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Monday 31 May 2004

Standing committee on justice and social policy

Commitment to the Future of Medicare Act, 2004

Chair: Jim Brownell
Clerk: Susan Sourial

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de l'Ontario

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Journal des débats (Hansard)

Lundi 31 mai 2004

Comité permanent de la justice et des affaires sociales

Loi de 2004 sur l'engagement d'assurer l'avenir de l'assurance-santé

Président : Jim Brownell
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

Monday 31 May 2004

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE ET DES AFFAIRES SOCIALES

Lundi 31 mai 2004

The committee met at 1541 in committee room 1.

COMMITMENT TO THE FUTURE OF MEDICARE ACT, 2004

LOI DE 2004 SUR L'ENGAGEMENT D'ASSURER L'AVENIR DE L'ASSURANCE-SANTÉ

Consideration of Bill 8, An Act to establish the Ontario Health Quality Council, to enact new legislation concerning health service accessibility and repeal the Health Care Accessibility Act, to provide for accountability in the health service sector, and to amend the Health Insurance Act / Projet de loi 8, Loi créant le Conseil ontarien de la qualité des services de santé, édictant une nouvelle loi relative à l'accessibilité aux services de santé et abrogeant la Loi sur l'accessibilité aux services de santé, prévoyant l'imputabilité du secteur des services de santé et modifiant la Loi sur l'assurance-santé.

The Vice-Chair (Mr Jeff Leal): We'll bring this meeting of the standing committee on justice and social policy to order. We're now starting the clause-by-clause review. Are there any comments, questions or amendments to any section of the bill and, if so, to which section?

Ms Kathleen O. Wynne (Don Valley West): Are you looking for amendments that have not already been presented?

The Vice-Chair: Nothing has been moved as of yet, so we'll be moving chronologically, starting now.

Ms Wynne: OK. I have an amendment to introduce to section 5, but I believe that there is an opposition amendment.

The Vice-Chair: We're starting in order, and when we get to section 5, I'll recognize you, Ms Wynne.

Ms Wynne: Fine. Thanks.

The Vice-Chair: We'll start with section 1. Are there any amendments to section 1?

Ms Shelley Martel (Nickel Belt): Chair, can I just beg your indulgence for one moment? I gather the government is moving amendments today that we haven't seen yet. So I'm just asking if we can get a copy of those.

The Vice-Chair: Absolutely.

Ms Wynne: There are four amendments that I'm introducing today, and I have copies of them.

The Vice-Chair: Thank you, Ms Wynne.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): I've got 39 more, Mr Chair—I'm only kidding.

The Vice-Chair: Thank you, Mr McMeekin. It's an old trick of mayors, right?

Mr McMeekin: Yes. It's the difference between the day mayor and the nightmare.

The Vice-Chair: Absolutely.

We'll now move on section 1. Any amendments to section 1? Any debate on section 1? All those in favour of section 1? Opposed? Carried.

Any amendments to section 2? All those in favour of section 2? Opposed? Section 2 is carried.

All those in favour of section 3? Opposed? Carried.

All in favour of section 4?

Ms Martel: On "Functions of Council," section 4, page 4, I just make the point that I really think that the government, to strengthen this council and to make it accountable, should have added to the functions their ability to actually make recommendations to the minister regarding what they learn through their monitoring and reporting, and that those recommendations should and could come in the form of making recommendations for funding for changes in health policy and for changes in health legislation.

The Vice-Chair: Are you moving that as an amendment?

Ms Martel: No.

The Vice-Chair: OK, just your comment.

Mrs Witmer, do you have anything you want to say on section 4?

Mrs Elizabeth Witmer (Kitchener-Waterloo): No.

The Vice-Chair: All those in favour of section 4? Opposed? It's carried.

Any amendments to section 5?

1550

Mrs Witmer: Yes. I move that section 5 of the bill, as amended by the standing committee on justice and social policy before second reading, be struck out and the following substituted:

"Reports

"5. The council shall make such reports to the Legislative Assembly as it considers desirable."

The Vice-Chair: Ms Witmer, would you like a five-minute recess to—

Mrs Witmer: No, I have it.

The Vice-Chair: The paper's right there? Sorry, Ms Witmer, go ahead. Comments on that amendment?

Mrs Witmer: I'd like to make some comments, please. Yes, the intention here is to make the council independent and ensure that it reports directly to the Legislature. This was certainly envisioned and described in the Liberal campaign platform and also the speech from the throne. The platform states that it would report directly to you on health care. Also, the speech from the throne, on November 20, 2003, says that "This independent council will report directly to Ontarians on how well their health care system is working."

Regrettably, the way the legislation is presently written, the council reports to the Minister of Health and Long-Term Care, as opposed to the people in the province of Ontario. So this would allow the council to report directly to the Legislative Assembly and to the people.

Ms Wynne: I just want to make a comment that we have an amendment—the next amendment, actually, that we're going to introduce—that would require that that report to the minister be the report that is presented in the Legislative Assembly. So, in fact, that report will come to the Legislative Assembly. I think it accomplishes the same thing.

The Vice-Chair: Further discussion?

Mr McMeekin: I'll just say that while I understand the intent and don't have a problem with the report going to the Legislative Assembly, I think the spirit of this is that the designated ministry, as a courtesy, should have the report so that they can prepare, if nothing else, answers that could logically come up in the Legislative Assembly. As my colleague, Ms Wynne, has reported, there is a provision that would ensure that the report actually go to the Legislative Assembly, as per the intent of Ms Witmer's motion.

The Vice-Chair: Further speakers on this amendment?

All in favour of the amendment? Opposed? The amendment's defeated.

Ms Wynne: This is the first motion that was just handed out. I move that subsection 5(2) of the bill be struck out and the following substituted:

"Tabling

"(2) The minister shall table the yearly report under this section in the Legislative Assembly within 30 days of receiving it from the council, but is not required to table the council's annual business plan."

Just to comment, the way the language originally appeared in the legislation, it was a report that would be brought to the Legislative Assembly. What this does is it says that the report that the council brings to the minister is the report that comes to the Legislative Assembly.

The Vice-Chair: Further speakers on the amendment?

All those in favour of the amendment? Opposed? The amendment carries.

All in favour of section 5, as amended? Opposed? It's carried.

We're now on to section 6. Shall section 6 carry?

Ms Wynne: I have a motion to section 6.1. You're just doing section 6 at this point?

The Vice-Chair: That's correct.

Mr McMeekin: On a point of order, Mr Chairman: Have we dealt with all the amendments to section 5?

The Vice-Chair: That's correct. We're now on section 6, and Ms Wynne is moving a new section, 6.1.

Ms Wynne: I just need clarification. Are we first going to deal with section 6 and then 6.1?

The Vice-Chair: Yes, that's correct. We'll deal with section 6 first. All in favour? Opposed? It's carried.

Ms Wynne: I move that subsection 6.1(11) of the bill be struck out and the following substituted:

"No review

"(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

"Exception

"(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the ground that the minister has not taken a step required by this section.

"Time for application

"(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

"(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

"(b) the regulation is filed, if it is a regulation described in subsection (10)."

The Vice-Chair: Further comment on the government motion?

Ms Wynne: I don't know if the lawyers want to comment. Do you want to make a comment on this?

Mr Robert Maisey: Certainly. Robert Maisey, counsel with the Ministry of Health and Long-Term Care. This section replicates an amendment that was made to Bill 31, which contained a similar provision. What it does is allow a limited form of judicial review where a step has not been taken under the consultation provisions, and it sets out that there's a 21-day period of time within which the judicial review application needs to be made.

Commentary had come in to the committee previously, and to the committee that was dealing with Bill 31, which suggested that subsection (11) should be amended because there was no provision for judicial review. This introduces a limited form of judicial review with a time limit.

Mr McMeekin: Am I to understand that this provision is essentially in place to guarantee the integrity of the act and that the requirements of the act can't be left undone? There would be some process that could be put in place to ensure that the intent of the act is followed?

Mr Maisey: Yes. It deals with the 60-day consultation provision. Section 6.1 sets out a 60-day consultation process. As the bill stands at the moment, there's no provision that would allow for judicial review if the

minister or the Lieutenant Governor in Council fails to follow through on that 60-day consultation provision.

Mr McMeekin: I think that's an important point, because as I recall from sitting in at a couple of the days of hearings, that was in fact raised by a number of the presenters. They were concerned about the 60-day period and the appeal process if something wasn't going the way they thought it should go. So I think it's a good provision.

The Vice-Chair: Further comment? All in favour of the government motion on section 6.1? Opposed? It's carried.

Shall section 6.1, as amended, carry? All in favour? Opposed? It's carried.

Section 7: Shall section 7 be approved? All in favour? Opposed? Carried.

Shall section 8 carry? All in favour? Opposed? Carried.

Section 9, a government motion. Ms Wynne, please.

1600

Ms Wynne: I have a motion for section 9.1.

The Vice-Chair: Correct.

Ms Wynne: So I'm assuming you'll deal with section 9 first?

The Vice-Chair: We will.

Ms Wynne: Actually, I do believe there's an opposition motion.

The Vice-Chair: There's a government motion, too.

Ms Wynne: On section 9(4). Yes. Do you want me to do that one first? OK.

I move that subsection 9(4) of the bill be amended by striking out "for rendering an insured service to an insured person" in the portion before clause (a) and substituting "for an insured service rendered to an insured person."

The Vice-Chair: Shall that carry? Any discussion?

Ms Wynne: The purpose of this is to correct the wording to ensure that third parties—for example, management companies—can't charge for insured services rendered by physicians or practitioners. This is an issue that was raised in Niagara, I believe.

The Vice-Chair: Further debate? Shall subsection 9(4) carry? All in favour? Opposed? Carried.

Mrs Witmer: I don't have a motion. I simply want to go on the record as stating that I'll be voting against section 9 for the following reasons:

I understand that there's not agreement on this particular amendment when it comes to the OMA and the OHA, and I think it's very important to look at alternative options when parties involved are at an impasse. I know that the OHA believes that the matter of payments by hospitals to physicians cannot and should not be resolved by means of legislation. So these payments are and continue to be the subject of considerable debate among the Ministry of Health, the OMA and OHA. I know everyone would like to arrive at a resolution that is appropriate, and I think that can more appropriately be done outside of this particular setting.

For that reason, we would recommend that section 9 be deleted in its entirety. What we would propose is a tripartite body of the Ministry of Health and Long-Term Care, the Ontario Medical Association and the Ontario Hospital Association, in order that work on this issue can be continued and a resolution obtained, as opposed to putting it into legislation.

Ms Martel: If I might follow up with that, we went from a position in the first draft of this bill to essentially not allowing for any payments, and we had a number of presenters in the first round of hearings who came forward and gave examples of how that would eliminate an arrangement that had already been arrived at in a particular hospital. Windsor was one, for example, I believe.

Then we went to a position when we dealt with the clause-by-clause, a change that essentially opened the door to the possibility of any number of payments. My recollection of the OHA's presentation to us after that revision was that what it was going to do was open the door now to, if I paraphrase their words, really upping the ante among some physicians who would see this now as an opportunity to look for ways and means to have other services that they provide for in a hospital covered.

I worry about that, because I've seen the ministry struggle on more than one occasion, for example, to keep physicians in emergency rooms, particularly in northern Ontario, where a number of hospitals are understaffed. That has, in some cases, caused significant problems for hospitals' global budgets, for example. I think we do have a problem here. I also understand from the OHA that they don't believe this has been worked out yet. I would much rather see us in a position where we find some way to resolve it so that we are not in a position, because of this particular provision, of having hospitals trying to find money for alternative payments in their budgets in a way that they're not now having to do.

I like what Ms Witmer has put forward, and I think the government might want to take second look at this and what its implications are if it goes forward in the way it's currently drafted.

The Vice-Chair: Further debate?

Shall section 9, as amended, carry? All in favour? Opposed? Carried.

We're now dealing with section 9.1.

Ms Wynne: Yes. I've distributed a motion on section 9.1. The motion that members already have in their package needs to be withdrawn, and the one you were just handed is the replacement. The motion on page 5 in your package is being replaced by the motion that I just distributed. Is everybody with me?

The Vice-Chair: We're with you. Continue, Ms Wynne.

Ms Wynne: I move that we replace subsections 9.1(1) through (7) with the following:

"Transitional

"9.1(1) This section applies to physicians and designated practitioners who, on or before May 13, 2004, have rendered insured services to insured persons and who had

never notified the general manager of their intention to submit accounts for the performance of insured services rendered to insured persons directly to the plan in accordance with subsection 15(1) or 16(1) of the Health Insurance Act, or had notified the general manager under subsection 15(4) or 16(4) of the Health Insurance Act that they intended to cease submitting their accounts directly to the plan.

"Notification

"(2) If a physician or designated practitioner mentioned in subsection (1) notifies the general manager by registered mail, within 90 days of the coming into force of this section, that he or she intends not to submit his or her accounts directly to the plan, the provisions of subsection (7) apply to him or her.

"Transitional time

"(3) Subsection 9(2) does not apply to a physician or designated practitioner mentioned in subsection (1) who does not give notice under subsection (2) until the first day of the third month following the expiration of the 90-day period under subsection (2).

"Subsequent election

"(4) A physician or designated practitioner who has notified the general manager under subsection (2) may subsequently notify the general manager by registered mail that he or she intends to submit his or her accounts directly to the plan for the performance of insured services rendered to insured persons and in such a case, subsection 9(2) shall apply and the physician or designated practitioner may not subsequently choose to cease submitting his or her accounts directly to the plan.

"When decision takes effect

"(5) A decision to submit accounts directly to the plan under subsection (4) takes effect as of the first day of the third month following the month in which the general manager received the notification.

"Deemed election

"(6) Unless the general manager is satisfied that the account was submitted in error, if a physician or designated practitioner who has notified the general manager under subsection (2) subsequently submits an account directly to the plan for the performance of insured services rendered to an insured person, he or she shall be deemed to have notified the general manager under subsection (4) that he or she intends to submit his or her accounts directly to the plan, except in respect of any prescribed accounts or classes of accounts, and subject to any prescribed circumstances or conditions.

"Where notification given

"(7) The following apply to a physician or designated practitioner who has notified the general manager under subsection (2), except in respect of any prescribed accounts or classes of accounts, and subject to any prescribed circumstances or conditions:

"1. Subsection 9(2) does not apply to the physician or designated practitioner, and despite subsection 9(4), he or she may accept payment for the rendering of insured services to insured persons from a source not mentioned in clauses 9(2)(a), (b) or (c), if he or she complies with all other relevant provisions of this part.

"2. Subject to subsection 9(1.1), the physician or designated practitioner shall not accept payment for rendering an insured service to an insured person until after he or she receives notice that the patient has been reimbursed by the plan unless the insured person consents to make the payment on an earlier date.

"3. All other applicable provisions of this part apply to the physician or designated practitioner."

This new section grandparents physicians and designated practitioners who, on or before May 13, 2004, did not submit their accounts for rendering insured services to insured persons directly to OHIP. This deals with the opt-out situation we've talked about a number of times in this committee. This clarifies how practitioners should proceed.

1610

The Vice-Chair: Thanks very much, Ms Wynne. Debate?

Ms Martel: I have a quick question. The changes appear to be around the transitions moving from 16(4) to 16(1) of the Health Insurance Act. Is that the change?

Ms Wynne: Can we get legal counsel to clarify that?

Ms Jennifer Wilson: There was a reference to 15(1) of the Health Insurance Act. We added a reference to 16(1); 15(1) deals with physicians and 16(1) deals with practitioners. It was just an error there.

The Vice-Chair: Could you identify yourself for Hansard?

Ms Wilson: I'm Jennifer Wilson, counsel with the Ministry of Health and Long-Term Care.

The Vice-Chair: Thank you very much.

Ms Wilson: I can give you more of an overview of the provisions if you'd like.

Ms Martel: I looked through the whole thing and that seemed to be the only area where there was a change. I wasn't sure what the reference was to have the section put in again but with a different number.

The Vice-Chair: Any further debate?

Shall section 9.1 carry? All in favour? Opposed? Carried.

We're now dealing with section 10. Shall section 10 carry? All in favour? Opposed? It's carried.

Shall section 11 carry? All in favour? Opposed? Section 11 is carried.

Shall section 12 carry? All in favour? Opposed? It's carried.

Shall section 13 carry? All in favour? Opposed? It's carried.

Section 14: Ms Wynne.

Ms Wynne: I move that subsection 14(3.1) of the bill be amended by striking out "prescribed time" and substituting "period of time."

This is a question of cross-referencing. The language was changed in one place and not in another.

The Vice-Chair: Ms Wynne has moved the amendment. All in favour of the amendment? Opposed? The amendment carries.

Shall section 14, as amended, carry? All in favour? Opposed? It's carried.

We're now on section 15. Shall section 15 carry? All in favour? Opposed? Section 15 is carried.

Section 16: Ms Wynne, please.

Ms Wynne: I move that subsection 16(1) of the bill be struck out and the following substituted:

"Block fees

"(1) If regulations have been made under this section, a person or entity may charge a block or annual fee only in accordance with those regulations."

This retains the status quo until regulations are written around block fees, and therefore addresses the concern about that interim period. I think some people may have heard that concern that was brought to us by the OMA.

The Vice-Chair: Debate on this one?

Mrs Witmer: Just for clarification, does this amendment mean that the college will continue to regulate block or annual fees until the regulations have been developed?

Ms Wynne: What it means is that the status quo will pertain until the regulations are written.

Mrs Witmer: Then can you answer my question specifically? Will the college continue to regulate block or annual fees until the regulations—

Ms Wynne: I'll have legal counsel speak to this, but there is actually nothing in legislation that gives the college the right to regulate block fees. It has been rather an ad hoc situation, and that's what we're trying to clarify in the legislation. Does that answer your question, or would you like to hear—

Mrs Witmer: No, it doesn't.

Ms Ella Schwartz: I'm Ella Schwartz, counsel for the Ministry of Health and Long-Term Care. It doesn't take a position on whether the college can regulate block fees or not; it just says that whatever the status quo is, we're not changing it.

Mrs Witmer: What is the status quo?

Ms Wynne: Sorry, if I could speak, there are guidelines. I think we heard many times that the college has guidelines in place, but that's not a regulatory function. That status quo of those guidelines will pertain until the regulations are written.

Mrs Witmer: But in essence what you're telling me then is that until such time as they are developed or written, basically nobody is responsible for regulating.

Ms Wynne: What we're telling you is that the situation that pertains now is going to pertain until the regulations are written.

Mrs Witmer: But people don't know who is responsible for regulating these fees in the interim while the regulations are being drafted.

Ms Schwartz: The college has guidelines in place. It is possible that they have regulation-making power, but we don't really know what the court would say. There was a block fees regulation made by the minister that the court said didn't work. If the college brought forth a block fees regulation and it were challenged, the court would look at it and make a decision on that particular block fees regulation, whether it was authorized or not. We thought our regulation was authorized and the court disagreed with us, so we can't really say what would happen if the college made a block fees regulation.

Ms Wilson: It's my understanding they don't have any specific power respecting block fees.

Ms Schwartz: They have professional misconduct power, and it's hard to know exactly what the limits of the professional misconduct power are without bringing a specific regulation forward to the courts. But of course, when a college makes a regulation, it's law until it's challenged and struck down. So that's why we can't answer you; we have to wait for the courts.

Mrs Witmer: Sure, and I appreciate that, but I guess what we want to make sure happens is that there is a smooth transition here during the time of passage of Bill 8 and the development of the regulations. I think it's really important that everyone clearly understand, particularly those in the medical profession, the status and the guidelines around block or annual fees. I don't find this amendment makes any clarification.

Ms Wynne: I know my colleague wants to say something as well, but I think the fact that there hasn't been anything more explicit in legislation until this point means there is some clarity within the profession on what the guidelines are. They've been functioning. The previous government didn't introduce anything that clarified the issue, so the status quo will pertain until the regulations are written. I think that does deal with the transition; that's exactly what this amendment is intended to do.

Mrs Witmer: I'll have to trust you, Ms Wynne.

The Vice-Chair: The speaking order is Ms Martel and then Mr McMeekin.

Ms Martel: On a practical level, if a constituent has an issue about a block fee, do we tell them to use the discipline process at CPSO or do we tell them to deal with the Ministry of Health in that regard? It's just on a practical level, because they deal with complaints about block fees. Who do we refer people to in the interim?

Ms Wilson: Before regulations are passed for Bill 8?

Ms Martel: Back to CPSO?

Ms Wilson: CPSO.

Mr McMeekin: It seems to me that there are issues worth fighting over and some that aren't. My old martial arts training always taught me you don't go picking fights when you don't need to. It seems to me this is a contentious issue. I think we need to be saying to the ministry, regardless of what we're saying to anybody else, get on with putting those regulations in place, but in the meantime we'll have peace in the land and we'll get on and provide good, quality health care to people, and sooner, rather than later, we'll have these regulations come forward that will sort it out definitively once and for all.

The Vice-Chair: Further debate?

1620

Ms Martel: I have another question. The process for this regulation-making will be the one that's already

described in the bill, which will be a public process. What is your intention around the timeline for these particular sets of regulations?

The Vice-Chair: Could you identify yourself for Hansard, please?

Mr Thomas O'Shaughnessy: I'm Thomas O'Shaughnessy, senior policy adviser, Ministry of Health and Long-Term Care.

Ms Martel, could you repeat your question, please?

Ms Martel: Because of the lack of clarification around this area, I'm assuming you're going to use the more public process for regulations that's listed in the bill that we've amended already. But what is the ministry's time frame around these particular regulations dealing with block fees?

Mr O'Shaughnessy: We're certainly going to be consulting with the CPSO. We've already been in communication with the CPSO and the dialogue is very open. So we're going to be in dialogue with them over the course of this summer, the next couple of months, to ensure that the regulation is developed in a very timely and comprehensive way.

Ms Martel: Has the ministry set a deadline for that?

Mr O'Shaughnessy: The ministry has set no definitive deadline, but obviously as soon as possible.

The Vice-Chair: Further debate?

Mr McMeekin: I just want to say that it's a whole new approach. And with reference to Ms Wynne, if you can't trust Ms Wynne, whom can you trust?

The Vice-Chair: Very philosophical.

Shall government motion 61 carry? All in favour? Opposed? It's carried.

Ms Wynne, government motion 16(4), please.

Ms Wynne: I move that subsection 16(4) of the bill be struck out and the following substituted:

"Definition

"(4) In this section,

"'block or annual fee,'

"(a) means a fee charged in respect of one or more health services that are not insured services as defined in section 1 of the Health Insurance Act, or a fee for an undertaking not to charge for such a service or to be available to provide such a service or services if,

"(i) the service or services are or would be rendered by a physician, practitioner or hospital, or the service or services are or would be necessary adjuncts to services rendered by a physician, practitioner or hospital, and

"(ii) at the time the fee is paid it is not possible for the person paying the fee to know with certainty how many, if any, of the services covered by the block or annual fee the patient will require during the period of time covered by the block or annual fee, or

"(b) has any other meaning that may be provided for in regulations made under subsection (3)."

This expands the definition of "block fee" and makes it a more comprehensive one.

The Vice-Chair: Debate?

Shall subsection 16(4) carry? All in favour? Opposed? It's carried.

Ms Witmer, please.

Mrs Witmer: I'm going to, in light of the discussion we've just had in good faith, withdraw this motion.

The Vice-Chair: That's withdrawn.

Ms Witmer, 16(5).

Mrs Witmer: I'm also going to withdraw 16(5).

The Vice-Chair: Thank you very much, Ms Witmer.

Shall section 16, as amended, carry? All in favour? Opposed? That's carried.

Shall section 17 carry? All in favour? Opposed? It's carried.

Section 18: Ms Wynne, please.

Ms Wynne: I move that section 18 of the bill be amended by adding the following subsection:

"Restriction

"(5) A regulation made for the purposes of this part shall not include a provision that is contrary to a provision of the Canada Health Act."

I think that's self-explanatory, Mr Chair.

The Vice-Chair: Thank you very much, Ms Wynne. Any debate?

All in favour of government motion 18(5)? Opposed? That's carried.

Shall section 18, as amended, carry? All in favour? Opposed? Carried.

We're now dealing with section 19. Shall section 19 carry? All in favour? Opposed? Carried.

Section 20: Mrs Witmer, please.

Mrs Witmer: I move that subsection 20(2) of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following paragraph:

"11.1 Timely access to care."

The Vice-Chair: Debate?

Mrs Witmer: I guess what we would want to ensure happens is that the minister or the Lieutenant Governor in Council, when acting in the public interest, would take accessibility of care into account. Also, the inclusion of this particular amendment would align public interest in Bill 8 with the definition of public interest in the Public Hospitals Act, and this would ensure consistency.

Ms Wynne: Just to be clear, we are introducing the next motion, to add accessibility, which, actually, is broader than just timely access. So I won't be supporting the timely access.

Mrs Witmer: Well, I would respectfully disagree with Ms Wynne. The word "accessibility" simply says, "at some point in time." "Timely access to care" actually speaks to the fact that it needs to be accessible, but it needs to be accessible within, hopefully, a reasonable period of time. So I think the motion that I have proposed is actually much more definitive and, as I've said before, it is consistent. I couldn't support the next one.

Ms Martel: The key has to do with timely access to care. You don't need to have too many government reports to know that is an issue with respect to cancer treatment, for example, and many others. As the government develops a bill which they say is going to improve medicare, improving medicare means that patients who

require hip surgery or cancer treatment or a whole host of health care services get them when they need them and where they need them. So I think the inclusion of the word "timely," frankly, is critical when you're talking about people who expect and require medical care in Ontario. "Accessibility" just doesn't go far enough to deal with, frankly, what the government purports this bill will do, which is, once the health council gets up and running, monitor and report on these kinds of matters and, we hope, make funding investments in the places that will ensure that people do get access to the care when they need it and where they need it. So I would really encourage the government to have a second look at the inclusion of "timely." I think it is quite critical to what we are discussing with respect to public interest in this section.

Ms Wynne: I just want to reinforce what I said earlier about accessibility being the broader term. The word "timely" is not in the Public Hospitals Act. The whole point of this bill is to introduce accountability. Within those accountability agreements that will be negotiated with the health institutions, that's where the targets for wait times and so on will be set. So really, the whole issue of timeliness is in this bill, and accessibility is a broader term that takes in more than just timeliness, but also timeliness.

Mr McMeekin: I just want to be clear. Maybe this is one of those times when the freedom of members to speak their mind in committees—I don't think the government is saying that they don't want to see timely access for health care. I think, in part, what Ms Wynne is saying—and she is always very logical in her arguments—is that from her perspective, accountability is an inclusive term.

Ms Wynne: Accessibility.

Mr McMeekin: Oh, accessibility. Sorry. The whole thing is about accountability and accessibility. But surely, timeliness is part of that. It would seem to me that it's difficult to say on the one hand that this concept is included in the broader definition, yet excluded specifically when it may help clarify to have it included. So I intend to support the amendment, although I do so respectfully, given what Ms Wynne has said.

1630

Ms Martel: Can I just make one other point, Chair? I don't pretend to know all the provisions of the Public Hospitals Act, but it's not clear to me that all of the other values or characteristics that are outlined on page 23 of the bill under "public interest" are also actually outlined in the bill.

Someone's going to correct me if I'm wrong, I'm sure—and they should—but if you look at any of the other principles, we've outlined a number of principles which the minister will have as part of the accountability agreements. There are 1 to 12 here listed under 20(2). I suspect not all of those are outlined in the Public Hospitals Act, so that shouldn't be a reason for us not to incorporate timeliness here. I think it is an important principle that the minister should be taking into account in accountability agreements. Frankly, so should the partners, and I'm sure they will be, but the use of "timely" is a much different matter than the principle that only specifically talks to accessibility. We've already got 12 other principles that are outlined. I'm not sure what the problem is about adding 13 or 14, for that matter.

Ms Wynne: We're going to get into a linguistic debate here, but to our mind, "accessibility" is the broader term. If we talk about timely access, then do we have to talk about other kinds of access—geographic access? I mean, you might have to then specify—

Ms Martel: I like that. I'm with you on that one.

Ms Wynne: I know. I thought you would. That's why we're going to use accessibility, because it's the broad term, it includes those other things and it's the more inclusive term.

Mrs Witmer: I would respectfully disagree, because you've just made a very good point. I think timely access to care would provide for those in distant geographical locations to have timely access. This means that, no matter where you live in this province, no matter who you are, you are ensured of having the same timely access to care as anybody else, whether you're in the city of Toronto or you're up in New Liskeard.

I think that's extremely important, and I think Ms Martel has made some excellent points. The reality is, folks, when someone has cancer, they don't need treatment a year or two years from now. When someone needs a hip replacement or cataract surgery, really the key is that it's just not accessibility; it's making sure it's provided in a very, very timely manner. Because in the case of some of the eye diseases, it is obviously going to have a big impact on their vision and quality of life.

The Vice-Chair: Further debate?

Ms Wynne: I'm going to rest my case.

Mr McMeekin: Since I'm out on a limb anyway, I just want to pick up on Mrs Witmer's point. My late mother had to wait 10 weeks to get a test to find out how little time she had left to live, and that was not timely health care. One of the things that I try to do every day, and I think every member here tries to do every day, is be intelligent about the decisions we make. We spent a fair bit of time in the election campaign talking about timely access to health care. So I intend to support it.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): I just had a little discussion here, and I mentioned that very thing. We did, during our campaign, talk about timely access. I think if it's implied in the word "accessibility," then why not be up front and have it in as a word? As Mr McMeekin said, that's the reason for the support. I think the word "accessibility" is totally fine, but this gives it a little more meat. I'm going to support it.

The Vice-Chair: Further debate? Further discussion?

Shall PC motion 20(2) carry? All in favour?

Ms Martel: Recorded vote.

The Vice-Chair: All in favour? Mrs Witmer, Ms Martel—

Interjection.

The Vice-Chair: Oh, I'm sorry. I'm used to my council days when the chairman used to read out the names. Go ahead. Sorry. I didn't mean to usurp your role, Madam Clerk.

Ayes

Brownell, Craitor, Martel, McMeekin, Witmer.

The Vice-Chair: It's carried. I just wanted to give everybody an opportunity.

So we now move to a government motion. Ms Wynne, please.

Ms Wynne: Given the argument I made that this is the broader term, I am going to go ahead and move this amendment.

I move that subsection 20(2) of the bill be amended by adding the following paragraph:

"11.1 Accessibility."

The Vice-Chair: Debate?

Ms Wynne: Should it be renumbered? Yes, there's a numbering problem. If 11.1 has already been moved with this—

The Vice-Chair: It will be renumbered.

Ms Wynne: All right.

The Vice-Chair: Any discussion or debate? Ms Martel, please.

Ms Martel: I'm going to support that. It's not a problem, Kathleen. It's one more principle among many, so that's good.

The Vice-Chair: Any further debate?

Shall government motion 20(2), which will be renumbered when the bill goes out, carry? Carried.

Shall section 20, as amended, carry? Carried.

The clerk is distributing some material with regard to PC motions that really belong in section 20, but in our material they're listed under section 21. I'm sorry, is it just the opposite? OK. It should be in 21. There we go. That's correct. The clerk is distributing the right information now.

Section 21: Ms Wynne, you have a government motion?

Ms Wynne: Yes, thank you, Mr Chair.

I move that subsections 21(2) and (4) of the bill be struck out and the following substituted:

"Discussion

"(2) After the notice under subsection (1) is given, the minister and the health resource provider shall negotiate the terms of an accountability agreement and enter into an accountability agreement within the applicable number of days provided for in subsection (2.1).

"Applicable number of days

"(2.1) The applicable number of days is,

"(a) 90 days where the minister gives notice to the health resource provider under subsection (1),

"(i) for the first time, or

"(ii) for the second time, where the first accountability agreement was for a term of one year or less; and

"(b) 60 days in all other cases.

"Direction

"(4) If the health resource provider and the minister do not enter into an accountability agreement within the applicable number of days after the minister gave notice under subsection (1), the minister may direct the health resource provider to enter into an accountability agreement with the minister and with any other health resource provider on such terms as the minister may determine, and the health resource provider shall enter into and shall comply with the accountability agreement."

This clarifies and gives more time for the establishment of the accountability agreements, and we heard a lot about this from delegates.

The Vice-Chair: Debate? Ms Martel, please.

Ms Martel: This might not be quite the appropriate section to raise my general concerns about these provisions, it might be 21(1), but I'll do now anyway. Let me raise two concerns with the committee that you've heard before, but I'll do them one more time.

Number one has to do with the time frame that is outlined. I think the ministry is going to be in significant trouble very early on in negotiating these accountability agreements, because we are talking about accountability agreements not only for hospitals, and there are many of them in the province, but we are talking about accountability agreements with community care access centres, independent health facilities and long-term-care facilities.

1640

It's never been clear to me exactly what the ministry was going to use in terms of its agreements with long-term-care providers. For example, if they were going to try and build on the service agreements that exist—I think they're renewed annually, but in any event, I don't think the ministry will be, in any shape or form, able to actually comply itself, from its side, with respect to the sheer number of people who are going to have to be involved in the negotiation of these agreements, and frankly their capacity as well. In some of these hospitals, you're talking about millions and millions of dollars.

A program that may now be under way with the joint policy and planning committee still has to be, I think, tuned up and fixed, up to the point where it can be applicable. I would even have thought it would have made more sense for the ministry to test some of this in a pilot in a number of hospitals and in a number of community care access centres etc to see how it was going to work. I think that as soon as we get into it, the ministry itself is going to be out of compliance in terms of the time range it has outlined here.

Second—this is probably more with respect to section 21, but with your indulgence I'll deal with it now—I continue to be very concerned that the ministry has been unable to negotiate some kind of independent, third-party dispute resolution mechanism with the OHA. There has been no change in the ministry's position as far as I can tell, and that issue remains outstanding. I firmly believe it would make much more sense for the government to have an independent third party, where disputes can finally be resolved, than to have essentially the minister

in the position of issuing what will be unilateral orders or compliance directives in the event there is no agreement.

I do not understand why the government wants to be in that position, why the minister wants to be in that position. It would have made far more sense to move a little bit further down the road and to put in place a dispute resolution mechanism, whatever that mechanism might be, so that at the end of the day, it would be that independent third party issuing decisions rather than the government itself. I think this is going to cause enormous problems in a number of communities with local hospital boards, for example. I just don't understand why the government wants to be in that position, and I think that's where you will be.

Mrs Witmer: This entire section remains as one of the most outstanding contentious issues, and I would certainly support everything that has just been said by Ms Martel. I'm really surprised and very disappointed that the government has not sought to work in a collaborative manner and made some compromises, particularly with the Ontario Hospital Association. As Ms Martel has said, there is a JPPC process in place. Work was ongoing.

I've been at the Ministry of Health. I personally don't think there is the capacity to draft all of these agreements within the timelines that are being suggested. I don't think anybody understands the enormous task that is before the ministry. Are we simply going to increase the size of the bureaucracy and not achieve any savings, and I'm not sure much in the way of accountability? I am very disappointed there isn't a resolution with the Ontario Hospital Association in resolving this particularly contentious issue.

I'm also disappointed there are no pilot agreements. We used to do this all the time in education when I was chair of a board. We would test and pilot initiatives, and I have to tell you, you learned a lot. I think in this particular area we could learn a lot if we developed pilot agreements with some of the different health care providers. We could save ourselves a tremendous amount of taxpayer money and wasted energy.

Again, I'm very disappointed that there is no dispute resolution mechanism, that we're not prepared to hand it over to a commissioner or a panel of commissioners—some independent third party—because I'll say what I've said before: The accountability really goes all one way. There isn't much accountability here for the Ministry of Health or the government. So I have very serious reservations about this section.

Ms Wynne: I will just say two things. First of all, the extension to 90 days is an acknowledgement that there may need to be, especially at the beginning, a longer process. I think that, on all we heard about the need for a dispute resolution process, we're responding to it in terms of extending the period.

I think on the other piece, there is nothing in what we're saying here that would suggest that the work of the joint policy and planning committee is not going to be used. As Ms Martel said, I think that is ongoing. We're hoping that the framework they come up with for accountability agreements will absolutely be consistent, and we expect it will be consistent, with Bill 8. So that work is already in the works. The stakeholders are at the table having that conversation.

I think this amendment is a substantial compromise, and I think it will go a long way to deal with the issues that have been raised with us.

The Vice-Chair: Further debate?

Shall the government amendment on section 21 carry? All in favour? Opposed? It's carried.

PC motion 21(4): Mrs Witmer, please.

Mrs Witmer: I move that subsection 21(4) of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by striking out "the minister may direct" and substituting "the minister may, subject to the approval of the Lieutenant Governor in council, direct."

By putting this forward, we want to make sure there is an amendment that adds accountability to ensure the power to impose an agreement could only be made by an order in council or, alternatively, that it be subject to ministerial approval. As I say, this is certainly the most contentious set of amendments that remains unresolved. This is an attempt to ensure the accountability of the minister as well.

The Vice-Chair: Further discussion?

Shall PC motion 21(4) carry? All in favour? Opposed? It's lost.

Ms Witmer, 21(4.1).

Mrs Witmer: I move that section 21 of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following subsection:

"Review by commissioners

"(4.1) Before making a direction under subsection (4), the minister shall refer the matter to a commissioner or a panel of commissioners who are independent of the health resource provider and the minister, and the commissioner or commissioner, if it considers the matter appropriate for review, shall review the matter and make recommendations to the minister, the health resource provider and the public within 30 days of the referral."

I'll just repeat what I've said. The legislation, as currently drafted, still allows for these accountability agreements to be imposed without referral to a third-party dispute resolution mechanism. As a result, and most regrettably, there is still power for the minister to impose anything he likes on any individual health provider, while ignoring the people within the system. We can take a look at the boards of hospitals and really take into consideration some of the priorities of the particular health provider.

This really would provide for true third-party review in a manner that is streamlined. We would still see an expedient resolution of the issue. In addition, it would provide the parties with some independent advice and give the sector information respecting how disputes over the agreements are being addressed. The commissioners would have the authority to deny a review if they felt it wasn't in the public interest to do so.

1650

I think what this does is ensure an open, democratic process of negotiation which would result in a fair resolution, which ultimately would be more conducive to achieving what I would believe the government would have in mind, as far as the goals and objectives that they would want set out in the accountability agreements.

I have to tell you, I'm very, very perplexed that this government in particular refuses to participate in this type of open, democratic process of negotiation that I believe would result in a fair resolution.

The Vice-Chair: Further debate?

Ms Martel: I just might add to what Mrs Witmer has just said. I think it remains impossible for the government to argue that accountability agreements are negotiated when the language in the bill shows otherwise. The language in the bill remains very clear, and that is that at the end of the day, the minister does have the unilateral authority to impose orders or compliance directives.

So two things: If the government were serious and if the minister himself were serious about his claims that these are negotiated, then the government would have been here today withdrawing those sections of the bill that still allow for the minister to have unilateral power.

For example, that would include on page 27, section 21.1(4), where it says: "The minister shall consider any representations made under subsection (3) before making a decision to issue a compliance directive or an order under subsection 26(1)."

The government would be here today removing section 22(2), page 28 of the bill, which says: "The health resource provider shall comply with a compliance directive."

The government would have been here removing today subsection 26(2), under "compliance," which says: "The health resource provider shall comply with an order issued under subsection (1)."

So while the minister says publicly that the accountability agreements will be negotiated, the language of the bill clearly demonstrates otherwise. At the end of the day, the minister continues to have all of the authority to unilaterally use his or her power to implement both orders and compliance directives upon hospitals. So there's no negotiation in that. I think the very draconian power for the minister that's in the bill is power that is not necessary and should be removed.

Again, if the government wants to get at negotiated settlements, the government would remove this language and the government would put in place a true third-party process that would allow them to get there with respect to these accountability agreements.

We heard again and again, particularly from hospital boards, that they were not averse to accountability agreements. They outlined the many ways they felt they were accountable. The government should be moving to an independent process for those times and places where you cannot get an agreement between the ministry and the various hospital boards or owners of long-term-care facilities etc.

Ms Wynne: Just two quick comments: I think the issue here is the delay in the process and the desire not to further delay the process by introducing another process on top of the one that's already outlined. I guess the other point is that the commissioner or the reviewer, whoever that third party is, is not, at the end of the day, going to be held accountable for the decisions made for core functions of the minister. Those core functions, that core job is what the minister's holding on to here, by not having a commissioner or a reviewer who would not be accountable to the people of Ontario. So that's the argument for leaving the language the way it is.

The Vice-Chair: Further debate?

Shall PC motion subsection 21(4.1) carry?

Ms Martel: Recorded vote.

Ayes

Martel, Witmer.

Nays

Brownell, Cansfield, Craitor, McMeekin, Wynne.

The Vice-Chair: It's lost.

Mrs Witmer, subsection 21(5).

Mrs Witmer: I move that subsection 21(5) of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by striking out "may" and substituting "shall."

Now, what this would do is ensure a direct line of accountability between a board and its CEO. It would prevent the blurred accountability between the CEO and the board.

As you know, we heard over and over and over again that this bill, Bill 8, threatens the voluntary boards in particular of the hospitals throughout the province of Ontario. It would diminish the role of the CEO, and this would ensure that hospital CEOs are directly accountable to their boards, and at least eliminate that cause of concern.

The Vice-Chair: Debate?

Shall PC motion subsection 21(5) carry? All in favour? Opposed? It's lost.

Shall section 21, as amended, carry? All in favour? Opposed? It's carried.

Section 21.1: Ms Wynne, please.

Ms Wynne: I move that section 21.1 of the bill be amended by adding the following subsection:

"Restriction

"(2.1) The minister shall not give a notice under subsection (1) that proposes to make directions in an order under subsection 26(1) unless,

"(a) a compliance directive has been issued in respect of the circumstance or a related circumstance that is referred to in the notice; or

"(b) the circumstance referred to in the notice relates to non-compliance with,

"(i) a compliance directive,

"(ii) an order made under subsection 26(1), or

"(iii) an order made under subsection 26.1(5)."

So this clarifies that there has been a compliance directive before an order.

The Vice-Chair: Discussion? Debate?

Shall government motion subsection 21.1(2.1) carry? All in favour? Opposed? It's carried.

Shall section 21.1, as amended, carry? All in favour? Opposed? It's carried.

Section 22: Ms Wynne, please.

Ms Wynne: I move that paragraph 11 of subsection 22(3) of the bill be amended by striking out "subsection 29(3)" and substituting "subsection 29(2)."

The Vice-Chair: Debate?

Ms Wynne: Again, this is a correction of a mistake in cross-reference. So it's not substantive.

The Vice-Chair: Shall government motion subsection 22(3) carry? All in favour? Opposed? It's carried.

Shall section 22, as amended, carry? All in favour? Opposed? It's carried.

Section 25: Shall section 25 carry? Opposed? It's carried.

We're now on to section 26. Ms Wynne, please.

Ms Wynne: I gave people an amendment to subsection 26(1), on loose paper. I move that subsection 26(1) of the bill be amended by adding "and the minister proposed in the notice to issue an order under this section" after "notice was given by the minister."

Again, this was to make explicit the order of events in terms of issuing orders and notices of orders.

The Vice-Chair: Any debate?

Shall subsection 26(1) carry? All in favour? It's carried.

Ms Wynne, please.

Ms Wynne: I move that subsection 26(4) of the bill be amended by striking out "or chief executive officer."

This was a correction of a mistake in reference to CEOs, since orders can't be issued against CEOs.

The Vice-Chair: Debate?

Shall motion subsection 26(4) carry? Carried.

Ms Wynne, please.

1700

Ms Wynne: I move that section 26 of the bill be amended by adding the following subsection:

"No delegation

"(8) Despite subsection 3(3) of the Ministry of Health and Long-Term Care Act, the Minister shall not delegate the power to issue an order under subsection (1)."

There was a concern raised that it would be someone in the ministry who would be issuing this order, and this clarifies who can issue the order.

The Vice-Chair: Any discussion? Shall government motion subsection 26(8) carry? All in favour? It's carried.

Shall section 26, as amended, carry? All in favour? Carried.

Section 26.1: Ms Witmer, please, a recommendation.

Mrs Witmer: Yes, it's actually a recommendation. I just want to give notice that we are going to be voting against this section. Obviously, we cannot support the punitive sanctions set out in this section and so we're going to be voting against it.

Ms Martel: I would vote against it as well. This is another section where it is very clear in the language of the bill in the provisions that in fact the minister does have the unilateral power to issue orders and directives. In this case, the order refers to holding back or reducing or varying compensation. The minister has said on numerous occasions that accountability agreements have to be negotiated. I've pointed out the sections previously where, if that were true, the language in the bill that allows for him to unilaterally issue orders and compliance directives would have been deleted.

In the same way, if these agreements were negotiated and we were working collaboratively together, there would not be provisions in the bill that essentially allow the minister to hold back, reduce or vary compensation provided to a chief executive officer in any manner or for any period of time as he is now allowed to do under subsection 26.1(6), page 32 of the bill.

I said earlier in the course of the public hearings—and I'll repeat it—that chief executive officers are not employees of the Ministry of Health; they are employees of that particular volunteer board. I suspect that the first time the government tries to implement this particular section, they will have a chief executive officer who will be making that very point in law.

But again, all of the references—the actual language or the text in the bill—that allow for the minister to do something unilaterally, whether it be to withhold money from a hospital board or, in this case, from the CEO, are references that should be removed and an independent third party should be dealing with those issues where there are disputes.

Mr McMeekin: It seems to me that on those rare occasions where there may be a failure to be collaborative and, particularly given the astute observation about ambiguity in law, the buck has to stop somewhere. It's not enough to just mouth words about accountability. There are provisions within the legislation to be collaborative around the agreements. There are provisions within the legislation to have those challenged judicially, if that's appropriate. But there also needs to be a provision somewhere in the bill that the buck stops here, and I think this provision does that.

The Vice-Chair: Further debate?

Shall section 26.1 carry? All in favour?

Ms Martel: Recorded vote.

Ayes

Brownell, Cansfield, Craitor, Fonseca, McMeekin, Wynne.

Nays

Martel, Witmer.

The Vice-Chair: It's carried.

Section 27: Your motion, Ms Witmer.

Mrs Witmer: Again, we would have to recommend voting against this section 27, based in large measure on that we simply cannot support the punitive sanctions that are in this bill. We really do not support the ability for the government to deal directly with CEOs. So we are very, very strongly opposed and we regret very much that this government has not sought a resolution, in particular with the Ontario Hospital Association, in making sure that the legislation addresses the concerns they have.

The Vice-Chair: Any discussion?

Ms Wynne: I think we've said it before, but the point of this bill is to establish a new relationship with those institutions and those providers. The accountability process that we've laid out is designed to re-jig that relationship, and the accountability agreements are designed to do that. I have a lot of optimism that we're not going to have to get to the point where this section would have to be used.

The Vice-Chair: Further discussion?

Shall section 27 carry?

Interjection: Recorded vote.

Ayes

Brownell, Cansfield, Craitor, Fonseca, McMeekin, Wynne.

Nays

Martel, Witmer.

The Vice-Chair: It's carried.

Section 28: Shall section 28 carry? All those in favour? Opposed? Carried.

Ms Wynne: I move that subsection 29(2) of the bill be amended by striking out "ordered" and substituting "required."

This is an issue of consistency in wording. Does everybody see where we are?

The Vice-Chair: Yes. Any discussion?

Shall government motion subsection 29(2) carry? Opposed? It's carried.

Shall section 29, as amended, carry? All in favour? Opposed? It's carried.

Shall section 30 carry? All in favour? Opposed? It's carried.

Shall section 31 carry? All in favour? Opposed? It's carried.

Shall section 32 carry? All in favour? Opposed? It's carried.

Section 32.1: Ms Wynne, please.

Ms Wynne: I move that subsection 32.1(11) of the bill be struck out and the following substituted:

"No review

"(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

"Exception

"(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the ground that the minister has not taken a step required by this section.

"Time for application

"(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

"(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

"(b) the regulation is filed, if it is a regulation described in subsection (10).

Again, this provides the opportunity for judicial review.

The Vice-Chair: Discussion?

Mr McMeekin: This importantly provides some of that much-requested balance that some members of the justice and social policy committee were looking for with earlier sections. I think it's a nice juxtaposition to some of the powers that were contained, that people had raised some alarms about, to in fact see this provision there.

The Vice-Chair: Further debate, discussion?

Shall government motion subsection 32.1(11) carry? In favour? Opposed? It's carried.

Shall section 32.1, as amended, carry? All in favour? Opposed? It's carried.

Section 32.2: Ms Witmer, the PC motion.

Mrs Witmer: I move that the bill, as amended by standing committee on justice and social policy before second reading, be amended by adding the following section:

"Faith-based mission

"(1) Nothing in this part authorizes the minister or the Lieutenant Governor in Council to interfere, directly or indirectly, with the faith-based aspects of a health resource provider that has a faith-based mission or governance structure.

"Same

"(2) The powers under this part shall be exercised in the manner that is consistent with the faith-based aspects of a health resource provider that has a faith-based mission or governance structure."

The reason we have brought this forward is that certainly there is some concern from faith-based health care providers in Ontario who see the implementation of section 3 of Bill 8 as a threat to their provision of health care and see the ability to jeopardize their contribution to the health of the communities they serve.

1710

I just want to quote from a letter that Premier McGuinty wrote to the Catholic Health Association of Ontario in August 2003:

"The Ontario Liberals recognize the invaluable contribution that the Catholic Health Association of Ontario ... and the caregivers you represent have made as partners in the delivery of quality health care in our province.

"As I have stated in the past, the Ontario Liberals are committed to preserving the Catholic health ministry in our province. We appreciate that governance issues are of the utmost importance if Catholic hospitals, long-term-care facilities and home care providers are to preserve their ministry."

If the government believes what is written, then I believe there should be no hesitation on their part in including the clause that I have just included in the legislation.

The Vice-Chair: Discussion?

Ms Wynne: There's no comparable provision related to faith-based institutions anywhere in health legislation. The reason I'm not supporting this motion is that to do so would suggest that there needs to be a special provision for all sorts of organizations, all sorts of different groups who have an interest in health provision. The context in which the accountability agreements will be negotiated is the context in which the faith-based organizations are delivering health care now, and that context remains the same.

Ms Martel: I'd like to ask counsel, when the Catholic Health Association was before us they referenced other provincial jurisdictions and language that appeared and gave us the sense that those were provisions that protected faith-based health care delivery. Can you tell us again why none of those provisions would work in this case?

Mr Maisey: It's Robert Maisey of the Ministry of Health and Long-Term Care. My recollection is that those two situations were in Alberta and Saskatchewan, where those governments had entered into some form of contractual agreement with a representative body in those provinces, and it was not legislation.

Ms Martel: What was the nature of the contractual agreement? I remember asking them a question that referred to delivery of health care services. At least I thought I remember asking them that, and they said yes. What was the nature of the agreement and why can't it be applied here?

Mr Maisey: That was an agreement between the government and an umbrella organization for delivery of health care services. It was not a legislative provision. A legislative provision obviously has a much higher legal form than a contractual provision, because a contract can be changed.

Ms Martel: The government could negotiate a contract with the Catholic Health Association as a representative body of those groups that deliver health care services, either long-term-care facilities or hospital-based?

Mr Maisey: That's right.

Ms Martel: If the government is adamant about not moving in a direction which would see section 32.2 added, as per the request that was made by the association to the committee in a letter dated May 27, what is the government prepared to do then by way of a similar contractual agreement with the Catholic Health Association that would, through that mechanism, give them the protections that they're looking for? Is that a possibility?

Mr Maisey: I suppose it is. I'm afraid I can't answer the question as to what the government intends to do, because I'm not part of the Ministry of Health in working on that particular aspect. But I believe there was some discussion around potentially dealing with those concerns through the processes that are in place, either now or in the future, for negotiating these types of accountability agreements, such as through the joint planning and policy committee, or other processes.

Ms Martel: But even through that process, it would be individual hospitals working with the ministry, right? Not the association on behalf of.

Mr Maisey: Well, at the moment the JPPC is an Ontario Hospital Association and ministry process, so I suspect it would be possible to do it either through that process or through a different process with a faith-based organization or group of organizations.

Ms Martel: Mr Chair, may I just make the suggestion then? If the government was going to accept it, it would be here as a government amendment, so it's not. So I'm assuming that we're not going to be looking at this because the government feels there's not a mechanism to do it within individual accountability agreements.

I would then strongly recommend to the government that they look at the contractual agreements that exist in Saskatchewan and Alberta, to sort out whether or not there's an overarching contractual agreement that could be arrived at with the association and the representative hospitals and long-term care facilities that it speaks on behalf of to provide as similar a protection as we can. If it can't be by way of legislation, and clearly the government says it can't, then to give them some comfort that through the process of developing the accountability agreements, faith-based institutions will be protected. I make that suggestion to the government.

The Vice-Chair: Thanks, Ms Martel.

Mr McMeekin: This is a quandary for some of us, because on the one hand you want to respect the values and the historic nature and charter of those institutions, which in many cases were foundational in terms of providing health care. On the other hand, we dealt with a section earlier, section 20, which talked about timely and accessible services to all services under the Canada Health Act.

So I guess one of my questions would be, in particular recognizing the sensitivities here—and I don't want to trample on those, but on the other hand I want to ensure that those who show up in a publicly-funded health care facility at least have access. Alternatively, if a faith-based group finds itself in a position where they can't deliver a service, for whatever reason or combination or reasons, I don't think the amendment covers that off. So I don't want to see people denied access to timely and accessible services. I don't see any provision in the amendment to ensure that the very section we passed around timely and accessible services isn't thwarted, by definition, by including this.

I'm sensitive to the suggestion that was made—I think I heard it—that there will be agreements that will need to be worked out and, I'm assuming, with those provisions within those agreements to ensure some alternate access to services that might not be rendered in a faith-based hospital. To that, we've had the additional wisdom, as she is so wont to do, from Ms Martel, indicating that there are some other provincial jurisdictions that have struggled with this and come up with some useful alternative language.

On balance, having said all of that, I'm inclined not to support this, but with the clear understanding that we take Ms Martel up on her very good suggestion, if we can direct—certainly suggest, but I would say suggest and direct—the ministry to in fact investigate those provisions. Again, it's a leap of faith here—we're talking about faith-based—that's worked out fairly well historically in the province under the leadership of the previous health minister and others. I have no reason to believe that won't happen, but I guess the other part of it is I'm not sure I want to open a whole can of worms here either by putting something down too quickly, perhaps, that with a little bit more investigation, research and sensitive and deliberative consultation, we can resolve.

The Vice-Chair: When Mr McMeekin, when you were speaking, and Ms Martel, I noticed the ministry people were making some notes there, so I think the point has been taken and well understood.

1720

Mr Brownell: Basically, I'm just going to follow up with what Mr McMeekin said. I fully agree. Ms Martel brought an idea forward. I've struggled with this. I've expressed comments to Ms Wynne about this section and my struggles. I think if other provinces have something in place, let's investigate. Let's work at something that will assist these faith-based providers. I'm willing and ready to work together to try to get something in here.

Ms Wynne: Can I just say one more thing? Just be aware that you're not just talking about one group that wants to make sure that provision of care is protected for them. Francophone groups, multicultural groups, disability groups, sexual orientation—there are all sorts of groups that want to make sure that care is provided according to their needs. I have no problem with what Ms Martel has suggested, but I think we just need to be aware of what we're talking about.

The Vice-Chair: Further debate?

Shall the PC motion to insert new section 32.2 carry? All in favour? Opposed? It's lost.

Section 33: A government motion, Ms Wynne, please.

Ms Wynne: I move that the provisions of the Health Insurance Act set out in section 33 of the bill be amended by adding the following section:

"Transitional

"15.2(1) The following rules apply with respect to a physician or designated practitioner to whom subsection 9.1(7) of the Commitment to the Future of Medicare Act, 2004, applies:

"1. Sections 15 and 15.1 do not apply to him or her.

"2. Subsections 15(5), 16(5), 16.1(2), 17(2), 25(2) to (9), and 27.2(3) and (4), as applicable, as they existed immediately before their repeal by the Commitment to the Future of Medicare Act, 2004, continue to apply to the physician or designated practitioner, as the case may be, as if they had not been repealed, except in respect of any prescribed accounts or classes of accounts, and subject to any prescribed circumstances or conditions.

"3. Where, under subsection 27.2(3), the physician or designated practitioner is required to temporarily submit his or her accounts directly to the plan, the submission of the accounts is not a deemed election for the purposes of subsection 9.1(6) of the Commitment to the Future of Medicare Act, 2004, but subsection 9(2) of that act applies to him or her during the time that he or she is temporarily required to submit accounts directly to the plan.

"4. All other applicable provisions of this act apply to the physician or designated practitioner.

"Same

"(2) Where a physician or designated practitioner to whom section 9.1 of the Commitment to the Future of Medicare Act, 2004, applies submits his or her accounts for the rendering of insured services to insured persons directly to the plan, subsections 25(2) to (9) of this act, as they existed before their repeal, apply to him or her with respect to accounts submitted before he or she commenced submitting his or her accounts directly to the plan.

"Interpretation

"(3) In this section,

"'physician' and 'designated practitioner' means a physician or designated practitioner within the meaning of part II of the Commitment to the Future of Medicare Act, 2004."

The Vice-Chair: Debate?

Shall the government motion on section 33 of the bill, section 15.2 of the Health Insurance Act, carry? All in favour? Opposed? It's carried.

Shall section 33, as amended, carry? All in favour? Opposed? It's carried.

I think we may be able to collapse the next few sections, with agreement of the committee. That would be sections 34, 35 and 36.

Shall sections 34, 35 and 36 carry? Opposed? They're carried.

We're now dealing with section 37.

Ms Wynne: I have an amendment to subsection 37(1) that I passed out to people.

I move that subsection 37(1) of the bill be struck out and the following substituted:

"Same

"(1) Subsection 25(2) of the act, as amended by the Statutes of Ontario, 2002, chapter 18, schedule I, section 8, is repealed."

I may have to get legal counsel to speak to this one.

The Vice-Chair: Ms Wilson.

Ms Wilson: Yes. This is a provision right now in the bill, which is a transitional provision. It was put in to deal

with physicians' accounts, where the physician was opt-in but they were previously opt-out, so certain provisions of the Health Insurance Act would still apply when there was arguing of their opt-out accounts. With the new provisions respecting opt-out, we've moved that provision over there and we just forgot to repeal that. So it's already included in the new 15.2 under section 33.

The Vice-Chair: Debate?

Shall government amendment subsection 37(1) carry? Carried.

Shall section 37, as amended, carry?

With committee's concurrence, I think we can then collapse sections 38, 39, 40 and 41. Can we move that those sections carry? Opposed? They're all carried.

Section 42: Ms Wynne, please.

Ms Wynne: I move that section 42 of the bill be struck out and the following substituted:

"Commencement

"42(1) Subject to subsections (2) and (3), this act comes into force on the day it receives royal assent.

"Same

"(2) Sections 1 to 6, 7 to 18 and 33 to 41 come into force on a day to be named by proclamation of the Lieutenant Governor.

"Same

(3) Section 26.1 comes into force two years after this act receives royal assent."

This is a two-year delay on the remedy for the action of CEOs.

The Vice-Chair: Debate?

Shall government motion section 42 carry? Sorry, Mr McMeekin.

Mr McMeekin: I was just going to say, another example of more reasonable balance and openness to being deliberative and collaborative.

Ms Martel: The souls of flexibility.

Mr McMeekin: Yes.

The Vice-Chair: Thank you, Mr McMeekin.

Shall the government motion on section 42 carry? Opposed? It's carried.

Shall section 42, as amended, carry? Carried.

Shall section 43 carry? Carried.

Ms Wynne: Mr Chair, could I request a very short recess?

The Vice-Chair: You sure can.

Ms Wynne: OK. Five minutes?

The Vice-Chair: Five minutes would be great. All in favour? It's carried.

Ms Wynne: Thank you.

The committee recessed from 1728 to 1740.

The Vice-Chair: We're now dealing with the preamble to the bill. The first motion here is a government motion dealing with paragraph 5 of the preamble.

Ms Wynne: I move that paragraphs 5 and 6 of the preamble to the bill be struck out and the following substituted:

"Recognize that pharmacare for catastrophic drug costs is important to the future of the health system;

"Recognize that access to community-based health care, including primary health care, home care based on assessed need and community mental health care are cornerstones of an effective health care system."

We're introducing this motion because it's consistent with the rest of the language in the bill and it doesn't introduce a new concept in terms of what the bill is about. That's why we're supporting this motion.

The Vice-Chair: I appreciate that, Ms Wynne. I think there's opinion from two experts in parliamentary procedure. I'll just read this to you. It says:

"In the case of a bill that has been referred to a committee after second reading, a substantive amendment to the preamble is admissible only if it is rendered necessary by the amendments made to the bill. In addition, an amendment to the preamble is in order when the purpose is to clarify it…."

That citation came from Marleau and Montpetit, who are experts and read in the rules of parliamentary procedure.

As there have been no amendments to the bill that render the proposed amendments to the preamble necessary, I find the amendments to the preamble out of order at this time. But if there is unanimous consent of the committee, we can accept the amendments.

Ms Martel: I'm going to make a suggestion then, because we have two proposals before us. We have the government amendment, which I support, and the amendment from Mrs Witmer, which I also support. I would hope that we can get consent to agree to both. Then I would give unanimous consent. So maybe we can have a discussion. If you're amenable to having both, then I would give unanimous consent for both to be passed.

Ms Wynne: I'd like to ask a question of legal counsel. My understanding is that the Conservative amendment, the introduction of the promotion of health, is different than or inconsistent with what we've talked about before, the rest of the language in the bill. Can you just tell me the implications, if any, of introducing that concept into the preamble? If there are no implications, then that's fine.

Ms Wilson: I don't see any legal implications. The purpose of the preamble is not to create any new rights, so the wording of this looks fine.

Mrs Witmer: I would certainly be prepared to give unanimous consent to both the government motion and, obviously, the one that I've introduced, which does focus on and, I believe, recognizes mental health as a very integral component of the health care system.

Mrs Donna H. Cansfield (Etobicoke Centre): Just a clarification. Given the comments that you've just made previous about the inadmissibility of additional preamble because it wasn't part of the original bill, would that not follow suit with this as well? Would you not have to have—

The Vice-Chair: Unanimous consent for the PC amendment?

Mrs Cansfield: Right. Or would it be otherwise, that it would have to be unanimous consent?

The Vice-Chair: Correct. Any further discussion?

First of all then, I would ask unanimous consent for the government amendment to the preamble. Is there unanimous consent? Agreed.

All in favour that the preamble carries? Agreed. So it's carried.

The PC motion: unanimous consent? Sorry, do you want to move it, Mrs Witmer? I'm just a little ahead of myself.

Mrs Witmer: I move that the preamble to the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following paragraph after paragraph 7:

"Recognize that the promotion of health and the prevention and treatment of disease includes mental and physical illness."

The Vice-Chair: Is there unanimous consent that we carry that? Carried.

Shall the preamble, as amended, carry? All in favour? Carried.

Shall the long title of the bill carry? All in favour? Opposed? It's carried.

Shall Bill 8, as amended, carry?

Ms Martel: I disagree, so I'd like a recorded vote.

Ayes

Brownell, Cansfield, Craitor, Fonseca, McMeekin, Wynne.

Nays

Martel, Witmer.

The Vice-Chair: It's carried.

Shall I report the bill, as amended, to the House? Opposed? It's carried.

Thanks very much for the co-operation of the committee. I appreciate it.

The committee adjourned at 1747.

CONTENTS

Monday 31 May 2004

Commitment to the Future of Medicare Act, 2004, Bill 8, *Mr Smitherman* /
Loi de 2004 sur l'engagement d'assurer l'avenir de l'assurance-santé,
projet de loi 8, *M. Smitherman*..... J-615

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