (a) subject to the regulations, if any, if an interim manager occupies and operates a long-term care home pursuant to an order under subsection 157 (4) with respect to the suspension of a licence; and
- (b) if an interim manager occupies and operates a long-term care home pursuant to an order under subsection 157 (4) with respect to the revocation of a licence.

#### **37 The Act is amended by adding the following section:**

##### **Minister’s suspension**

**158.1** (1) If the Minister has reasonable grounds to believe that a long-term care home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents, the Minister may make an order suspending the licence for the home.

##### **Application of other provisions, etc.**

- (2) Subject to the regulations and subsection (3), where the Minister makes an order under subsection (1), sections 157 to 171 apply with necessary modifications.

##### **Interim management order**

- (3) Where the Minister makes an order under subsection (1), the Director shall make an order described in subsection 157 (4), and such an order is deemed to have been made under subsection 157 (4).

#### **38 Sections 159, 160, 160.1, 161, 162, 163 and 164 of the Act are repealed and the following substituted:**

##### **Due diligence, mistake do not prevent orders or penalties**

- 159** (1) The authority to make an order or issue a notice under sections 153 to 158.1 against a licensee who has not complied with a requirement under this Act may be exercised whether or not,
- (a) the licensee took all reasonable steps to prevent the non-compliance; or
- (b) at the time of the non-compliance, the licensee had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

**Same, decisions**

- (2) The authority to make a decision under subsection 163 (6) or section 169 may be exercised whether or not,
- (a) the licensee took all reasonable steps to prevent the non-compliance; or
  - (b) at the time of the non-compliance, the licensee had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

**More than one order or notice**

**160** More than one order or notice under sections 153 to 158.1 may be made or issued in respect of the same instance of non-compliance with a requirement under this Act.

**Enforcement under other Acts**

**160.1** An order may be made or a notice issued under sections 153 to 158.1 despite any other measures taken under the *Local Health System Integration Act, 2006* or the *Commitment to the Future of Medicare Act, 2004*, in respect of the same instance of non-compliance with a requirement under this Act.

**Order or notice not a bar to conviction**

**161** An order or a notice under sections 153 to 158.1 in respect of non-compliance with a requirement under this Act does not affect the liability of any person to conviction for an offence arising from the non-compliance.

**Form and service of orders and notices**

**162** (1) An order or a notice under sections 153 to 158.1,

- (a) must be in writing;
- (b) must set out the grounds upon which it is made or issued;
- (c) must set out, if there is a right under section 163 to have it reviewed, a statement of that right and an explanation of how to exercise that right, including the deadline for requesting a review;
- (d) must set out, if there is a right of appeal under section 164, a statement of that right and an explanation of how to exercise that right, including the deadline for the appeal; and
- (e) must be served on the licensee against whom it is made or issued.

**Additional content, notices**

(2) A notice of administrative penalty shall set out, in accordance with the regulations, the amount of the penalty to be paid, and shall specify the time and manner of the payment.

**Filing with court**

**162.1** (1) Subject to subsection (2), a certified copy of an order under sections 153 to 158.1 or a Director's decision under subsection 163 (6) may be filed with a local registrar of the Superior Court of Justice and on filing is deemed to be an order of that court and is enforceable as an order of that court.

**Same**

(2) An order or decision filed under subsection (1) may only be filed upon the expiry of the period for reviewing the order under subsection 163 (2) or appealing the order under section 165 or 170, as the case may be.

**Offence**

**162.2** (1) Every person is guilty of an offence who fails to comply with an order under sections 153 to 156 or 157 to 158.1.

**No imprisonment or probation**

(2) Despite anything else in this Act, a person convicted of an offence under subsection (1) is not liable to imprisonment or to a probation order under subsection 72 (1) of the *Provincial Offences Act* as a result of the conviction or as a result of default in payment of the fine resulting from the conviction.

**Due diligence, mistake not a defence**

(3) It is not a defence to a charge under subsection (1) that the person took all reasonable steps to prevent the non-compliance, or at the time of the failure, the person had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.



## REVIEWS AND APPEALS

### **Review of inspector's order or notice**

**163** (1) A licensee against whom an order is made by an inspector under section 153 or 154 or against whom a notice of administrative penalty is issued by an inspector under section 156.1 may request the Director to review the order or notice of administrative penalty.

### **When and how request to be made**

(2) The request for review must be in writing and shall be served on the Director within 28 days from the day the order or notice was served on the licensee.

### **Contents of request for review**

- (3) The request for review must include,
- (a) the portions of the order or notice of administrative penalty in respect of which the review is requested;
  - (b) any submissions that the licensee wishes the Director to consider; and
  - (c) an address for service for the licensee.

### **No automatic stay pending review of an order**

(4) Despite section 25 of the *Statutory Powers Procedure Act*, a request for a review does not stay an order unless the Director orders otherwise in writing upon being satisfied that a stay will not cause harm or a risk of harm to a resident.

### **Stay, administrative penalty**

(5) If a licensee requests a review of a notice of administrative penalty, the requirement to pay is stayed until the disposition of the review.

### **Director's decision**

(6) On a review of an order or notice of administrative penalty, the Director may rescind, confirm or alter the order or notice, and the Director may substitute his or her own order or notice for that of the inspector.

### **Reduction of administrative penalty**

(7) In confirming or altering a notice of administrative penalty, the Director may find that the penalty is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances, and in that case shall reduce the amount of the penalty.

### **Serving decision**

(8) The Director shall serve the Director's decision, including reasons if the order or notice of administrative penalty is confirmed or altered, on,

- (a) the licensee; and
- (b) the local health integration network that provides funding under the *Local Health System Integration Act, 2006* to the licensee, in respect of a decision that relates to an order made under section 154.

### **Automatic confirmation of order**

(9) If the Director does not serve the licensee with a copy of the Director's decision within 28 days of receiving the request for review, the Director shall be deemed to have confirmed the order or notice of administrative penalty and, for the purposes of an appeal to the Appeal Board by the licensee, the Director shall be deemed to have served the licensee with a copy of that decision on the expiry of the 28-day period.

### **Appeal from order, notice, decision**

**164** A licensee may appeal any of the following to the Appeal Board:

1. An order made by the Director under sections 153 to 157, and, subject to the regulations, if any, an order made by the Minister under section 158.1.
2. A notice of administrative penalty issued by the Director under section 156.1.
3. A decision of the Director under section 163.

**39** Section 165 of the Act is amended by striking out "the order or decision" and substituting "the order, notice of administrative penalty, or decision".

**40** (1) Subsection 166 (2) of the Act is repealed and the following substituted:

**Exception**

(2) Subsection (1) does not apply with respect to an order to suspend or revoke a licence under subsection 157 (1) or an order to suspend a licence under subsection 158.1 (1), but does apply with respect to an order under subsection 157 (4).

**(2) Section 166 of the Act is amended by adding the following subsection:****Stay, administrative penalty**

(5) If a licensee appeals to the Appeal Board a notice of administrative penalty issued by the Director under section 156.1 or a decision of the Director under section 163 respecting a notice of administrative penalty, the requirement to pay is stayed until the disposition of the appeal.

**41 Section 168 of the Act is amended by adding the following subsection:****When hearing to begin if licence suspended**

(2.1) In the case of an appeal of an order to suspend a licence under section 157 or 158.1, the hearing shall begin within 30 days after the day the Appeal Board receives the notice unless the parties agree to a postponement.

**42 Section 169 of the Act is amended by adding the following subsection:****Same, administrative penalty**

(2) Despite subsection (1), after a hearing the Appeal Board may rescind, confirm or alter a notice of administrative penalty issued by the Director under section 156.1 or a decision of the Director under section 163 respecting a notice of administrative penalty according to what it considers reasonable in the circumstances, but the Board shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

**43 Section 170 of the Act is amended by adding the following subsection:****Stay, administrative penalty**

(4.1) Despite anything else in this section, if a party appeals a decision of the Appeal Board made under subsection 169 (2) to the Divisional Court, the requirement to pay is stayed until the disposition of the appeal.

**44 Section 173 of the Act is repealed and the following substituted:****Reports, etc., to be public**

**173** The Director shall publish, in any format or manner the Director considers appropriate,

- (a) every direction under subsection 50 (1);
- (b) every inspection report under section 149;
- (c) every order under this Part;
- (d) every written notification or request under subsection 152 (1);
- (e) every written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 153 (1) (b) following a referral under paragraph 4 of subsection 152 (1); and
- (f) any information specified by the Director about administrative penalties issued under this Act and about convictions and penalties imposed on conviction.

**Copy constitutes evidence**

**173.1** (1) In any proceeding, other than a prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector or the Director is admissible as evidence of the order, decision or inspection report and of the facts appearing in the document without further proof.

**Same**

(2) In any proceeding, other than a prosecution, a copy of a record or thing made under clause 147 (1) (b) that appears to be certified as a true copy of the original by an inspector or the Director is admissible as evidence of the record or thing and of the facts appearing in it without further proof.

**Same, prosecution**

(3) In any prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector or the Director, is admissible as evidence, in the absence of evidence to the contrary, of the order, decision or inspection report and of the facts appearing in the document without further proof.

**Same**

(4) In any prosecution, a copy of a record or thing made under clause 147 (1) (b) that appears to be certified as a true copy of the original by an inspector or the Director is admissible as evidence, in the absence of evidence to the contrary, of the record or thing and of the facts appearing in it without further proof.

### **Admissibility of certain documents**

(5) In any proceeding, a certificate as to the result of an examination or test conducted under clause 147 (1) (f) that states the name and qualifications of the person who conducted the examination or test and that appears to be signed by that person is, without further proof of the office or signature of that person, admissible as evidence, in the absence of evidence to the contrary, of the facts stated in the certificate, if the certificate has been served on the other parties to the proceeding within a reasonable time before the certificate is adduced.

#### **45 (1) Clause 174 (2) (a) of the Act is repealed and the following substituted:**

(a) governing the actions to be taken by an inspector under subsection 152 (1) and the orders to be made by an inspector or Director under sections 153 to 157, including, without limiting the generality of the foregoing, specifying factors to be taken into account in determining what actions to take or orders to make, and specifying how such factors are to be taken into account;

(a.1) requiring the payment of, and governing the charging of fees for, inspections;

(a.2) governing administrative penalties under this Act and respecting all matters concerning the administration of a system of administrative penalties under this Act;

#### **(2) Clause 174 (2) (b) of the Act is amended by adding the following subclause:**

(iv) for the purposes of clause 158 (1) (a), making exemptions from any other provision under section 158 and specifying alternative or additional conditions and requirements in respect of the employment of employees and in respect of any other matter affected by section 158;

#### **(3) Subsection 174 (2) of the Act is amended by adding the following clause:**

(b.1) governing suspensions by the Minister under section 158.1, including clarifying and modifying the application of other provisions of this Act to such suspensions;

#### **46 Part X of the Act is amended by adding the following section:**

##### **Directives by Minister**

**174.1** (1) The Minister may issue operational or policy directives respecting long-term care homes where the Minister considers it to be in the public interest to do so.

##### **Public interest**

(2) In deciding to issue an operational or policy directive, the Minister may consider any matter that the Minister regards as relevant, and without limiting the generality of the foregoing, may consider,

(a) the proper management and operation of long-term care homes in general;

(b) the availability of financial resources for the management and operation of the long-term care home system and for the delivery of long-term care home services; and

(c) the quality of care and treatment of residents within long-term care homes generally.

##### **Binding on licensees**

(3) Every licensee of a long-term care home shall carry out every operational or policy directive that applies to the long-term care home.

##### **General or particular**

(4) An operational or policy directive of the Minister may be general or particular in its application, but may not be made with respect to one particular home or licensee.

##### **Non-application of *Legislation Act, 2006***

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to operational or policy directives.

##### **Public availability**

(6) The Minister shall make every operational or policy directive available to the public.

##### **Law prevails**

(7) For greater certainty, in the event of a conflict between an operational or policy directive issued under this section and another requirement under this Act, a provision of any applicable Act, or rule of any applicable law, the requirement, Act or rule prevails.

#### **47 Section 181 of the Act is amended by adding the following subsection:**

**No remedy**

(2) Despite any other Act or law, no costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person against the Crown, the Minister, the Director or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network, in connection with anything referred to in subsection (1), ~~except as provided for in section 158 except as provided for under this Act.~~

**48 (1) Subsections 182 (1), (2), (3) and (4) of the Act are repealed and the following substituted:****Penalties**

- (1) Except where subsection (2) applies, every individual who is convicted of an offence under this Act is liable,
- for a first offence, to a fine of not more than \$100,000 or to imprisonment for a term of not more than 12 months, or to both; and
  - for a subsequent offence, to a fine of not more than \$200,000 or to imprisonment for a term of not more than 12 months, or to both.

**Same**

(2) Every individual who is convicted of an offence under section 24 of this Act is liable to a fine of not more than \$100,000.

**Directors, etc.**

(3) Despite subsection (1), the following rules apply if an individual is convicted of an offence under this Act by virtue of section 69:

- If the individual is a member mentioned in subsection 69 (2), or a director or officer of a corporation that is the licensee of a non-profit long-term care home, the individual is liable to a fine of not more than \$2,000.
- In every other case, the individual is liable to a fine of not more than \$100,000 for a first offence, and not more than \$200,000 for a second or subsequent offence.

**Same, corporations**

(4) Every corporation that is convicted of an offence under this Act is liable to a fine of not more than \$200,000 for a first offence and to a fine of not more than \$500,000 for a subsequent offence.

**(2) Section 182 of the Act is amended by adding the following subsections:****Other conditions**

(5.1) Despite clause 72 (3) (c) of the *Provincial Offences Act*, the court that convicts a person of an offence under this Act may prescribe conditions described in that clause even though the offence is not punishable by imprisonment.

**Presiding judge**

(5.2) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of a prosecution under this Act.

**(3) Section 182 of the Act is amended by adding the following subsections:****Protection of information**

(5.3) In a prosecution for an offence under this Act or where documents or materials are filed with a court under section 148 of this Act or sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,

- (a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

**Definition of personal health information**

(5.4) In this section,

“personal health information” means personal health information as defined in the *Personal Health Information Protection Act, 2004*.

**49 (1) The French version of clause 183 (2) (b) of the Act is amended by striking out “psychologique” and substituting “affectif”.**

**(2) Subsection 183 (2) of the Act is amended by adding the following clause:**

(f.1) defining any word or expression used in this Act but not defined in this Act;

**50 The following provisions of the Act are repealed:**

1. Subsection 207 (2).
2. Subsection 207 (3).
3. Subsection 207 (4).
4. Subsection 207 (5).
5. Subsection 207 (6).
6. Subsection 207 (7).
7. Subsection 207 (8).
8. Subsection 207 (11).
9. Subsection 207 (12).
10. Subsection 207 (13).
11. Subsection 207 (14).
12. Subsection 207 (18).

**HEALTH CARE CONSENT ACT, 1996**

**51 (1) Clause 1 (b) of the *Health Care Consent Act, 1996* is amended by striking out “admission to care facilities” and substituting “admission to or confining in care facilities”.**

**(2) Clauses 1 (c), (e) and (f) of the Act are repealed and the following substituted:**

- (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to or confining in a care facility is proposed and persons who are to receive personal assistance services by,
- (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding,
  - (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to or confining in a care facility or personal assistance services, and
  - (iii) requiring that wishes with respect to treatment, admission to or confining in a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;
- . . . . .
- (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, an admission to or a confining in a care facility or a personal assistance service; and
- (f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to or confining in a care facility or personal assistance services.

**52 (1) Subsection 2 (1) of the Act is amended by adding the following definition:**

“confining in a care facility” and related expressions when used in this Part and Part III.1 have the meaning or meanings provided for in the regulations; (“confinement dans un établissement de soins”)

**(2) The definition of “treatment” in subsection 2 (1) of the Act is amended,**

- (a) by striking out “admission to a care facility” in clause (a), and substituting “admission to or confining in a care facility”; and
- (b) by adding the following clause:

(e.1) a person’s confining in a care facility,

**53 Section 4 of the Act is repealed and the following substituted:**

**Capacity**

**4 (1)** A person is capable with respect to a treatment, admission to or confining in a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission, confining or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

**Presumption of capacity**

(2) A person is presumed to be capable with respect to treatment, admission to or confining in a care facility and personal assistance services.

**Exception**

(3) A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable with respect to the treatment, the admission, the confining or the personal assistance service, as the case may be.

**54 Subsection 5 (1) of the Act is amended by striking out “admission to a care facility” and substituting “admission to or confining in a care facility”.**

**55 The definition of “crisis” in section 39 of the Act is repealed and the following substituted:**

“crisis” means,

- (a) a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility, and
- (b) a situation prescribed by the regulations as a crisis; (“crise”)

**56 Subsection 40 (1) of the Act is repealed and the following substituted:**

**Consent on incapable person’s behalf**

(1) If a person is found by an evaluator to be incapable with respect to the admission,

- (a) consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized unless the person responsible for authorizing admissions is of the opinion that the substitute decision-maker has given consent on the person’s behalf in accordance with this Act.

**57 The Act is amended by adding the following Part:**

**PART III.1  
CONFINING IN A CARE FACILITY**

GENERAL

**Application of Part**

**54.3** This Part applies to confining in a care facility.

**Definitions**

**54.4** In this Part,

“licensee” means,

- (a) a licensee within the meaning of the *Long-Term Care Homes Act, 2007*, and
- (b) any other person prescribed by the regulations as a licensee for the purposes of this Part; (“titulaire de permis”)

“substitute decision-maker” means a person who is authorized under section 54.6 to give or refuse consent to confining in a care facility on behalf of a person who is incapable with respect to the confining. (“mandataire spécial”)

CONSENT ON INCAPABLE PERSON’S BEHALF

**Consent on incapable person’s behalf**

**54.5** (1) If a person is found by an evaluator to be incapable with respect to confining in a care facility,

- (a) consent to confining may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the licensee shall take reasonable steps to ensure that the person is not confined in the care facility unless the licensee is of the opinion that the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act.

**Opinion of Board or court governs**

(2) If a person who is found by an evaluator to be incapable with respect to his or her confining in a care facility is found to be capable with respect to the confining by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply.

### **Determining who may give or refuse consent**

**54.6** Section 20 applies, with necessary modifications, for the purpose of determining who is authorized to give or refuse consent to confining in a care facility on behalf of a person who is incapable with respect to the confining.

### **Principles for giving or refusing consent**

**54.7** (1) A person who gives or refuses consent on an incapable person's behalf to his or her confining in a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests.

### **Best interests**

(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on the incapable person's behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes that the incapable person would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to confining in a care facility that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
  - (i) whether confining in the care facility is likely to,
    - (A) improve the quality of the incapable person's life,
    - (B) prevent the quality of the incapable person's life from deteriorating, or
    - (C) reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate,
  - (ii) whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without confining in the care facility,
  - (iii) whether the benefit the incapable person is expected to obtain from confining in the care facility outweighs the risk of negative consequences to the incapable person,
  - (iv) whether a course of action that is less restrictive than confining in the care facility is available and is appropriate in the circumstances.

### **Confining**

(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the incapable person's behalf to the incapable person's confining in a care facility, unless the confining is essential to prevent serious bodily harm to the incapable person or to others, or allows the incapable person greater freedom or enjoyment.

### **Withdrawal of consent**

(4) Authority to consent on an incapable person's behalf to the person's confining in a care facility includes authority to withdraw the consent at any time.

### **Information**

**54.8** (1) Before giving or refusing consent on an incapable person's behalf to the incapable person's confining in a care facility, a substitute decision-maker is entitled to receive all the information required in order to make the decision.

### **Conflict**

(2) Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*.

### **Ancillary decisions**

**54.9** (1) Authority to consent on an incapable person's behalf to the incapable person's confining in a care facility includes authority to make decisions that are necessary and ancillary to the confining.

### **Collection and disclosure of information**

(2) A decision concerning the collection, use and disclosure of information relating to the incapable person is a decision that is necessary and ancillary to the confining, if the information is required for the purpose of the confining and is not personal health information within the meaning of the *Personal Health Information Protection Act, 2004*.

**Exception**

(3) Subsection (1) does not authorize the making of a decision concerning the incapable person's property.

**Obligation when application is being made****Application**

**54.10** (1) This section applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) before the confining takes place, the licensee is informed that the person who was found to be incapable, or a person acting on the person's behalf, intends to apply, or has applied, to the Board for a review of the finding; and
- (c) the application to the Board is not prohibited by subsection 54.14 (2).

**Same**

(2) This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) before the confining takes place, the licensee is informed that,
  - (i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the confining on his or her behalf, or
  - (ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the confining on his or her behalf; and
- (c) the application to the Board is not prohibited by subsection 54.15 (3).

**Same**

(3) This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) consent to the incapable person's confining in a care facility is given on the person's behalf by his or her substitute decision-maker; and
- (c) before the confining takes place, the licensee is informed that the incapable person, or a person acting on the incapable person's behalf, intends to apply, or has applied, to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

**Shall not confine**

(4) In the circumstances described in subsections (1), (2) and (3), the licensee shall take reasonable steps to ensure that the person is not confined in the care facility,

- (a) until 48 hours have elapsed since the licensee was first informed of the intended application to the Board without an application being made;
- (b) until the application to the Board has been withdrawn;
- (c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the licensee that he or she intends to appeal the Board's decision; or
- (d) if a party to the application before the Board has informed the licensee that he or she intends to appeal the Board's decision,
  - (i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
  - (ii) until the appeal of the Board's decision has been finally disposed of.

**Where confining has taken place**

(5) For greater certainty, subsection (4) does not apply if the licensee is not informed of a matter described in clause (1) (b), (2) (b) or (3) (c) until after the confining has taken place.

**Non-application**

(6) This section does not apply if the licensee is of the opinion that the incapable person requires confining under the common law duty of a caregiver to confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others.



### **Incapacity information**

**54.11** An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to confining in a care facility such information about the consequences of the findings as is specified in the guidelines.

### **Apparently valid consent to confining**

**54.12** (1) If a licensee confines a person in a care facility with a consent that the licensee believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the licensee is not liable for confining the person without consent.

### **Apparently valid refusal of confining**

(2) If a licensee does not confine a person in a care facility because of a refusal that the licensee believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the licensee is not liable for failing to confine the person.

### **Reliance on assertion**

(3) If a person who gives or refuses consent to confining in a care facility on an incapable person's behalf asserts that he or she,

- (a) is a person described in subsection 20 (1), as it applies for the purpose of section 54.6, or an attorney for personal care described in clause 54.14 (2) (b);
- (b) meets the requirement of clause 20 (2) (b) or (c), as it applies for the purpose of section 54.6; or
- (c) holds the opinions required under subsection 20 (4), as it applies for the purpose of section 54.6;

the licensee is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances.

### **Person making decision on another's behalf**

**54.13** A person who gives or refuses consent on another person's behalf to the other person's confining in a care facility, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent.

## **APPLICATIONS TO BOARD**

### **Application for review of finding of incapacity**

**54.14** (1) A person, or any person acting on that person's behalf, may apply to the Board for a review of an evaluator's finding that the person is incapable with respect to the person's confining in a care facility.

### **Exception**

(2) Subsection (1) does not apply to,

- (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the person's confining in a care facility; or
- (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50 (1) of the *Substitute Decisions Act, 1992*.

### **Parties**

(3) The parties to the application are:

1. The person found to be incapable.
2. The evaluator.
3. The licensee.
4. Any other person whom the Board specifies.

### **Subss. 32 (4) to (7) apply**

(4) Subsections 32 (4) to (7) apply, with necessary modifications, to an application under this section.

### **Application for appointment of representative**

**54.15** (1) A person who is 16 years old or older and who is incapable with respect to his or her confining in a care facility may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf.

### **Application by proposed representative**

(2) A person who is 16 years old or older may apply to the Board to be appointed as the representative of a person who is incapable with respect to his or her confining in a care facility, in order to give or refuse consent on behalf of the incapable person.

**Exception**

(3) Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the person's confining in a care facility, or an attorney for personal care under a power of attorney conferring that authority.

**Parties**

(4) The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20 (1), as it applies for the purpose of section 54.6.
4. The licensee.
5. Any other person whom the Board specifies.

**Appointment**

(5) In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf to his or her confining in a care facility.

**Subss. 33 (6) to (8) apply**

(6) Subsections 33 (6) to (8) apply, with necessary modifications, to an appointment under this section.

**Application for directions**

**54.16** (1) A substitute decision-maker or the licensee may apply to the Board for directions if the incapable person expressed a wish with respect to the incapable person's confining in the care facility, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or
- (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age.

**Notice to substitute decision-maker**

(2) A licensee who intends to apply for directions shall inform the substitute decision-maker of the intention before applying.

**Parties**

(3) The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The licensee.
4. Any other person whom the Board specifies.

**Directions**

(4) The Board may give directions and, in doing so, shall apply section 54.7.

**Application to depart from wishes**

**54.17** (1) If a substitute decision-maker is required by paragraph 1 of subsection 54.7 (1) to refuse consent to the incapable person's confining in a care facility because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the confining despite the wish; or
- (b) the licensee may apply to the Board to obtain permission for the substitute decision-maker to consent to the confining despite the wish.

**Notice to substitute decision-maker**

(2) If the licensee intends to apply under subsection (1), the licensee shall inform the substitute decision-maker of the licensee's intention before applying.

**Parties**

(3) The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The licensee.
4. Any other person whom the Board specifies.

#### **Criteria for permission**

(4) The Board may give the substitute decision-maker permission to consent to the confining despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the confining is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

#### **Application with respect to confining**

**54.18** (1) If consent to a person's confining in a care facility is given on an incapable person's behalf by a substitute decision-maker, the person, or any other person acting on the incapable person's behalf, may apply to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

#### **Parties**

- (2) The parties to the application are:
1. The substitute decision-maker.
  2. The incapable person.
  3. The licensee.
  4. Any other person whom the Board specifies.

#### **Restriction on repeated applications**

(3) If the decision to consent to the confining of the person is confirmed on the final disposition of an application under this section, the person or another person acting on that person's behalf shall not make a new application for a review of the decision to consent within six months after the final disposition of the earlier application, unless the Board gives leave in advance.

#### **Restriction where other applications**

(4) A person shall not make an application under this section for a review of a decision to consent to the confining within six months after any of the following, unless the Board gives leave in advance:

1. A final disposition of an application under section 54.16 if the result of the final disposition was that directions were given with respect to a wish, applicable to the circumstances, expressed by the person while capable and after attaining 16 years of age.
2. A final disposition of an application under section 54.17 if the result of the final disposition was that permission was given to the substitute decision-maker to consent to the confining despite a wish expressed by the person while capable and after attaining 16 years of age.
3. A final disposition of an application under section 54.18 if the result of the final disposition was that directions were given with respect to the consent to the confining.

#### **Same**

(5) The Board may give leave for the new application to be made under subsection (3) or (4) if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to consent to the confining.

#### **Power of Board**

(6) In determining whether the substitute decision-maker complied with section 54.7, the Board may substitute its opinion for that of the substitute decision-maker.

#### **Directions**

(7) If the Board determines that the substitute decision-maker did not comply with section 54.7, it may give the substitute decision-maker directions and, in doing so, shall apply section 54.7.

#### **Time for compliance**

(8) The Board shall specify the time within which its directions must be complied with.

#### **Deemed not authorized**

(9) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, the substitute decision-maker shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 54.6.

**Subsequent substitute decision-maker**

(10) If, under subsection (9), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (11) and (12), comply with the directions given by the Board on the application within the time specified by the Board.

**Application for directions**

(11) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to confining in a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 54.16.

**Inconsistent directions**

(12) Directions given by the Board under section 54.16 on a subsequent substitute decision-maker's application brought with leave under subsection (11) prevail over inconsistent directions given under subsection (7) to the extent of the inconsistency.

**P.G.T.**

(13) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the Public Guardian and Trustee is required to comply with the directions, and subsection (9) does not apply to him or her.

**Application by licensee to determine compliance with s. 54.7**

**54.19** (1) If consent to confining in a care facility is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the licensee is of the opinion that the substitute decision-maker did not comply with section 54.7, the licensee may apply to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

**Parties**

(2) The parties to the application are:

1. The licensee.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies.

**Power of Board**

(3) In determining whether the substitute decision-maker complied with section 54.7, the Board may substitute its opinion for that of the substitute decision-maker.

**Directions**

(4) If the Board determines that the substitute decision-maker did not comply with section 54.7, it may give the substitute decision-maker directions and, in doing so, shall apply section 54.7.

**Time for compliance**

(5) The Board shall specify the time within which its directions must be complied with.

**Deemed not authorized**

(6) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, the substitute decision-maker shall be deemed not to meet the requirements of subsection 20 (2), as it applies for the purpose of section 54.6.

**Subsequent substitute decision-maker**

(7) If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20 (2), any subsequent substitute decision-maker shall, subject to subsections (8) and (9), comply with the directions given by the Board on the application within the time specified by the Board.

**Application for directions**

(8) If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the confining in a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 54.16.

**Inconsistent directions**

(9) Directions given by the Board under section 54.16 on a subsequent substitute decision-maker's application brought with leave under subsection (8) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency.

**P.G.T.**

(10) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the Public Guardian and Trustee is required to comply with the directions, and subsection (6) does not apply to him or her.

**Deemed application concerning capacity**

**54.20** An application to the Board under section 54.15, 54.16, 54.17, 54.18 or 54.19 shall be deemed to include an application to the Board under section 54.14 with respect to the person's capacity to consent to his or her confining in a care facility unless the person's capacity to consent to such confining has been determined by the Board within the previous six months.

**Transition, applications to the Board under Part III.1**

**54.21** Despite subsection 75 (2), the hearing of an application made under this Part before the day on which this section has been in force for eight months shall begin within 14 days after the day the Board receives the application, unless the parties agree to a postponement.

**58 Subsection 57 (1) of the Act is repealed and the following substituted:****Decision on incapable recipient's behalf**

- (1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service,
- (a) a decision concerning the service may be made on the recipient's behalf by the recipient's substitute decision-maker in accordance with this Act; and
  - (b) the person who is proposing to provide the service shall not rely on the consent of the substitute decision-maker unless the person is of the opinion that the recipient's substitute decision-maker has given consent on the recipient's behalf in accordance with this Act.

**59 Subsection 81 (1) of the Act is amended by striking out "admission to a care facility" in the portion before clause (a) and substituting "admission to or confining in a care facility".**

**60 (1) Section 82 of the Act is amended by adding the following subsection:**

**Same**

(2.1) No person who gives or refuses consent to confining in a care facility on an incapable person's behalf shall make an assertion referred to in subsection 54.12 (3), knowing that it is untrue.

**(2) Subsection 82 (4) of the Act is amended by striking out "subsection (1), (2) or (3)" and substituting "subsection (1), (2), (2.1) or (3)".**

**61 Subsection 83 (1) of the Act is amended by striking out "admission to a care facility" and substituting "admission to or confining in a care facility".**

**62 Section 84 of the Act is repealed and the following substituted:**

**Offence: decision contrary to wishes**

**84 (1)** A person who knowingly contravenes paragraph 1 of subsection 21 (1), paragraph 1 of subsection 42 (1), paragraph 1 of subsection 54.7 (1) or paragraph 1 of subsection 59 (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

**Exception**

(2) Subsection (1) does not apply if the person acts in accordance with permission given under section 36, 53, 54.17 or 68 or in accordance with directions given under section 35, 37, 52, 54, 54.16, 54.18, 67 or 69.

**62.1 The Act is amended by adding the following section:****Protection of information**

**84.1 (1) In a prosecution for an offence under this Act or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,**

- (a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

**Definition of personal health information**

**(2) In this section.**

**“personal health information” means personal health information as defined in the *Personal Health Information Protection Act, 2004*.**

**63 (1) Clause 85 (1) (h) of the Act is amended by striking out “admission to a care facility” and substituting “admission to or confining in a care facility”.**

**(2) Clauses 85 (1) (k), (l) and (m) of the Act are repealed and the following substituted:**

- (k) governing the transfer of information between an evaluator and the person responsible for authorizing admissions to a care facility or between the evaluator and a licensee within the meaning of Part III.1, or between an evaluator and the member of a service provider’s staff who is responsible for a personal assistance service;
- (l) governing the transfer of information that is relevant to the making of a decision under this Act concerning a treatment, admission to or confining in a care facility or a personal assistance service, including regulating the disclosure of such information to the person who is the subject of the decision or to his or her substitute decision-maker and requiring or permitting the disclosure of such information with the consent of the person or his or her substitute decision-maker;
- (m) providing for and governing anything that under this Act is to be prescribed in the regulations or provided for in the regulations;
- (n) governing confining in a care facility, including clarifying the application of this Act or any provision of this Act to confining in a care facility;
- (o) providing for additional or alternate rules with respect to confining in a care facility or a class of care facilities;
- (p) prescribing and governing forms for the purpose of this Act or the regulations.

**64 Subsection 88 (3) of the Act is amended by striking out “clause (d)” and substituting “clause (b)”.**

**PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004**

**65 Section 5 of the *Personal Health Information Protection Act, 2004* is amended by adding the following subsection:**

**Confining in a care facility**

(3.1) A substitute decision-maker of an individual within the meaning of section 54.4 of the *Health Care Consent Act, 1996* shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about confining in a care facility under Part III.1 of that Act.

**66 Subsection 22 (3) of the Act is amended by striking out “(3) or (4)” at the end and substituting “(3), (3.1) or (4)”.**

**67 Paragraph 3 of subsection 23 (1) of the Act is amended by striking out “(3) or (4)” and substituting “(3), (3.1) or (4)”.**

**68 Subsection 26 (11) of the Act is amended by striking out “(3) or (4)” at the end and substituting “(3), (3.1) or (4)”.**

**SUBSTITUTE DECISIONS ACT, 1992**

**69 Paragraph 3 of subsection 50 (2) of the *Substitute Decisions Act, 1992* is amended by striking out “50 and 65” and substituting “50, 54.14 and 65”.**

**COMMENCEMENT**

**Commencement**

**70 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 6  
MEDICAL RADIATION AND IMAGING TECHNOLOGY ACT, 2017**

**Definitions**

**1** In this Act,

“College” means the College of Medical Radiation and Imaging Technologists of Ontario; (“Ordre”)

“Health Professions Procedural Code” means the Health Professions Procedural Code set out in Schedule 2 to the *Regulated Health Professions Act, 1991*; (“Code des professions de la santé”)

“member” means a member of the College; (“membre”)

“profession” means the profession of medical radiation and imaging technology; (“profession”)

“this Act” includes the Health Professions Procedural Code. (“la présente loi”)

**Health Professions Procedural Code**

**2** (1) The Health Professions Procedural Code shall be deemed to be part of this Act.

**Terms in Code**

(2) In the Health Professions Procedural Code as it applies in respect of this Act,

“College” means the College of Medical Radiation and Imaging Technologists of Ontario; (“Ordre”)

“health profession Act” means this Act; (“loi sur une profession de la santé”)

“profession” means the profession of medical radiation and imaging technology; (“profession”)

“regulations” means the regulations under this Act. (“règlements”)

**Definitions in Code**

(3) Definitions in the Health Professions Procedural Code apply with necessary modifications to terms in this Act.

**Scope of practice**

**3** The practice of medical radiation and imaging technology is 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.

**Authorized acts**

**4** In the course of engaging in the practice of medical radiation and imaging technology, a member is authorized, subject to the terms, conditions and limitations imposed on their certificate of registration, to perform the following:

1. Administering substances by injection or inhalation.
2. Tracheal suctioning of a tracheostomy.
3. Administering contrast media, or putting an instrument, hand or finger,
  - i. beyond the opening of the urethra,
  - ii. beyond the labia majora,
  - iii. beyond the anal verge, or
  - iv. into an artificial opening of the body.
4. Performing a procedure on tissue below the dermis.
5. Applying a prescribed form of energy.

**Additional requirements for authorized acts**

**5** (1) A member shall not perform a procedure under the authority of paragraphs 1 to 4 of section 4 unless the procedure is ordered by a member of the College of Physicians and Surgeons of Ontario or the member performs the procedure pursuant to an exemption set out in a regulation made under the *Regulated Health Professions Act, 1991*.

**Same**

(2) A member shall not perform a procedure under paragraph 5 of section 4 unless the procedure is ordered by a member of the College of Physicians and Surgeons of Ontario or a member of any other College who is authorized to order the procedure or the member performs the procedure pursuant to an exemption set out in a regulation made under the *Regulated Health Professions Act, 1991*.

### **Professional misconduct**

(3) In addition to the grounds set out in subsection 51 (1) of the Health Professions Procedural Code, a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member contravenes subsection (1) or (2) of this section.

### **College continued**

**6** The College of Medical Radiation Technologists of Ontario is continued under the name College of Medical Radiation and Imaging Technologists of Ontario in English and Ordre des technologues en radiation médicale et en imagerie médicale de l'Ontario in French.

### **Council**

**7** (1) The Council shall be composed of,

- (a) at least six and no more than nine persons who are members elected in accordance with the by-laws;
- (b) at least five and no more than eight persons appointed by the Lieutenant Governor in Council who are not,
  - (i) members,
  - (ii) members of a College as defined in the *Regulated Health Professions Act, 1991*, or
  - (iii) members of a Council as defined in the *Regulated Health Professions Act, 1991*; and
- (c) one or two persons selected, in accordance with a by-law made under section 13, from among members who are faculty members of an educational institution in Ontario that is authorized to grant diplomas or degrees in a specialty of the profession.

### **Who can vote in elections**

(2) Subject to the by-laws, every member who practises or resides in Ontario and who is not in default of payment of the annual membership fee is entitled to vote in an election of members of the Council.

### **President and Vice-President**

**8** The Council shall have a President and Vice-President who shall be elected annually by the Council from among the Council's members.

### **Restricted titles**

**9** (1) No person other than a member shall use the title "medical radiation and imaging technologist", "diagnostic medical sonographer", "radiological technologist", "radiation therapist", ~~"nuclear medicine therapist"~~, "nuclear medicine technologist", "magnetic resonance technologist", a variation or abbreviation or an equivalent in another language.

### **Representations of qualification, etc.**

(2) No person other than a member shall hold themselves out as a person who is qualified to practise in Ontario as a medical radiation and imaging technologist or in a specialty of medical radiation and imaging technology.

### **Definition**

(3) In this section,

"abbreviation" includes an abbreviation of a variation.

### **Notice if suggestions referred to Advisory Council**

**10** (1) The Registrar shall give a notice to each member if the Minister refers to the Advisory Council, as defined in the *Regulated Health Professions Act, 1991*, a suggested,

- (a) amendment to this Act;
- (b) amendment to a regulation made by the Council; or
- (c) regulation to be made by the Council.

### **Requirements re notice**

(2) A notice mentioned in subsection (1) shall set out the suggestion referred to the Advisory Council and the notice shall be given within 30 days after the Council of the College receives the Minister's notice of the suggestion.

### **Offence**

**11** Every person who contravenes subsection 9 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence.



### Regulations

12 Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations prescribing forms of energy, other than ionizing radiation, electromagnetism and soundwaves, for the purposes of section 3.

### By-laws

13 The Council may make by-laws respecting the qualifications, number, selection and terms of office of Council members who are selected.

### Transition

14 (1) A person who, on the day before section 15 of this Act came into force, was registered under the *Medical Radiation Technology Act, 1991* shall be deemed to be the holder of a certificate of registration issued under this Act subject to any term, condition or limitation to which the registration was subject.

### Same, Council members

(2) A person who, on the day before section 15 of this Act came into force, was a member of the Council or the President or Vice-President under the *Medical Radiation Technology Act, 1991* continues in office under this Act until their term would otherwise expire.

### Same, by-laws and regulations

(3) By-laws and regulations made under the *Medical Radiation Technology Act, 1991* that were in force on the day before section 15 of this Act came into force remain in force until they are revoked or replaced under this Act.

### Power of Council

(4) The Council of the College of Medical Radiation Technologists of Ontario has the power to make by-laws and regulations under this Act to come into force on or after section 15 comes into force.

### Repeal

15 **The *Medical Radiation Technology Act, 1991* is repealed.**

### *Healing Arts Radiation Protection Act*

16 Paragraph 7 of subsection 5 (2) of the *Healing Arts Radiation Protection Act* is amended by striking out “the College of Medical Radiation Technologists of Ontario” and substituting “the College of Medical Radiation and Imaging Technologists of Ontario”.

### *Regulated Health Professions Act, 1991*

17 (1) **Item 16 of the Table to the *Regulated Health Professions Act, 1991* is struck out and the following substituted:**

16.	person registered under the <i>Radiological Technicians Act</i>	member of the College of Medical Radiation and Imaging Technologists of Ontario
17.	member of the College of Medical Radiation Technologists of Ontario	member of the College of Medical Radiation and Imaging Technologists of Ontario

(2) **Schedule 1 to the Act is amended by striking out,**

<i>Medical Radiation Technology Act, 1991</i>	<b>Medical Radiation Technology</b>
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**and substituting the following:**

<i>Medical Radiation and Imaging Technology Act, 2017</i>	Medical Radiation and Imaging Technology
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### Commencement

18 (1) **Subject to subsection (2), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

(2) **Subsection 14 (4) and sections 18 and 19 come into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

### Short title

19 **The short title of the Act set out in this Schedule is the *Medical Radiation and Imaging Technology Act, 2017*.**

**SCHEDULE 7  
ONTARIO DRUG BENEFIT ACT**

**1 Subsection 13 (3) of the *Ontario Drug Benefit Act* is repealed and the following substituted:**

**Disclosure**

(3) The Minister and the executive officer shall disclose personal information, subject to such conditions as may be prescribed, if the disclosure is necessary for purposes related to the administration of this Act or for such other purposes as may be prescribed, but shall not disclose the information if, in his or her opinion, the disclosure is not necessary for those purposes.

**2 Clause 23 (3) (b) of the Act is repealed and the following substituted:**

- (b) a requirement that the use of a drug product for particular patients or a particular class of patients require a prescription from a prescriber or member of a class of prescribers specified by the executive officer;

**Commencement**

**3 This Schedule comes into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**SCHEDULE 8**  
**ONTARIO MENTAL HEALTH FOUNDATION ACT**

*Ontario Mental Health Foundation Act*

**1** The *Ontario Mental Health Foundation Act* is repealed.

*Pay Equity Act*

**2** Section 12 under the heading “Ministry of Health and Long-Term Care” in the Appendix to the *Pay Equity Act* is repealed.

*Substitute Decisions Act, 1992*

**3** The Schedule to the *Substitute Decisions Act, 1992* is amended by striking out “*Ontario Mental Health Foundation Act*”.

*Social Contract Act, 1993*

**4** Sections 11 and 17 under the heading “Ministry of Health and Long-Term Care” in the Appendix to the *Social Contract Act, 1993* are repealed.

**Commencement**

**5** This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 9  
OVERSIGHT OF HEALTH FACILITIES AND DEVICES ACT, 2017**

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**PART I  
INTERPRETATION**

**Interpretation**

**1** In this Act,

“Board” means the Health Services Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission”)

“business day” means a day on which Canada Post ordinarily delivers lettermail; (“jour ouvrable”)

“cessation order” means an order made under section 51; (“ordre de cessation”)

“community health facility” means,

- (a) a 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
- (b) a place or collection of places prescribed in regulations made by the Minister; (“établissement de santé communautaire”)

“compliance order” means an order made under section 50; (“ordre de conformité”)

“energy applying and detecting medical device” means a prescribed device that,

- (a) is an instrument, apparatus, contrivance or other similar article, including a component, part or accessory of any of them, that is manufactured, sold or represented for use in,
  - (i) diagnosing, treating, mitigating or preventing a disease, disorder or abnormal physical state, or any of their symptoms, in human beings, or
  - (ii) restoring, modifying or correcting the body structure of human beings or the functioning of any part of the bodies of human beings, and
- (b) is used to,
  - (i) apply to the body of a human being acoustic, electromagnetic or particle radiation, or
  - (ii) detect acoustic, electromagnetic, or particle radiation emitted from or applied to the body of a human being pharmaceutically or by other means; (“instrument médical d’application et de détection d’énergie”)

- “executive officer” means the executive officer appointed under section 2, and where more than one executive officer has been appointed, means the person who is the executive officer for the purposes of the provision in which the term appears; (“administrateur”)
- “facility cost” means,
- (a) a charge, fee or payment for or in respect of a service or operating cost that supports, assists and is a necessary adjunct, or any of them, to an insured service but is not part of the insured service, and
  - (b) anything else that is prescribed as a facility cost; (“coût d’établissement”)
- “inspecting body” means an organization designated as an inspecting body in accordance with the regulations; (“organisme d’inspection”)
- “inspector” means an inspector appointed by an inspecting body under section 36 or by the executive officer under section 37; (“inspecteur”)
- “insured person” has the same meaning as in the *Health Insurance Act*; (“assuré”)
- “insured service” means, subject to the regulations, a service rendered in Ontario to an insured person by a physician or practitioner where the service is an insured service under the *Health Insurance Act* and the regulations made under it; (“service assuré”)
- “justice” has the same meaning as in the *Provincial Offences Act*; (“juge”)
- “licence” means a licence issued under this Act, and “licensed” has a corresponding meaning; (“permis”)
- “licensee” means,
- (a) in respect of a community health facility, the holder of a licence to operate the facility, and
  - (b) in respect of an energy applying and detecting medical device in respect of which a licence has been issued, the owner or other person having management and control of the device; (“titulaire de permis”)
- “local health integration network” means a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*; (“réseau local d’intégration des services de santé”)
- “Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)
- “Ministry” means the ministry of the Minister; (“ministère”)
- [“personal health information” has the same meaning as in the \*Personal Health Information Protection Act, 2004\*; \(“renseignements personnels sur la santé”\)](#)
- “personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act* and includes personal health information ~~as defined in the *Personal Health Information Protection Act, 2004*~~; (“renseignements personnels”)
- “physician” means a legally qualified medical practitioner who is lawfully entitled to practice medicine in Ontario; (“médecin”)
- “practitioner” means a person other than a physician who is lawfully entitled to render insured services in Ontario; (“praticien”)
- “prescribed” means prescribed in the regulations; (“prescrit”)
- “procedure” means either or both of the services prescribed in regulations made by the Minister for the purposes of a community health facility and the procedures performed in the course of operating an energy applying and detecting medical device; (“acte”)
- “prospective licensee” means a person who is permitted to operate a community health facility under section 16 pending a decision of the executive officer as to whether to issue a licence; (“titulaire éventuel d’un permis”)
- “provincial offences officer” has the same meaning as in the *Provincial Offences Act*; (“agent des infractions provinciales”)
- “regulated health College” means a College of a health profession or group of health professions established or continued under an Act named in Schedule 1 to the *Regulated Health Professions Act, 1991*; (“ordre de santé réglementé”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “requirement under this Act” means a requirement contained in this Act or its regulations, or set out in a compliance order, cessation order or other order authorized under this Act or in a notice of administrative penalty under section 54 or in any directive of the Minister under section 67, or a requirement that is a condition of a licence or of receiving funding. (“exigence que prévoit la présente loi”)

## **PART II EXECUTIVE OFFICER**

### **Executive officer**

**2** (1) The Lieutenant Governor in Council shall appoint one or more persons as the executive officer for community health facilities and energy applying and detecting medical devices.

### **Functions and powers**

(2) Subject to this Act and the regulations, it is the function of the executive officer, and the executive officer has the power, to perform any functions or duties that he or she may have under this Act and the regulations.

### **Appointment**

(3) Where more than one person is appointed as executive officer, the appointment may provide for the functions and duties of each person who is appointed.

## **PART III LICENSING AND RELATED MATTERS**

### **Request for applications, community health facilities**

**3** (1) The executive officer may, at any time, request one or more applications for the operation of one or more community health facilities.

### **How made**

(2) The executive officer may request applications,

- (a) by sending an application form to one or more specified persons; or
- (b) by publishing a request for applications in any manner that the executive officer considers appropriate.

### **Submission**

(3) A person interested in operating a community health facility may respond to a request for applications by submitting an application form that complies with subsection 4 (3).

### **Additional information**

(4) The executive officer may request additional information in respect of any application.

### **No obligation to accept**

(5) The executive officer is under no obligation to accept any application.

### **Cancellation**

(6) The executive officer may cancel a request for applications at any time, and for any reason.

### **Applications, general**

#### **Community health facilities**

**4** (1) Any person may apply for a licence to operate a community health facility, subject to any prescribed conditions or prohibitions, whether or not the executive officer has requested applications, but the executive officer is under no obligation to accept or consider an application that has not been requested.

#### **Energy applying and detecting medical devices**

(2) Any person may apply for a licence to operate an energy applying and detecting medical device, subject to any prescribed conditions or prohibitions.

### **Application**

(3) Every application for a licence shall be in a form acceptable to the executive officer and contain any information, which may include personal information, that the executive officer considers necessary or advisable.

### **Issuance**

**5** (1) The executive officer may issue a licence to an applicant where the following conditions are met:

1. The applicant has applied in a manner that complies with the requirements under subsection 4 (3).
2. The applicant has paid any fee established in a regulation made by the Minister.
3. In the case of an application with respect to a proposed community health facility, including a community health facility operating under section 16,



- i. where there has been a request for applications, the applicant and the proposed community health facility meet the requirements of the request, in addition to making the application in accordance with subsection 4 (3),
- ii. where a person has submitted an application under subsection 4 (1), the applicant and the proposed community health facility meet any requirements set out in the form referred to in subsection 4 (3),
- iii. the applicant and the proposed community health facility meet all applicable prescribed requirements,
- iv. the executive officer is satisfied that the applicant will operate the proposed community health facility in compliance with this Act and the regulations and any other applicable Act or regulation,
- v. the applicant and the proposed community health facility have passed any inspection that the executive officer has requested, or that an inspecting body has initiated,
- vi. the applicant has complied, to the satisfaction of the executive officer, with any orders that have been issued by the executive officer or an inspecting body in respect of a community health facility that is permitted to operate under section 16 pending a licensing decision,
- vii. the executive officer is satisfied that the applicant or, where the applicant is a corporation, its officers and directors and the persons with a controlling interest in it, will operate the community health facility with honesty and integrity,
- viii. the executive officer is satisfied that the past conduct relating to the operation of a community health facility or any other matter or business of a person listed in subsection (2) affords reasonable grounds to believe that the persons are competent to operate a community health facility in a responsible manner, ~~and~~
- ix. the executive officer is satisfied that the past conduct relating to the operation of a community health facility or any other matter or business of a person listed in subsection (2) affords reasonable grounds to believe that the facility will be operated in accordance with the law, and
- x. the applicant has paid any fee required to be paid under clause 72 (3) (t).

- 4. In the case of an application with respect to an energy applying and detecting medical device,
  - i. the applicant and the device meet all prescribed requirements,
  - ii. the executive officer is satisfied that the applicant is competent to operate the device and would operate the device in a competent and responsible manner, after considering, as the executive officer may consider appropriate, anything concerning the applicant's history and qualifications that are relevant to the provision of the procedures that will be provided and to the operation of the device,
  - iii. the applicant and the device have passed any inspection that the executive officer has requested, and
  - iv. the executive officer is satisfied that a licence should be issued, after having considered,
    - A. the proposed use of the device,
    - B. the extent to which the proposed use of the device is already available in Ontario or any part of Ontario,
    - C. the need for the proposed use of the device in Ontario or any part of Ontario,
    - D. the future need for the proposed use of the device in Ontario or any part of Ontario, and
    - E. any other matter that the executive officer considers relevant to the management of the health care system.

#### **Relevant persons**

(2) The following are the persons listed for the purposes of subparagraphs 3 viii and ix of subsection (1):

- 1. The applicant.
- 2. If the applicant is a corporation, the officers and directors of the corporation and any other person with a controlling interest in the corporation.
- 3. If the person with a controlling interest is a corporation, the officers and directors of the corporation.

#### **Additional requirement, community health facilities**

(3) In the case of an application that contemplates the provision at the community health facility of insured services or services for which the applicant may receive funding from the Minister, the executive officer shall not issue a licence unless the executive officer is satisfied that a licence should be issued, after having considered,

- (a) the nature of the services to be provided in the community health facility;
- (b) the extent to which the services are already available in Ontario or in any part of Ontario;
- (c) the need for the services in Ontario or any part of Ontario;

- (d) the future need for the services in Ontario or any part of Ontario;
- (e) the projected cost in public money for the establishment and operation of the community health facility;
- (f) the availability of public money to pay for the establishment and operation of the community health facility;
- (g) the concentration of ownership, control or management of community health facilities in Ontario or any part of Ontario; and
- (h) any other matter that the executive officer considers relevant to the management of the health care system.

#### **Discretion**

(4) The executive officer may, in the executive officer's absolute discretion, decide not to issue a licence even where all the requirements of this section have been met, and in the case of an application in respect of a community health facility, may prefer one application over others.

#### **Conditions, etc., time of issue**

6 The executive officer may specify conditions that apply to a licence at the time it is issued.

#### **Conditions, etc. after issue — executive officer**

7 (1) The executive officer may, at any time after the issuance of a licence, amend the licence or the conditions of a licence, including imposing new conditions or removing existing ones.

#### **Notice of amendment**

(2) The executive officer shall serve notice of an amendment under subsection (1), together with brief written reasons, on the licensee.

#### **When effective**

(3) An amendment under subsection (1) takes effect upon the date specified by the executive officer in the notice of amendment.

#### **Conditions, community health facility that was formerly licensed under the *Private Hospitals Act***

**7.1 A license issued or amended under this Act with respect to a community health facility that was formerly licensed under the *Private Hospitals Act* shall include the following conditions:**

1. The facility shall only provide the same services that it provided when the facility was licensed under the *Private Hospitals Act*.
2. The facility shall only operate in the same location that it operated in when the facility was licensed under the *Private Hospitals Act*.
3. The patient bed capacity of the facility shall be no greater than what it was when the facility was licensed under the *Private Hospitals Act*.

#### **Amendment of licence, on application**

8 (1) Without restricting the executive officer's powers under section 7, a licensee may, at any time, apply to the executive officer to amend the licence or the conditions of a licence.

#### **Restriction, community health facility**

(2) A licensee in respect of a community health facility may only make an application under subsection (1) with respect to the services that may be provided under the licence, the location or locations where services may be performed or any other condition of a licence provided for in the regulations.

#### **Form and manner**

(3) An application for an amendment shall be made in a form and manner that is acceptable to the executive officer.

#### **Response of executive officer**

- (4) Where a licensee has applied to the executive officer for an amendment, the executive officer may,
- (a) amend the licence or the conditions of the licence in accordance with the application;
  - (b) amend the licence or the conditions of the licence subject to any further conditions; or
  - (c) deny the application for amendment.

#### **Written reasons, etc.**

(5) Where the executive officer amends the licence subject to further conditions or denies the application, the executive officer shall provide brief written reasons for the decision.

**Transfer of licence**

~~9 (1) A licence in respect of a community health facility is not transferable without the prior written consent of the executive officer.~~

**Criteria**

~~(2) In deciding whether to consent to the transfer of a licence, the executive officer,~~

- ~~— (a) shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence, and for that purpose section 5 applies with necessary modifications; and~~
- ~~— (b) shall also consider whether the current holder of the licence is complying with the requirements under this Act, and may refuse to consent, or consent subject to conditions on the consent, where either or both of the Minister and executive officer have identified a failure to comply with any requirement under this Act by the current holder of the licence.~~

**Conditions**

~~(3) The executive officer's consent to the transfer of a licence may be made subject to conditions, and in consenting to the transfer of a licence, the executive officer may attach to the licence any conditions that the executive officer considers necessary in the circumstances.~~

**Prohibition, transfer of EADMD licence**

~~(4) A licence in respect of an energy applying and detecting medical device is not transferable.~~

**Transfer of licence**

9 (1) Subject to section 9.1, a licence in respect of a community health facility is not transferable without the prior written consent of the executive officer.

**No transfer if unpaid fees**

(1.1) The executive officer shall not consent to transfer a licence unless the current holder of the licence has paid any fee required to be paid under clause 72 (3) (t).

**Criteria**

(2) Subject to section 9.1, in deciding whether to consent to the transfer of a licence, the executive officer,

- (a) shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence, and for that purpose section 5 applies with necessary modifications; and
- (b) shall also consider whether the current holder of the licence is complying with the requirements under this Act, and may refuse to consent, or consent subject to conditions on the consent, where either or both of the Minister and executive officer have identified a failure to comply with any requirement under this Act by the current holder of the licence.

**Conditions**

(3) Subject to section 9.1, the executive officer's consent to the transfer of a licence may be made subject to conditions, and in consenting to the transfer of a licence, the executive officer may attach to the licence any conditions that the executive officer considers necessary in the circumstances.

**Prohibition, transfer of EADMD licence**

(4) A licence in respect of an energy applying and detecting medical device is not transferable.

**Community health facility that was formerly licensed under the *Private Hospitals Act*****Transfer of licence**

9.1 (1) A licence in respect of a community health facility that was formerly licensed under the *Private Hospitals Act* is not transferable without the prior written consent of the Minister.

**No transfer if unpaid fees**

(1.1) The Minister shall not consent to transfer a licence unless the current holder of the licence has paid any fee required to be paid under clause 72 (3) (t).

**Criteria**

(2) In deciding whether to consent to the transfer of a licence in respect of a community health facility that was formerly licensed under the *Private Hospitals Act*, the Minister,

- (a) shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence, and for that purpose section 5 applies with necessary modifications; and

(b) shall also consider whether the current holder of the licence is complying with the requirements under this Act, and may refuse to consent, or consent subject to conditions on the consent, where the Minister has identified a failure to comply with any requirement under this Act or under the *Private Hospitals Act* by the current holder of the licence.

### **Interpretation**

(3) For the purposes of clause (2) (a), all references to the executive officer in section 5 shall be read as references to the Minister.

### **Conditions**

(4) The Minister's consent to the transfer of a licence may be made subject to conditions, and in consenting to the transfer of a licence, the Minister may attach to the licence any conditions that the Minister considers necessary in the circumstances.

### **Licence subject to conditions, etc.**

**10** A licence is subject,

- (a) to every condition that may be specified by the executive officer; and
- (b) to every condition that may be prescribed.

### **Term of licence**

**11** A licence expires on the date, if any, specified in the licence in accordance with the regulations, if any, unless it is revoked or surrendered sooner, and may be renewed at the discretion of the executive officer.

## **PART IV CORPORATE LICENCES, COMMUNITY HEALTH FACILITIES**

### **Controlling interest**

**12** (1) Without limiting the meaning of controlling interest, a person shall be deemed to have a controlling interest in a licensee in respect of a community health facility if the person, either alone or with one or more associates, directly or indirectly,

- (a) owns or controls, beneficially or otherwise, with respect to a licensee that is a corporation,
  - (i) 10 per cent or more of the issued and outstanding equity shares, and
  - (ii) voting rights sufficient, if exercised, to direct the management and policies of the licensee; or
- (b) has the direct or indirect right or ability, beneficially or otherwise, to direct the management and policies of a licensee that is not a corporation.

### **Same**

(2) Without restricting the generality of subsection (1), a person shall be deemed to have a controlling interest in a licensee in respect of a community health facility if that person, either alone or with one or more associates, has a controlling interest in a person who has a controlling interest in a licensee, and so on.

### **Associates**

(3) For the purposes of subsection (1), one person shall be deemed to be an associate of another person if,

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partnership of which the other person is a partner;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that directly or indirectly controls the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation;
- (f) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or
- (g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

### **Calculating shares**

(4) In calculating the total number of equity shares of a corporation beneficially owned or controlled for the purposes of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as having the number of shares equal to the total number of votes it carries.

**Gaining controlling interest**

~~13 (1) A person who by any method gains a controlling interest in a licensee in respect of a community health facility shall obtain the approval of the executive officer.~~

**Executive officer's approval**

~~(2) The approval by the executive officer is subject to any conditions that would apply with respect to the licensee if the person had already gained a controlling interest in the licensee.~~

**Attachment of conditions**

~~(3) The executive officer may attach conditions to an approval.~~

**Regulations may provide for timing, process**

~~(4) The regulations may provide for when the approval of the executive officer must be obtained and for the process for obtaining the approval.~~

**Gaining controlling interest**

13 (1) Subject to section 13.1, a person who by any method gains a controlling interest in a licensee in respect of a community health facility shall obtain the approval of the executive officer.

**Executive officer's approval**

(2) Subject to section 13.1, the approval by the executive officer is subject to any conditions that would apply with respect to the licensee if the person had already gained a controlling interest in the licensee.

**Attachment of conditions**

(3) Subject to section 13.1, the executive officer may attach conditions to an approval.

**Regulations may provide for timing, process**

(4) The regulations may provide for when the approval of the executive officer must be obtained and for the process for obtaining the approval.

**Community health facility that was formerly licensed under the *Private Hospitals Act*****Gaining controlling interest**

13.1 (1) A person who by any method gains a controlling interest in a licensee in respect of a community health facility that was formerly licensed under the *Private Hospitals Act* shall obtain the approval of the Minister.

**Minister's approval**

(2) The approval by the Minister is subject to any conditions that would apply with respect to the licensee in respect of a community health facility that was formerly licensed under the *Private Hospitals Act* if the person had already gained a controlling interest in the licensee.

**Attachment of conditions**

(3) The Minister may attach conditions to an approval under subsection (2).

**Regulations may provide for timing, process**

(4) The regulations may provide for when the approval of the Minister must be obtained and for the process for obtaining the approval.

**Duty of corporation to notify executive officer**

14 (1) A licensee in respect of a community health facility that is a corporation shall notify the executive officer in writing, within the time provided for in the regulations, of any change in the officers or directors of the corporation.

**Same**

(2) Where a corporation has an interest in a licence of a community health facility and there is reasonable ground for belief that an event will occur by which a person would acquire an interest or increase an interest affecting the control of the corporation while the corporation has an interest in the licence, the corporation shall notify the executive officer of the possible event within the time provided for in the regulations.

**PART V  
PROHIBITIONS**

PROHIBITIONS, COMMUNITY HEALTH FACILITY

**Operation**

15 (1) No person shall operate a community health facility except under the authority of a licence, unless section 16 applies.

**Holding out**

(2) No person shall hold themselves out as operating a community health facility if the person is not operating a community health facility under the authority of a licence or by virtue of section 16.

**Operation on an interim basis and exemptions**

**16** Section 15 does not prohibit a person from operating a community health facility without a licence where any of the following apply:

1. Where the person is already operating a facility at the time that it becomes a community health facility for the purposes of this Act, the person may continue to operate it without a licence for up to 120 days after the day the facility becomes a community health facility, or a longer period specified by the executive officer, as long as any conditions specified by the executive officer are complied with.
2. Where the person submits an application for a licence for the community health facility to the executive officer during the period mentioned in paragraph 1, the person may continue to operate the community health facility until the executive officer has made a decision, as long as all applicable provisions of this Act, the regulations and any conditions specified by the executive officer are complied with.
3. Where the regulations provide for an exemption from section 15, the facility may be operated without a licence, subject to compliance with any conditions provided for in the regulations.
4. Where a person is issued an order under clause 48 (1) (a) to apply for a licence for a community health facility, the person may continue to operate the community health facility without a licence up to the date specified in the order, as long as any conditions specified in the order are complied with.
5. Where the person submits an application for a licence for the community health facility to the executive officer during the period mentioned in paragraph 4, the person may continue to operate the community health facility until the executive officer has made a decision, as long as all applicable provisions of this Act, the regulations and any conditions specified by the executive officer are complied with.

**Payments, etc.**

**17** (1) No person shall charge or accept payment of a facility cost unless,

- (a) the facility cost is charged and accepted with respect to an insured service provided to an insured person at a community health facility that is approved for funding under this Act; and
- (b) the facility cost is charged to, and accepted from, the Minister or a prescribed person.

**Access**

(2) No person shall, except as permitted under subsection (1),

- (a) charge or accept payment for providing an insured person with access to an insured service at a community health facility;
- (b) obtain or accept a benefit, direct or indirect, for providing an insured person with access to an insured service at a community health facility; or
- (c) offer to do anything referred to in clause (a) or (b).

**Non-discrimination**

(3) No person shall, in respect of a community health facility, refuse to provide or continue providing an insured service to an insured person for any reason relating to the insured person's choice not to,

- (a) pay an amount requested or charged in connection with the provision of an insured service at the community health facility; or
- (b) provide the licensee or another person or entity with any benefit, direct or indirect, in connection with the provision of an insured service at the community health facility.

**Obtaining funding to which not entitled**

(4) No person shall obtain, receive or attempt to obtain or receive funding or facility costs or any payment for or in respect of a service that the person is not entitled to obtain pursuant to the conditions, rules and restrictions of funding provided for under this Act or the regulations, if any.

**Aiding and abetting**

(5) No person shall aid or abet another person in obtaining, receiving or attempting to obtain or receive funding or facility costs or any payment for or in respect of a service that the person is not entitled to obtain pursuant to the conditions, rules and restrictions of funding provided under this Act or the regulations, if any.

**Licence not to be used as security**

**18** A licence for a community health facility shall not be used as security for the payment or performance of an obligation, and any transaction purporting to use such a licence as security for the payment or performance of an obligation is void.

**Contracts**

**19** (1) A licensee in respect of a community health facility shall not enter into a contract that may result in,

- (a) a change in the beneficial ownership of the licence without a corresponding transfer of the licence in accordance with section 9; or
- (b) in the case of a licensee that is a corporation, a person acquiring or increasing an interest affecting the control of the corporation while it is a licensee.

**Exception**

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licensee and the contract would not result in a breach of the condition.

PROHIBITIONS, ENERGY APPLYING AND DETECTING MEDICAL DEVICES

**Prohibition, operating without licence**

**20** No person shall operate an energy applying and detecting medical device except under the authority of a licence that has been issued with respect to the device.

**Prohibition, operating improperly**

**21** No person shall operate an energy applying and detecting medical device except in accordance with this Act and the regulations and in accordance with the terms and conditions of the licence for the device.

VICARIOUS LIABILITY

**Vicarious liability**

**22** If the executive officer or an inspector appointed by the executive officer is of the opinion that any person working in connection with anything regulated by this Act is failing to comply with this Part, the licensee shall be deemed to have not complied with the relevant provision, and the executive officer or inspector may take any action permitted under this Act in consequence.

**PART VI  
REQUIREMENTS AND STANDARDS**

**Requirements**

**23** (1) Every licensee shall comply with every condition of the licensee's licence.

**Same**

(2) Every licensee and prospective licensee shall comply with every requirement under this Act.

**Truthfulness**

**24** Every licensee and prospective licensee shall provide truthful, complete and accurate information in any application, report, document or any other information required or requested under this Act or the regulations or as a condition of a licence or of receiving funding.

**Safety and quality standards**

**25** Every licensee and prospective licensee shall comply with all safety and quality standards provided for in the regulations.

**Quality management programs**

**26** Every licensee and prospective licensee shall participate in every quality management program provided for in the regulations.

**Business practice standards**

**27** Every licensee and prospective licensee in respect of a community health facility shall comply with all business practice standards provided for in the regulations.

**Quality advisor**

**28** (1) Every licensee and prospective licensee in respect of a community health facility shall, in accordance with the requirements provided for in the regulations, if any, ensure that there is a quality advisor for the community health facility.

**Requirements**

(2) The quality advisor,

- (a) must be a member of a regulated health College;
- (b) must be approved by the executive officer;
- (c) must not be a licensee or prospective licensee, except with the prior written approval of the executive officer; and
- (d) must meet any other requirements provided for in the regulations.

### **Responsibilities**

(3) The quality advisor is responsible for,

- ~~— (a) advising the licensee on the quality and standards of services provided in the community health facility; and~~
- ~~— (b) any other functions provided for in the regulations.~~

(a) advising the licensee on how to provide services in the community health facility in compliance with the safety and quality standards provided for in the regulations;

(b) promptly informing the executive officer and any inspecting body designated for the community health facility where the quality advisor has reasonable grounds to believe that the licensee is not providing services in compliance with the safety and quality standards provided for in the regulations; and

(c) any other functions provided for in the regulations.

### **Quality committee**

**29** (1) Every licensee and prospective licensee in respect of a community health facility shall ensure that there is an inter-professional quality committee for the community health facility that complies with the requirements provided for in the regulations, if any.

### **Same**

(2) The quality committee shall,

- (a) provide advice to the quality advisor on the quality and standards of services provided in the community health facility; and
- (b) perform any other functions provided for in the regulations.

### **Safety officer**

**30** (1) Every licensee in respect of an energy applying and detecting medical device shall, in accordance with the requirements provided for in the regulations, if any, ensure that there is a safety officer for the energy applying and detecting medical device.

### **Responsibilities**

(2) The safety officer is responsible,

- (a) for ensuring that the energy applying and detecting medical device is maintained in safe operating condition; and
- (b) for any other matters related to the safe operation of energy applying and detecting medical devices that are provided for in the regulations.

### **Monitoring of services**

**31** Every licensee and prospective licensee in respect of a community health facility shall establish and maintain a system to monitor the results of services provided in the community health facility in accordance with the requirements provided for in the regulations, if any.

### **Complaints**

**32** Every licensee and prospective licensee in respect of a community health facility shall establish and maintain a process for receiving and responding to complaints from patients and service providers in accordance with the requirements provided for in the regulations, if any.

### **~~Incident review process~~**

~~**33** Every licensee and prospective licensee shall, in accordance with the requirements provided for in the regulations, if any, establish and maintain a process for the review of prescribed incidents and the disclosure of information, which may include personal information, if necessary, related to such incidents.~~

### **Incident review process**

**33** (1) Every licensee and prospective licensee shall, in accordance with the requirements provided for in the regulations, if any, establish and maintain a process for the review of prescribed incidents and the disclosure of information, which may include personal information, if necessary, related to such incidents.



### Disclosure of information related to prescribed incidents

(2) If information related to a prescribed incident is required to be disclosed, the information may only be disclosed to prescribed persons or entities.

#### **Posting**

**34** (1) Every licensee and prospective licensee in respect of a community health facility shall post, in a prominent place clearly visible to members of the public, at or near the entrance of the community health facility, and in compliance with the requirements provided for in the regulations, if any,

- (a) a copy of the licence for the facility in the case of a licensee;
- (b) the name of the licensee or prospective licensee;

~~—(c) copies of inspection reports for the past two years with respect to the community health facility;~~

(c) copies of the last two inspection reports in respect of the community health facility or, if two inspection reports have not been issued in respect of the facility, a copy of any inspection report with respect to the facility;

- (d) the facility's procedure for initiating complaints to the licensee or prospective licensee;
- (e) the executive officer's procedure for making complaints to the executive officer, together with the contact information of the executive officer, or the contact information of a person designated by the executive officer to receive complaints; ~~and~~

(e.1) a copy of each compliance order made under section 50 in respect of the facility and each cessation order made under section 51 in respect of the facility, for as long as the order is in effect; and

- (f) any other prescribed documents.

#### **No personal information**

~~(2) No personal information may be posted under subsection (1).~~

#### **No personal health information**

(2) No personal health information may be posted under subsection (1).

#### **Provision of information, executive officer**

**35** (1) Every licensee, prospective licensee and any other prescribed person shall, for the purposes provided for in subsection (2), provide reports, notices and other information, which may include personal information if necessary, to the executive officer or any other prescribed person,

- (a) as may be required by the executive officer from time to time; and
- (b) as provided for in the regulations, if any.

#### **Purposes**

(2) The purposes under subsection (1) are,

- (a) purposes related to this Act;
- (b) purposes related to the *Commitment to the Future of Medicare Act, 2004*;
- (c) purposes related to the *Health Insurance Act*; and
- (d) any other prescribed purposes.

#### **Collection, use and disclosure of personal information**

**35.1** (1) In the course of performing a duty or exercising a power under this Act or the regulations, no person shall,

(a) collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure; and

(b) collect, use or disclose more personal information than is reasonably necessary to meet the purposes of the collection, use or disclosure.

#### **Recipient of personal information**

(2) Unless a person or entity is subject to the *Personal Health Information Protection Act, 2004*, the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or is otherwise permitted or required by law to use or disclose the information and subject to any exceptions and additional requirements prescribed by regulation, a person or entity that receives personal information under subsection 35 (1), paragraph 5 of subsection 36 (3) and paragraph 4 of subsection 59 (5), shall not use or disclose the information for any purpose other than,

- (a) the purposes for which the information was authorized to be disclosed under this Act or the regulations; and
- (b) the purposes of carrying out a statutory or legal duty.

## **PART VII INSPECTING BODIES**

### **Inspecting bodies**

**36** (1) The regulations may designate one or more organizations as inspecting bodies of community health facilities for the purposes of this Act and the regulations.

### **Power to act**

(2) Every organization that is designated as an inspecting body is deemed to have among its objects all the powers necessary to act as an inspecting body for the purposes of this Act and the regulations.

### **Responsibilities of inspecting bodies**

(3) Subject to the regulations, an inspecting body has the following powers and responsibilities with respect to the community health facilities provided for in the regulations:

1. Developing safety and quality standards for the community health facilities and updating existing standards either as the inspecting body considers appropriate or as requested by the executive officer.
2. Establishing schedules for the regular inspection of the community health facilities.
3. Providing for the inspection of community health facilities as the inspecting body considers advisable or as requested by the executive officer.
4. Appointing inspectors to carry out the responsibilities of inspectors under this Act and the regulations. In the appointment the inspecting body may limit the authority of an inspector in such manner as the inspecting body considers necessary or advisable.
- ~~5. Submitting reports of inspections and other information, which may include personally identifiable information about a person, to the executive officer and to other prescribed persons or entities.~~
- ~~6. Making reports of inspections, which shall not include personally identifiable information about a person, available to the public.~~
- ~~7. Making orders under sections 50 and 51.~~
- ~~8. Establishing committees to carry out any functions of the inspecting body, or any function required by the executive officer.~~
- ~~9. Establishing and collecting fees from the operators of community health facilities in respect of the administration of quality assurance programs, the administration of inspection systems and the performance of inspections.~~
- ~~10. Exercising any power and carrying out any responsibility provided for in the regulations.~~
5. Submitting reports of inspections and other information, which may include personal information, to the executive officer and to other prescribed persons or entities.
6. Making reports of inspections available to the public.
7. Making orders under sections 50 and 51.
8. Making orders issued under sections 50 and 51 available to the public.
9. Establishing committees to carry out any functions of the inspecting body, or any function required by the executive officer.
10. Establishing and collecting fees for any activity that the inspecting body is required or permitted to carry out under this Act or the regulations, including fees for administrative and overhead costs related to the activity, from the following persons:
  - i. applicants for a licence,
  - ii. prospective licensees, and
  - iii. licensees.
11. Exercising any power and carrying out any responsibility provided for in the regulations.

### **No personal health information**

(3.1) Before making a report or order available to the public under subsection (3), the inspecting body shall remove all personal health information from the copy of the report or order that it intends to make public.

### **Shall carry out responsibilities**

(4) Every inspecting body shall exercise its powers and carry out its responsibilities according to the requirements provided for in this Act and in the regulations.

### **Requiring information**

(5) An inspecting body may request a licensee, prospective licensee or other prescribed person to provide the inspecting body with any information or reports that the inspecting body considers necessary for the purpose of carrying out its functions and the licensee, prospective licensee or prescribed person shall comply with the request in the manner and within the time set by the inspecting body.

### **Confidentiality**

(6) Every inspecting body and every inspector appointed by an inspecting body shall keep confidential all information that comes into their possession in the course of carrying out their functions under this Act, except,

- (a) where the executive officer requests the information from the inspecting body in the course of carrying out the executive officer's functions under this Act;
- (b) where the inspecting body is required under this Act or the regulations to post the information or to make the information public;
- (c) where the regulations require the inspecting body to provide the information;
- (d) where the person to whom the information relates has consented to the disclosure;
- (e) where the disclosure is for purposes related to,
  - (i) the *Regulated Health Professions Act, 1991*, a health profession Act, or the *Drug and Pharmacies Regulation Act*,
  - (ii) the *Commitment to the Future of Medicare Act, 2004*,
  - (iii) the *Health Insurance Act*, or
  - (iv) the *Health Protection and Promotion Act*;
- (f) where the disclosure is to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (g) where disclosure of the information is required by a law of Ontario or Canada;
- (h) where disclosure is required in a proceeding before the Board;
- (i) where there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons; or
- (j) as provided for in the regulations.

## **PART VIII ENFORCEMENT**

### **Inspectors, appointed by executive officer**

**37** The executive officer may appoint, in writing, inspectors or classes of inspectors for the purposes of this Act, whether or not an inspecting body has been given the responsibility of appointing inspectors, and in the appointment may limit the authority of an inspector in such manner as the executive officer considers necessary or advisable.

### **Functions of inspectors**

**38** The following applies with respect to inspectors:

1. The function of an inspector appointed by an inspecting body is to conduct inspections to ensure compliance with sections 25, 26, 28, 29, 31, 32 and 34 and with any other prescribed requirements. Without restricting the generality of this function, it may also include conducting inspections to assist the executive officer to determine whether a licence should be issued under section 5.
2. The function of an inspector appointed by the executive officer is to conduct inspections to ensure compliance with all requirements under this Act, including, but not limited to anything mentioned in paragraph 1.

### **Powers of inspector**

**39** (1) For the purpose of carrying out an inspector's function under this Act an inspector may, without a warrant or other order and without notice, enter and inspect,

- (a) a licensed community health facility or a place in respect of which an application for a licence for a community health facility has been made;
- (b) any business premises of a company that owns, operates or franchises one or more community health facilities;
- (c) any place that the inspector reasonably believes is operating as a community health facility; and
- (d) any premises at which an energy applying and detecting medical device is located or where the inspector reasonably believes an energy applying and detecting medical device is located.

**Time of entry**

(2) The power under this section to enter and inspect without a warrant or other order may be exercised at any reasonable time.

**Dwellings**

(3) No inspector shall enter a place or a part of a place that is being used as a dwelling, except with the consent of the occupier of the place or under the authority of an order under section 44.

**Use of force**

(4) An inspector is not entitled to use force to enter and inspect a community health facility, business premises, place or premises.

**Identification**

(5) An inspector conducting an inspection shall produce, on request, evidence of the inspector's appointment.

**Powers of inspector while inspecting**

- (6) An inspector conducting an inspection may, if the inspector considers it relevant to the inspection,
- (a) examine records or anything else;
  - (b) demand the production of a record or any other thing;
  - (c) upon providing a receipt, if someone is available to provide it to, remove a record or any other thing for copying, review, examination or testing;
  - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;
  - (e) take photographs or make any other kind of recording;
  - (f) question a person about a matter relevant to the inspection;
  - (g) directly observe the practice of, and the performance of procedures by, any person performing a procedure on a patient, in accordance with subsection (8); and
  - (h) call upon experts who may enter the premises and provide assistance to the inspector in carrying out the inspection in any manner that the inspector considers necessary.

**EADMDs**

(7) In addition to the powers set out in subsection (6) an inspector conducting an inspection of a premises at which an energy applying and detecting medical device is located may,

- (a) require the licensee to cease the operation of the device and to dismantle the device for the purpose of an examination or test;
- (b) affix stickers, labels or other things to an energy applying and detecting medical device for purposes of ensuring that the device is not used without the use being detected;
- (c) make tests and examinations to determine whether or not the energy applying and detecting medical device is installed and used in compliance with this Act and the regulations; and
- (d) require the production of proof that any person who operates an energy applying and detecting medical device meets the prescribed qualifications and requirements to ensure that this Act and the regulations are complied with.

**Where inspector observes patient**

(8) Where, as part of the inspection, an inspector directly observes a person performing a procedure on a patient, before the observation occurs, the inspector shall,

- (a) identify themselves to the patient as an inspector appointed under this Act;
- (b) explain the purpose of the direct observation to the patient;

~~—(c) inform the patient that information obtained from the direct observation, including personally identifiable information about the patient, may be used in proceedings under the laws of Ontario;~~

(c) inform the patient that information obtained from the direct observation, including personal information, may be used in proceedings under the laws of Ontario;

- (d) answer any questions that the patient asks about a matter relevant to the inspection; and
- (e) obtain the patient's written consent to the direct observation of the patient by the inspector.

#### **Written demand**

- (9) A demand under clause (6) (b) that a record or any other thing be produced must be in writing and must include,
  - (a) a statement of the nature of the record or thing required; and
  - (b) a statement of when the records and other things are to be produced.

#### **Obligation to produce and assist**

(10) If an inspector demands that a record or any other thing be produced under this section, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

#### **Records and things removed from place**

- (11) A record or other thing that has been removed for review, examination, copying or testing,
  - (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and for the inspector; and
  - (b) shall be returned to the person within a reasonable time.

#### **Confidentiality**

(12) Except as otherwise provided for in the regulations, an inspector appointed by the executive officer shall keep confidential all information that comes to the inspector's knowledge in the course of an inspection and shall not communicate any information to any other person except as required by law or except where the communication is to the executive officer or the Minister or a person employed in or performing services for the Ministry.

#### **Co-operation**

(13) Every person shall give all reasonable assistance to an inspector in the exercise of the inspector's powers or the performance of the inspector's duties under this Act or the regulations.

#### **Obstruction**

- (14) No person shall,
  - (a) hinder, obstruct or interfere with an inspector conducting an inspection, or otherwise impede an inspector in carrying out their duties;
  - (b) destroy or alter a record or other thing that has been demanded under clause (6) (b); or
  - (c) fail to do anything required under subsection (10) or (13) or under subsection 41 (7).

#### **Definition of record**

(15) In this section,

“record” means any document or record of information, in any form, including a record of personal information.

#### **Copy constitutes evidence**

**40** (1) In any proceeding, other than a prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector, an inspecting body or the executive officer is admissible as evidence of the order, decision or inspection report and of the facts appearing in the document without further proof.

#### **Same**

(2) In any proceeding, other than a prosecution, a copy of a record or thing made under clause 39 (6) (c) that appears to be certified as a true copy of the original by an inspector, an inspecting body or the executive officer is admissible as evidence of the record or thing and of the facts appearing in it without further proof.

#### **Same, prosecution**

(3) In any prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector, an inspecting body or the executive officer is admissible as evidence, in the absence of evidence to the contrary, of the order, decision or inspection report and of the facts appearing in the document without further proof.

**Same**

(4) In any prosecution, a copy of a record or thing made under clause 39 (6) (c) that appears to be certified as a true copy of the original by an inspector, an inspecting body or the executive officer is admissible as evidence, in the absence of evidence to the contrary, of the record or thing and of the facts appearing in it without further proof.

**Admissibility of certain documents**

(5) In any proceeding, a certificate as to the result of an examination or test conducted under subsection 39 (6) or (7) that states the name and qualifications of the person who conducted the examination or test and that appears to be signed by that person is, without further proof of the office or signature of that person, admissible as evidence, in the absence of evidence to the contrary, of the facts stated in the certificate, if the certificate has been served on the other parties to the proceeding within a reasonable time before the certificate is adduced.

**Production order**

**41** (1) On application without notice by a provincial offences officer, a justice may issue a production order to a person, other than a person under investigation for an offence, requiring the person to,

- (a) produce documents or copies of documents, certified by affidavit to be true copies, or produce data; or
- (b) prepare a document based on documents or data already in existence and produce it.

**Contents of order**

(2) A production order must stipulate when, where and how the documents or data are to be produced and to whom they are to be produced.

**Grounds**

(3) A justice may make a production order if satisfied by information given under oath or affirmation that there are reasonable grounds to believe that,

- (a) an offence under this Act has been or is being committed;
- (b) the document or data will provide evidence respecting the offence or suspected offence; and
- (c) the person who is subject to the order has possession or control of the document or data.

**Conditions**

(4) A production order may contain any conditions the justice considers advisable.

**Evidence**

(5) A copy of a document produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under this Act and has the same probative force as the original document would have if it had been proved in the ordinary way.

**No return of copies**

(6) Copies of documents produced under this section are not required to be returned to the person who provided them.

**Compliance required**

(7) A person to whom a production order is directed shall comply with the order according to its terms.

**Not compellable witness**

**42** An inspector or person who, at the request of an inspector, accompanies an inspector doing anything authorized under this Act is not a compellable witness in a civil suit or any proceeding respecting any information or material furnished, obtained, made or received by them under this Act while acting within the scope of their employment.

**Protection of information**

**43** In a prosecution for an offence under this Act or where documents or materials are filed with a court under section 41 of this Act or sections 158 to 160 of the *Provincial Offences Act* in relation to an inspection or an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal information about an individual, including, where appropriate,

- (a) removing the identifying information of any person whose personal information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

### **Order for entry or inspection**

**44** (1) A justice may issue an order authorizing an inspector to do anything set out in section 39, including to enter a place or a part of a place that is being used as a dwelling, if the justice is satisfied, on evidence under oath by an inspector, that there are reasonable grounds to believe that,

- (a) it is appropriate for the inspector to do anything set out in section 39 for the purpose of determining any person's compliance with this Act or the regulations; or
- (b) the inspector may not be able to carry out their duties effectively without an order under this section because,
  - (i) no occupier is present to grant access to a place that is locked or otherwise inaccessible,
  - (ii) a person has prevented or may prevent the inspector from doing anything set out in section 39,
  - (iii) it is impractical, because of the remoteness of the place to be inspected or for any other reason, for an inspector to obtain an order under this section without delay if access is denied, or
  - (iv) an attempt by an inspector to do anything set out in section 39 might not achieve its purpose without the order.

### **Same**

(2) Subsections 39 (2), (3) and (5) to (15) apply to an inspection carried out under an order issued under this section.

### **Use of force**

(3) An inspector named in an order under this section may use whatever force is necessary to execute the order and may call upon a police officer for assistance in executing the order.

### **Expiry**

(4) Unless renewed, an order under this section expires on the earlier of the day specified for the purpose in the order and the day that is 30 days after the date on which the order is made.

### **Renewal**

(5) An order under this section may be renewed in the circumstances in which an order may be made under subsection (1), before or after expiry, for one or more periods, each of which is not more than 30 days.

### **When to be executed**

(6) Everything that an order under this section authorizes must be done at a reasonable time.

### **Application without notice**

(7) An order under this section may be issued or renewed on application without notice.

### **Reports**

**45** (1) Promptly after completing an inspection of a community health facility,

- (a) an inspector appointed by an inspecting body shall make a written report to the inspecting body; and
- (b) an inspector appointed by the executive officer shall make a written report to the executive officer.

### **Same**

(2) An inspecting body shall, on request, provide to the executive officer, in the form and at times satisfactory to the executive officer, copies of,

- (a) every report made by an inspector under clause (1) (a);
- (b) a written summary of every report made under clause (1) (a); and
- (c) every order made by the inspecting body or an inspector appointed by the inspecting body under this Act.

### **Requirements certain documents**

**46** Every report, summary of a report and order made by an inspector or by an inspecting body under this Act must comply with the requirements provided for in the regulations, if any.

### **General matters re enforcement**

**47** (1) The use of any measure provided for in this Act in respect of a contravention of a requirement under this Act does not prohibit the use, at the same time or different times, of any other measure provided for in this Act or otherwise available in law in respect of the same contravention.

### **Consideration of past conduct**

(2) Where the executive officer, an inspecting body or an inspector makes a decision under this Act, ~~it may consider they~~ may consider any person's current or past failures to comply with a requirement under this Act or under any other Act that they may consider relevant.

### **Person operating community health facility without a licence**

**48** (1) If the executive officer or an inspector appointed by the executive officer believes on reasonable grounds that a person is operating a community health facility without a licence, except as permitted under section 16, the executive officer or inspector may serve an order on the person ordering the person to,

- (a) apply for a licence under this Act by a date specified on the order or cease operating the community health facility; or
- (b) cease operating the community health facility.

### **Person operating EADMD without a licence**

(2) If the executive officer or an inspector appointed by the executive officer believes on reasonable grounds that a person is operating an energy applying and detecting medical device without a licence, the executive officer or inspector may serve an order on the person ordering the person to cease operating the energy applying and detecting medical device.

### **Conditions**

(3) An order under clause (1) (a) may contain any conditions the executive officer or inspector, as the case may be, considers advisable.

### **Actions if non-compliance found**

**49** (1) If an inspector or inspecting body or the executive officer finds that a licensee or a prospective licensee in respect of a community health facility has not complied with a requirement under this Act, the inspector or inspecting body or executive officer shall do at least one of the following as they consider appropriate and as provided for in this Act:

1. Issue a written notification to the licensee or prospective licensee.
2. Issue a written request to the licensee or prospective licensee to prepare a written plan of correction for achieving compliance, to be implemented voluntarily.
3. Make an order in accordance with section 50 or 51.
4. Issue a notice of administrative monetary penalty in accordance with section 54.

### **Restriction, inspecting body**

(2) An inspecting body and an inspector appointed by an inspecting body may only take an action under subsection (1) with respect to a requirement under this Act for which the inspecting body is responsible under its designation by the regulations or that is reasonably connected to such a requirement.

### **Compliance orders**

#### **Compliance orders, EADMD**

**50** (1) An inspector or the executive officer may order a licensee in respect of an energy applying and detecting medical device,

- (a) to do anything, or refrain from doing anything, to achieve compliance with a requirement under this Act;
- (b) to do anything, or refrain from doing anything, that is necessary or advisable to protect the health or safety of any patient or any other person in or near the premises where the energy applying and detecting medical device is operated; or
- (c) to stop operating the device and to ensure that no one else is operating the device.

### **Grounds**

(2) A compliance order under subsection (1) may be made if, in the opinion of the inspector or the executive officer, after considering any factors provided for in this Act or the regulations, the licensee has not complied with a requirement under this Act or, if in the opinion of the inspector or the executive officer, it is necessary or advisable to protect the health or safety of any person in or near the premises where the energy applying and detecting medical device is operating.

#### **Compliance orders, community health facilities**

(3) An inspector appointed by the executive officer, an inspecting body or the executive officer may order a licensee or a prospective licensee in respect of a community health facility to,

- (a) do anything, or refrain from doing anything, to achieve compliance with a requirement under this Act; or



- (b) prepare, submit and implement a plan to the inspecting body or the executive officer, depending upon who is making the order, for achieving compliance with a requirement under this Act.

### **Grounds**

(4) A compliance order under subsection (3) may be made if, in the opinion of the inspector, inspecting body or the executive officer, after considering any factors provided for in this Act or the regulations, the licensee or prospective licensee has not complied with a requirement under this Act or, if in the opinion of the inspector, inspecting body or the executive officer, it is necessary or advisable to protect the health or safety of any person.

### **Restrictions**

(5) A compliance order made by an inspecting body may only be made with regard to a requirement under this Act respecting the functions for which the inspecting body is responsible under its designation in the regulations or that is reasonably connected to such a requirement.

### **Time of validity**

(6) A compliance order issued under clause (1) (c) is valid until the date set out in the order or until the conditions specified in the order have been met, whichever is earlier.

### **Cessation orders**

**51** (1) An inspector or inspecting body or the executive officer may order a licensee or a prospective licensee in respect of a community health facility to cease from operating or to cease from providing a service ~~for a period of time set out in the order or provided for in the regulations.~~

### **Grounds, cessation order**

(2) A cessation order may be made if, in the opinion of the inspector, inspecting body or the executive officer, after considering any factors provided for in this Act or the regulations, the licensee or prospective licensee has not complied with a requirement under this Act and the non-compliance poses a serious risk of harm to the health and safety of any person.

### **Restrictions**

(3) A cessation order made by an inspecting body or an inspector appointed by an inspecting body may only be with regard to requirements under this Act respecting the functions for which the inspecting body is responsible under its designation in the regulations or that is reasonably connected to such a requirement.

### **Cessation order by certain inspectors**

(4) The following applies with respect to a cessation order made by an inspector appointed by an inspecting body:

1. The order must be reviewed by the inspecting body within the time provided for in the regulations and the inspecting body must make a decision with respect to the order within a time provided for in the regulations. If the inspecting body does not make a decision within that time, the order ceases to be valid.
2. The licensee or prospective licensee may make submissions in writing to the inspecting body within the time specified by the inspecting body.
3. In its review, the inspecting body must consider the cessation order made by the inspector, the inspector's report and any submissions received from the licensee or prospective licensee.
4. In its decision, the inspecting body may confirm, alter or rescind the order made by the inspector and may also,
  - i. substitute another order for that of the inspector, including issuing a compliance order in accordance with section 50, and
  - ii. require an additional inspection to be carried out in accordance with its instructions.
5. The inspecting body shall serve the licensee or prospective licensee with notice of the decision, which shall include written reasons if the order is confirmed or altered or another order is substituted.

### **Copy**

(5) An inspector or inspecting body that issues a cessation order shall promptly provide the executive officer with a copy of the order.

### **Funding**

(6) Where, under a cessation order, a licensee or prospective licensee is required to cease providing any service, no funding shall be provided by the Minister or any other person out of public money with respect to the service that was the subject of the cessation order until the cessation order is terminated by an order issued under subsection (7).

### **Order valid**

(7) A cessation order is valid until terminated by further order of the inspector, inspecting body or executive officer.

**Copy**

(8) An inspector or inspecting body that terminates a cessation order shall promptly provide the executive officer with a copy of the order.

**Review of compliance order EADMD**

**52** (1) A licensee against whom a compliance order is made by an inspector under subsection 50 (1) may request the executive officer to review the order.

**When and how request to be made**

(2) The request for review must be in writing and shall be served on the executive officer within 28 days from the day the order was served on the licensee.

**Contents of request for review**

(3) The request for review must include,

- (a) the portions of the order in respect of which the review is requested;
- (b) any submissions that the licensee wishes to be considered; and
- (c) an address for service for the licensee.

**No automatic stay pending review**

(4) Despite section 25 of the *Statutory Powers Procedure Act*, a request for a review does not stay an order unless the executive officer orders otherwise, in writing, upon being satisfied that a stay will not cause harm or a risk of harm to any person.

**Decision**

(5) On a review of an order, the executive officer may rescind, confirm or alter the order, and may substitute another order for that of an inspector.

**Notice of decision**

(6) The executive officer shall serve the licensee with notice of the decision, which shall include brief written reasons if the order is confirmed or altered.

**Automatic confirmation of order**

(7) If the executive officer does not serve the licensee with a copy of a decision within 28 days of receiving the request for review, the order shall be deemed to have been confirmed.

**Supervisor**

**53** (1) The executive officer may appoint a person as a community health facility supervisor in respect of a community health facility that receives public funds where the executive officer considers it in the public interest to do so.

**Notice of appointment**

(2) The executive officer shall give the licensee in respect of a community health facility at least 14 days notice before appointing a supervisor.

**Term of office**

(3) The appointment of a community health facility supervisor is valid until terminated by order of the executive officer.

**Powers of supervisor**

(4) Unless the appointment provides otherwise, a community health facility supervisor has the exclusive right to exercise all of the powers of the licensee of the facility.

**Same**

(5) The executive officer may specify the powers and duties of a community health facility supervisor appointed under this section and the terms and conditions governing those powers and duties.

**Additional powers of supervisor**

(6) If, under the order of the executive officer, the licensee continues to have the right to act with regard to any matters, any such act of the licensee is valid only if approved in writing by the community health facility supervisor.

**Report to executive officer**

(7) A community health facility supervisor shall report to the executive officer as required by the executive officer.

## Disclosure

(8) The executive officer shall make any report provided to the executive officer under subsection (7) public.

### ~~Personal health information to be removed~~

~~(9) Before making the report public, the executive officer shall ensure that all personal health information, within the meaning of the *Personal Health Information Protection Act, 2004*, in the report is removed.~~

### Personal health information to be removed

(9) Before making the report available to the public, the executive officer shall ensure that all personal health information in the report is removed.

## Directions

(10) The executive officer may issue directions to a community health facility supervisor with regard to any matter within the jurisdiction of the supervisor.

### Directions to be followed

(11) A community health facility supervisor shall carry out every direction of the executive officer.

### Notice of administrative penalty

**54** (1) An inspector appointed by the executive officer or the executive officer may issue a notice in writing requiring a licensee or prospective licensee in respect of a community health facility to pay an administrative penalty in the amount set out in the notice if the inspector or executive officer is of the opinion that the licensee or prospective licensee has not complied with a requirement under this Act.

### Purpose of administrative penalty

- (2) A notice of administrative penalty may be issued under this section for the purpose of,
- (a) encouraging compliance with a requirement under this Act; or
  - (b) preventing a licensee or prospective licensee from deriving, directly or indirectly, any economic benefit as a result of not complying with a requirement under this Act.

### Amount of administrative penalty

- (3) Subject to subsection (4), the amount of an administrative penalty in respect of a failure to comply,
- (a) shall be in the amount prescribed for the purposes of the contravention; and
  - (b) shall reflect the purpose referred to in subsection (2).

### Same, reduction

(4) The inspector or executive officer shall reduce the amount of an administrative penalty determined under subsection (3) if the inspector or executive officer determines that the amount is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances.

### Two-year limitation

(5) A notice of administrative penalty shall not be issued under this section more than two years after the day the most recent failure to comply on which the notice is based first came to the knowledge of an inspector or executive officer.

### Contents of notice of administrative penalty

- (6) A notice of administrative penalty served on a licensee or prospective licensee shall,
- (a) contain or be accompanied by information setting out the nature of the contravention including, if relevant, the date on which and location where the contravention occurred;
  - (b) set out the amount of the penalty to be paid and specify the time and manner of payment; and
  - (c) inform the licensee or prospective licensee of their right to request an appeal of the notice by the Board.

### Review of inspector's notice

(7) A licensee or prospective licensee who is required by a notice issued by an inspector under subsection (1) to pay an administrative penalty may, within 20 days after service of the notice, by written notice served on the executive officer, request that the executive officer review whether the contravention or failure to which the notice relates occurred.

### Contents of request for review

- (8) A request for review under subsection (7) must include,
- (a) the portions of the notice of administrative penalty in respect of which the review is requested;

- (b) any submissions that the licensee or prospective licensee wishes to be considered; and
- (c) an address for service for the licensee or prospective licensee.

### **Stay**

(9) If a licensee or prospective licensee requests a review under subsection (7), the requirement to pay is stayed until the disposition of the review.

### **Decision**

(10) On a review of a notice of administrative penalty, the executive officer may rescind, confirm or alter the notice and may substitute another notice for that of an inspector.

### **Reductions of administrative penalty**

(11) In confirming or altering a notice of administrative penalty, the executive officer may find that the penalty is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances and in that case shall reduce the amount of the penalty.

### **Notice of decision**

(12) The executive officer shall serve the licensee or prospective licensee with notice of the decision, which shall include reasons if the notice of administrative penalty is confirmed or altered.

### **Automatic confirmation of notice**

(13) If the executive officer does not serve the licensee with a copy of a decision within 28 days of receiving the request for review, the notice of administrative penalty shall be deemed to have been confirmed and, for the purposes of an appeal to the Board by the licensee or prospective licensee, the executive officer shall be deemed to have served the licensee with a copy of that decision on the expiry of the 28 day period.

### **Hearing**

(14) A licensee or prospective licensee who is required by a notice issued by the executive officer under subsection (1) to pay an administrative penalty may appeal the decision of the executive officer to the Board in accordance with section 68.

### **Payment to Minister of Finance**

(15) A licensee or prospective licensee who is required to pay an administrative penalty under this Act shall pay the penalty to the Minister of Finance.

### **Enforcement of administrative penalty**

(16) Subject to subsection (17), if a licensee or prospective licensee who is required to pay an administrative penalty fails to pay it within the time specified in the notice, a copy of any of the following may be filed with a local registrar of the Superior Court of Justice and on filing is deemed to be an order of that court and is enforceable as an order of that court:

1. A notice of administrative penalty under subsection (1).
2. A decision of the Board with respect to the notice under section 68.

### **Same**

(17) The notice of administrative penalty or decision filed under subsection (16) may only be filed upon the expiry of the period for appealing the notice or decision.

### **Post-judgment interest**

(18) Section 129 of the *Courts of Justice Act* applies in respect of a notice of administrative penalty or decision filed with the Superior Court of Justice under subsection (16) and, for the purpose, the date on which the notice of administrative penalty or decision is filed under subsection (16) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

### **Crown debt**

(19) An administrative penalty issued under this Act that is not paid within the time set out in the notice of administrative penalty is a debt due to the Crown and enforceable as such.

### **Suspension, revocation, etc.**

### **Community health facilities**

**55** (1) With respect to a community health facility, the executive officer may suspend, revoke or refuse to renew a licence or suspend or revoke a licensee's authorization to provide one or more services under a licence where the executive officer has reasonable grounds to believe that,

- (a) the requirements under section 5 for the issuance of a licence were not met at the time of issuance, or are no longer being met;

- (b) the community health facility does not meet the prescribed safety and quality standards, having regard to any factors the executive officer considers relevant, including, without being limited to,
  - (i) the nature of risks revealed in the course of inspections, and
  - (ii) the actions taken by the licensee in response to compliance orders;
- (c) the licensee or anyone else operating or working at the community health facility has failed to comply with a requirement under this Act, or with any other relevant Act or law; or
- (d) the licensee has not provided services provided for in the licence for a period of at least six months and is not taking reasonable steps to provide the services.

#### **Licence renewal, community health facilities**

(1.1) The executive officer shall refuse to renew a licence unless the licensee has paid any fee required to be paid under clause 72 (3) (t).

#### **Energy applying and detecting medical devices**

- (2) With respect to an energy applying and detecting medical device, the executive officer may suspend, revoke or refuse to renew a licence, where the executive officer has reasonable grounds to believe that,
- (a) the requirements under section 5 for the issuance of a licence were not met at the time of issuance, or are no longer being met;
  - (b) the licensee does not meet the prescribed standards, having regard to any factors the executive officer considers relevant, including, without being limited to,
    - (i) the nature of risks revealed in the course of inspections, or
    - (ii) the actions taken by the licensee in response to compliance orders; or
  - (c) the licensee or anyone else operating an energy applying and detecting medical device has failed to comply with a requirement under this Act, or with any other relevant Act or law.

#### **Notice**

- (3) The executive officer shall give notice of every action taken under this section in accordance with section 58.

#### **Health care system factors**

#### **Community health facilities**

~~56 (1) With respect to a community health facility, at any time the executive officer may suspend, revoke or refuse to renew a licence or suspend or revoke a licensee's authorization to provide one or more services under a licence where the executive officer has reasonable grounds to believe that there has been a change in any factors related to the management of the health care system, including any of the following:~~

- ~~—1. The nature of the services to be provided in the community health facility.~~
- ~~—2. The extent to which the services are already available in Ontario or in any part of Ontario.~~
- ~~—3. The need for the services in Ontario or any part of Ontario.~~
- ~~—4. The future need for the services in Ontario or any part of Ontario.~~
- ~~—5. The projected cost in public money for the establishment and operation of the community health facility.~~
- ~~—6. The availability of public money to pay for the establishment and operation of the community health facility.~~
- ~~—7. The concentration of ownership, control or management of community health facilities in the area in which the licensee operates the facility.~~
- ~~—8. Any other matter that the executive officer considers relevant to the management of the health care system.~~

#### **Energy applying and detecting medical device**

~~(2) With respect to an energy applying and detecting medical device, at any time the executive officer may suspend, revoke or refuse to renew a licence where the executive officer has reasonable grounds to believe that there has been a change in any factors related to the management of the health care system, including any of the following:~~

- ~~—1. The proposed use of the device.~~
- ~~—2. The extent to which the proposed use of the device is already available in Ontario or any part of Ontario.~~
- ~~—3. The need for the proposed use of the device in Ontario or any part of Ontario.~~
- ~~—4. The future need for the proposed use of the device in Ontario or any part of Ontario.~~

~~—5. Any other matter that the executive officer considers relevant to the management of the health care system.~~

### **Health care system factors**

#### **Community health facilities**

**56** (1) Subject to section 56.1, with respect to a community health facility, at any time the executive officer may suspend, revoke or refuse to renew a licence or suspend or revoke a licensee's authorization to provide one or more services under a licence where the executive officer has reasonable grounds to believe that there has been a change in any factors related to the management of the health care system, including any of the following:

1. The nature of the services provided in the community health facility.
2. The extent to which the services are available in Ontario or in any part of Ontario.
3. The need for the services in Ontario or any part of Ontario.
4. The future need for the services in Ontario or any part of Ontario.
5. The projected cost in public money for the operation of the community health facility.
6. The availability of public money to pay for the operation of the community health facility.
7. The concentration of ownership, control or management of community health facilities in the area in which the licensee operates the facility.
8. Any other matter that the executive officer considers relevant to the management of the health care system.

#### **Energy applying and detecting medical device**

(2) With respect to an energy applying and detecting medical device, at any time the executive officer may suspend, revoke or refuse to renew a licence where the executive officer has reasonable grounds to believe that there has been a change in any factors related to the management of the health care system, including any of the following:

1. The proposed use of the device.
2. The extent to which the proposed use of the device is already available in Ontario or any part of Ontario.
3. The need for the proposed use of the device in Ontario or any part of Ontario.
4. The future need for the proposed use of the device in Ontario or any part of Ontario.
5. Any other matter that the executive officer considers relevant to the management of the health care system.

### **Health care system factors**

#### **Community health facilities that were formerly licensed under the *Private Hospitals Act***

**56.1** (1) With respect to a community health facility that was formerly licensed under the *Private Hospitals Act*, at any time the Minister may revoke or refuse to renew a licence where the Minister is of the opinion that it is in the public interest to do so.

#### **Same, public interest**

(2) In making a decision in the public interest under subsection (1), the Minister may consider any matter he or she regards as relevant including, without limiting the generality of the foregoing, the integrity of the publicly funded health care system, the proper management of the health care system in general, and the availability of financial resources for the management of the health care system and for the delivery of health care services.

#### **Due diligence, mistake do not prevent order, appointment or penalties**

**57** The authority to make an order under clause 48 (1) (a) or section 50 or 51, make an appointment under section 53, issue a notice under section 54 or take an action under section 55 against a licensee or prospective licensee who has not complied with a requirement under this Act may be exercised whether or not,

- (a) the licensee or prospective licensee took all reasonable steps to prevent the non-compliance; or
- (b) at the time of the non-compliance, the licensee had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

#### **Form and service of orders and notices**

**58** ~~An order under section 50 or 51, or the notice of taking an action under section 55 or 56,~~

- ~~—(a) must be in writing;~~
- ~~—(b) must set out the grounds upon which it is made;~~

- ~~—(c) must set out, if there is a right of review under section 52, a statement of that right and an explanation of how to exercise that right, including the deadline for requesting the review;~~
- ~~—(d) must set out, if there is a right under section 68 to appeal the order, a statement of that right and an explanation of how to exercise that right, including the deadline for exercising the right; and~~
- ~~—(e) must be served on the licensee or prospective licensee against whom the order is made or the action is taken.~~

#### **Forms and service of orders and notices**

**58** (1) An order under section 50 or 51, or the notice of taking an action under section 55 or 56,

- (a) must be in writing;
- (b) must set out the grounds upon which it is made;
- (c) must set out, if there is a right of review under section 52, a statement of that right and an explanation of how to exercise that right, including the deadline for requesting the review;
- (d) must set out, if there is a right under section 68 to appeal the order, a statement of that right and an explanation of how to exercise that right, including the deadline for exercising the right; and
- (e) subject to subsection (2), must be served on the licensee or prospective licensee against whom the order is made or the action is taken.

#### **Service of orders under s. 51**

(2) An order made under section 51 may be served on a person engaged in the administration or operation of a community health facility but, where an order is served on an administrator or operator, a copy of the order must be delivered to the licensee or prospective licensee of the community health facility.

#### **Forms and service of orders and notices**

**58.1** The notice of taking an action under section 56.1,

- (a) must be in writing;
- (b) must set out the grounds upon which it is made;
- (c) must be served on the licensee against whom the action is taken; and
- (d) may include directions to the licensee of a community health facility that was formerly licensed under the *Private Hospitals Act* providing for the actions the licensee must take to ensure the health and safety of patients.

## **PART IX FUNDING**

### **Funding**

**59** (1) The Minister may,

- (a) provide funding for community health facilities that may include, but is not limited to, facility costs; and
- (b) provide funding for inspecting bodies.

### **Conditions**

(2) The Minister may attach conditions to funding provided under subsection (1), including how funding may be used.

### **Restrictions**

(3) The provision of funding under subsection (1) is subject to any other conditions, rules and restrictions that may be provided for in the regulations, including requirements relating to eligibility to receive funding.

### **Set-off**

(4) Amounts owed to the Crown may be set off against funding that would otherwise be provided under subsection (1).

### **Other persons and entities**

(5) The Minister may make regulations that designate one or more persons or entities to provide funding under clause (1) (a) to community health facilities provided for in those regulations and, where the Minister makes such regulations, the following applies:

1. The Minister and the designated person or entity shall enter into an accountability agreement.
2. The designated person or entity may provide the funding on the terms and conditions that the person or entity considers appropriate, subject to the accountability agreement entered into under paragraph 1 and any requirements that may be set out in the regulations made by the Minister for the purposes of this subsection.

3. The Minister may assign to the designated person or entity the Minister's rights and obligations under all or part of an agreement between the Minister and a community health facility, including an agreement to which a person or entity that is not a community health facility is also a party.

~~4. The designated person or entity shall provide the reports, notices and other information, which may include personal information, if necessary, to the Minister or such other person specified by the Minister,~~

4. The designated person or entity shall provide the reports, notices and other information, which may include personal information, if necessary, to the Minister or such other person prescribed in a regulation made under this section,

i. as may be required by the Minister from time to time for purposes related to the administration of the Act and regulations, and

ii. as may be provided for in the regulations made by the Minister under this subsection.

5. The designated person or entity is deemed to have among its objects all the powers necessary to act as a designated person or entity under this Act.

6. Section 60 does not apply to the funding provided by the designated person or entity.

### Regulations

(6) The Minister may make regulations prescribing persons or entities that may receive information under paragraph 4 of subsection (5).

### **Determinations by Minister**

**60** (1) Subject to paragraph 6 of subsection 59 (5), the Minister shall determine all issues relating to payment of funds for services provided in accordance with this Act.

### **Actions of Minister**

(2) The Minister may take an action described in subsection (3), in respect of a service provided by a licensee or prospective licensee and for which the Minister provides or has provided funding under this Act or a predecessor to this Act,

(a) if the Minister is of the opinion that all or part of the service was not in fact rendered;

(b) if the Minister is of the opinion that the nature of the service is misrepresented, whether deliberately or inadvertently;

(c) if the Minister is of the opinion that the charge or claim for the service has not been submitted in accordance with this Act and the regulations;

(d) if the Minister is of the opinion that all or part of the service was not provided in accordance with prescribed safety and quality standards;

(e) if the Minister is of the opinion that a licensee's or prospective licensee's records do not support a claim, invoice or report for payment; and

(f) in such other circumstances as may be prescribed.

### **Same**

(3) Under the circumstances described in subsection (2), the Minister may,

(a) suspend the making of payments for any time;

(b) reduce the amount of payments for any time; or

(c) recover payments by,

(i) deduction or set-off from any money owing under this Act or the *Health Insurance Act*, or

(ii) demand for repayment of amount the Minister has determined is owing and every licensee or prospective licensee shall comply with any such demand issued by the Minister.

### **Notice**

(4) Before taking any action under subsection (3), the Minister shall provide the licensee or prospective licensee with notice of the Minister's initial opinion and provide a reasonable time set by the Minister to respond and, where the Minister provides such a notice, the following applies:

1. The notice of initial opinion must,

i. provide a brief statement of the facts giving rise to the Minister's initial opinion,

ii. advise the licensee or prospective licensee of the rights under paragraph 2, how to provide the information contemplated by that paragraph to the Minister and that the licensee or prospective licensee could be subject to a direction under paragraph 4, and



- iii. advise the licensee or prospective licensee whether the Minister has applied statistical inference to calculate the amount that the licensee or prospective licensee may be required to reimburse the Minister and how statistical inference was used to calculate the amount.
2. A licensee or prospective licensee who receives a notice of initial opinion may, within 20 business days of receiving the notice, provide the Minister in writing with any information that the licensee or prospective licensee believes is relevant to the Minister's opinion.
3. Where the licensee or prospective licensee has provided information under paragraph 2, the Minister shall review the information.
4. Following the Minister's review under paragraph 3, or where more than 20 business days have passed without the licensee or prospective licensee acting under paragraph 2, the Minister shall issue a direction to the licensee or prospective licensee that,
  - i. confirms the initial opinion,
  - ii. alters the initial opinion, or
  - iii. rescinds the initial opinion.
5. A direction under paragraph 4 must,
  - i. inform the licensee or prospective licensee of the Minister's reasons for the direction, if the Minister has confirmed or altered the initial opinion,
  - ii. where subparagraph 4 i or ii applies, set out the amount of the payment that will be suspended, reduced or recovered, as the case may be, and the date on which such action will be taken or the times within which payment must be made by the licensee or prospective licensee, as the case may be, and
  - iii. inform the licensee or prospective licensee whether statistical inference was used to calculate the amount of the reimbursement and how statistical inference was used to calculate the amount.
6. Despite section 25 of the *Statutory Powers Procedure Act*, an application for judicial review of the Minister's direction under paragraph 4 does not have the effect of staying the direction.

#### **Persons who receive services not to pay**

(5) For greater certainty, no licensee or prospective licensee shall charge or accept payment from a person who receives services from a community health facility for a service with respect to which the Minister has refused to pay or for which the Minister has taken action under subsection (3).

### **PART X MISCELLANEOUS**

#### **Publication**

**61** (1) The executive officer shall make available to the public,

- (a) every order made by the executive officer under this Act that is in relation to a community health facility; and
- (b) anything that is prescribed as something that the executive officer must make available to the public.

#### **Personal information**

~~(2) Before making an order, or anything provided for in the regulations, available to the public, the executive officer shall ensure that any personal information is removed.~~

#### **Personal health information to be removed**

~~(2) Before making an order, or anything provided for in the regulations, available to the public, the executive officer shall ensure that all personal health information is removed.~~

#### **Protection from liability**

~~**62** (1) No action or other proceeding, other than an application for judicial review under the *Judicial Review Procedure Act* or any right of appeal or review that is permitted under this Act, shall be commenced against the Crown, the Minister, the executive officer or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network or an inspector appointed by the executive officer or an inspecting body or any employee or agent of an inspecting body, for anything done or omitted to be done in good faith in the execution or intended execution of a power or duty under this Act.~~

#### **No remedy**

~~(2) Despite any other Act or law, no costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person against the Crown, the~~

~~Minister, the executive officer or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network or an inspector appointed by the executive officer or an inspecting body or any employee or agent of an inspecting body, in connection with anything referred to in subsection (1) except as otherwise provided under this Act.~~

### **Protection from liability**

~~62 (1) No action or other proceeding, other than an application for judicial review under the *Judicial Review Procedure Act* or any right of appeal or review that is permitted under this Act, shall be commenced against the Crown, the Minister, the executive officer or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network or an inspector appointed by the executive officer or an inspecting body or any employee or agent of an inspecting body or person appointed by an inspecting body or a member of the board of directors of an inspecting body or a member of a committee of an inspecting body, for anything done or omitted to be done in good faith in the execution or intended execution of a power or duty under this Act.~~

### **No remedy**

~~(2) Despite any other Act or law, no costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person against the Crown, the Minister, the executive officer or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network or an inspector appointed by the executive officer or an inspecting body or any employee or agent of an inspecting body or person appointed by an inspecting body or a member of the board of directors of an inspecting body or a member of a committee of an inspecting body, in connection with anything referred to in subsection (1) except as otherwise provided under this Act.~~

### **Limitations on remedies**

- 63 (1) No cause of action arises as a direct or indirect result of,
- (a) the enactment or repeal of any provision of this Act; or
  - (b) the making or revocation of any provision of the regulations made under this Act.

### **No remedy**

(2) No costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person in connection with anything referred to in clause (1) (a) or (b).

### **Proceedings barred**

(3) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against any person.

### **Same**

(4) Subsection (3) applies regardless of whether the cause of action on which the proceeding is purportedly based arose before or after the coming into force of this section.

### **Proceedings set aside**

(5) Any proceeding referred to in subsection (3) commenced before the day this section comes into force shall be deemed to have been dismissed, without costs, on the day this section comes into force.

### **No expropriation or injurious affection**

(6) Nothing done or not done in accordance with this Act or the regulations made under it constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

### **Person defined**

(7) In this section,

“person” includes the Crown and its employees and agents and members of the Executive Council.

### **Not Crown agency**

64 (1) Despite the *Crown Agency Act*, an inspecting body is not an agent of the Crown for any purpose and shall not hold itself out as such.

### **Same**

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by an inspecting body.
2. Members, officers and agents of an inspecting body.

3. Members of the board of an inspecting body, including those appointed by the Minister, if any.

#### **No Crown liability**

**65** (1) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a result of any act or omission of a person who is not a minister of the Crown, a Crown employee or a Crown agent if the act or omission is related, directly or indirectly, to the activities or affairs of an inspecting body or to the administration of this Act.

#### **No proceeding**

(2) No proceeding for damages, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any act or omission described in subsection (1).

#### **Personal information**

**66** (1) The Minister or the executive officer may directly or indirectly collect personal information, subject to such conditions as may be prescribed, for purposes related to the administration of this Act, the *Health Insurance Act* or the *Commitment to the Future of Medicare Act, 2004* or for other prescribed purposes.

#### **Use of personal information**

(2) The Minister or the executive officer may use personal information, subject to such conditions as may be prescribed, for purposes related to the administration of this Act, the *Health Insurance Act* or the *Commitment to the Future of Medicare Act, 2004* or for any other prescribed purposes.

#### **Disclosure**

(3) Despite anything else in this Act, the Minister or the executive officer shall disclose personal information subject to such conditions as may be prescribed, where the disclosure is necessary for purposes related to the administration of this Act, the *Health Insurance Act* or the *Commitment to the Future of Medicare Act, 2004* or for any other prescribed purposes, but shall not disclose the information if, in the Minister or executive officer's opinion, as the case may be, the disclosure is not necessary for those purposes.

#### **Disclosure to College**

(4) Where the Minister or the executive officer is of the opinion that it is advisable to do so, the Minister or the executive officer, as the case may be, shall disclose personal information to a College within the meaning of the *Regulated Health Professions Act, 1991* for the purpose of the administration of that Act or an Act named in Schedule 1 to that Act.

#### **Directives by Minister**

**67** (1) The Minister may issue operational or policy directives to a community health facility where the Minister considers it to be in the public interest to do so.

#### **Binding**

(2) The licensee or operator of a community health facility shall comply with every directive of the Minister.

#### **General or particular**

(3) An operational or policy directive of the Minister may be general or particular in its application.

#### **Non-application of *Legislation Act, 2006***

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to operational or policy directives.

#### **Public availability**

(5) The Minister shall make every directive under this section available to the public.

#### **Law prevails**

(6) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the Act or rule prevails.

#### **Appeals**

**68** (1) Except with respect to a decision based on factors related to the management of the health care system, a licensee, prospective licensee or an applicant for a licence may appeal to the Board,

- (a) a decision of the executive officer to refuse to issue a licence to an applicant who has been operating a community health facility without a licence by virtue of section 16;
- (b) a decision of the executive officer to refuse to issue a licence to an applicant that is in respect to an energy applying and detecting medical device;
- (c) a decision of the executive officer to specify conditions that apply to a licence in respect to an energy applying and detecting medical device under section 6;

- (d) a decision of the executive officer to amend a licence or the conditions of a licence in respect to an energy applying and detecting medical device under section 7 or 8 or to deny an application for an amendment of a licence in respect to an energy applying and detecting medical device;
- (e) a decision of the executive officer with regard to the transfer of a licence under section 9;
- (f) a decision of the executive officer under subsection 52 (5) to confirm or alter an order in respect to an energy applying and detecting medical device;
- (g) a decision of the executive officer to issue a compliance order under subsection 50 (1) or to substitute a compliance order under subsection 52 (5);
- (h) a decision of the executive officer, an inspector appointed by the executive officer or of an inspecting body to issue a cessation order under section 51;
- (i) a decision of an inspecting body to confirm or alter a cessation order under subsection 51 (4);
- (j) a decision of the executive officer to issue a notice of administrative penalty under section 54; and
- (k) a decision of the executive officer to suspend, revoke or refuse to renew a licence or suspend or revoke a licensee's authorization to provide one or more services under a licence under section 55.

**Time limit**

- (2) An appeal must be commenced within 15 days of the executive officer's or inspecting body's decision.

**Stay**

- (3) Subject to subsection (4), an appeal respecting a licence has the effect of staying a decision of the executive officer with respect to the licence, but not any other act of the executive officer or any other person or entity based on the same set of facts.

**No stay of cessation order**

- (4) Despite section 25 of the *Statutory Powers Procedure Act*, the appeal of a cessation order does not have the effect of staying the order.

**Stay, administrative monetary penalty**

- (5) If a licensee or prospective licensee appeals to the Board a notice of administrative penalty issued by the executive officer under subsection 54 (1) or a decision of the executive officer under subsection 54 (10) respecting a notice of administrative penalty, the requirement to pay is stayed until the disposition of the appeal.

**Parties**

- (6) The parties to an appeal are,
- (a) the applicant, licensee or prospective licensee;
  - (b) the executive officer, where the decision being appealed is with respect to a decision or an action taken by the executive officer or an order of the executive officer or an inspector appointed by the executive officer;
  - (c) the inspecting body, where the decision being appealed is based on a finding or order of an inspecting body or an inspector appointed by an inspecting body; and
  - (d) any other person that the Board, in its discretion, designates as a party.

**Hearing**

- (7) After receiving a notice of appeal, the Board shall promptly appoint a time and place for a hearing.

**Notice of hearing**

- (8) The Board shall give each of the parties at least seven days notice of the time and place of the hearing.

**Recording of evidence**

- (9) The oral evidence taken before the Board at a hearing shall be recorded and, if required, copies of a transcript of the evidence shall be furnished.

**Health Insurance Act**

- (10) Subsections 23 (1), (2), (4) and (6) of the *Health Insurance Act* apply to the proceedings and decisions of the Board under this Part.

**Onus**

- (11) In any appeal under this section, the onus is on the appellant to establish why any decision or order should not have been made.

### **Decision of Board**

(12) After a hearing, the Board may rescind, confirm or alter the order or decision appealed from and may substitute its own opinion and may direct the person or organization that made the decision to take any action that the Board considers ought to be taken in accordance with this Act and the regulations.

### **Same, administrative monetary penalty**

(13) Despite subsection (12), after a hearing the Board may rescind, confirm or alter a notice of administrative penalty issued by the executive officer under subsection 54 (1) or a decision of the executive officer under subsection 54 (10) respecting a notice of administrative penalty according to what it considers reasonable in the circumstances, but the Board shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

### **Appeal to court**

(14) Any party to the proceedings before the Board may appeal from its decision to the Divisional Court in accordance with the rules of court.

### **Stay, administrative monetary penalty**

(15) If a party appeals a decision of the Board made under subsection (13) to Divisional Court, the requirement to pay is stayed until the disposition of the appeal.

### **Record to be filed in court**

(16) Where any party appeals from a decision of the Board, the Board shall forthwith file in the Divisional Court the record of the proceedings before it in which the decision was made which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

### **Powers of court on appeal**

(17) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the executive officer to take any action which the Board may direct the executive officer to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the executive officer or of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

### **Funding not to be considered**

**69** The sufficiency of the funding provided to a licensee or prospective licensee from any source shall not be considered in any review or appeal under this Act.

### **Service**

**70** (1) Any notice that is required to be served under this Act may be served,

- (a) by personal service;
- (b) by sending the notice by registered mail addressed to the person or entity to be served at their last address appearing on the ~~records of the executive officer~~ records of the executive officer if the executive officer is serving notice or of the inspecting body if the inspecting body is serving notice;
- (c) by sending the notice by fax to the person or entity to be served at their last fax number appearing on the ~~records of the executive officer~~ records of the executive officer if the executive officer is serving notice or of the inspecting body if the inspecting body is serving notice;
- (d) by sending the notice by commercial courier to the person or entity to be served at their last address appearing on the ~~records of the executive officer~~ records of the executive officer if the executive officer is serving notice or of the inspecting body if the inspecting body is serving notice; or
- (e) by any other prescribed method of delivery.

### **Deemed receipt**

(2) Where notice is served in a manner described in subsection (1), the person or entity shall be deemed to have received the notice,

- (a) in the case of a notice sent by registered mail, on the fifth business day after the day it was mailed;
- (b) in the case of a notice sent by personal delivery or fax, on the first business day after the day it was sent;
- (c) in the case of a notice sent by commercial courier, on the second business day after the commercial courier received the document; or
- (d) in the case of a notice sent by any other prescribed methods, on a day provided for in the regulations.

### Delegation

**71** The executive officer may delegate in writing any of the executive officer's powers under this Act to a prescribed person or entity, subject to any conditions or restrictions that the executive officer considers advisable, and the exercise of such a power by the person or entity is deemed to be the exercise of the power by the executive officer for all purposes.

### Regulations

**72** (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

#### Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) providing for and governing anything that this Act refers to as being prescribed or provided for in the regulations, or as being required to be done in accordance with the regulations, other than a matter for which the Minister is empowered to make regulations;
- (b) defining or clarifying the meaning of any word or expression used in this Act that is not otherwise defined in this Act;
- (c) providing for additional powers, functions and duties of the executive officer;
- (d) governing the service of any document or information that is required to be served under this Act or the regulations;
- (e) designating inspecting bodies and governing the exercise of their responsibilities under this Act;
- (f) governing inspections, including the actions to be taken by an inspector or inspecting body;
- (g) providing for exemptions from this Act or any provision of this Act, subject to any conditions that may be set out in the regulation;
- (h) providing for and governing any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act and with the repeal of the *Healing Arts Radiation Protection Act*, the *Independent Health Facilities Act* and the *Private Hospitals Act*.

#### Same, community health facilities

(3) The Lieutenant Governor in Council may make regulations governing community health facilities and their licensing and, without restricting the generality of the foregoing, may make regulations,

- (a) respecting and governing the operation of community health facilities;
- (b) respecting and governing the care, treatment and services provided in community health facilities;
- (c) respecting and governing the quality and standards of services provided in community health facilities;
- (d) respecting and governing the quality and standards of community health facilities;
- (e) respecting and governing the qualifications of persons providing services in community health facilities;
- (f) respecting and governing the requirements for persons working in community health facilities;
- (g) respecting and governing conditions and requirements that apply to licensees and prospective licensees in respect of community health facilities, and requiring compliance with those conditions and requirements;
- (h) respecting and governing the construction, establishment, location, equipment, maintenance and repair of community health facilities;
- (i) respecting and governing books, records and accounts that are required to be kept by licensees and prospective licensees;
- (j) respecting and governing information that a licensee, prospective licensee and any other person is required to provide to the executive officer or other prescribed persons;
- (k) respecting and governing the requirements for posting reports, information and documents;
- ~~(l) respecting and governing reports that are required to be made publicly available and the persons responsible for making such reports available;~~
- (l) respecting and governing reports, decisions and orders that are required to be made publicly available and the persons responsible for making such reports, decisions and orders available;
- (m) respecting and governing administrative penalties under this Act and respecting all matters concerning the administration of a system of administrative penalties under this Act;
- (n) respecting and governing the provision of funding under this Act, including providing for the amounts payable, which may be set at nil;

- (o) governing claims made for purposes of payment under this Act, including requiring claims to be made in the prescribed manner and at the prescribed time and prescribing conditions for the making of claims;
- (p) prescribing services, classes of services and operating costs that are not part of an insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;
- (q) prescribing services, classes of services and operating costs that are part of an insured service;
- (r) governing the admission and discharge of patients;
- (s) respecting and governing the requirements and duties that apply to a licensee that is a corporation, including prescribing additional requirements;
- ~~(t) requiring applicants for a licence, prospective licensees and licensees to pay fees established by an inspecting body.~~
- (t) requiring applicants for a licence, prospective licensees and licensees to pay fees established by an inspecting body for any activity the inspecting body is required or permitted to carry out under this Act or the regulations, including fees for administrative and overhead costs related to the activity.

#### **Same, EADMDs**

- (4) The Lieutenant Governor in Council may make regulations governing energy applying and detecting medical devices and their licensing and, without restricting the generality of the foregoing, may make regulations,
- (a) respecting and governing the places and areas where energy applying and detecting medical devices are located, and associated places;
  - (b) respecting communication of information to patients with respect to the use of energy applying and detecting medical devices;
  - (c) respecting and governing standards of design, construction, operation and performance for energy applying and detecting medical devices and their components;
  - (d) respecting and governing the installation of energy applying and detecting medical devices;
  - (e) respecting and governing the monitoring and maintenance of energy applying and detecting medical devices and their component parts;
  - (f) respecting and governing qualifications for the operators of energy applying and detecting medical devices;
  - (g) respecting and governing the operation of energy applying and detecting medical devices;
  - (h) providing for requirements, standards and procedures related to the radiation exposure by energy applying and detecting medical devices for patients, operators and the public;
  - (i) respecting, governing and limiting the purposes for which any person or class of persons may operate an energy applying and detecting medical device or any class of energy applying and detecting medical devices;
  - (j) respecting and governing requirements and standards for evaluating the performance of procedures and quality management programs regarding energy applying and detecting medical devices;
  - (k) respecting and governing requirements and duties that apply to licensees in respect of energy applying and detecting medical devices and requiring compliance with those requirements;
  - (l) respecting and governing books, records and accounts that are required to be kept by licensees;
  - (m) respecting and governing information that licensees in respect of energy applying and detecting medical devices are required to provide to the executive officer;
  - (n) providing for the position of an energy applying and detecting medical device safety officer, and governing qualifications for that position and its responsibilities.

#### **Minister regulations**

- (5) The Minister may make regulations,
- (a) establishing the fees to be paid by applicants for licences;
  - (b) except for fees established by an inspecting body, requiring applicants for licences and licensees to pay other fees, and establishing those fees;
  - (c) prescribing services for the purpose of the definition of “community health facility” in section 1;
  - (d) prescribing a place or collection of places for the purpose of the definition of “community health facility” in section 1.

#### **Retroactivity**

- (6) A regulation is, if it so provides, effective with reference to a period before it is filed.

**Scope**

(7) A regulation may be general or specific in its application to any person, organization, licence, place or thing or any class of them, may impose different requirements, conditions or restrictions on or in respect of any class and may be limited as to time and place.

**Classes**

(8) A class described in a regulation may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics.

**Rolling incorporation by reference**

(9) If a regulation adopts by reference any code, standard, guideline or similar document, the regulation may require compliance with the code, standard or guideline, as amended from time to time, whether the amendment was made before or after the regulation was made.

**Offences**

~~73 (1) Every person is guilty of an offence who,~~

- ~~— (a) transfers a licence contrary to section 9;~~
- ~~— (b) contravenes any requirement under Part IV;~~
- ~~— (c) does anything prohibited under Part V;~~
- ~~— (d) contravenes any requirement under Part VI;~~
- ~~— (e) contravenes subsection 39 (14);~~
- ~~— (f) fails to comply with an order under clause 48 (1) (a);~~
- ~~— (g) fails to comply with an order under clause 48 (1) (b) or subsection 48 (2); or~~
- ~~— (h) fails to comply with a compliance order or cessation order.~~

**No imprisonment or probation**

~~(2) Despite anything else in this Act, a person convicted of an offence under clause (1) (f) or (h) is not liable to imprisonment or to a probation order under subsection 72 (1) of the *Provincial Offences Act* as a result of the conviction or as a result of default in payment of the fine resulting from the conviction.~~

**Due diligence, mistake not a defence**

~~(3) It is not a defence to a charge under clause (1) (f) or (h) that the person took all reasonable steps to prevent any failure to comply with this Act or, at the time of the failure, the person had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.~~

**Offences**

73 (1) Every person is guilty of an offence who,

- (a) transfers a licence contrary to section 9;
- (b) transfers a licence contrary to section 9.1;
- (c) contravenes any requirement under Part IV;
- (d) does anything prohibited under Part V;
- (e) contravenes any requirement under Part VI;
- (f) contravenes subsection 39 (14);
- (g) fails to comply with an order under clause 48 (1) (a);
- (h) fails to comply with an order under clause 48 (1) (b) or subsection 48 (2);
- (i) fails to comply with a direction of the Minister under clause 58.1 (d);
- (j) does anything prohibited in section 75.1; or
- (k) fails to comply with a compliance order or cessation order.

**No imprisonment or probation**

(2) Despite anything else in this Act, a person convicted of an offence under clause (1) (g) or (k) is not liable to imprisonment or to a probation order under subsection 72 (1) of the *Provincial Offences Act* as a result of the conviction or as a result of default in payment of the fine resulting from the conviction.



**Due diligence, mistake not a defence**

(3) It is not a defence to a charge under clause (1) (g) or (k) that the person took all reasonable steps to prevent any failure to comply with this Act or, at the time of the failure, the person had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

**Penalty, individual**

(4) Every individual who is convicted of an offence under this section is liable for each day or part of a day on which the offence occurs or continues,

- (a) for a first offence, to a fine of not more than \$50,000 or to imprisonment for a term of not more than 12 months, or to both; or
- (b) for a subsequent offence, to a fine of not more than \$75,000 or to imprisonment for a term of not more than 12 months, or to both.

**Same, corporation**

(5) Every corporation that is convicted of an offence under this section is liable, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$100,000 for a first offence and to a fine of not more than \$250,000 for a subsequent offence.

**Compensation or restitution**

(6) The court that convicts a person of an offence under this section may, in addition to any other penalty, order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

**No limitation**

(7) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this section.

**Transition, community health facilities**

**74** The following occurs when this section comes into force:

1. Subject to paragraphs 3 and 4, every licence for an independent health facility under the *Independent Health Facilities Act* that was in force immediately before this section came into force is replaced by a licence under this Act to provide the same services at the same locations for a term, determined by the executive officer, that shall be set out in the replacement licence.
2. The conditions and limitations that otherwise applied to the licence under the *Independent Health Facilities Act*, other than those respecting the services and locations mentioned in paragraph 1, cease to apply, but the licensee must still comply with all of the requirements of this Act, and the executive officer may make the replacement licence subject to new conditions in accordance with this Act and the regulations.
3. Where, immediately before this section came into force, the independent health facility was subject to a notice from the Director of Independent Health Facilities under either subsection 18 (1) or (2) of the *Independent Health Facilities Act*, the licence for the facility is revoked and the facility must cease operating until the executive officer issues a licence under this Act with respect to the facility. The executive officer may issue the licence without applying the requirements under section 5 if,
  - i. the facility undergoes an inspection by an inspector appointed by an inspecting body within six months after this section comes into force, and
  - ii. within one year of the coming into force of this section, or a longer period set by the executive officer, the facility passes the inspection under subparagraph i.
4. Where the executive officer determines that one or more services authorized by the licence under the *Independent Health Facilities Act* have not been provided at the location in the six-month period immediately before the coming into force of this section, the executive officer may decline to provide for those services under the replacement licence and if those services are the only services that were provided under the licence may decline to issue a replacement licence.
5. In the case of premises that were subject to inspection under Part XI of Ontario Regulation 114/94 (General) under the *Medicine Act, 1991* and that are community health facilities for the purposes of this Act, but that were not independent health facilities under the *Independent Health Facilities Act*, section 16 of this Act applies.

**Crown bound re EADMDs**

**75** The requirements of this Act respecting energy applying and detecting medical devices bind the Crown.

**Prohibition, providing in-patient medical and nursing care**

**75.1 (1) Only the persons and entities specified in subsection (2) may accept a person as an in-patient and provide treatment to that person.**

**Entities specified for the purposes of subs. (1)**

(2) The following persons and entities are specified for the purposes of subsection (1):

1. A person or entity that is licensed under the *Private Hospitals Act*.
2. A community health facility that was formerly licensed under the *Private Hospitals Act*.
3. A public hospital within the meaning of the *Public Hospitals Act*.
4. The University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa.
5. A psychiatric facility within the meaning of the *Mental Health Act*.

**Application**

(3) The prohibition in subsection (1) only applies with respect to insured services.

**Definitions**

(4) In this section,

“in-patient” means a person admitted to and assigned a bed for overnight accommodation in any type of health care facility; (“malade hospitalisé”)

“treatment” means medical and nursing care including the maintenance, observation and supervision of an in-patient. (“traitement”)

**PART XI  
AMENDMENT AND REPEALS**

**Repeals**

~~**76 (1) The *Independent Health Facilities Act* is repealed.**~~

~~**(2) The *Healing Arts Radiation Protection Act* is repealed.**~~

~~**(3) The *Private Hospitals Act* is repealed.**~~

**Amendment**

**76 Paragraph 1 of subsection 75.1 (2) of this Act is repealed.**

**Repeals**

**76.1 (1) The *Independent Health Facilities Act* is repealed.**

**(2) The *Healing Arts Radiation Protection Act* is repealed.**

**(3) The *Private Hospitals Act* is repealed.**

**PART XII  
CONSEQUENTIAL AND RELATED AMENDMENTS  
CONSEQUENTIAL AMENDMENTS**

***Anti-Racism Act, 2017***

**77 Clause (h) of the definition of “public sector organization” in subsection 1 (1) of the *Anti-Racism Act, 2017* is repealed and the following substituted:**

- (h) a health service provider within the meaning of the *Local Health System Integration Act, 2006*,
- (h.1) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act* and that received public funds in the previous fiscal year of the Government of Ontario,

***Broader Public Sector Accountability Act, 2010***

**78 (1) Clause (b) of the definition of “hospital” in subsection 1 (1) of the *Broader Public Sector Accountability Act, 2010* is repealed and the following substituted:**

- (b) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act* and that received public funds in the previous fiscal year of the Government of Ontario, and
- (2) The definition of “private hospital” in subsection 1 (1) of the Act is repealed.**
- (3) Subsection 6 (1) of the Act is repealed and the following substituted:**

### Reporting by hospitals

(1) Every hospital shall prepare reports concerning the use of consultants by the hospital that are approved by the hospital's board.

**(4) Subsection 15 (2) of the Act is repealed and the following substituted:**

#### Who shall make attestations

(2) An attestation must be approved by the hospital's board and shall be made by,

- (a) in the case of a public hospital, the administrator; and
- (b) in the case of a community health facility or the University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa, the chief executive officer.

**(5) Subsection 20 (2) of the Act is amended by striking out “or the superintendent of a private hospital” after “local health integration network” and by striking out “or superintendent” after “where the board”.**

### *Child and Family Services Act*

**79 Clause (c) of the definition of the definition of “children’s residence” in section 192 of the *Child and Family Services Act* is repealed and the following substituted:**

- (c) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,

### *Child, Youth and Family Services Act, 2017*

**80 Paragraph 4 of the definition of “children’s residence” in section 243 of the *Child, Youth and Family Services Act, 2017* is repealed and the following substituted:**

- 4. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

### *City of Toronto Act, 2006*

**81 Paragraph 4 of section 268 of the *City of Toronto Act, 2006* is amended by striking out “every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*” at the end and substituting “every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.**

### *Commitment to the Future of Medicare Act, 2004*

**82 (1) Subsection 13 (5) of the *Commitment to the Future of Medicare Act, 2004* is amended by striking out “the *Independent Health Facilities Act*” and substituting “the *Oversight of Health Facilities and Devices Act, 2017*”.**

**(2) Subsections 15 (1) to (3) of the Act are amended by striking out “the *Independent Health Facilities Act*” wherever it occurs and substituting “the *Oversight of Health Facilities and Devices Act, 2017*” in each case.**

**(3) Paragraph 3 of subsection 16 (1) of the Act is repealed and the following substituted:**

- 3. Section 17 of the *Oversight of Health Facilities and Devices Act, 2017*.

**(4) Paragraph 3 of subsection 16 (1) of the Act, as re-enacted by subsection 1 (3) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, is repealed and the following substituted:**

- 3. Section 17 of the *Oversight of Health Facilities and Devices Act, 2017*.

**(5) Subsections 16 (5) and (6) of the Act are amended by striking out “the *Independent Health Facilities Act*” wherever it occurs and substituting “the *Oversight of Health Facilities and Devices Act, 2017*” in each case.**

**(6) Subsections 16 (5) and (6) of the Act, as re-enacted by subsection 1 (3) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, are amended by striking out “the *Independent Health Facilities Act*” wherever it occurs and substituting “the *Oversight of Health Facilities and Devices Act, 2017*” in each case.**

### *Coroners Act*

**83 (1) Clause 10 (2) (h) of the *Coroners Act* is amended by striking out “public or private hospital” and substituting “hospital”.**

**(2) Section 10 of the Act is amended by adding the following subsection:**

#### Definition

(7) In this section,

“hospital” means a public hospital within the meaning of the *Public Hospitals Act* or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

***Drug and Pharmacies Regulation Act***

**84 The definitions of “hospital” and “hospital patient” in subsection 1 (1) of the *Drug and Pharmacies Regulation Act* are repealed and the following substituted:**

“hospital” means a hospital within the meaning of the *Public Hospitals Act* or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*; (“hôpital”)

“hospital patient” means,

- (a) a patient within the meaning of the *Public Hospitals Act*, or
- (b) a patient of a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*; (“malade d’un hôpital”)

***Electronic Cigarettes Act, 2015***

**85 Paragraph 2 of subsection 5 (1) of the *Electronic Cigarettes Act, 2015* is repealed and the following substituted:**

- 2. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

***Freedom of Information and Protection of Privacy Act***

**86 (1) Subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act* is amended by adding the following definition:**

“community health facility” means a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*; (“établissement de santé communautaire”)

**(2) Clause (a.2) of the definition of “head” in subsection 2 (1) of the Act is repealed and the following substituted:**

- (a.2) in the case of a community health facility, the chair of the board,

**(3) Clause (b) of the definition of “hospital” in subsection 2 (1) of the Act is repealed and the following substituted:**

- (b) a community health facility, and

**(4) The definition of “private hospital” in subsection 2 (1) of the Act is repealed.**

**(5) Clause 60 (1) (j.1) of the Act is amended by striking out “private hospitals” and substituting “community health facilities”.**

***Health Care Consent Act, 1996***

**87 The definition of “hospital” in subsection 2 (1) of the *Health Care Consent Act, 1996* is repealed and the following substituted:**

“hospital” means,

- (a) a hospital as defined in the *Public Hospitals Act*, or
- (b) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*; (“hôpital”)

***Health Facilities Special Orders Act***

**88 (1) Clause (c) of the definition of “health facility” in section 1 of the *Health Facilities Special Orders Act* is repealed.**

**(2) Paragraph 2 of the definition of “licence” in section 1 of the Act is repealed.**

**(3) The definition of “private hospital” in section 1 of the Act is repealed.**

**(4) Section 19 of the Act is amended by striking out “the *Private Hospitals Act*”.**

***Health Insurance Act***

**89 (1) Section 1 of the *Health Insurance Act* is amended by adding the following definition:**

“community health facility” means a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*; (“établissement de santé communautaire”)

(2) The definition of “general requisition number” in section 1 of the Act, as enacted by subsection 11 (1) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, is amended by striking out “independent health facility” and substituting “community health facility”.

(3) The definition of “independent health facility” in section 1 of the Act, as enacted by subsection 11 (1) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, is repealed.

(4) Subsections 4.1 (1) to (3) of the Act are amended by striking out “*Independent Health Facilities Act*” wherever it occurs and substituting “*Oversight of Health Facilities and Devices Act, 2017*” in each case.

(5) Section 18.2 of the Act is amended by striking out “independent health facility” wherever it occurs and substituting “community health facility” in each case.

(6) Section 18.2.1 of the Act, as enacted by subsection 11 (3) of the *Regulated Health Professions Statute Law Amendment Act, 2009* is amended by striking out “independent health facility” wherever it occurs and substituting “community health facility” in each case.

(7) Subsection 36.1 (3) of the Act is amended by striking out “or an independent health facility as defined in the *Independent Health Facilities Act*” at the end and substituting “or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*”.

(8) Subsection 37 (1) of the Act, as amended by subsection 11 (5) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, is amended by striking out “independent health facility” in the portion before clause (a) and substituting “community health facility”.

(9) Clause 37 (1) (a) of the Act is amended by striking out “*Independent Health Facilities Act*” at the end and substituting “*Oversight of Health Facilities and Devices Act, 2017*”.

(10) Clause 37.1 (6.1) (b) of the Act, as enacted by subsection 11 (9) of the *Regulated Health Professions Statute Law Amendment Act, 2009*, is repealed and the following substituted:

- (b) in the case of a service rendered by another practitioner or health facility, or by a physician, hospital or community health facility, the practitioner, health facility, physician, hospital or community health facility shall provide the General Manager with all relevant information within his, her or its control.

(11) Subsection 45 (5) of the Act is repealed.

#### *Health Protection and Promotion Act*

90 (1) Clause (n) of the definition of “institution” in subsection 21 (1) of the *Health Protection and Promotion Act* is repealed and the following substituted:

- (n) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

(2) Paragraph 4 of the definition of “health care provider or health care entity” in subsection 77.7 (6) of the Act is amended by striking out “a private hospital within the meaning of the *Private Hospitals Act*”.

(3) Paragraph 4 of the definition of “health care provider or health care entity” in subsection 77.7 (6) of the Act is amended by striking out “or an independent health facility within the meaning of the *Independent Health Facilities Act*” at the end and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*”.

#### *Local Food Act, 2013*

91 Clause (b) of the definition of “hospital” in section 2 of the *Local Food Act, 2013* is repealed and the following substituted:

- (b) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act* and that received public funds in the previous fiscal year of the Government of Ontario, and

#### *Local Health System Integration Act, 2006*

92 (1) Paragraph 1 of the definition of “health service provider” in subsection 2 (2) of the *Local Health System Integration Act, 2006* is amended by striking out “or a private hospital within the meaning of the *Private Hospitals Act*” at the end and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.

(2) Clause 21.2 (2) (a) of the Act is amended by striking out “or a private hospital within the meaning of the *Private Hospitals Act*” and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.

(3) Subsection 27 (3.1) of the Act is repealed and the following substituted:

## Exceptions

(3.1) Subsection (3) does not apply to an integration that requires a decision of the Minister, a director or the executive officer under the *Oversight of Health Facilities and Devices Act, 2017* or the *Long-Term Care Homes Act, 2007*.

### *Long-Term Care Homes Act, 2007*

**93 Subclause 95 (2) (a) (iii) of the *Long-Term Care Homes Act, 2007* is repealed and the following substituted:**

(iii) the *Oversight of Health Facilities and Devices Act, 2017*,

### *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*

**94 (1) Paragraph 3 of subsection 6 (1) of the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998* is repealed.**

**(2) Paragraph 10 of subsection 6 (1) of the Act is repealed.**

**(3) Subsection 6 (1) of the Act is amended by adding the following paragraph:**

13. The *Oversight of Health Facilities and Devices Act, 2017*.

**(4) Paragraph 14 of subsection 6 (1) of the Act is repealed.**

### *Municipal Act, 2001*

**95 Paragraph 4 of section 400.2 of the *Municipal Act, 2001*, as enacted by section 11 of Schedule 19 to the *Stronger, Healthier Ontario Act (Budget Measures), 2017* is amended by striking out “every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*” and substituting “every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.**

### *Occupational Health and Safety Act*

**96 Subclause (b) (i) of the definition of “factory” in subsection 1 (1) of the *Occupational Health and Safety Act* is repealed and the following substituted:**

(i) a public hospital or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,

### *Ontarians with Disabilities Act, 2001*

**97 Item 2 of the Schedule to the *Ontarians with Disabilities Act, 2001* is repealed and the following substituted:**

2. Every hospital as defined in the *Public Hospitals Act* and a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

### *Ontario Energy Board Act, 1998*

**98 Clause (d) of the definition of “designated consumer” in section 56 of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:**

(d) is a hospital as defined in the *Public Hospitals Act*, a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007* or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,

### *Patient Restraints Minimization Act, 2001*

**99 Subsection 2 (1) of the *Patient Restraints Minimization Act, 2001* is amended by striking out “every hospital that is licensed as a private hospital under the *Private Hospitals Act*” and substituting “every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.**

### *Pay Equity Act*

**100 Clause 1 (d) of the Schedule to the *Pay Equity Act* is repealed and the following substituted:**

(d) every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act* and every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*;

### *Personal Health Information Protection Act, 2004*

**101 (1) Subparagraph 4 i of subsection 3 (1) of the *Personal Health Information Protection Act, 2004* is amended by striking out “a private hospital within the meaning of the *Private Hospitals Act*”.**

(2) Subparagraph 4 i of subsection 3 (1) of the Act is amended by striking out “an independent health facility within the meaning of the *Independent Health Facilities Act*” at the end and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*”.

*Private Hospitals Act*

102 (1) Clause (a) of the definition of “private hospital” in section 1 of the *Private Hospitals Act* is amended by striking out “an independent health facility within the meaning of the *Independent Health Facilities Act*” at the beginning and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*”.

(2) Subsection 15.1 (1) of the Act is repealed and the following substituted:

**Revocation**

- (1) The Minister may revoke a licence issued under this Act if the Minister,
- (a) wishes to make the licensee subject to the licensing requirements under another Act; or
  - (b) is of the opinion that it is in the public interest to do so.

(3) Section 15.6 of the Act is amended by adding the following subsection:

**No remedy**

(2) Despite any other Act or law, no costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person against the Crown, the Minister or any employee or agent of the Crown, including a local health integration network, or any officer, director or employee of a local health integration network, in connection with anything referred to in subsection (1).

(4) The Act is amended by adding the following section:

**Transition — deemed community health facilities formerly licenced under this Act**

34 (1) A private hospital is deemed to be a community health facility that was formerly licenced under this Act for the purposes of the following provisions:

1. Clause (h.1) of the definition of “public sector organization” in subsection 1 (1) of the *Anti-Racism Act, 2017*.
2. Clause (c) of the definition of “children’s residence” in section 192 of the *Child and Family Services Act*.
3. Paragraph 4 of the definition of “children’s residence” in section 243 of the *Child, Youth and Family Services Act, 2017*.
4. Paragraph 4 of section 268 of the *City of Toronto Act, 2006*.
5. Subsection 10 (7) of the *Coroners Act*.
6. The definitions of “hospital” and “hospital patient” in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*.
7. Paragraph 2 of subsection 5 (1) of the *Electronic Cigarettes Act, 2015*.
8. Clause (a.2) of the definition of “head” and clause (b) of the definition of “hospital” in subsection 2 (1) and clause 60 (1) (j.1) of the *Freedom of Information and Protection of Privacy Act*.
9. Clause (b) of the definition of “hospital” in subsection 2 (1) of the *Health Care Consent Act, 1996*.
10. Clause (n) of the definition of “institution” in subsection 21 (1) of the *Health Protection and Promotion Act*.
11. Clause (b) of the definition of “hospital” in section 2 of the *Local Food Act, 2013*.
12. Paragraph 13 of subsection 6 (1) of the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*.
13. Paragraph 4 of section 400.2 of the *Municipal Act, 2001*, as enacted by section 11 of Schedule 19 to the *Stronger, Healthier Ontario Act (Budget Measures), 2017*.
14. Subclause (b) (i) of the definition of “factory” in subsection 1 (1) of the *Occupational Health and Safety Act*.
15. Item 2 of the Schedule to the *Ontarians with Disabilities Act, 2001*.
16. Clause (d) of the definition of “designated consumer” in section 56 of the *Ontario Energy Board Act, 1998*.
17. Subsection 2 (1) of the *Patient Restraints Minimization Act, 2001*.
18. Clause 1 (d) of the Schedule to the *Pay Equity Act*.
19. Clause (b) of the definition of “hospital” in section 2 of the *Public Sector Labour Relations Transition Act, 1997*.
20. Clause (f) of the definition of “public sector” in subsection 2 (1) of the *Public Sector Salary Disclosure Act, 1996*.

21. Paragraph 2 of subsection 4 (2) and paragraph 2 of subsection 13 (4) of the *Smoke-Free Ontario Act*.

22. Clause 1 (e) of the Schedule to the *Social Contract Act, 1993*.

**Transition — deemed community health facilities**

(2) A private hospital is deemed to be a community health facility for the purposes of the following provisions:

1. Paragraph 4 of subsection 77.7 (6) of the *Health Protection and Promotion Act*.
2. Paragraph 1 of the definition of “health service provider” in subsection 2 (2) and clause 21.2 (2) (a) of the *Local Health System Integration Act, 2006*.
3. Subclause 95 (2) (a) (iii) of the *Long-Term Care Homes Act, 2007*.
4. Subparagraph 4 i of subsection 3 (1) of the *Personal Health Information Protection Act, 2004*.
5. Section 2 of the *Public Hospitals Act*.
6. Clause (d) of the definition of “health facility” in subsection 2 (1) of the *Quality of Care Information Protection Act, 2016*.

**Transition — deemed living accommodation**

(3) A private hospital is deemed to be a living accommodation that is subject to the *Oversight of Health Facilities and Devices Act, 2017* for the purposes of clause 5 (e) of the *Residential Tenancies Act, 2006*.

**Transition — deemed premises**

(4) A private hospital is deemed to be a premises governed by or funded under the *Oversight of Health Facilities and Devices Act, 2017* for the purposes of definition of “retirement home” in subsection 2 (1) of the *Retirement Homes Act, 2010*.

**Transition — deemed facility**

(5) A private hospital is deemed to be a facility governed or funded under the *Oversight of Health Facilities and Devices Act, 2017* for the purposes of the Schedule to the *Substitute Decisions Act, 1992*.

**Transition — superintendent**

(6) A superintendent of a private hospital is deemed to be,

- (a) the board of a hospital for the purposes of subsections 6 (1), 15 (2) and 20 (2) of the *Broader Public Sector Accountability Act, 2010*;
- (b) the chief executive officer of a community health facility for the purposes of clause 15 (2) (b) of the *Broader Public Sector Accountability Act, 2010*; and
- (c) the chair of a board of a community health facility for the purposes of clause (a.2) of the definition of “head” in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

***Public Hospitals Act***

~~103 Section 2 of the *Public Hospitals Act* is amended by striking out “a private hospital under the *Private Hospitals Act* or an independent health facility within the meaning of the *Independent Health Facilities Act*” at the end and substituting “a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*”.~~

***Public Hospitals Act***

**103 (1) Section 2 of the *Public Hospitals Act* is repealed and the following substituted:**

**Community health facilities not affected**

2 Nothing in this Act in any way relates to or affects a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*.

**(2) Section 2 of the *Public Hospitals Act*, as re-enacted by subsection (1), is repealed and the following substituted:**

**Community health facilities not affected**

2 (1) Subject to subsection (2), nothing in this Act in any way relates to or affects a community health facility under the *Oversight of Health Facilities and Devices Act, 2017*.

**Prohibition, identifying as or holding self out as hospital**

(2) Persons and entities that are not hospitals approved by the Minister under this Act shall not,

- (a) identify themselves as hospitals; or
- (b) hold themselves out as providing hospital services.



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

**104 The definition of “hospital” in section 2 of the *Public Sector Labour Relations Transition Act, 1997* is repealed and the following substituted:**

“hospital” means,

- (a) a hospital as defined in section 1 of the *Public Hospitals Act*,
- (b) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,
- (c) a psychiatric facility listed in Schedule 1 to Regulation 741 of the Revised Regulations of Ontario, 1990 (“Application of Act”) made under the *Mental Health Act*, or
- (d) the Alcoholism and Drug Addiction Research Foundation; (“hôpital”)

***Public Sector Salary Disclosure Act, 1996***

**105 Clause (f) of the definition of “public sector” in subsection 2 (1) of the *Public Sector Salary Disclosure Act, 1996* is amended by striking out “every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*” at the end and substituting “every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*”.**

***Quality of Care Information Protection Act, 2016***

**106 (1) Clause (b) of the definition of “health facility” in subsection 2 (1) of the *Quality of Care Information Protection Act, 2016* is repealed.**

**(2) Clause (d) of the definition of “health facility” in subsection 2 (1) of the Act is repealed and the following substituted:**

- (d) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*, or

***Regulated Health Professions Act, 1991***

**107 (1) Clause 36 (1) (d) of the *Regulated Health Professions Act, 1991* is amended by striking out “the *Healing Arts Radiation Protection Act*”.**

**(2) Clause 36 (1) (d) of the Act is amended by striking out “the *Independent Health Facilities Act*”.**

**(3) Clause 36 (1) (d) of the Act is amended by adding “the *Oversight of Health Facilities and Devices Act, 2017*” after “the *Long-Term Care Homes Act, 2007*”.**

***Residential Tenancies Act, 2006***

**108 Clause 5 (e) of the *Residential Tenancies Act, 2006* is amended by striking out “*Private Hospitals Act*” and substituting “*Oversight of Health Facilities and Devices Act, 2017*”.**

***Retirement Homes Act, 2010***

**109 Subclause (d) (viii) of the definition of “retirement home” in subsection 2 (1) of the *Retirement Homes Act, 2010* is repealed and the following substituted:**

- (viii) the *Oversight of Health Facilities and Devices Act, 2017* in the case of premises that were formerly governed by the *Private Hospitals Act*,

***Smoke-Free Ontario Act***

**110 (1) Paragraph 2 of subsection 4 (2) of the *Smoke-Free Ontario Act* is repealed and the following substituted:**

- 2. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

**(2) Paragraph 2 of subsection 13 (4) of the Act is repealed and the following substituted:**

- 2. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*.

***Social Contract Act, 1993***

**111 (1) Clause 1 (e) of the Schedule to the *Social Contract Act, 1993* is repealed and the following substituted:**

- (e) every public hospital within the meaning of the *Public Hospitals Act* and every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*;

**(2) Section 15 under the heading “Ministry of Health and Long-Term Care” in the Appendix to the Act is repealed and the following substituted:**

15. A person operating a community health facility to which the *Oversight of Health Facilities and Devices Act, 2017* applies.

***Substitute Decisions Act, 1992***

**112 (1) The Schedule to the *Substitute Decisions Act, 1992* is amended by striking out “*Independent Health Facilities Act*” and adding “*Oversight of Health Facilities and Devices Act, 2017*”.**

**(2) The Schedule to the Act is amended by striking out “*Private Hospitals Act*”.**

***Tobacco Damages and Health Care Costs Recovery Act, 2009***

**113 Clause (e) of the definition of “health care benefits” in subsection 1 (1) of the *Tobacco Damages and Health Care Costs Recovery Act, 2009* is repealed and the following substituted:**

- (e) payments under the *Oversight of Health Facilities and Devices Act, 2017*,

**RELATED AMENDMENT**

***Independent Health Facilities Act***

**114 Subsection 37.1 (3) of the *Independent Health Facilities Act* is repealed and the following substituted:**

**Disclosure**

(3) Despite subsection 37 (2), the Minister shall disclose personal information, subject to such conditions as may be prescribed, if the disclosure is necessary for purposes related to the administration of this Act, the *Health Insurance Act* or the *Commitment to the Future of Medicare Act, 2004* or for such other purposes as may be prescribed, but shall not disclose the information if, in his or her opinion, the disclosure is not necessary for those purposes.

**PART XIII**

**COMMENCEMENT AND SHORT TITLE**

**Commencement**

**115 (1) Subject to subsection (2), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**(2) Sections 114 to 116 come into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**Short title**

**116 The short title of the Act set out in this Schedule is the *Oversight of Health Facilities and Devices Act, 2017*.**

**SCHEDULE 10  
RETIREMENT HOMES ACT, 2010**

**1 (1) Subsection 2 (1) of the *Retirement Homes Act, 2010* is amended by adding the following definitions:**

“confine”, except with respect to the common law duty of a caregiver to confine a person as mentioned in section 71, has the meaning provided in the regulations; (“confiner”)

“memorandum of understanding” means the memorandum of understanding described in subsection 18 (1); (“protocole d’entente”)

**(2) The definition of “Minister” in subsection 2 (1) of the Act is amended by striking out “Minister Responsible for Seniors” and substituting “Minister of Seniors Affairs”.**

**(3) The definition of “secure unit” in subsection 2 (1) of the Act is repealed.**

**2 Section 18 of the Act is amended by adding the following subsection:**

**Amendment by Minister**

(3) If the Minister considers it reasonable to do so in the public interest, the Minister may unilaterally amend the memorandum of understanding after giving the Authority the notice that the Minister considers reasonable in the circumstances.

**3 The Act is amended by adding the following sections:**

**Advisory committees, advisory process**

**19.1** The Minister may require the Authority to,

- (a) establish one or more advisory committees;
- (b) include, as members of an advisory committee, at least one consumer representative of the retirement home sector and any other individuals that the board selects or that the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

**Review**

**19.2** (1) The Minister may,

- (a) require that policy, legislative or regulatory reviews related to the powers and duties of the Authority under this Act, the regulations or the memorandum of understanding be carried out,
  - (i) by or on behalf of the Authority, or
  - (ii) by a person or entity specified by the Minister; or
- (b) require that reviews of the Authority, of its operations or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,
  - (i) by or on behalf of the Authority, or
  - (ii) by a person or entity specified by the Minister.

**Access to records**

(2) If a review is carried out by a person or entity specified by the Minister, the Authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

**4 Subsection 22 (1) of the Act is amended by striking out “entered into under section 18”.**

**5 The Act is amended by adding the following section:**

**Public access to compensation information**

**22.1** (1) The Authority shall make available to the public the prescribed information relating to the compensation for members of its board of directors or officers or employees of the Authority and relating to any other payments that it makes or is required to make to them, and shall do so in the prescribed manner.

**Processes and procedures**

(2) The Authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the Authority and with respect to managing personal information contained in those records.

**6 The Act is amended by adding the following section:**

### Deputy Registrars

**23.1** (1) The board may appoint a maximum of two Deputy Registrars who shall perform the duties that the Registrar assigns and shall act as the Registrar in the Registrar's absence.

#### If more than one Deputy Registrar

(2) If more than one Deputy Registrar is appointed, only one Deputy Registrar may act as the Registrar under subsection (1) at any one time.

**7 (1) The Act is amended by adding the following section:**

#### Audit

**31.1** (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the Authority, other than an audit required under the *Corporations Act*.

#### Access to records and information

(2) If the Auditor General conducts an audit under subsection (1), the Authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

**(2) Subsection 31.1 (1) of the Act, as enacted by subsection (1), is amended by striking out "the Corporations Act" and substituting "the Not-for-Profit Corporations Act, 2010".**

**8 (1) Clause 37 (1) (a) of the Act is amended by adding "any licensee or" after "competence of".**

**(2) Clause 37 (1) (b) of the Act is repealed and the following substituted:**

- (b) require any licensee or any person who is the subject of an inquiry or investigation to provide material or information that is relevant to the inquiry or investigation;

**9 Paragraph 4 of subsection 50 (2) of the Act is amended by striking out "to a secure unit".**

**10 (1) Subsection 51 (1) of the Act is amended by adding the following paragraph:**

- 6.1 The right not to be confined except in accordance with this Act or the common law.

**(2) Subsection 51 (1) of the Act is amended by adding the following paragraph:**

- 11. The right to know if the home is also a care home within the meaning of the *Residential Tenancies Act, 2006*, and whether the residents therefore have rights and responsibilities as tenants under that Act.

**11 Clause 54 (2) (e.1) of the Act is amended by striking out "to a secure unit of their retirement home".**

**12 Clause 65 (2) (d.1) of the Act is amended by striking out "to a secure unit of the home" at the end.**

**13 (1) Section 66 of the Act is amended by adding "Subject to subsection (2) and the regulations" at the beginning and by adding "in accordance with the regulations" after "trained".**

**(2) Section 66 of the Act is amended by adding the following subsection:**

#### Exception

(2) Subsection (1) does not apply to volunteers working in a retirement home if,

- (a) they are occasional volunteers who do not provide direct care to residents of the home;
- (b) their work in the home is monitored and supervised in accordance with written policies that the licensee of the home has prepared for that purpose; and
- (c) they have received information about the matters covered by the training described in subsection (1).

**14 (1) Subsection 68 (2) of the Act is repealed and the following substituted:**

#### Same, confinement

(2) No licensee of a retirement home and no external care providers who provide services in the home shall confine a resident of the home, other than in accordance with section 70 or under the common law duty mentioned in section 71.

**(2) Subsection 68 (4) of the Act is amended by striking out "to a secure unit of the home".**

**15 (1) The following provisions of section 70 of the Act are amended by striking out "to a secure unit of the home by the use of barriers, locks or other devices or controls in the home" wherever that expression appears:**

1. Subsection (1).
2. Subsection (2).
3. Subsection (3), in the portion before clause (a).

**(2) Clauses 70 (3) (b) and (c) of the Act are repealed and the following substituted:**

- (b) the licensee has considered, and tried where appropriate, alternatives to confining the resident but considers that they would not be, or has found that they have not been, effective to address the risk described in clause (a);
- (c) the method and degree of the confinement are reasonable, in light of the resident's physical and mental condition and personal history, and are the least restrictive of the reasonable methods and degrees that would be effective to address the risk described in clause (a);

**(3) Clause 70 (3) (f) of the Act is amended by striking out "subsection (4)" at the end and substituting "subsection (14)".**

**(4) The following provisions of section 70 of the Act are amended by striking out "to a secure unit of the home" wherever that expression appears:**

1. Subsection (4), in the portion before clause (a).
2. Subsection (5), in the portion before clause (a).

**(5) Section 70 of the Act is amended by adding the following subsection:**

**Notice of right to withdraw consent**

(5.1) When obtaining consent to confine a resident of a retirement home, the licensee of the home shall ensure that the resident or the resident's substitute decision-maker is informed that consent may be withdrawn at any time.

**(6) Subsection 70 (6) of the Act is repealed and the following substituted:**

**Right to apply for review**

(6) If a substitute decision-maker of a resident of a retirement home has, on the resident's behalf, consented to the resident's confinement, the resident or any person acting on the resident's behalf has a right, which is exercisable in accordance with the regulations, to apply for a review described in the regulations.

**(7) Subsection 70 (8) of the Act is repealed and the following substituted:**

**Notice to resident**

(8) If a substitute decision-maker of a resident of a retirement home has, on the resident's behalf, consented to the resident's confinement, the licensee of the home shall promptly, in accordance with the regulations, if any,

- (a) give the resident both written and verbal notice of the proposed confinement and a verbal explanation of the notice that complies with subsection (12); and
- (b) ensure that the resident is asked whether the resident wishes to meet with a rights adviser.

**(8) Clause 70 (9) (a) of the Act is amended by striking out "to a secure unit of the home" at the end.**

**(9) Clause 70 (9) (b) of the Act is amended by striking out "the resident's right to a review" and substituting "the right of the resident or a person acting on behalf of the resident to apply for a review".**

**(10) Subsections 70 (10), (11), (12) and (13) of the Act are repealed and the following substituted:**

**Contacting a rights adviser**

(10) If the resident indicates a wish to meet with a rights adviser or if the resident expresses disagreement with the proposed confinement, the licensee shall promptly, in accordance with the prescribed requirements, if any, assist the resident in contacting a rights adviser or contact a rights adviser on behalf of the resident.

**Assistance of rights adviser**

(11) If a rights adviser is contacted by the resident or by the licensee on behalf of the resident and if the resident does not refuse to meet with the rights adviser, the rights adviser shall, in accordance with the regulations, [if any](#),

- (a) promptly meet with the resident and explain, in accordance with subsection (12),
  - (i) the right of the resident or a person acting on behalf of the resident to apply for a review under subsection (6), and
  - (ii) all other prescribed matters;
- (b) at the resident's request, assist the applicant in making an application for the review mentioned in subclause (a) (i) and in obtaining legal services; and
- (c) notify the licensee if the rights adviser is aware that,
  - (i) the resident or any person acting on the resident's behalf intends to apply for a review under subsection (6), or
  - (ii) another person intends to apply to be appointed as the representative to give or refuse consent to the proposed confinement on the resident's behalf.

### **Explanation to resident**

(12) An explanation that clause (8) (a) or (11) (a) requires a person to give to a resident shall explain the matters required by the applicable clause to the best of the ability of the person giving the explanation and in a manner that addresses the special needs of the resident, whether the resident understands it or not.

### **Start of confinement**

(13) If a substitute decision-maker of a resident of a retirement home has, on the resident's behalf, consented to the resident's confinement, the licensee of the home shall not so confine the resident until after,

- (a) the licensee has given the notices required by subsection (8);
- (b) the resident has met with a rights adviser or the rights adviser has advised the licensee that the resident refuses to meet with the rights adviser; and
- (c) the other requirements, if any, that are prescribed have been satisfied.

**(11) Subsection 70 (14) of the Act is amended by striking out “to a secure unit of the home” in the portion before clause (a).**

**(12) Subclause 70 (14) (c) (i) of the Act is amended by striking out “to a secure unit of the home” at the end.**

**(13) Subclause 70 (14) (c) (ii) of the Act is amended by adding “or degree” after “method”.**

**(14) Section 70 of the Act is amended by adding the following subsection:**

### **Application of requirements**

(15) The licensee of a retirement home shall ensure that the requirements of this section are satisfied,

- (a) when a resident of the home is initially confined under subsection (1) or (2); and
- (b) at any other times and under any other circumstances provided for in the regulations.

**16 (1) Subsection 71 (1) of the Act is amended by striking out “to a secure unit of a retirement home”.**

**(2) Section 71 of the Act is amended by adding the following subsection:**

### **Limitations on confinement**

(3.1) A licensee of a retirement home who is having a resident of the home confined pursuant to the common law duty described in subsection (1) shall ensure that the confinement is done in accordance with the prescribed requirements, if any.

**17 The Act is amended by adding the following section:**

### **Prohibited devices for restraint or confinement**

**71.1** A licensee of a retirement home shall ensure that no device prohibited for use in any applicable regulations is used to restrain or confine a resident of the home.

**18 (1) Subsection 75 (5) of the Act is repealed and the following substituted:**

### **Inspection or inquiries**

(5) If the Registrar receives a report indicating that any of the events described in subsection (1) may have occurred, the Registrar shall ensure that an inspector conducts an inspection of the retirement home or makes inquiries for the purpose of determining whether the licensee of the home is in compliance with the requirements under this Act.

### **Immediate visit**

(5.1) In acting under subsection (5), the inspector shall immediately visit the retirement home if the report indicates that serious harm has occurred to a resident of the home or that there is a risk of serious harm occurring to a resident of the home.

**(2) Subsection 75 (6) of the Act is amended by striking out “subsection (1)” at the end and substituting “subsection (5) or (5.1)”.**

**19 (1) Subsection 77 (2) of the Act is repealed and the following substituted:**

### **Same, residential complex**

(2) If an inspector has reasonable and probable grounds to believe that a residential complex or part of a residential complex is a retirement home being operated by a person who is not licensed to operate it, the inspector may at any reasonable time, without notice, enter and conduct an inspection of the complex or the part for the purpose of determining whether,

- (a) it is a retirement home;
- (b) the person is operating a retirement home for which the Registrar refused to issue a licence to the person under section 36;

- (c) the person is in compliance with an order made by the Registrar under section 89 or 95; or
- (d) there has been harm or there is a risk of harm to occupants resulting from the failure of the operator to comply with section 33 or any other requirement of this Act.

**(2) Subsection 77 (16) of the Act is repealed and the following substituted:**

**Report, if operator not licensed**

(16) If an inspector conducts an inspection under subsection (2) for any of the purposes set out in that subsection, the inspector, on completing the inspection, shall prepare an inspection report setting out the inspector's findings in the manner, if any, that the Registrar determines and shall give the report to the Registrar.

**20 Subsections 80 (4) and (5) of the Act are repealed.**

**21 The Act is amended by adding the following sections:**

**Investigations with warrant**

**80.1** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence that is relevant to the person's fitness for a licence; and
- (b) there is,
  - (i) in any building, dwelling, receptacle or place, anything relating to the contravention of this Act or the regulations or to the person's fitness for a licence, or
  - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness for a licence that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

**Power to enter**

(2) Subject to any conditions contained in it, a search warrant issued under subsection (1) authorizes an investigator to enter or access the building, dwelling, receptacle or place specified in the warrant.

**Other powers of investigator, etc.**

(3) Subject to any conditions contained in a search warrant issued under subsection (1), subsections 77 (4) to (12) apply, with necessary modifications, to an investigation under the warrant, reading references to an inspector as references to an investigator and references to a search warrant as references to a search warrant issued under subsection (1) of this section.

**Conditions on warrant**

(4) A warrant issued under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

**Expiry of warrant**

(5) A warrant issued under subsection (1) shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

**Time of execution**

(6) An entry or access under a warrant issued under subsection (1) shall be made between 8 a.m. and 8 p.m., unless the warrant specifies otherwise.

**Use of force**

(7) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

**Seizure of things not specified**

**80.2** An investigator who is lawfully present in a place, pursuant to a warrant or otherwise, in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

**Searches in exigent circumstances**

**80.3** (1) An investigator may enter or access, without a warrant, any building, dwelling, receptacle or place in which there is anything relating to the contravention of this Act or the regulations or to the person's fitness for a licence if the conditions for obtaining the warrant exist but, by reason of exigent circumstances, it would be impracticable to obtain the warrant.

**Applicability of s. 77**

(2) Subsections 77 (4) to (12) apply, with necessary modifications, to a search under this section, reading references to an inspector as references to an investigator.

**Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

**22 (1) Section 85 of the Act is amended by striking out “visits the home immediately” in the portion before paragraph 1 and substituting “conducts an inspection of the home or makes inquiries for the purpose of determining whether the licensee of the home is in compliance with the requirements under this Act”.**

**(2) Section 85 of the Act is amended by adding the following subsection:**

**Immediate visit**

(2) In acting under subsection (1), the inspector shall immediately visit the retirement home if the report indicates that serious harm has occurred to a resident of the home or that there is a risk of serious harm occurring to a resident of the home.

**23 Section 89 of the Act is repealed and the following substituted:**

**Person operating without a licence**

**89 (1)** If the Registrar believes on reasonable grounds that a person is operating a retirement home without a licence, the Registrar may serve an order on the person ordering the person to cease to operate the premises as a retirement home by a date that the Registrar specifies or to apply for a licence under this Act by a date that the Registrar specifies or both.

**Contents of order**

(2) If the order requires the person to cease operating the premises as a retirement home, the order may require the person to comply, at the person’s expense, with the requirements that are set out in the order and that the Registrar considers necessary for achieving the ceasing of the operation.

**24 The Act is amended by adding the following section:**

**Court order for compliance**

**96.1** The Registrar may apply to the Superior Court of Justice for an order directing a person to comply with a provision of this Act or the regulations or an order made under this Act and, upon the application, the court may make any order that the court thinks fit.

**25 (1) Subsection 98 (2) of the Act is amended by adding the following paragraphs:**

7.1 Subsection 80.1 (3) as it relates to subsection 77 (7) (compliance with investigations).

7.2 Subsection 80.3 (2) as it relates to subsection 77 (7) (compliance with a search by an investigator without warrant).

7.3 Subsection 113 (3) (confidentiality of information).

**(2) Section 98 of the Act is amended by adding the following subsections:**

**Protection of information**

**(8) In a prosecution for an offence under this Act or if documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,**

**(a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;**

**(b) receiving representations without notice;**

**(c) conducting hearings or parts of hearings in private; or**

**(d) sealing all or part of the court files.**

**Definition**

**(9) In this section,**

**“personal health information” means personal health information as defined in the *Personal Health Information Protection Act, 2004*.**

**26 Subsection 108 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following:**



### **Request for information**

(1) The Registrar may at any time request a licensee of a retirement home to give the Registrar, within the time period specified by the Registrar, information that the Registrar specifies in accordance with processes and criteria that the Authority establishes and that the Minister approves and that relates to,

#### **27 (1) Subsection 113 (1) of the Act is amended by adding the following definition:**

“serious incident” means any occurrence at or around a retirement home that results in harm or a risk of harm to a resident of the home. (“incident grave”)

#### **(2) Subsection 113 (3) of the Act is amended by adding the following clause:**

(g.1) if the information relates to compliance with this Act or the regulations or relates to a serious incident involving a retirement home and if the information is communicated to a person who administers or enforces another Act or a regulation made under another Act, as may be required to aid an inspection, investigation or similar proceeding related to the administration or enforcement of the other Act or regulation;

#### **28 (1) Paragraph 4 of subsection 121 (1) of the Act is amended by striking out “or secure units” at the end.**

#### **(2) Subsection 121 (1) of the Act is amended by adding the following paragraph:**

21.1 governing the confinement of residents, including setting requirements for confinement in addition to those set out in this Act;

#### **(3) Subparagraph 22 ii of subsection 121 (1) of the Act is repealed and the following substituted:**

ii. governing the requirements that a person must fulfil in order to have the right to apply for the review,

#### **(4) Paragraph 26 of subsection 121 (1) of the Act is amended by striking out “to a secure unit of a retirement home”.**

#### **(5) Section 121 of the Act is amended by adding the following subsection:**

#### **Rolling incorporation by reference**

(5) If a regulation adopts by reference any code, standard, guideline or similar document that is made by a body that is not part of the Government of Ontario, the regulation may require compliance with the code, standard or guideline, as amended from time to time, whether the amendment was made before or after the regulation was made.

#### **Commencement**

**29 (1) Subject to subsections (2) to (6), this Schedule comes into force on the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(2) Subsection 7 (2) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(3) Subsection 10 (1) and section 15 come into force on the later of the day section 70 of the *Retirement Homes Act, 2010* comes into force and the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(4) Section 11 comes into force on the latest of the day section 70 and subsection 124 (1) of the *Retirement Homes Act, 2010* come into force and the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(5) Section 12 comes into force on the latest of the day sections 70 and 126 of the *Retirement Homes Act, 2010* come into force and the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**

**(6) Subsection 14 (2) comes into force on the latest of the day subsection 68 (4) and section 70 of the *Retirement Homes Act, 2010* come into force and the day the *Strengthening Quality and Accountability for Patients Act, 2017* receives Royal Assent.**