

## APPENDIX A

### LISTING OF GOVERNMENT POWERS IN LEGISLATION PRIOR TO BILL 36

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**Note: the following does not take account of any amendments to the Acts proposed in Bill 36, the Local Health System Integration Act, 2005.**

The heading is in each case a link to the full text of the legislation on the Ontario governments E-Laws site.

## **Ministry of Health and Long-Term Care Act**

The MOH&LTC Act is the basic source of the Minister's authority. Section 6 of the Act sets out the Minister's functions and provides the power to carry out specified duties. Section 8 contains the power to establish District Health Councils, and to specify their geographic scope, and section 9 of the Act sets out a general power to create advisory bodies, which was the power originally employed to create DHCs, prior to the specific legislative amendments relating to them. Section 12 sets out broad regulatory powers relating to health, to be exercised by the Minister with the approval of the LG.

Section 3 of the Act provides that the Minister is responsible for the administration of this Act and any other Acts that are assigned to him or her by the Legislature or by the Lieutenant Governor in Council, and specifically allows the Minister to delegate, in writing, any of his or her powers or duties under this or any other Act to any of the following persons, and the power to impose conditions and restrictions with respect to the delegation:

1. The Deputy Minister.
2. Any public servant.
3. Any other person who is employed in the Ministry.
4. Any officer or member of the board of an agency or other entity for which the Minister has been assigned responsibility by the Lieutenant Governor in Council.

Given the importance of this Act in defining the Minister's powers a hard copy is attached. For other legislation, please view the memo electronically on a computer with internet access and click on the links provided.

## **Bill 8: Commitment to the Future of Medicare Act**

### **Description of the Legislation**

The government has repeatedly described Bill 8 as the fundamental tool and building block in its new initiatives.

Part I of the Bill provides for the establishment of the Ontario Health Quality Council, provides for its functions and reporting, and gives a framework to make regulations concerning the organization and work of that Council. (Note: The OHQC regulation was to be out by the end of September for consultation). Part II replaces the Health Care Accessibility Act (which dealt with extra-billing) and places new restrictions on charging fees not covered by OHIP.

Part III gives the Minister powers to require Accountability agreements with health resource

providers and Performance Agreements with the CEOs of such organizations. These accountability agreements give the Ministry considerable control over health providers. It appears likely that the LHINs will have a significant role in exercising many of the Minister's power under Bill 8. Bill 8 provides that only one of the Ministerial powers it covers may not be delegated under s.3 of the MOHLTC Act, namely the power to issue compliance orders relating to accountability agreements.

Note that the Ministry and the OHA are currently working on a prototype accountability agreement through the bilateral Joint Policy and Planning Committee (see [www.jpcc.org/ha](http://www.jpcc.org/ha)).

### Specific Governmental powers in Bill 8

(throughout this memo the text paraphrases the actual text of the bill, unless otherwise noted)

#### Pt I - Ontario Health Quality Council

2. LG shall by regulation establish to Ontario Health Quality Council, and appoint its members.
5. Council shall deliver to the Minister a yearly report on the state of the health system in Ontario

Council may make recommendations to the Minister in regard to future areas of reporting

Council shall submit to Minister is business plan for the next year

6. LG has broad regulation making powers re: the OHQC, though a public consultation process is required under s.7, where "in the Minister's opinion" certain exceptions set out in s.7(6) apply.

#### Pt II - Health Services Accessibility

Pt II relates to payment for insured services and most powers are given to the General Manager of the OHIP appointed under the Health Insurance Act.

- 12 MOHLTC may enter into agreements with the OMA, ODA and OAO to provide for methods of negotiating ... amounts payable under the Plan....

The LG may make a regulation adding other persons or organizations to the above list

- 16 The Minister (or general manager) .... may suspend payments under the Plan or under the Independent Health Facilities Act to a person failing to comply with a requirement to submit information to the General Manager re: possible contravention
- 20 The LG has broad regulation making powers relating to this Part (Health Insurance payments) - including the power to exempt from the application of any provision of this Part.

## Pt II - Accountability

All powers relating to accountability agreements with health providers and performance agreements with CEOs rest with the Minister and/or the LG.

s.22 requires these powers to be exercised in the public interest considering any matters they consider relevant including a list of enumerated factors.

The Minister has all powers relating to the negotiation or imposition of agreements and the issuance of compliance orders.

s.27(8) provides that the minister cannot delegate the power under s.27(1) to issue orders, despite s.3 of the MOH&LTC Act (discussed above).

Exceptional orders affecting CEO compensation are to be made by the LG on the recommendation of the Minister

- s.31 Minister may require provision of a performance agreement or any information that the Minister considers necessary other than personal health information.....

Minister to disclose to public ... if of the opinion that disclosure would promote accountability

- 34 The LG may make regulations prescribing anything that may be prescribed for purposes of Pt III, re: the content of any accountability agreement; re: the manner in which accomplishment may be recognized under s.26 - or exempting from any provision of this Part.

- 35 Regs under 35 require a public consultation process, except where "in the Minister's opinion" certain conditions apply.

Pt IV sets out amendments to the Health Insurance Act

s.45 of that Act is amended by adding a Ministerial power, upon the advice of the General Manager to amend a schedule of fees or benefits adopted in a regulation as the Minister considers appropriate for the purposes of the regulation.

Note: Parts II, III and IV are currently in force.

### **Health Insurance Act**

The HEA provides the framework for OHIP. Revisions introduced by the Savings and Restructuring Act, 1996 gave the Minister power to define which services are insured, to prescribe fees and to grant and withhold billing numbers to physicians.

### **Health Protection and Promotion Act**

#### Description

The primary statutory foundation for public health services is the Health Protection and Promotion Act (HPPA). The HPPA requires municipalities to provide public health services via Boards of Health (in many cases defined such that they are the municipalities themselves). The Act's stated purpose (in s.2) is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario

The Mandatory Guidelines setting public health minimum standards are published by the Ministry under the HPPA (s.7)

Under the HPPA current public health units may be merged or dissolved by L-G regulation.

The Minister also has authority to establish and maintain public health laboratory centres at such places and with such buildings, appliances and equipment as the Minister considers proper (s.79), as well as to give directions concerning their operation.

#### Specific Government Powers

7 Ministry power to set Mandatory public health guidelines

49(6) power to fix remuneration of BOH members in certain circumstances

58.1 power to approve fees charged by BOH's

Obligation to assist BOH in replacing chief medical officer if position becomes

vacant

Power to approve appts of medical officers of health and requirement of consent for dismissal

76. The Minister may make grants for the purposes of this Act on such conditions as he or she considers appropriate. 1997, c. 15, s. 5

s.77 addresses the merger of health units and provides the Minister with power to make an order concerning the division of assets and liabilities where the boards of health are unable to agree.

78. (1) The Minister has power to make investigations respecting the causes of disease and mortality in any part of Ontario. R.S.O. 1990, c. H.7, s. 78 (1).

79. (1) The Minister may establish and maintain public health laboratory centres at such places and with such buildings, appliances and equipment as the Minister considers proper.

The Minister may give direction from time to time to a public health laboratory centre as to its operation and the nature and extent of its work, and the public health laboratory centre shall comply with the direction. R.S.O. 1990, c. H.7, s. 79 (2).

80 Minister may appoint inspectors to enforce the Act

81 Minister shall appoint a chief medical officer

82 Minister to appoint BOH assessors

83 Minister has broad powers to issue directions to BOH's based on an assessment (by an assessor) that the BOH is not in compliance with the HPPA.

86. (1) If the Minister is of the opinion that a situation exists anywhere in Ontario that constitutes or may constitute a risk to the health of any persons, he or she may investigate the situation and take such action as he or she considers appropriate to prevent, eliminate or decrease the risk.

86.2 (1) The Minister may request a board of health to provide such information in respect of the board of health and the health unit served by the board of health as the Minister

specifies. 1997, c. 30, Sched. D, s. 11.

Minister also has certain “emergency” powers to e.g. name temporary isolation facilities.

### Regulations

(6) The Minister may make regulations re: information provision under 91.1

The LG has broad regulation-making powers relating to public health standards, and, in addition has the power make regulations....

(a) designating any area in Ontario as a health unit;

(b) prescribing the names of health units;

(c) altering the boundaries of or dissolving any health unit established or continued by or under this Act;

97 The Minister has regulation-making powers re: such matters as defining reportable and communicable diseases (the list is longer)

## **Long-Term Care Act**

### Description

The Long-Term Care Act governs the Community Care Access Centres and other community support agencies and community service. CCACs are recognized as approved agencies under the Long-Term Care Act (though they were a later introduction which took the functional place assigned by the NDP’s LTC Act to multi-service agencies). CCACs are governed by this Act and its Regulations, as well as by the Community Care Access Corporations Act, 2001. Note, however, that the CCAC Act, 2001 specifies that some parts of the LTC Act do not apply to CCACs e.g. ss.50-51, & 53 - 55. The changes in approach since the drafting of the LTC Act have been achieved by regulation and service agreements w. CCACs.

Under s.58 all Ministerial powers under this Act may be delegated to “any person or group of persons” by written authorization.

### Governmental powers:

s.5 Power to approve an agency (other than First Nations agencies where an

agreement is in place) to provide a community service

- s.6 Power to approve premises for the provision of services by an approved agency and to provide financial and other assistance...
- s.9 Power to enter into agreements with First Nations / aboriginal orgs for provision of community services
- s.10 Power to designate approved agencies as multi-service agencies for specific groups or areas
- s.11 Power to allow a multi-service agency to provide or arrange for the provision of non-mandatory services
- s.12 Minister to approve budgets of multi-service agencies
- s.15 Minister power to exempt a multi-service agency from parts of s.11 (mandatory programs) or s.12 (limits on services purchased)

[Note the LTC act contains some successorship provisions re: multi-service agencies which deliver a service previously provided by another service provider]

- s.30 service providers to provide Minister with reports etc
- s.50 Minister power to revoke or suspend approval of an agency in specified circumstances including that “the agency is located in a geographic area for which the Minister has designated another approved agency as a multi-service agency”
- s.51 Ministerial power to revoke or suspend approval of premises in specified circumstances
- s.52 Ministerial power to revoke or suspend a designation of a multi-service agency under specified circumstances
- s.53 Power to takeover an approved agency in specified circumstances (relating to contravention of terms or inability to deliver services)
- s.56 Ministerial power to order suspension or cease of activity where reasonable grounds to believe there is likely harm to safety etc.
- s.58 Ministerial power to delegate in writing any of the Ministers’ powers or duties under the Act, to any person or group of persons, subject to the limitations set out in the delegation.

- s.61 Power to appoint program supervisors
- s.68 L-G has extensive regulation-making powers covering all aspects of the statute (list s 45 areas for regulation)

### **Community Care Access Corporations Act, 2001**

#### Description

The CCAC Act, 2001 defines the structure of CCACs and the manner in which they fit into the scheme of the LTC Act. The Minister and LG can exercise significant control over CCACs through this legislation. The Act provides that the Minister's powers and duties under this Act may be delegated to "any person or persons" (s.19).

#### Governmental Powers under the Act

- s.2 Ministerial power to designate, by regulation, a CCAC
- s.3 Ministerial power through regulation to deem a CCAC to be an approved agency under the LTC Act.
- s.6 CCAC not to acquire or dispose of real property or borrow money without Minister's approval
- s.7 LG to appoint CCAC Boards of Directors
- s.10 LG to appoint, by order CCAC Executive Directors.  
Minister to fix remuneration of CCAC Executive Directors
- s.11 Minister may issue mandatory directions re: exercise of CCAC rights and duties under the Act (the Regulations Act does not apply to such directions)
- 12. Minister may require an audit of a CCAC
- 13. Minister to receive annual report from CCACs and may specify the information to be included
- 14. Minister may appoint a supervisor for a CCAC if the Minister considers it to be in the public interest to do so and may specify the supervisors powers and duties and issue directions to the supervisor

- 18 Minister shall make CCAC annual reports available to the public and may make available such other info as considered necessary in the public interest
- 19 Minister may authorize, in writing, any person or persons to exercise any of the Ministers powers or duties under this Act, subject to such restrictions as the Minister may impose
- 21 Minister to undertake comprehensive review of the Act in 5 years
- 22 Minister may make regulations a) prescribing those things stated to be required to permitted to be prescribed by regulation in the act; b) prescribing restrictions on CCACs; c) prescribing rights powers and duties of Executive Directors of CCACs

## **Public Hospitals Act**

### Governmental Powers

- s.3 Minister to administer and enforce the Act and its Regulations
- s.4 Minister must approve of a) mergers and amalgamations; b) use of premises as a hospital; c) addition of premises or buildings to a hospital ; d) sale of hospital premises or land.
- s.5 Minister may pay any grant, make any loan and provide any financial assistance to a hospital if the Minister considers it in the public interest to do so, and may attach terms and conditions
- s.6 Minister may issue various directions incl shutdown & amalgamation to hospitals in receipt of directions from the Health Restructuring Commission prior to April 30 1999
- s.8 LG may appoint investigators re: hospital quality of care
- s.9 LG may appoint a supervisor on the recommendation of the Minister
- 9.1 LG and Minister to consider public interest in making decisions under this act
- 32 Minister, with the approval of the LG has regulation-making powers in an extensive list of specified areas
- 32.1 Minister may assign hospitals to classifications and/or grades and maintain a list of hospitals

## **Independent Health Facilities Act**

This legislation governs independent health facilities, such as free-standing ultrasound and MRI clinics.

s.4 Minister to appoint Director of Independent Health Facilities

Minister to designate IHFs subject to LG approval, and the services for which a facility fee may be charged

Notice of intention to designate must be published 30 days ahead in the Gazette

s.5 The Minister may authorize the Director to request one or more proposals for the establishment and operation of IHFs. The decision must be based on consideration of listed factors.

s.9 Minister may direct refusal to issue licence after RFP issued

s.19 Power to direct revocation or non-renewal of IHF licence based on enumerated considerations. The LG has the power to revoke such a direction.

s.24 Minister to pay for services provided by IHF prescribed amounts; may pay additional amounts to IHF's e.g. capital costs - or costs of establishing; may delegate these powers

s.25 Power to appoint inspectors

37 Minister may collect personal information necessary for administration of this or other specified related acts

41 Minister to prepare annual report under this Act

42 LG has extensive regulation-making powers re: the matters covered by this Act.

## **Mental Health Act**

Note: the review below is not of all Ministerial or governmental powers under the Act, but only those with a potential impact on the structures through which mental health services are delivered

- s.9 Power to appoint advisory officers to assist in all matters pertaining to mental health
- s.10 Minister may pay provincial aid to psychiatric facilities
- s.31 Power to transfer patients to institutions outside Ontario
- 80.02 Minister may designate psychiatric facilities and classify them
- s. 81 LG has extensive regulatory powers concerning the creation and governance of psychiatric facilities (as well as over other aspects of mental health)

### **Charitable Institutions Act (Homes for Aged)**

This is one of the three long-term care facilities acts. The Minister has certain powers and duties under this Act relating to Homes for Aged, such as the power to make grants in excess of the operating subsidy prescribed by regulation and to enter into related service agreements.

Under s.9 covering Home for the Aged, the Minister must give statements to residents concerning allowable charges for accommodation, shall designate placement coordinators, shall designate priority veteran beds, and ensure veteran preference. With the consent of a residents' council, the Minister may appoint a residents' council assistant to assist the residents' council in carrying out its responsibilities.

Section 10 deals with the suspension or revocation of Ministerial approvals to operate as a home for the aged, and prescribes the basis for Ministerial decisions on this subject.

Section 11 provides powers to the Minister to take over a Home for the Aged, where s/he reasonably believe specified circumstances to obtain

s.12 provides extensive regulation-making powers to the LG relating to the matters covered by the Act.

### **Homes for Aged or Rest Homes Act**

Under this long-term care facilities Act the Minister's role is to approve homes run (mostly) by municipalities, to designate placement coordinators, to approve capital expenditures, provide additional grants etc., and enter into related service agreements. There are also powers to take control under exceptional circumstances, and extensive regulation-making powers in the LG relating primarily to the governance of the facilities covered.

## **Nursing Homes Act**

Under this long-term care facilities Act the government has the following authority:

- s.3 The Minister is responsible for the administration and enforcement of this Act and the regulations.

Minister required to appoint a Director under the Act

Minister to set licence fees.

- s.5 Minister can block the issuance of a licence by the Director where the Minister finds it is not in the public interest to operate the home in the proposed area, based on prescribed factors

Service agreements are required with the Crown in the right of Ontario

As with the other long-term facilities Acts, the Minister has authority to run the home where a licence is revoked, to designation of placement coordinators, to ensure preference for veterans, and to provide capital funding or additional grants and impose related conditions. Operating subsidies are to be set by regulation.

Under s. 20.1 the power to enter into mandatory service agreements with providers can be delegated to a person authorized in writing to negotiate and sign service agreements (despite s.6 of the Executive Council Act which otherwise requires Ministerial signature or LG approval)

## **Mental Hospitals Act**

Institutions under this Act are designated by LG Regulation, who is also empowered to make such regulations as are necessary for carrying out the Act. The Ministry has authority over the administration of the Act, and all Ministerial obligations under the Act may be delegated (s.6). Minister to contribute to costs as prescribed by regulation. Minister may issue certificates approving homes for pts released from MHs (s.12).

## **Laboratory and Specimen Collection Centre Licensing Act**

Minister may appoint inspectors and the Director of Laboratory and Specimen Collection. The Minister may bar issuance of a licence by the Director, acting in the public interest.

19. Minister may enter into an agreement with an agency or agencies designated in the

regulations to provide for the examination and evaluation of the performance of tests in laboratories including the manner and frequency of such examinations and evaluations, the reports thereon and payment therefor.

20. Minister may also establish a committee of no less than 5 persons to set standards

### **Homes for Special Care Act**

2. Minister is responsible for the administration of this Act.
5. The Minister may license homes for special care and may renew or cancel the licences on such terms and conditions as the regulations prescribe.  
Minister may pay for care as prescribed by regulations
6. LG may declare Mental Health Act to apply
7. LG has regulatory powers with respect to homes for special care

### **Private Hospitals Act**

This Act grandparents private hospitals operating under the authority of a licence issued before 29 October, 1973. The Act deals with renewal of such licenses and grants the Minister powers to intervene if necessary. The Minister administers and enforces this Act and its Regulations. It is mentioned for completeness.