



Commitment to the Future of Medicare Act, 2004

S.O. 2004, CHAPTER 5

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Preamble

The people of Ontario and their Government:

Recognize that Medicare – our system of publicly funded health services – reflects fundamental Canadian values and that its preservation is essential for the health of Ontarians now and in the future;

Confirm their enduring commitment to the principles of public administration, comprehensiveness, universality, portability and accessibility as provided in the Canada Health Act;

Continue to support the prohibition of two-tier medicine, extra billing and user fees in accordance with the Canada Health Act;

Believe in a consumer-centred health system that ensures access is based on assessed need, not on an individual's ability to pay;

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;

Believe in public accountability to demonstrate that the health system is governed and managed in a way that reflects the public interest and that promotes efficient delivery of high quality health services to all Ontarians;

Recognize that the promotion of health, and the prevention of and treatment of disease includes mental and physical illness;

Recognize the importance of an Ontario Health Quality Council that would report to the people of Ontario on the performance of their health system to support continuous quality improvement;

Affirm that a strong health system depends on collaboration between the community, individuals, health service providers and governments, and a common vision of shared responsibility;

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

PART I (ss. 1-7) Repealed: 2010, c. 14, s. 18 (1).

PART II

HEALTH SERVICES ACCESSIBILITY

Definitions

8. In this Part,

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

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following definition:

“College” means a College within the meaning of the Regulated Health Professions Act, 1991, but does not include the College of Physicians and Surgeons of Ontario; (“ordre”)

See: 2009, c. 26, ss. 1 (1), 27 (2).

“designated practitioner” means a practitioner that is designated by the regulations as being a practitioner who may not charge an amount for the provision of insured services rendered to an insured person other than the amount payable by the Plan; (“praticien désigné”)

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following definition:

“designated service” means a service,

(a) that has been designated by the regulations as a designated service,

(b) that is not an insured service,

(c) that is rendered by a member of a prescribed College while the member is engaging in the practice of his or her health profession, or, if the regulations so provide in the case of a regulation making the dispensing of a drug a designated service, a member of the College of Physicians and Surgeons of Ontario, and

(d) that is provided under the circumstances, if any, or in accordance with the limitations and conditions, if any, that are provided for in the regulations; (“service désigné”)

See: 2009, c. 26, ss. 1 (1), 27 (2).

“General Manager” means the General Manager of the Plan appointed under the Health Insurance Act; (“directeur général”)

“insured person” means a person who is entitled to insured services under the Health Insurance Act and the regulations made under it; (“assuré”)

“insured service” means a service that is an insured service under the Health Insurance Act and the regulations made under it; (“service assuré”)

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following definition:

“Minister” means the Minister of Health and Long-Term Care; (“ministre”)

See: 2009, c. 26, ss. 1 (1), 27 (2).

“non-designated practitioner” means a practitioner who is not a designated practitioner; (“praticien non désigné”)

“personal information” means any information about an identifiable individual; (“renseignements personnels”)

“physician” means a legally qualified medical practitioner who is lawfully entitled to practise medicine in Ontario; (“médecin”)

“Plan” means the Ontario Health Insurance Plan; (“Régime”)

“practitioner” means a practitioner or a health facility within the meaning of the Health Insurance Act that is prescribed as a practitioner for the purposes of this Part; (“praticien”)

“prescribed” means prescribed by the regulations made under this Part; (“prescrit”)

“unauthorized payment” means any payment accepted contrary to section 10. (“paiement non autorisé”) 2004, c. 5, s. 8; 2009, c. 33, Sched. 18, s. 17 (2).

General Manager

9. Subject to this Part and the regulations, the General Manager shall carry out any functions and duties that the General Manager considers necessary for purposes related to the administration of this Part. 2004, c. 5, s. 9.

Persons not to charge more than OHIP

10. (1) A physician or designated practitioner shall not charge more or accept payment or other benefit for more than the amount payable under the Plan for rendering an insured service to an insured person. 2004, c. 5, s. 10 (1).

Exception

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

(a) a charge made to or a payment or benefit accepted from a public hospital for an insured service rendered to an insured person in that public hospital;

(b) a charge made to or a payment accepted from a prescribed facility for an insured service rendered to an insured person in that facility; or

(c) any other charge, payment, benefit or service that is prescribed, subject to any prescribed conditions or limitations. 2004, c. 5, s. 10 (2).

Physicians and designated practitioners

(3) A physician or designated practitioner shall not accept payment or benefit for an insured service rendered to an insured person except,

(a) from the Plan, including a payment made in accordance with an agreement made under subsection 2 (2) of the Health Insurance Act;

(b) from a public hospital or prescribed facility for services rendered in that public hospital or facility; or

(c) if permitted to do so by the regulations in the prescribed circumstances and on the prescribed conditions. 2004, c. 5, s. 10 (3).

Non-designated practitioners

(4) A non-designated practitioner shall not accept payment except from the Plan for that part of his or her account for any insured service rendered to an insured person that is payable by the Plan. 2004, c. 5, s. 10 (4).

Restriction on who may accept payment

(5) No person or entity may charge or accept payment or other benefit for an insured service rendered to an insured person,

(a) except as permitted under this section; or

(b) unless permitted to do so by the regulations in the prescribed circumstances and on the prescribed conditions. 2004, c. 5, s. 10 (5).

Not a payment or other benefit

(6) For the purposes of subsection (5), “payment or other benefit” does not include a salary or an amount payable under a contract of employment or a contract of services to an employee of or a person who contracts with a physician, practitioner, public hospital or prescribed facility. 2004, c. 5, s. 10 (6).

Transitional

11. (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. 2004, c. 5, s. 11 (1).

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. 2004, c. 5, s. 11 (2).

Transitional time

(3) Subsection 10 (3) 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). 2004, c. 5, s. 11 (3).

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 10 (3) shall apply and the physician or designated practitioner may not subsequently choose to cease submitting his or her accounts directly to the Plan. 2004, c. 5, s. 11 (4).

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. 2004, c. 5, s. 11 (5).

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. 2004, c. 5, s. 11 (6).

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 10 (3) does not apply to the physician or designated practitioner and, despite subsection 10 (5), he or she may accept payment for the rendering of insured services to insured persons from a source not mentioned in clause 10 (3) (a), (b) or (c), if he or she complies with all other relevant provisions of this Part.
2. Subject to subsection 10 (2), 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. 2004, c. 5, s. 11 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Designated services

11.1 (1) Where a service has been designated as a designated service, no person or entity may charge or accept payment or other benefit for a designated service rendered to an insured person, except as permitted by and in accordance with the regulations. 2009, c. 26, s. 1 (2).

Determination

(2) A prescribed person may make a determination that a charge, payment or other benefit was made or accepted contrary to subsection (1). 2009, c. 26, s. 1 (2).

Application to Board

(3) Any person or entity with standing may apply to the Board,

(a) for a review to determine whether a charge, payment or other benefit was made or accepted contrary to subsection (1); or

(b) for a review of a determination made under subsection (2). 2009, c. 26, s. 1 (2).

Standing

(4) For the purposes of subsection (3), “person or entity with standing” means,

(a) in clause (3) (a),

(i) a person or entity that charged or may have charged or accepted or may have accepted payment or other benefit for a designated service rendered to an insured person,

(ii) an insured person to whom a designated service was rendered or may have been rendered or who was charged or may have been charged for a designated service or who paid for or provided a benefit or may have paid for or provided a benefit for a designated service,

(iii) a prescribed person referred to in subsection (2), or

(iv) any other person or entity provided for in the regulations; and

(b) in clause (3) (b),

(i) a person or entity that has been determined to have charged or accepted payment or other benefit for a designated service rendered to an insured person,

(ii) an insured person to whom a designated service was rendered who has been determined to have been charged or determined to have paid for or provided a benefit for the designated service, or

(iii) any other person or entity provided for in the regulations. 2009, c. 26, s. 1 (2).

Appeal

(5) Any party to a matter before the Board under this section may in the circumstances provided for in the regulations appeal from the Board’s determination or order to the Divisional Court in accordance with the rules of the court. 2009, c. 26, s. 1 (2).

Evidence

(6) Section 23 of the Health Insurance Act applies to the matter before the Board as if it were a hearing under section 21 of the Health Insurance Act. 2009, c. 26, s. 1 (2).

Filing with court

(7) A copy of a determination or order made by the Board under this section may be filed with the Superior Court of Justice after the time in which an appeal may be made has passed, and once filed shall be entered in the same way as a judgment or order of the Superior Court of Justice and is enforceable as an order of that court. 2009, c. 26, s. 1 (2).

Regulations

(8) The Lieutenant Governor in Council may make regulations governing designated services, and without restricting the generality of the foregoing, may make regulations,

(a) designating services as designated services and, for the purposes of the definition of “designated service”,

(i) providing for the circumstances under which a service is a designated service,

(ii) providing for limitations and conditions on the provision of a designated service,

(iii) prescribing Colleges for the purposes of the definition of “designated service”;

(b) limiting any charges or payments for rendering a designated service to an insured person to charges made to or payments accepted from the Crown in right of Ontario and providing for audits and for the recovery and reimbursement of amounts received contrary to this Act or the regulations;

(c) defining “charge”, “payment”, “benefit”, “dispensing” or “drug” for the purposes of this section;

(d) governing when, to whom, by whom, in what circumstances and in what amounts, charges may be made or payments may be accepted for rendering designated services, including establishing maximum amounts that may be charged, and prohibiting charges and payments, in full or in part;

(e) governing the making of payments, including governing the information that must be maintained in support of such payments and the information that must be furnished in connection with them, and governing the manner in which payments must be made and the times within which they must be made;

(f) governing the information that must be provided to a person who is charged for a designated service;

(g) specifying services that are not designated services;

(h) where the dispensing of a drug is designated as a designated service, clarifying the relationship between this Act and the Drug Interchangeability and Dispensing Fee Act or any other Act or law, including specifying which Act or law prevails in the case of a conflict;

(i) prescribing persons for the purposes of subsection (2);

(j) governing any matter before the Board under this section, including providing for,

(i) applications and the giving of notice,

(ii) the parties to the proceedings,

- (iii) the manner in which the proceedings shall be conducted and the conduct of proceedings,
- (iv) when the Minister or another prescribed person is entitled to be heard or otherwise make submissions,
- (v) the powers of the Board upon making a determination,
- (vi) the circumstances in which an appeal of the determination or order of the Board may be made to the Divisional Court,
- (vii) the powers of the Divisional Court upon the appeal. 2009, c. 26, s. 1 (2).

Public consultation

(9) Section 7 applies to the making of regulations under this section, with necessary modification. 2009, c. 26, s. 1 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed and the following substituted:

Public consultation

(9) Subsections 16 (2) to (9) of the Excellent Care for All Act, 2010 apply to the making of regulations under this section, with necessary modification. 2010, c. 14, s. 18 (2).

See: 2010, c. 14, ss. 18 (2), 21 (2).

See: 2009, c. 26, ss. 1 (2), 27 (2).

Agreement for determining amount

12. (1) The Minister of Health and Long-Term Care may enter into agreements with the associations mentioned in subsection (2), as representatives of physicians, dentists and optometrists, to provide for methods of negotiating and determining the amounts payable under the Plan in respect of the rendering of insured services to insured persons. 2004, c. 5, s. 12 (1).

Associations

(2) The associations representing physicians, dentists and optometrists are,

(a) the Ontario Medical Association, in respect of physicians;

(b) the Ontario Dental Association, in respect of dentists; and

(c) the Ontario Association of Optometrists, in respect of optometrists. 2004, c. 5, s. 12 (2).

Same

(3) The Lieutenant Governor in Council may make a regulation providing that the Minister may enter into an agreement under subsection (1) with a specified person or organization other than an association mentioned in subsection (2). 2004, c. 5, s. 12 (3).

Definitions

(4) In this section,

“dentist” means a member of the Royal College of Dental Surgeons of Ontario; (“dentiste”)

“optometrist” means a member of the College of Optometrists of Ontario. (“optométriste”) 2004, c. 5, s. 12 (4).

Unauthorized payment

13. (1) If the General Manager is of the initial opinion that a person has paid an unauthorized payment, the General Manager shall promptly serve on the physician, practitioner, other person or entity that is alleged to have received the unauthorized payment notice of the General Manager’s intent to reimburse the person who is alleged to have made the unauthorized payment, together with a brief statement of the facts giving rise to the General Manager’s initial opinion. 2004, c. 5, s. 13 (1).

Providing information

(2) The physician, practitioner, other person or entity that is alleged to have received the unauthorized payment may, not later than 21 days after receiving the notice described in subsection (1), provide the General Manager in writing with any information that he, she or it believes is relevant to determining whether an unauthorized payment has been paid. 2004, c. 5, s. 13 (2).

Payment by General Manager

(3) If, after reviewing any information provided in accordance with subsection (2), the General Manager is satisfied that a person has paid an unauthorized payment, the General Manager shall pay to the person the amount of the unauthorized payment. 2004, c. 5, s. 13 (3).

Debt

(4) Where a person has paid an unauthorized payment and the General Manager has paid the person under subsection (3), the physician, practitioner, other person or entity to whom the unauthorized payment was made is indebted to the Plan for the amount of the unauthorized payment and the amount of the administrative charge prescribed by the regulations. 2004, c. 5, s. 13 (4).

General Manager to recover money

(5) The General Manager may recover from the physician, practitioner, other person or entity a part or all of any amount he, she or it is indebted to the Plan under subsection (4) by set-off against any money payable by the Plan or under the Independent Health Facilities Act to him, her or it. 2004, c. 5, s. 13 (5).

Applies despite SPPA

(6) Despite section 25 of the Statutory Powers Procedure Act, a request for a review under section 14 or any application for judicial review of a review under section 14 does not stay the General Manager from exercising any right of set-off under subsection (5). 2004, c. 5, s. 13 (6).

Notice of recovery

(7) Following a payment under subsection (3), the General Manager shall promptly serve on the physician, practitioner, other person or entity notice of the amount of his, her or its indebtedness to the Plan, the account in respect of which the indebtedness arose and his, her or its right under section 14 to request a review of the issue. 2004, c. 5, s. 13 (7).

Service of notice

(8) The notice under subsection (1) or (7) shall be served upon the physician, practitioner, other person or entity to whom the notice is required to be given in accordance with the regulations, and shall be deemed to have been given on a date determined in accordance with the regulations. 2004, c. 5, s. 13 (8).

Entitlement to review

14. (1) A physician, practitioner, other person or entity is entitled to a review of the issue of whether he, she or it has received an unauthorized payment if within 15 days after receiving the notice under subsection 13 (7) he, she or it mails or delivers to the General Manager written notice requesting a review. 2004, c. 5, s. 14 (1).

Referral for review

(2) The General Manager, upon receiving a request for a review in accordance with subsection (1), shall refer the matter to the Board's chair. 2004, c. 5, s. 14 (2).

Persons to review

(3) The Board's chair may from time to time appoint a member of the Board to conduct a review under this Part. 2004, c. 5, s. 14 (3).

Terms of reference

(4) A member of the Board conducting a review shall inquire into whether the physician, practitioner, other person or entity has received an unauthorized payment. 2004, c. 5, s. 14 (4).

Right to representations

(5) The General Manager, the physician, practitioner, other person or entity to which notice must be given under subsection 13 (7) and the insured person have the right to make written representations to the member of the Board conducting the review. 2004, c. 5, s. 14 (5).

Non-application of SPPA

(6) Despite any provision of the Statutory Powers Procedure Act, the written representations to the member of the Board are the only representations that may be made under this section. 2004, c. 5, s. 14 (6).

Decision in writing

(7) The member of the Board conducting a review shall provide to the parties who made representations in accordance with subsection (5) a decision in writing as to whether, in the Board's opinion, an unauthorized payment was paid and, if so, the amount of that payment. 2004, c. 5, s. 14 (7).

Filing of notice or decision

(8) Where a physician, practitioner, other person or entity has not requested a review in accordance with subsection (1) or where a member of the Board has conducted a review and determined that the physician, practitioner, other person or entity has received an unauthorized payment, the General Manager may file with the Superior Court of Justice a copy of the notice given by the General Manager to the physician, practitioner, other person or entity, or of the decision of the Board, as the case may be, and the notice or decision shall be entered in the same way as a judgment or order of the Superior Court of Justice and is enforceable as an order of that court. 2004, c. 5, s. 14 (8).

General Manager to pay

(9) If the member of the Board conducting a review advises the General Manager that the General Manager recovered more from the physician, practitioner, other person or entity than the sum of the unauthorized payment, if any, and the administrative charge, the General Manager shall pay the physician, practitioner, other person or entity,

(a) if the member finds there was no unauthorized payment, the total amount recovered; or

(b) if the member finds there was an unauthorized payment, the difference between the amount recovered and the amount that should have been recovered. 2004, c. 5, s. 14 (9).

Personal information

15. (1) The General Manager may directly or indirectly collect personal information, subject to such conditions as may be prescribed, for purposes related to the administration of this Part, the Health Insurance Act or the Independent Health Facilities Act. 2004, c. 5, s. 15 (1).

Use of personal information

(2) The General Manager may use personal information, subject to any conditions that may be prescribed, for purposes related to the administration of this Part, the Health Insurance Act or the Independent Health Facilities Act. 2004, c. 5, s. 15 (2).

Disclosure

(3) The General Manager shall disclose personal information if all prescribed conditions have been met and if the disclosure is necessary for purposes related to the administration of this Part, the Health Insurance Act, the Independent Health Facilities Act, the Regulated Health Professions Act, 1991 or a health profession Act as defined in that Act, but shall not disclose the information if, in his or her opinion, the disclosure is not necessary for those purposes. 2004, c. 5, s. 15 (3).

Limitation

(4) The General Manager shall not collect, use or disclose more information than is reasonably necessary for the purposes of the collection, use or disclosure. 2004, c. 5, s. 15 (4).

Obligation

(5) Before disclosing personal information obtained under this Part, the person who obtained it shall delete from it all names and identifying numbers, symbols or other particulars assigned to individuals unless,

(a) disclosure of the names or other identifying information is necessary for the purposes described in subsection (3); or

(b) disclosure of the names or other identifying information is otherwise authorized under the Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2004. 2004, c. 5, s. 15 (5), (7).

(6) Spent: 2004, c. 5, s. 15 (6).

(7) Spent: 2004, c. 5, s. 15 (7).

Disclosure of information to the General Manager

16. (1) The General Manager may require that any person or entity submit information to the General Manager for the purposes of determining whether there has been a contravention of or a failure to comply with any of the following provisions, if the General Manager is of the opinion that such a contravention or failure may have taken place:

1. Section 10, 13, 17 or 18 of this Act.
2. Section 15 or 15.1 of the Health Insurance Act.
3. Section 3 of the Independent Health Facilities Act. 2004, c. 5, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Disclosure of information

(1) The General Manager or, in the case of a determination regarding section 11.1 and if the regulations so provide, another prescribed person may require that any person or entity submit information to the General Manager or the prescribed person for the purposes of determining whether there has been a contravention of or a failure to comply with any of the following provisions, if the General Manager or prescribed person is of the opinion that such a contravention or failure may have taken place:

1. Section 10, 11.1, 13, 17 or 18 of this Act.
2. Section 15 or 15.1 of the Health Insurance Act.
3. Section 3 of the Independent Health Facilities Act. 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Same

(2) The information mentioned in subsection (1) may be any information that the General Manager reasonably considers is necessary for the purposes mentioned in subsection (1). 2004, c. 5, s. 16 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Same

(2) The information mentioned in subsection (1) may be any information that the General Manager or prescribed person reasonably considers is necessary for the purposes mentioned in subsection (1). 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Time and form

(3) Subject to the regulations, the information shall be submitted and disclosed,

(a) in the form required by the General Manager; and

(b) within 21 days of the receipt by the person or entity of the request by the General Manager. 2004, c. 5, s. 16 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Time and form

(3) Subject to the regulations, the information shall be submitted and disclosed,

(a) in the form required by the General Manager or prescribed person; and

(b) within 21 days of the receipt by the person or entity of the request by the General Manager or prescribed person. 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Extension of time

(4) The General Manager may extend the period of time mentioned in clause (3) (b) for a time that the General Manager believes is reasonable in the circumstances, if the General Manager believes that the person or entity cannot submit or disclose the information within the period of time for reasons that he, she or it cannot control. 2004, c. 5, s. 16 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Extension of time

(4) The General Manager or prescribed person may extend the period of time mentioned in clause (3) (b) for a time that he or she believes is reasonable in the circumstances, if the General Manager or prescribed person believes that the person or entity cannot submit or disclose the information within the period of time for reasons that he, she or it cannot control. 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Suspension of payments

(5) The Minister or the General Manager may suspend payments under the Plan or under the Independent Health Facilities Act to a person or entity during any period when he, she or it fails to comply with subsection (1) without just cause, whether or not the person or entity is convicted of an offence. 2004, c. 5, s. 16 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Suspension of payments

(5) The Minister, the General Manager or a prescribed person may suspend payments under the Plan or under the Independent Health Facilities Act or under any other Act, law or system of payments to a person or entity during any period when the person or entity fails to comply with subsection (1) without just cause, whether or not the person or entity is convicted of an offence. 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Reporting

(6) Any person shall report to the General Manager any information relating to the administration or enforcement of this Part or the regulations, the Health Insurance Act or the Independent Health Facilities Act if the person believes it to be in the public interest to do so. 2004, c. 5, s. 16 (6).

(7) Repealed: 2004, c. 3, Sched. A, s. 79 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

Reporting

(6) Any person shall report to the General Manager or to a prescribed person any information relating to the administration or enforcement of this Part or the regulations, the Health Insurance Act or the Independent Health Facilities Act if the person believes it to be in the public interest to do so. 2009, c. 26, s. 1 (3).

Regulations

(7) The Lieutenant Governor in Council may make regulations defining “system of payments” for the purposes of this section. 2009, c. 26, s. 1 (3).

See: 2009, c. 26, ss. 1 (3), 27 (2).

Protection from liability

(8) No proceeding for reporting, providing or disclosing information under this section shall be commenced against a person unless he or she acts maliciously and the information is not true. 2004, c. 5, s. 16 (8).

No retaliation

(9) No person or entity shall discipline or penalize any person for reporting, providing or disclosing information under this section unless he or she acts maliciously and the information is not true. 2004, c. 5, s. 16 (9).

Exception: solicitor-client privilege

(10) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. 2004, c. 5, s. 16 (10).

Interpretation

(11) In this section,

“information” includes personal information. 2004, c. 5, s. 16 (11).

Preferences

17. (1) No person or entity shall,

(a) pay or confer a benefit upon any person or entity in exchange for conferring upon an insured person a preference in obtaining access to an insured service;

(b) charge or accept payment or a benefit for conferring upon an insured person a preference in obtaining access to an insured service;

(c) offer to do anything referred to in clause (a) or (b). 2004, c. 5, s. 17 (1).

Mandatory reporting

(2) A prescribed person who, in the course of his or her professional or official duties, has reason to believe that anything prohibited by subsection (1) has occurred shall promptly report the matter to the General Manager. 2004, c. 5, s. 17 (2).

(3) Repealed: 2004, c. 3, Sched. A, s. 79 (4).

Protection from liability

(4) No proceeding for making a report under subsection (2) or for providing information in connection with the report shall be commenced against a person unless he or she acts maliciously and the information on which the report is based is not true. 2004, c. 5, s. 17 (4).

No retaliation

(5) No person or entity shall discipline or penalize any person for making a report under subsection (2) or for providing information in connection with the report unless the person who reported or provided the information acted maliciously and the information is not true. 2004, c. 5, s. 17 (5).

Defence

(6) Where an employer or contractor is charged with contravening subsection (1) as a result of an act committed by an employee, subcontractor or person with whom the employer or contractor contracted, it is a defence to the charge that the employer or contractor took all reasonable steps in the circumstances to prevent such a contravention. 2004, c. 5, s. 17 (6).

Exception: solicitor-client privilege

(7) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. 2004, c. 5, s. 17 (7).

Block fees

18. (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. 2004, c. 5, s. 18 (1).

Non-discrimination

(2) A physician, practitioner or hospital shall not refuse to render an insured service to an insured person or refuse to continue rendering insured services to an insured person for any reason relating to an insured person's choice not to pay a block or annual fee. 2004, c. 5, s. 18 (2).

Regulations

(3) For the purposes of this section, the Lieutenant Governor in Council may make regulations governing block or annual fees, including the circumstances under which they may be charged and the information that must be provided to the person who is charged, but may not regulate the amount of such a fee. 2004, c. 5, s. 18 (3).

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 in regulations made under subsection (3). 2004, c. 5, s. 18 (4).

Offence

19. (1) Every one who contravenes a provision of this Part or the regulations is guilty of an offence. 2004, c. 5, s. 19 (1).

Penalty, individual

(2) Subject to subsection (3), an individual who is convicted of an offence under this section is liable to a fine of not more than \$10,000. 2004, c. 5, s. 19 (2).

Same, s. 17 (2)

(3) An individual who is convicted of an offence under this section for contravening subsection 17 (2) is liable to a fine not exceeding \$1,000. 2004, c. 5, s. 19 (3).

Penalty, corporation

(4) A corporation that is convicted of an offence under this section is liable to a fine not exceeding \$25,000. 2004, c. 5, s. 19 (4).

Compensation or restitution

(5) The court that convicts a person of an offence under this section may, in addition to any other penalty, order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence. 2004, c. 5, s. 19 (5).

Limitation

(6) A prosecution for an offence under this section shall not be commenced after two years after the date on which the offence was, or is alleged to have been, committed. 2004, c. 5, s. 19 (6).

Regulations

20. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing practitioner and health facilities for the purposes of the definition of “practitioner” in this Part;

(b) designating practitioners as practitioners who may not charge an amount for the provision of insured services rendered to insured persons other than the amount payable by the Plan;

(c) governing circumstances and prescribing conditions for the purposes of subsection 10 (5);

(d) prescribing an administrative charge for the purpose of subsection 13 (4), and for that purpose may set out a formula to determine the charge;

(e) governing service for the purposes of subsection 13 (8);

(f) prescribing conditions and purposes for the purposes of section 15;

(g) governing the information that must be provided under section 16, including its content and the form in which it must be provided;

(h) prescribing persons for the purposes of section 17;

(i) prescribing conditions and limitations for the purposes of this Part;

(j) prescribing anything that must or may be prescribed under this Part or anything that is required or permitted to be done in accordance with the regulations or as provided in the regulations. 2004, c. 5, s. 20 (1).

Same

(2) A regulation under this Part may be general or specific in its application, may create different categories or classes, and may make different provisions for different categories, classes or circumstances. 2004, c. 5, s. 20 (2).

Exemptions

(3) A regulation under this Part may provide for exemption from the application of any provision of this Part. 2004, c. 5, s. 20 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Exemptions

(3) The Lieutenant Governor in Council may make regulations exempting any person or entity or class of persons or entities from the application of any provision of this Part, and may make such an exemption subject to any condition that may be provided for in the regulations. 2009, c. 26, s. 1 (4).

See: 2009, c. 26, ss. 1 (4), 27 (2).

Retroactivity

(4) A regulation under this Part is effective with respect to a period before it was filed if the regulation so provides. 2004, c. 5, s. 20 (4).

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. 2004, c. 5, s. 20 (5).

PART III ACCOUNTABILITY

Definitions

21. (1) In this Part,

“chief executive officer” means any individual who holds the position of chief executive officer with a health resource provider, and any individual who, regardless of title,

(a) holds a position with a health resource provider similar to that of chief executive officer, or

(b) performs functions for a health resource provider similar to those normally performed by a chief executive officer; (“chef de la direction”)

“compensation package” means the value of any compensation in any form that is provided to or on behalf of a chief executive officer in respect of his or her office with a health resource provider including,

(a) any amount that is required by section 5 of the Income Tax Act (Canada) to be included in the chief executive officer's income from his or her office with the health resource provider,

(b) any amount or benefit paid to or on behalf of another person arising directly or indirectly from the chief executive officer's position with or services provided to the health resource provider, and

(c) any other prescribed compensation type; ("rémunération")

"compliance directive" means a directive issued by the Minister under section 25; ("directive de conformité")

"health resource provider" has the meaning set out in subsection (2); ("fournisseur de ressources en santé")

"local health integration network" means a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006; ("réseau local d'intégration des services de santé")

"Minister" means the Minister of Health and Long-Term Care; ("ministre")

"performance agreement" means an agreement between a health resource provider and a chief executive officer of the health resource provider under this Part; ("convention de performance")

"personal information" means any information about an identifiable individual; ("renseignements personnels")

"prescribed" means prescribed by the regulations; ("prescrit")

"service accountability agreement" means an agreement establishing any one or more of,

(a) performance goals and objectives, roles and responsibilities, service quality, accessibility of services, related health human resources, performance management framework, shared and collective responsibilities for health system outcomes, consumer and population health status, value for money, consistency, and other prescribed matters,

(b) a plan and a timeframe for meeting anything mentioned in clause (a),

(c) requirements for reporting and the provision of information, excluding personal information,

(d) any other prescribed matter, and

(e) the standards and measures to be used with respect to anything mentioned in clauses (a) to (d). ("entente de responsabilisation en matière de services") 2004, c. 5, s. 21; 2006, c. 4, s. 44 (2-4).

Health resource provider

(2) In this Part,

"health resource provider", subject to subsection (3), means,

(a) in respect of the exercise by a local health integration network of a power under this Part, a health service provider as defined in section 2 of the Local Health System Integration Act, 2006 to which the network provides or proposes to provide funding under subsection 19 (1) of that Act, or

(b) in respect of the exercise by the Minister of a power under this Part, a licensee under the Independent Health Facilities Act, 2006, c. 4, s. 44 (5).

Same, exclusions

(3) The following are not health resource providers:

1. Any of the following individuals when they provide, or offer to provide, health services to individuals within the scope of practice of their profession:

i. A member of the College of Chiropractors of Ontario in the podiatrist class under the Chiropractic Act, 1991.

ii. A member of the Royal College of Dental Surgeons of Ontario under the Dentistry Act, 1991.

iii. A member of the College of Physicians and Surgeons of Ontario under the Medicine Act, 1991.

iv. A member of the College of Optometrists of Ontario under the Optometry Act, 1991.

2. A health profession corporation that holds a certificate of authorization issued by the College of Chiropractors of Ontario, the Royal College of Dental Surgeons of Ontario, the College of Physicians and Surgeons of Ontario or the College of Optometrists of Ontario under the Regulated Health Professions Act, 1991 or under Schedule 2 to that Act.

3. A trade union. 2006, c. 4, s. 44 (5).

Governing principle

22. (1) In administering this Part, the Minister and each local health integration network shall be governed by the principle that accountability is fundamental to a sound health system. 2006, c. 4, s. 44 (6).

Public interest

(2) The Minister, the Lieutenant Governor in Council or a local health integration network may exercise any authority under this Part where he, she or it considers it in the public interest to do so and, in doing so, the Minister, the Lieutenant Governor in Council or the network may consider any matter that he, she or it considers relevant in the circumstances, including any of the following:

1. Clear roles and responsibilities regarding the proper management of the health care system and any health resource provider.

2. Shared and collective responsibilities.

3. Transparency.
4. Quality improvement.
5. Fiscal responsibility.
6. Value for money.
7. Public reporting.
8. Consistency.
9. Trust.
10. Reliance on evidence.
11. A focus on outcomes and the quality of the care and treatment of individuals.
12. Timely access to care.
13. Accessibility.
14. Any other prescribed matter. 2004, c. 5, s. 22 (2); 2006, c. 4, s. 44 (7).

Service accountability agreements

23. (1) The Minister may, and a local health integration network shall, give notice to a health resource provider that the Minister or the network, as the case may be,
- (a) proposes to enter into a service accountability agreement with the health resource provider; or
 - (b) proposes to enter into a service accountability agreement with the health resource provider and one or more other health resource providers. 2006, c. 4, s. 44 (8).

Discussion

- (2) After giving the notice under subsection (1), the Minister or the local health integration network, on the one hand, and the health resource provider, on the other hand, shall negotiate the terms of a service accountability agreement and enter into a service accountability agreement within the applicable time period provided for in subsection (3). 2006, c. 4, s. 44 (8).

Time period

- (3) The applicable time period is,
- (a) 90 days or such other time period that is prescribed if the Minister or a local health integration network gives notice to the health resource provider under subsection (1),
 - (i) for the first time, or

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

(b) in all other cases, 60 days or such other time period that is prescribed. 2006, c. 4, s. 44 (8).

Information

(4) The Minister or the local health integration network, on the one hand, and the health resource provider, on the other hand, shall disclose to each other any information, other than personal information, that they consider necessary for the purposes of negotiating a service accountability agreement, but this subsection does not,

(a) authorize or require the Minister or the network to disclose information that is not required to be disclosed to a requester under the Freedom of Information and Protection of Privacy Act;

(b) authorize or require a health resource provider to disclose information that is not required to be disclosed to a requester under the Municipal Freedom of Information and Protection of Privacy Act, if that Act applies to a health resource provider;

(c) authorize or require the disclosure of any information that is subject to any privilege recognized by law; or

(d) require the disclosure of any information that the Minister, the network or health resource provider is entitled not to disclose by virtue of any other law. 2004, c. 5, s. 23 (4); 2006, c. 4, s. 44 (9-11).

Direction

(5) If the health resource provider does not enter into a service accountability agreement with the Minister or the local health integration network within the applicable number of days after the Minister or the network, as the case may be, gave notice under subsection (1), the Minister or the network may direct the health resource provider to enter into a service accountability agreement with the Minister or the network and with any other health resource provider on the terms that the Minister or the network determines, and the health resource provider shall enter into and shall comply with the service accountability agreement. 2006, c. 4, s. 44 (12).

Performance agreement

(6) A service accountability agreement may provide that a health resource provider will enter into a performance agreement with its chief executive officer to support the achievement by the health resource provider of the terms of the service accountability agreement. 2004, c. 5, s. 23 (6); 2006, c. 4, s. 44 (13).

Same

(7) If a service accountability agreement requires that a health resource provider enter into a performance agreement, the health resource provider and its chief executive officer shall enter into a

performance agreement within such period of time stipulated in the service accountability agreement, and the terms of the performance agreement shall be consistent with the service accountability agreement. 2004, c. 5, s. 23 (7); 2006, c. 4, s. 44 (13).

Exception – chief executive officer

(8) Despite subsection (7), a chief executive officer shall not be required to enter into a performance agreement except with respect to that part of the individual's appointment, employment or contract that relates to his or her function or position as a chief executive officer for the health resource provider. 2004, c. 5, s. 23 (8).

Duty of health resource provider

(9) A health resource provider has a duty to take all reasonable care to ensure that its chief executive officer complies with any performance agreement and his or her duties under this Part, including taking such measures as may be necessary from time to time to enforce the health resource provider's rights under the performance agreement. 2004, c. 5, s. 23 (9).

Notice of non-compliance

24. (1) The Minister or a local health integration network may give notice in writing to a health resource provider if the Minister or the network believes that any of the following circumstances have occurred:

1. A health resource provider has not entered into a service accountability agreement as directed by the Minister or a local health integration network under subsection 23 (5).
2. A health resource provider has not entered into a performance agreement with its chief executive officer as required under subsection 23 (7).
3. A chief executive officer has not entered into a performance agreement with a health resource provider as required under subsection 23 (7).
4. The terms of a performance agreement that a health resource provider and its chief executive officer have entered into or intend to enter into are not consistent with the terms of a service accountability agreement as required under subsection 23 (7).
5. A health resource provider has not complied with a term of a service accountability agreement.
6. A health resource provider has not complied with its duty under subsection 23 (9).
7. A health resource provider has not complied with a term of a performance agreement.
8. A chief executive officer has not complied with a term of a performance agreement, an order issued under subsection 28 (5) or any provision of this Part that a chief executive officer is required to comply with.

9. A health resource provider has not complied with a compliance directive, an order issued under section 26, or an order issued under subsection 27 (1).

10. A health resource provider has not complied with any provision of this Part. 2004, c. 5, s. 24 (1); 2006, c. 4, s. 44 (13-16).

Contents of notice

(2) A notice under subsection (1) shall briefly describe,

(a) the circumstance that has led the Minister or the local health integration network to give the notice; and

(b) any directions that the Minister or the local health integration network proposes to make to the health resource provider in a compliance directive or an order under subsection 27 (1). 2004, c. 5, s. 24 (2); 2006, c. 4, s. 44 (17, 18).

Restriction

(3) The Minister or the local health integration network shall not give a notice under subsection (1) that proposes to make directions in an order under subsection 27 (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 27 (1), or

(iii) an order made under subsection 28 (5). 2004, c. 5, s. 24 (3); 2006, c. 4, s. 44 (16-18).

Process of dispute resolution

(4) If a health resource provider that receives a notice under subsection (1) disputes any matter set out in it,

(a) the Minister or the local health integration network, on the one hand, and the health resource provider, on the other hand, shall discuss the circumstances that resulted in the notice or any directions that are proposed in the notice;

(b) the Minister or the local health integration network shall provide to the health resource provider any information that the Minister or the network believes,

(i) is appropriate for the Minister or the network to disclose to the health resource provider, and

(ii) is necessary to an understanding of the circumstances referred to in the notice or the directions that are proposed in the notice; and

(c) the health resource provider may make representations to the Minister or the local health integration network about the matters set out in the notice. 2006, c. 4, s. 44 (19).

Consideration

(5) The Minister or the local health integration network shall consider any representations made under subsection (4) before making a decision to issue a compliance directive or an order under subsection 27 (1). 2004, c. 5, s. 24 (5); 2006, c. 4, s. 44 (18, 20).

Exception

(6) Subsections (1) to (5) do not apply to the issuance of an order under subsection 27 (1) if the Minister or the local health integration network believes that,

(a) a circumstance described in subsection (1) exists which urgently requires that an order under subsection 27 (1) be issued to a health resource provider and the circumstance is,

(i) exceptional and unlikely to occur in the future, or

(ii) causing or likely to cause harm to any person or property;

(b) it is reasonable not to follow the procedures set out in subsections (1) to (5); and

(c) it is necessary to issue an order under subsection 27 (1) to a health resource provider to remedy the circumstance or alleviate the effects of the circumstance. 2004, c. 5, s. 24 (6); 2006, c. 4, s. 44 (18, 21, 22).

Compliance directives

25. (1) If any circumstance referred to in a notice under subsection 24 (1) continues for more than 30 days after the Minister or the local health integration network gave the notice, the Minister or the network, as the case may be, may issue a compliance directive to the health resource provider. 2006, c. 4, s. 44 (23).

Compliance

(2) The health resource provider shall comply with a compliance directive. 2004, c. 5, s. 25 (2).

Directions

(3) A compliance directive may require the health resource provider to comply with any directions set out in the compliance directive relating to the following:

1. Requiring the health resource provider to enter into a service accountability agreement with the Minister or the local health integration network on the terms set out in the compliance directive.

2. Requiring the health resource provider to enter into a performance agreement.
3. Requiring the health resource provider to comply with a provision of this Part, a term of a service accountability agreement, or a term of a performance agreement.
4. Requiring the health resource provider to meet with the Minister, the local health integration network or any person designated by the Minister or the network, at a time and place set out in the compliance directive, for the purposes of discussing any non-compliance identified by the Minister or the network.
5. Requiring the health resource provider to carry out or cause to be carried out an audit, as directed by the Minister or the local health integration network.
6. Requiring the health resource provider to study and to report to the Minister or the local health integration network on any matter as directed by the Minister or the local health integration network.
7. Requiring the health resource provider to provide any information identified in the compliance directive to the Minister or the local health integration network or to otherwise assist the Minister, the network or any person authorized by the Minister or the network to conduct an audit or carry out a study or report in respect of the operations of the health resource provider.
8. Requiring the health resource provider to develop or implement an education or remedial learning plan for the health resource provider, or to follow an educational or remedial learning plan.
9. Requiring the development of a budget for the review and approval of the Minister or the local health integration network as set out in the compliance directive.
10. Requiring compliance with a budget as set out in the compliance directive.
11. Requiring the posting and distribution of any matter as required by subsection 31 (2).
12. Taking any action or refraining from taking any action that is specified in the compliance directive to correct the circumstance of non-compliance described in the notice under subsection 24 (1), to prevent its reoccurrence, or to remedy any effects of the circumstance of non-compliance. 2004, c. 5, s. 25 (3); 2006, c. 4, s. 44 (13, 18, 24-26).

Times

(4) In any compliance directive, the Minister or the local health integration network may specify the time or times when or the period or periods of time within which the health resource provider must comply with the directive. 2004, c. 5, s. 25 (4); 2006, c. 4, s. 44 (18).

Directions not in notice

(5) Despite subsection 24 (2), a compliance directive may set out a direction that the Minister or the local health integration network did not propose in the notice under subsection 24 (1). 2004, c. 5, s. 25 (5); 2006, c. 4, s. 44 (18).

Varying

(6) The Minister or the local health integration network may vary a compliance directive after it is issued if the change relates to a circumstance referred to in the notice under subsection 24 (1). 2004, c. 5, s. 25 (6); 2006, c. 4, s. 44 (18).

Recognition of accomplishment

26. If a health resource provider meets or exceeds all or part of the terms of a service accountability agreement, the Minister or a local health integration network may, in his, her or its discretion, make an order directing that the accomplishment be recognized in any prescribed manner. 2006, c. 4, s. 44 (27).

Order

27. (1) The Minister or a local health integration network may issue an order to a health resource provider if,

(a) the Minister or the network gave a notice to the health resource provider under subsection 24 (1) and proposed in the notice to issue an order under this section and the circumstance referred to in the notice continued for more than 30 days after the giving of the notice; or

(b) the Minister or the network did not give a notice to the health resource provider under subsection 24 (1) by virtue of subsection 24 (6) and the circumstance described in subsection 24 (1) has continued for more than 30 days. 2006, c. 4, s. 44 (28).

Order of network

(1.1) An order issued under subsection (1) by a local health integration network shall be approved by the board of directors of the network. 2006, c. 4, s. 44 (28).

Compliance

(2) The health resource provider shall comply with an order issued under subsection (1). 2004, c. 5, s. 27 (2); 2006, c. 4, s. 44 (29).

Matters in order

(3) An order issued under subsection (1) may require the health resource provider to comply with any directions set out in the order relating to any or all of the following:

1. Requiring a health resource provider to comply with any part of a compliance directive that has been issued to the health resource provider.
2. Requiring a health resource provider to comply with any direction that may be made in a compliance directive.

3. Holding back, reducing or discontinuing any payment payable to or on behalf of a health resource provider by the Crown, the Minister, or a local health integration network in any manner and for any period of time as provided in the order and despite any provision in a contract to the contrary.

4. Requiring a health resource provider to enforce any provision of a performance agreement with a chief executive officer.

5. Varying, as set out in the order, any term of an agreement made between the Crown, the Minister or a local health integration network on the one hand and the health resource provider on the other hand. 2004, c. 5, s. 27 (3); 2006, c. 4, s. 44 (30-32).

Times for compliance

(4) In an order under this section, the Minister or the local health integration network may specify the time or times when or the period or periods of time within which the health resource provider must comply with the order. 2004, c. 5, s. 27 (4); 2006, c. 4, s. 44 (18, 33).

Direction not in notice

(5) An order under this section may set out a direction that the Minister or the local health integration network did not propose in the notice under subsection 24 (1). 2004, c. 5, s. 27 (5); 2006, c. 4, s. 44 (18, 34).

Varying

(6) The Minister or the local health integration network may vary an order after it is issued if the changes relate to a circumstance which caused the order to be issued under subsection (1). 2006, c. 4, s. 44 (35).

Orders without notice

(7) If, by virtue of subsection 24 (6), the Minister or a local health integration network did not give notice under subsection 24 (1) before issuing an order under this section, the Minister or the network, as the case may be, shall, as soon as reasonably possible after issuing the order, provide the health resource provider with,

(a) reasons for issuing the order;

(b) the matters that the Minister or the network took into account in making the decision to issue an order; and

(c) the matters that caused the Minister or the network to form a belief under subsection 24 (6) and to not follow the procedures set out in subsections 24 (1) to (5). 2006, c. 4, s. 44 (35).

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). 2004, c. 5, s. 27 (8).

Notice in exceptional circumstance

28. (1) A local health integration network may give notice in writing to a person or entity mentioned in subsection (1.1) and its chief executive officer if,

(a) the network has issued a compliance directive or an order under subsection 27 (1) to the person or entity in respect of non-compliance by the person or entity under the service accountability agreement or this Part or by its chief executive officer under a performance agreement or any provision of this Part, with which the chief executive officer is required to comply;

(b) the network believes that the person or entity has not complied with a service accountability agreement or this Part or the chief executive officer has not complied with a performance agreement or has not complied with a provision of this Part, with which the chief executive officer is required to comply, despite a compliance directive or an order under subsection 27 (1); and

(c) the network believes that, even though attempts have been made to require the person, entity or chief executive officer to comply, an exceptional circumstance may exist that may require that an order be issued under subsection (5) to the person or entity and its chief executive officer. 2006, c. 4, s. 44 (36).

Person or entity

(1.1) The person or entity mentioned in subsection (1) is,

(a) a person or entity that operates a hospital within the meaning of the Public Hospitals Act; or

(b) the University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa. 2006, c. 4, s. 44 (36).

Contents of notice

(2) A notice under subsection (1) shall briefly describe,

(a) the reasons for the notice; and

(b) any directions that the local health integration network proposes to recommend be made in an order under subsection (5). 2004, c. 5, s. 28 (2); 2006, c. 4, s. 44 (37).

Dispute resolution process

(3) If the person, entity or chief executive officer who receives a notice under subsection (1) disputes any matter set out in the notice,

(a) the local health integration network and the person, entity or chief executive officer shall discuss the circumstances that resulted in the notice or any directions that are proposed in the notice;

(b) the local health integration network shall provide to the person, entity or chief executive officer any information that the network believes is necessary to an understanding of the reasons for the notice or the directions that are proposed in the notice; and

(c) the person, entity or chief executive officer may make representations to the local health integration network about the matters set out in the notice. 2006, c. 4, s. 44 (38).

Consideration

(4) The local health integration network shall consider any representations made under subsection (3) before making a recommendation to issue an order under subsection (5). 2004, c. 5, s. 28 (4); 2006, c. 4, s. 44 (39).

Recommendation to Minister

(4.1) After following the process set out in subsections (1) to (4), the local health integration network may recommend to the Minister that an order be made under subsection (5) and the network shall provide the Minister with any information that the Minister requires. 2006, c. 4, s. 44 (40).

Recommendation to Cabinet

(4.2) After receiving a recommendation under subsection (4.1), the Minister may recommend to the Lieutenant Governor in Council to make an order under subsection (5) and, if the Minister makes the recommendation, he or she shall notify the local health integration network, the person or entity and its chief executive officer of the recommendation and the reasons for it. 2006, c. 4, s. 44 (40).

Order

(5) The Lieutenant Governor in Council may make an order to the person or entity and to its chief executive officer if,

(a) the Lieutenant Governor in Council believes that an exceptional circumstance exists which makes it necessary to issue an order;

(b) a period of 30 days has passed since a local health integration network gave notice under subsection (1) and the circumstance of non-compliance that caused the notice under subsection (1) to be issued has not been remedied to the satisfaction of the network;

(c) the local health integration network and the Minister have both recommended that the Lieutenant Governor in Council make the order; and

(d) the Minister has given the notice mentioned in subsection (4.2). 2006, c. 4, s. 44 (41).

Directions

(6) An order made under subsection (5) may require the person or entity and its chief executive officer to comply with any directions set out in the order relating to any or all of the following:

1. Holding back, reducing or varying the compensation package provided to or on behalf of a chief executive officer in any manner and for any period of time as provided for in the order and despite any provision in a contract to the contrary.
2. Requiring a chief executive officer to pay any amount of his or her compensation package to the Crown or any person. 2004, c. 5, s. 28 (6); 2006, c. 4, s. 44 (42).

Compliance

(7) A person, entity or chief executive officer shall comply with the directions set out in the order. 2006, c. 4, s. 44 (43).

Times

(8) In an order under subsection (5), the Lieutenant Governor in Council may specify the times when or the periods of time within which the person or entity and its chief executive officer must comply with the order. 2006, c. 4, s. 44 (43).

Direction not in notice

(9) An order under subsection (5) may set out a direction that the local health integration network did not propose in the notice under subsection (1). 2004, c. 5, s. 28 (9); 2006, c. 4, s. 44 (44).

Varying

(10) The Lieutenant Governor in Council may vary an order after it is issued if the change relates to a circumstance which caused the order to be issued under subsection (5). 2004, c. 5, s. 28 (10).

Maximum limit

(11) An order issued under subsection (5) shall not require the payment by the chief executive officer of more than, or shall not hold back, reduce or vary the compensation package by more than, 10 per cent of the compensation package in respect of the calendar year during which the non-compliance occurred which caused the notice under subsection (1) to be given. 2004, c. 5, s. 28 (11).

Prohibition

(12) Where an order is issued under subsection (5) that holds back, reduces or varies the compensation package of a chief executive officer or requires the chief executive officer to make a payment,

(a) no person shall provide any payment, compensation or benefit to the person, entity or chief executive officer or to any other person on behalf of the person, entity or chief executive officer to compensate for or reduce or alleviate the effects of the order on the chief executive officer, despite any provision at law or in a contract to the contrary; and

(b) the person, entity or chief executive officer shall not accept or permit any other person to accept on his, her or its behalf any compensation, payment or benefit to compensate for or to reduce or alleviate the effects of the order on the chief executive officer, despite any provision at law or in a contract to the contrary. 2004, c. 5, s. 28 (12); 2006, c. 4, s. 44 (45).

Civil enforcement

(13) The local health integration network that gave a notice under subsection (1) that resulted in the making of an order under subsection (5) that requires a chief executive officer to pay an amount may file the order with a local registrar of the Superior Court of Justice and enforce the order as if it were an order of that court. 2006, c. 4, s. 44 (46).

Same

(14) Section 129 of the Courts of Justice Act applies in respect of an order filed with the Superior Court of Justice, and the date of filing shall be deemed to be the date of the order. 2004, c. 5, s. 28 (14).

Where change in employment

29. (1) Where, as the result of entering into a performance agreement under subsection 23 (7) or the making of an order made under subsection 27 (1) or 28 (5), there is a material change in a chief executive officer's terms of employment with a health resource provider, including a holdback, reduction or variation of the compensation package or a payment by the chief executive officer,

(a) the change shall be deemed to have been mutually agreed upon by the chief executive officer and the health resource provider;

(b) no proceeding shall be brought by or on behalf of the chief executive officer for any payment, compensation, benefits or damages from the health resource provider, the Minister, a local health integration network or any other person, despite any provision to the contrary at law or in his or her contract of employment; and

(c) the chief executive officer shall not receive any payment, compensation, benefits or damages from the health resource provider, the Minister, a local health integration network or any other person, despite any provision to the contrary at law or in his or her contract of employment. 2004, c. 5, s. 29 (1); 2006, c. 4, s. 44 (47).

Services

(2) Subsection (1) applies with necessary modification to a contract or agreement for services between a health resource provider and a chief executive officer. 2004, c. 5, s. 29 (2).

Change in funding, agreement, etc.

30. If, as the result of an order made under subsection 27 (1), any funding or payment by the Crown, the Minister or a local health integration network to a health resource provider is withheld, reduced or

discontinued, or any term of a contract or agreement between the Crown, the Minister or a local health integration network, on the one hand, and a health resource provider, on the other hand, is varied, the reduction, variance or discontinuance,

(a) shall be deemed to have been mutually agreed upon by the parties; and

(b) does not entitle the health resource provider to payment or compensation, despite any provision to the contrary at law or in the contract or agreement. 2004, c. 5, s. 30; 2006, c. 4, s. 44 (48).

Information

31. (1) For the purposes of carrying out this Part, the Minister or a local health integration network may require any health resource provider or chief executive officer to provide the Minister or the network with a performance agreement or any information that the Minister or the network considers necessary other than personal health information, in the form and at the times that the Minister or the network requires, and the health resource provider or chief executive officer shall comply with the requirement of the Minister or the network. 2006, c. 4, s. 44 (49).

Posting and distribution

(2) A health resource provider shall post in a conspicuous place or distribute all or part of any notice under subsection 24 (1), compliance directive, order issued under subsection 27 (1), notice under subsection 28 (1) or order issued under subsection 28 (5) when required to do so by the Minister or a local health integration network, even if this results in the disclosure of personal information. 2006, c. 4, s. 44 (49).

Public disclosure

(3) The Minister or a local health integration network shall disclose to the public all or part of any notice under subsection 24 (1), representations under subsection 24 (5), compliance directive, order issued under subsection 27 (1), notice under subsection 28 (1), representations under subsection 28 (3), order issued under subsection 28 (5) or any enforcement action taken by the Minister or the network even if personal information is contained in what is disclosed, if the Minister or the network is of the opinion that disclosure would promote accountability. 2006, c. 4, s. 44 (49).

Service accountability agreement

(3.1) The Minister or a local health integration network shall make copies of any service accountability agreement that the Minister or the network, as the case may be, has entered into with a health resource provider available to the public at the offices of the Ministry or the network, as the case may be, even if this results in the disclosure of personal information. 2006, c. 4, s. 44 (49).

Same, health resource provider

(3.2) A health resource provider shall post a copy of its service accountability agreement in a conspicuous public place at the health resource provider's sites of operations to which the agreement

applies and on its public website on the Internet, if any, even if this results in the disclosure of personal information. 2006, c. 4, s. 44 (49).

Offence

(4) Every person who fails to provide a performance agreement or information as provided in subsection (1) or refuses to post or distribute as required by subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 2004, c. 5, s. 31 (4).

Definition of "personal health information"

(5) In subsection (1),

"personal health information" means information, other than information referred to in subsection (6), that is in oral or recorded form, if the information,

(a) is information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual, and

(b) is information that,

(i) relates to the physical or mental health of the individual, including information that consists of the medical history of the individual's family,

(ii) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

(iii) is a plan of service within the meaning of the Home Care and Community Services Act, 1994 for the individual,

(iv) relates to payments or eligibility for health care in respect of the individual,

(v) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,

(vi) is the individual's health number, or

(vii) identifies an individual's substitute decision-maker. 2004, c. 5, s. 31 (5); 2007, c. 8, s. 199 (2).

Exception

(6) "Personal health information" does not include identifying information contained in a record that is in the custody or under the control of a person if,

(a) the identifying information contained in the record relates primarily to one or more employees or other agents of the person; and

(b) the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents. 2004, c. 5, s. 31 (6).

No liability

32. (1) No compensation or damages shall be payable by the Crown, the Minister, a local health integration network, a director or officer of a local health integration network, or an employee or agent of the Crown, the Minister or a local health integration network for any act done in good faith in the execution or intended execution of a duty or authority under this Part or the regulations, or for any alleged neglect or default in the execution in good faith of any such duty or authority. 2006, c. 4, s. 44 (50).

Same

(2) No action or proceeding for damages or otherwise, other than an application for judicial review, shall be instituted against the Crown, the Minister, a local health integration network, a director or officer of a local health integration network, or an employee or agent of the Crown, the Minister or a local health integration network for any act done in good faith in the execution or intended execution of a duty or authority under this Part or the regulations or for any alleged neglect or default in the execution in good faith of any such duty or authority. 2006, c. 4, s. 44 (50).

Offence

33. (1) Subject to subsection (2), every health resource provider that fails to comply with an order under subsection 27 (1), every health resource provider or chief executive officer who fails to comply with an order made under subsection 28 (5), every person who fails to comply with subsection 28 (12) and every person who wilfully attempts to circumvent or obstruct compliance with an order under subsection 27 (1) or 28 (5) is guilty of an offence. 2004, c. 5, s. 33 (1); 2006, c. 4, s. 44 (51).

Exception

(2) Despite subsection (1), where a health resource provider consists of a board of trustees of a non-profit oriented entity, an individual member of the board of trustees is not liable to a conviction for failing to comply with an order under subsection 27 (1), if that individual receives no compensation of any kind for being a member of the board of trustees. 2004, c. 5, s. 33 (2); 2006, c. 4, s. 44 (52).

Penalty – individual

(3) An individual who is convicted of an offence under this section is liable to a fine of not more than \$10,000. 2004, c. 5, s. 33 (3).

Penalty – corporation

(4) A corporation that is convicted of an offence under this section is liable to a fine of not more than \$25,000. 2004, c. 5, s. 33 (4).

Regulations

34. (1) The Lieutenant Governor in Council may make regulations,
- (a) prescribing anything that may be prescribed for the purposes of this Part;
 - (b) respecting the content or terms and conditions of any service accountability agreement;
 - (c) prescribing manners in which accomplishment may be recognized in orders under section 26. 2004, c. 5, s. 34 (1); 2006, c. 4, s. 44 (53, 54).

Same

- (2) A regulation under this Part may be general or specific in its application, may create different categories or classes, and may make different provisions for different categories, classes or circumstances. 2004, c. 5, s. 34 (2).

Exemptions

- (3) A regulation under this Part may provide for exemption from the application of any provision of this Part. 2004, c. 5, s. 34 (3).

Public consultation before making regulations

35. (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 34 unless,
- (a) the Minister has published a notice of the proposed regulation in The Ontario Gazette and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;
 - (b) the notice complies with the requirements of this section;
 - (c) the time periods specified in the notice, during which persons may make comments, have expired;
 - (d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation, or an accurate synopsis of such comments; and
 - (e) the Minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2004, c. 5, s. 35 (1).

Contents of notice

- (2) The notice mentioned in clause (1) (a) shall contain,
- (a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which a person may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of any other methods by which a person may comment on the proposed regulation and the manner in which and the time period during which they may do so;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) any prescribed information; and

(f) any other information that the Minister considers appropriate. 2004, c. 5, s. 35 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2004, c. 5, s. 35 (3).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Part or the regulations; or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 5, s. 35 (4).

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (e), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with any changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2004, c. 5, s. 35 (5).

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 34 if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 5, s. 35 (6).

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 34,

(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

(b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision. 2004, c. 5, s. 35 (7).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2004, c. 5, s. 35 (8).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in The Ontario Gazette and give the notice by all other means that the Minister considers appropriate. 2004, c. 5, s. 35 (9).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 34 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

(a) be identified as a temporary regulation in the text of the regulation; and

(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2004, c. 5, s. 35 (10).

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. 2004, c. 5, s. 35 (11).

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. 2004, c. 5, s. 35 (12).

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). 2004, c. 5, s. 35 (13).

36.-44. Omitted (amends or repeals other Acts). 2004, c. 5, ss. 36-44.

45. Omitted (provides for coming into force of provisions of this Act). 2004, c. 5, s. 45.

46. Omitted (enacts short title of this Act). 2004, c. 5, s. 46.
