

Notice of Minister of Health and Long-Term Care

NOTICE OF PROPOSED REGULATION

Commitment to the Future of Medicare Act, 2004 ***Part I - Ontario Health Quality Council***

The Minister of Health and Long-Term Care on behalf of the Government of Ontario invites public comments on a regulation proposed to be made under the *Commitment to the Future of Medicare Act, 2004*.

The *Commitment to the Future of Medicare Act, 2004* was passed by the Legislature on June 7, 2004 and received Royal Assent on June 17, 2004. Section 7 of Part I (Public consultation before making regulations) came into force upon Royal Assent. The remaining sections of Part I (ss. 1-6) will come into force at a later date. Part I of the Act relates to the Ontario Health Quality Council. Before Part I of the Act comes into force in its entirety, the Government is considering the development of a regulation to establish and support the operationalization of the Council. Section 7 of the Act requires that the Minister publish a notice of the proposed regulation and allow 60 days for public comment, after which the Minister reports to the Lieutenant Governor in Council, who may then finalize the regulation with or without changes.

Proposed Regulation under the *Commitment to the Future of Medicare Act, 2004*

The regulation proposed to be made under the *Commitment to the Future of Medicare Act, 2004* includes the following:

- Establishes the Ontario Health Quality Council as a corporation without share capital, with a board of directors consisting of the members of the Council appointed by the Lieutenant Governor in Council: subsections 1(1) and (2).
- A member's appointment is for three years, with the possibility of reappointment for one further term: subsection 1(3).
- The initial appointments of members will be for terms of two and three years, one-half being for two and one-half being for three years. This will result in rotating terms with half of the members being changed every three years. This ensures continuity in the renewal process: subsection 1(4).
- The person appointed to the Ontario Health Quality Council who is also appointed to the Health Council of Canada will hold office on the Ontario Council for the same term as on the national council: subsection 1(5).

- To ensure the rotating terms, where a person ceases to be a Council Member, the person appointed to succeed that person can only be appointed for the remainder of the first person's term: subsection 1(6).
- The Lieutenant Governor in Council shall choose the Chair and vice-Chair, and the role of the Chair is defined: subsections 1(7) and (8).
- Members of the Council are entitled to be paid remuneration as fixed by the Lieutenant Governor in Council, and are also entitled to be paid reasonable expenses: subsection 1(9).
- The Council must meet regularly, and a minimum of four times each year: subsection 1(10).
- Quorum is a majority of members of the Council: subsection 1(11).
- The Council is an agent of Her Majesty: section 2.
- The *Corporations Act* and the *Corporations Information Act* do not apply to the Council. The sections of the *Business Corporations Act* that deal with the standard of care of directors, the conflict of interest provisions and the ability of the corporation to indemnify the members apply to the Council: section 3.
- The Council has all the powers of a natural person in order to carry out its functions. There are also restrictions on these powers: the Council cannot acquire, hold or dispose of any interest in real property, borrow money or pledge its assets, or create a subsidiary without the approval of the Lieutenant Governor in Council: section 5.
- The members of the Council have the power, subject to the approval of the Minister, to pass by-laws and resolutions in order to conduct and manage its affairs and, in particular, the ability to appoint officers, make banking arrangements and establish committees: section 6.
- The Council has to hire a chief executive officer, who is responsible for the operation of the Council, subject to the supervision and direction of the Council. The CEO may hire employees as are necessary. The CEO and employees are not members of the Ontario Public Service: section 7.
- The Council may only collect de-identified personal health information. The definition of de-identified information is the same as in the *Health Information Protection Act, 2004*. The Council can only commission the creation of information from sources approved by the Minister of Health and Long-Term Care: section 8.
- The Council cannot sell any analysis of the information it has collected without the approval of the Lieutenant Governor in Council: section 9.
- The Council's fiscal year is the same as the Ontario government's April 1 to March 31: section 10.
- The Council has to appoint auditors, and give a copy of the auditors' report to the Minister of Health and Long-Term Care: section 11.

- The Council has to give an annual report on its affairs to the Minister of Health and Long-Term Care, which report is to be laid before the Legislative Assembly: section 12.
- The Council's yearly report on the health system may report respecting access to health care services, availability of health human resources, health and wellness of the population, and the quality, efficiency and effectiveness of health care services: section 13.
- The Minister may wind up the affairs of the Council, if it is in the public interest to do so, by liquidating or selling the assets of the Council and paying them into the Consolidated Revenue Fund or by transferring them to the Crown or an agency of the Crown: section 14.

Invitation to Provide Comments on the Proposed Regulation

The public is invited to provide written comments on the draft regulation over a 60 day period, commencing on September 25, 2004 and ending on November 24, 2004.

In providing comments, please consider whether the proposed provisions should be included in the final regulation, with or without changes. Furthermore, please consider whether any other provisions should be included in the regulation. Please be as specific as possible, and provide a full rationale for any suggested changes or additions.

Written comments may be addressed to:

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The draft regulation attached is provided, for consultation purposes, in English and French. We welcome your input in either English or French.

All comments and submissions received during the comment period will be considered during final preparation of the regulation. The content, structure and form of the draft regulation are subject to change as a result of the comment process. The Lieutenant Governor in Council makes the final decision on what if anything will be included in the regulation.

The final regulation under the *Commitment to the Future of Medicare Act, 2004*, will be published in *The Ontario Gazette*.

Information respecting the *Commitment to the Future of Medicare Act, 2004*, and electronic copies of this notice, including the text of the draft regulation, may be accessed through the Ministry of Health and Long Term Care's web-site at the following address:

http://www.health.gov.on.ca/english/public/updates/archives/hu_03/hu_medicare.html

A copy of the legislation is also available from Publications Ontario, 50 Grosvenor St., Toronto, Ontario, M7A 1N8, (416) 326-5300.

Please note that unless requested and agreed otherwise by the Ministry, all materials or comments received from organizations will be considered public information and may be used and disclosed by the Ministry to assist the Ministry in evaluating and revising the proposed draft regulation. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified.

Materials or comments received from individuals who do not indicate affiliations with organizations will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments provided by individuals may be used and disclosed by the Ministry to assist in evaluating and revising the proposed draft regulation. Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be disclosed by the Ministry without the individual's consent unless required by law.

If you have any questions about the collection of this information, you can contact the Freedom of Information and Privacy Coordinator of the Ministry of Health and Long-Term Care at (416) 327-7040.

The Honourable George Smitherman
Minister of Health and Long-Term Care

ONTARIO REGULATION

made under the

COMMITMENT TO THE FUTURE OF MEDICARE ACT, 2004

ONTARIO HEALTH QUALITY COUNCIL

Council established

1. (1) A corporation without share capital is established, under the name “Ontario Health Quality Council” in English, and “Conseil ontarien de la qualite des services de sante” in French.

(2) The Council consists of the members of the Council appointed by the Lieutenant Governor under subsection 2 (2) of the Act, who shall serve as the board of directors of the corporation established under subsection (1).

(3) Subject to subsections (4), (5) and (6), members of the Council hold office for a term of three years and may be re-appointed for one further term.

(4) Of the initial appointments of the members of the Council, as nearly as possible,

(a) one-half shall be appointed for a term of two years; and

(b) one-half shall be appointed for a term of three years.

(5) The person appointed under subsection 2 (6) of the Act shall hold office for the duration of the term of his or her appointment on a similar council for Canada and the provinces and territories of Canada.

(6) If a person ceases to be a member of the Council, the first term of appointment of the person appointed to succeed that person may only be for the remainder of the first person’s term.

(7) One of the members shall be the Chair of the Council, and one of the members shall be the vice-Chair, as provided for by the Lieutenant Governor in Council.

(8) The Chair shall preside at all meetings of the Council and, in the absence of the Chair or if the office is vacant, the vice-Chair shall have all the powers and shall perform the duties of the Chair.

(9) Members of the Council who are not members of the public service of Ontario are entitled to be paid such remuneration as is fixed by the Lieutenant Governor in Council, and are entitled to be reimbursed for reasonable expenses incurred in performing their duties under the Act and this Regulation.

(10) The Council shall meet regularly throughout the year at the call of the Chair, and, in any event, at least four times a year.

(11) A majority of members of the Council constitutes a quorum for meetings of the Council.

Crown agent

2. The Council is for all its purposes an agent of Her Majesty, its powers may be exercised only as an agent of Her Majesty, and all property acquired by the Council is the property of Her Majesty.

Non-application of Acts

3. **The *Corporations Act* and the *Corporations Information Act* do not apply to the Council.**

Conflict of interest, indemnities and standard of care

4. Section 132, subsection 134 (1) and section 136 of the *Business Corporations Act* apply to the Council and to its members with necessary modifications.

Powers of Council

5. (1) The Council has the capacity, rights, powers and privileges of a natural person for carrying out its functions, except as limited by the Act or this Regulation.

(2) The revenues of the Council, including all money or assets received by the Council by grant, gift, contribution, profit or otherwise, shall only be used to further its functions.

(3) The Council shall not, except with the approval of the Lieutenant Governor in Council,

(a) acquire, hold or dispose of any interest in real property;

- (b) borrow money;
- (c) pledge the assets of the Council; or
- (d) create any subsidiary.

Powers of members

6. (1) The affairs of the Council are under the management and control of its board of directors.

(2) The Council may, subject to the approval of the Minister, pass by-laws and resolutions for conducting and managing its affairs, including,

- (a) appointing officers and assigning to them such powers and duties as the board considers appropriate;
- (b) maintaining bank accounts and making other banking arrangements; and
- (c) establishing committees

Chief executive officer and employees

7. (1) The Council shall appoint a chief executive officer.

(2) The chief executive officer is responsible for the operation of the Council, subject to the supervision and direction of the Council.

(3) The chief executive officer may appoint such employees as are considered necessary for the proper conduct of the affairs of the Council.

(4) The employees are not civil servants, public servants or Crown employees within the meaning of the *Public Service Act*.

Collection of information

8. (1) The Council may only collect de-identified personal health information for the purposes of carrying out its functions and making its reports.

(2) The Council shall not commission the creation of information by sources that are not approved by the Minister.

(3) In subsection (1),

“de-identified personal health information” means personal health information of an individual that has had removed from it any information that identifies the

individual or any information for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information to identify the individual.

Restriction on sale

9. The Council shall not sell any analysis of the information it has collected, or any of its services, without the approval of the Lieutenant Governor in Council.

Fiscal year

10. The Council's fiscal year begins on April 1 in each year and ends on March 31 in the following year.

Auditor

11. (1) The Council shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit annually the accounts and financial transactions of the corporation.

(2) The Council shall give a copy of every auditor's report to the Minister within six months after the end of the fiscal year to which the report relates, and shall make available to the Provincial Auditor, on his or her request, the auditor's report and all accounts, records and other documents relating to the audit.

(3) The Minister may require that any aspect of the affairs of the Council be audited by an auditor appointed by the Minister.

Report on affairs

12. (1) Within six months of the end of each fiscal year of the Council, the Council shall give the Minister a report on its affairs for the preceding fiscal year.

(2) The report mentioned in subsection (1) must include any information specified by the Minister.

(3) The Minister shall submit the report mentioned in subsection (1) to the Lieutenant Governor in Council and shall then table it in the Legislative Assembly.

(4) The Council shall give the Minister such other information and reports on its affairs and operations as the Minister may require.

Yearly report

13. In its yearly report under section 5 of the Act, the Council may report respecting,

- (a) access to health care services, including primary health care and community based health services;
- (b) availability of health human resources, including physicians, nurses and other health care professionals;
- (c) health and wellness of the population; and
- (d) quality, efficiency and effectiveness of health care services.

Winding-up

14. If the Minister considers it to be in the public interest to wind up the affairs of the Council, he or she may do all things necessary to accomplish that, including dealing with the assets of the Council by,

- (a) liquidating or selling the assets and paying the proceeds into the Consolidated Revenue Fund; or
- (b) transferring the assets to the Crown, including another agency of the Crown.