ONTARIO LEGISLATIVE UPDATE - A YEAR IN REVIEW

Kathryn Frelick
Toronto
416.595.2979
kfrelick@millerthomson.com

The following is a summary of some of the new and proposed legislation that may have implications for health industry clients. We hope that this overview is of assistance to you in determining the scope of any new legal obligations you may have and to assist you in meeting your accreditation obligations.

ONTARIO LEGISLATION IN FORCE

Local Health System Integration Act, 2005 (Formerly Bill 36)

The Local Health System Integration Act passed third and final reading on March 1, 2006 and received Royal Assent on March 28, 2006. Most of the provisions of this legislation are now in effect, with others becoming in force upon proclamation. This legislation significantly devolves decision-making authority relating to the planning, funding and integration of the health system to LHINs. For more information about the key concepts in the legislation, please see our Communiqué dated November 25, 2005.

There have been a number of changes to the legislation as a result of an extensive public consultation process. Some of the more significant changes include, further defining the "community engagement" provisions, confirming the government's commitment to public health care, and adding language to ensure "due process" is followed in relation to integration decisions and Ministry orders.

We will provide additional information in a Communiqué in the near future.

Accessibility for Ontarians with Disabilities Act, 2005 (Formerly Bill 118)

The Accessibility for Ontarians with Disabilities Act, 2005 became law on June 13, 2005. The purpose of the legislation is to develop, implement, and enforce standards in order to achieve accessibility for all Ontarians. The Act includes a 20 year timeframe for implementation, with improvements to be introduced in 5 year stages. The Ontario government is at a very early stage in the process of implementing this Act. The process for developing accessibility standards will involve Standards Development Committees for various sectors or industries, including the health sector, to determine long-term accessibility objectives. Once they are developed, the Standards will cover both visible and invisible disabilities.

Some general examples of standards that hospitals and other health facilities will be required to implement may include accessible pedestrian routes and entrances into buildings, lower counter heights to accommodate wheelchairs, and staff training in serving persons with disabilities. Until the new standards under the Accessibility for Ontarians with Disabilities Act, 2005 are introduced as regulations, the Ontarians with Disabilities Act, 2001 remains in effect.
When new standards are in place, the older legislation will be repealed. For more information about this legislation, please see our Communiqué dated October 5, 2005.

**Adoption Information Disclosure Act, 2005 (Formerly Bill 183)**

The Adoption Information Disclosure Act, 2005, which amends the Vital Statistics Act and Child and Family Services Act received Royal Assent on November 3, 2005 and is being implemented in a staged manner over an 18-month transition period. Once in full effect, it will allow easier access to original birth records and adoption records. It provides a process by which a birth parent or adoptee who does not wish to be contacted can put a "no contact" notice on their records. The changes will be applied retroactively to all registered adoptions in Ontario.

Information about the status of the legislation is available on the Ministry of Community and Social Services website at http://www.cfcs.gov.on.ca/CFCS/en/default.htm. In addition, the Information and Privacy Commissioner/Ontario, which has been very vocal about protecting the privacy rights of individuals in light of the retroactive nature of the legislation, has a number of resources available relating to this legislation on its website at http://www.ipc.on.ca.

**Budget Measures Act, 2005 (Formerly Bill 197)**

The Budget Measures Act, 2005 received Royal Assent on December 12, 2005 and relevant to the health industry, amendments to provisions relating to health professional corporations came into force on January 1, 2006. The Ontario Business Corporations Act and the Regulated Health Professions Act were amended to authorize regulation making ability for the Lieutenant Governor in Counsel in relation to the structure of these entities.

Consequently, Ontario Regulation 666/05, amending Regulation 32/02 under the Regulated Health Professions Act also came into force on January 1, 2006. This Regulation enables family members of physicians and dentists to become shareholders in medical or dental corporations. While voting shares of a corporation must be owned by a member of the applicable health profession college, non-voting shares of a corporation may be owned by a member of the College, a family member of a voting physician/dentist shareholder, or a trustee in trust for the minor children of a voting physician/dentist shareholder. Family member includes a physician/dentist shareholder's spouse, child, or parent. These changes may have important tax implications for physicians and dentists.

**Ending Mandatory Retirement Statute Law Amendment Act, 2005 (Formerly Bill 211)**

The Ending Mandatory Retirement Statute Law Amendment Act, 2005 received Royal Assent on December 12, 2005, with a one year transition period for most provisions. The legislation amends the Ontario Human Rights Code and certain other statutes to effectively abolish mandatory retirement for employees, unless justifiable as a bona fide occupational requirement. It is therefore no longer permissible for employers, including health industry clients, to discriminate against a person on the basis of being age 65 or older in the context of employment. For more information about this legislation, please see our Labour and Employment Newsletter (December 9, 2005 and June 8, 2005).

Physicians practicing in the hospital environment are generally not employees and would not be affected by this change. Nevertheless, it is important to ensure that hospitals have carefully crafted professional staff by-laws and medical staff rules and regulations to effectively deal with this issue.

**Mandatory Gunshot Wounds Reporting Act, 2005 (Formerly Bill 110)**

The Mandatory Gunshot Wounds Reporting Act, 2005 came into effect on September 1, 2005, and imposes an obligation on public hospitals to report to police when they treat a person for a gunshot wound. Specifically, a hospital is required to report: (1) that a person is being treated for a gunshot wound at the facility, (2) the person's name, if known, and (3) the location of the facility.

The facility is required to report to the local municipal, regional or provincial police force. The report must be made orally as soon as it is practicable to do so without interfering with the patient's treatment or disrupting the activities of the facility. The Act provides protection against liability for damages for negligence for the facility and its staff or agents that report a gunshot wound, if it is done in good faith and with the intent of fulfilling this statutory obligation. For more information on this legislation, please see our Communiqués dated July 11, 2005 and August 10, 2005.
Private Security and Investigative Services Act, 2005 (Formerly Bill 159)

The *Private Security and Investigative Services Act, 2005* became law on December 15, 2005. The Act regulates private investigators and security guards, and is therefore of interest to hospitals and health industry clients that employ these individuals. In particular, the Act may require security guards (including those within healthcare institutions) to have specific training and pass specific tests as prescribed by regulation. The Act imposes licensing requirements and puts procedures in place for revoking and suspending licences. It also provides for a process for dealing with complaints from the public. Finally, regulations may be made which set out a code of conduct for security guards.

Tobacco Control Statute Law Amendment Act (Bill 164) - IN FORCE MAY 31, 2006

Bill 164 received Royal Assent and its provisions come into force on May 31, 2006. At that time, the current *Tobacco Control Act, 1994* is amended and renamed as the *Smoke Free Ontario Act*. The regulation under the Tobacco Control Act is also replaced by a new regulation 48/06, made under the *Smoke Free Ontario Act*. Finally, the *Smoking in the Workplace Act* is repealed.

The *Smoke Free Ontario Act* bans smoking in enclosed public places and workplaces as of May 31, 2006. An enclosed workplace is defined to include buildings, structures and vehicles, which would mean employees would be prohibited from smoking in company vehicles. "Designated smoking areas", which were permitted under the former legislation, will also be prohibited. Employers will be responsible for ensuring that there is strict compliance with the Act, both by employees and those entering the workplace. Furthermore, the Act requires employers to provide notice to each employee of smoking prohibitions, to post no-smoking signs throughout an enclosed workplace, to ensure that there are no ashtrays in an enclosed workplace, and to see that employees who are not in compliance with the Act do not remain in the workplace.

The Act also provides specific rules for home health care workers, including the right to request that a client stop smoking in his or her presence while she or he is providing health care service. Under certain circumstances, there may be a right to leave without providing services where that person refuses to stop, unless doing so would pose a serious and immediate danger to the client.

The Act includes an exception to the ban on smoking in enclosed workplaces for certain facilities, including residential care facilities (nursing homes, supportive housing, etc.) and psychiatric facilities designated under the *Mental Health Act*. In these facilities, smoking will be permitted in an enclosed smoking room so long as the employer complies with prescribed requirements. Smoking will be limited to the residents of the facility, and employees cannot be required to enter these designated smoking rooms against their wishes. Any resident using the room must be able to smoke safely without assistance.

ONTARIO LEGISLATION - NOT YET IN FORCE

Bill 190 - Good Government Act, 2005

This Government bill received first reading on April 27, 2005 and if passed, would amend over 90 existing statutes. These changes are mostly housekeeping in nature, but of particular interest for the health industry, there are proposed amendments to the *Health Care Consent Act, 1996*, clarifying that the jurisdiction of the Consent and Capacity Board does not include the consideration of constitutional questions, as well as amendments to the *Quality of Care Information Protection Act* and the *Health Protection and Promotion Act*.

Proposed changes to the *Ministry of Government Services Act* would expand the definition of "government related agency" to include public hospitals, which would permit the Ontario Government to acquire, manage and provide common services for hospitals. This should be read in conjunction with Bill 36, as discussed above, which provides that the Lieutenant Governor in Council may, by regulation, order one or more public hospitals to cease performing any prescribed non-clinical service and to integrate the service by transferring it to a prescribed person or entity. If adopted, it is contemplated that these changes could potentially permit the Government to either provide common non-clinical services directly or require another entity to provide services to public hospitals.
Bill 50 - *Traditional Chinese Medicine Act, 2005*

This Bill was introduced by the Ontario Government and received first reading on December 7, 2005. It seeks to introduce a new health profession act with respect to the regulation of traditional Chinese medicine. This would be subject to the Health Professions Procedural Code under the *Regulated Health Professions Act, 1993*.

The scope of practice of traditional Chinese medicine includes the “assessment of body system disorders using traditional Chinese medicine techniques and treatment using traditional Chinese medicine therapies to promote, maintain or restore health”. The titles “traditional Chinese medicine practitioner” and “acupuncturist” would be restricted to members of the College.

Bill 123 - *Transparency in Public Matters Act, 2005*

This private member's Bill received second reading on October 28, 2004, and was sent to the Standing Committee on Regulations and Private Bills, which reported back to the Legislature on November 30, 2005. The Bill has not yet received third reading.

Bill 123 proposes that meetings of designated public bodies, including the Board of Directors of a hospital, at which deliberation or decision-making occurs, are to be open to the public and that minutes of those meetings are to be made available to the public. Members of the public may be excluded from a meeting or part of a meeting for specified reasons. The Bill sets out the powers of the Information and Privacy Commissioner/Ontario to review compliance.

Currently, hospitals follow their own guidelines to determine how and when in camera Board meetings are held. In response to significant concerns expressed by the Ontario Hospital Association and others, a number of changes were made by the Standing Committee. Notably, the provisions of the act are no longer applicable to Committees of a Hospital Board created under its governing legislation, such as the Fiscal Advisory Committee, Medical Advisory Committee or Nursing Advisory Committee.

Bill 14 - *Access to Justice Act*

Bill 14, which makes amendments to multiple pieces of legislation, including the *Public Hospitals Act*, had its first reading on October 27, 2005. Importantly, if passed, this Bill will have implications for hospitals in the context of medical malpractice litigation where there has been a finding of liability on the part of the hospital. Specifically, in most cases, any damages awarded for the future care costs of the plaintiff must be paid as periodic payments under an annuity contract that satisfies specified criteria.

Proposed Changes to Organ Donation Legislation

Three separate private members bills were recently introduced in the Ontario Legislature, which represent three different approaches to dealing with issues around organ donation.

**Bill 61, An Act to Amend the Trillium Gift of Life Network Act, 2006**

Introduced on February 16, 2006 by Peter Kormos (NDP), this draft legislation adopts a "presumed consent" approach to organ donation (i.e. tissue may be removed and made available without consent, subject to an objection by the individual or a substitute decision maker).

**Bill 67, Organ and Tissue Donation Mandatory Declaration Act, 2006**

Introduced on February 22, 2006 by Frank Klees (PC), this draft legislation would require individuals to complete a declaration specifying what uses could be made of organs or tissue after death, in order to be issued or reissued a driver' license or health card.

**Bill 79, Trillium Gift of Life Network Statute Law Amendment Act, 2006**

Introduced on March 2, 2006 by Jean-Marc Lalonde (LIB), this proposed legislation would require that a consent form be distributed with every application for or renewal of a driver's license or health card. If the individual provides consent, this information is to be included on the health card or numerically identified on the individual's driver's license.

We would be pleased to assist health industry clients with specific advice relating to new and proposed legislation.
ABOUT THE AUTHOR:

Kathryn Frelick is a lawyer practising in our Health Industry Practice Group and supervises the Legal Retainer Program. Kathryn provides advice to clients in areas of privacy, administrative law, regulatory law and health policy issues. The author would like to thank Rebecca Cooper for her assistance in preparing this Legislative Update.

Our National Health Industry Practice Group is dedicated to providing comprehensive and integrated legal services to health industry clients. For more information about our group, visit our website at www.millerthomson.com or contact one of our regional contacts.

REGIONAL CONTACTS

Toronto/Markham
Joshua Liswood
jliswood@millerthomson.com
Kathryn Frelick
kfrelick@millerthomson.com

Calgary
Bryan R. Ede
bede@millerthomson.com

Edmonton
Brian Curial
bcurial@millerthomson.com

Vancouver
David Martin
dmartin@millerthomson.com

Montréal
André Dugas
adugas@millertomsonpouliot.com

Waterloo-Wellington
Gregory P. Hanmer
ghanmer@millerthomson.com

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