Ontario Health Coalition

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Summary

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Bill 36 LHINs Legislation Analysis

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Bill 36 was introduced in late November and has passed second reading. It has been referred to committee for hearings.

In Bill 36 the Ministry of Health and Long Term Care has given itself major new powers to order health system restructuring and contracting out.

The legislation covers hospitals, certain psychiatric facilities, long term care facilities (public, non & for-profit), homecare, community mental health and addiction agencies, community health service providers, community health centres and others by regulation. It does not include family doctors, chiropodists, dentists, optometrists, independent health facilities, labs, public health and certain corporations of health professionals. If the purpose of the legislation is to create an integrated health system, it is impossible to see how this could be done without the inclusion of the major providers of primary health care.

The legislation centralizes - rather than regionalizes - control over the health system. The Minister shall issue a strategic plan for the health system. The LHINs are appointed by cabinet and will be provided with funding from the Ministry at the Minister’s discretion. They will be bound by Accountability Agreement to allocate that funding and find integration opportunities following the direction of the Minister's strategic plan. In turn, in their regions, the LHINs will come to Service Accountability Agreements with the health providers covered in the legislation. These Service Accountability Agreements will be required to comply with the direction of the strategic plan set out by the Minister. They will be backed by court order. The legislation overrides current provisions for democracy and community control over health provider organizations. The legislation mandates the LHINs to seek opportunities to transfer or merge services, to coordinate interactions and create partnerships (between non-profits or for-profits).

The most recent major round of health restructuring through the creation of the Health Restructuring Commission in 1996 covered only hospital services and did not include the extensive powers and scope set out in this legislation.

This is a very complex piece of legislation with many implications that will no doubt lead to much legal wrangling if it is passed. Some of the major issues of interest to patients, caregivers, careworkers, health professionals and providers are covered in our analysis. However, the full implications of the legislation’s provisions pertaining to powers to transfer property and services, the funding arrangements and implications for hospitals with deficits, and the amendments to other legislation cannot be covered here.

There are some significant dangers in this legislation. While the legislation specifies how the LHINs, Ministry and cabinet can exercise their powers to order restructuring and indemnifies them from liability for those decisions, it is short on provisions for democratic control, public input, public notice, and principles to guide this health restructuring. For those of us who support an enhanced and strengthened public non-profit health system, this legislation does nothing to extend the public health system or promote non-profit health care. In fact, the legislation promotes privatization in several ways and facilitates the spread of competitive bidding through the hospital system.

Some of the main concerns with the legislation are:

1) The provisions for democratic input and community control are weak or non-existent.

- the legislation supercedes democratic safeguards set out in other pieces of legislation.

- the Minister of Health is not held to any democratic process for his strategic plan or his restructuring decisions.

- the provisions for community input are vague and to be left to regulation.

- all democratic safeguards are inadequate: there are no provisions for community appeal, few requirements for public notice, inadequate protection from conflict of interest, no protection of equality-seeking groups.

2) The legislation facilitates privatization.

- cabinet is expressly given new powers to order wholesale privatization of non-clinical services.

- there is no protection or promotion of non-profit and public delivery of services, in fact the legislation empowers the Minister to order these services to be closed down but does not give him the power to do the same to the for-profits.

- there is no protection against OHIP services being cut. In fact, LHINs may insulate the Minister from the political consequences of such cuts.

- there is no protection against a corporate for-profit bias on LHINs boards or among key LHINs personnel.

- the current Ministry strategy of spreading competitive bidding through key acute care services in hospitals will create new opportunities for for-profit corporations to bid on services. There is no protection against this for-profit privatization in the legislation.

3) The principles governing the direction of health restructuring and accountability for the government are inadequate.

- although all health providers covered are made accountable through Service Accountability Agreements to be backed by court order, the Ministry itself is held only to the undefined principle of acting in the public interest in the Preamble (not legally binding) to the legislation.

- Canada Health Act principles of comprehensiveness, universality, accessibility, portability and public administration are not included.

- The lack of clear direction or principles to protect the public interest is of deep concern since recent speeches and interviews by the Health Minister indicate that his strategic direction is to centralize and consolidate hospital services and community mental health agencies. Under the provincial “wait times strategy” the Ministry is implementing a competitive bidding system for hospital services such as cataract surgery or hip and knee replacements. This bidding system is structured to result in fewer hospitals providing such services, thereby worsening inequalities of local access to health services.

4) The legislation sets up an expensive extra administrative tier for no clear benefit.

- the 14 LHINs entities will operate like regional ministries with awesome powers, heavy administrative requirements, and little public accountability for improving the health system. Experts agree that the legislation and restructuring is likely to spawn many expensive legal batttles. The added administration and legal fees will be costly. Yet there is no promise of improved comprehensiveness, or accessibility, or extention of public coverage envisioned in this legislation. No rationale is given for setting up the LHINs or for centralizing powers.

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