

Ontario proposes new legislation for private health facilities and surgical centres

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On February 21, 2023, the Ontario government tabled [Bill 60, *Your Health Act, 2023*](#) (Bill 60) [PDF], following its recent announcement of its plan to reduce wait times for surgeries and procedures in Ontario. If passed, Bill 60 will repeal the existing *Independent Health Facilities Act* (the IHFA) and replace it with the *Integrated Community Health Services Centres Act, 2023* (the New Act).

The New Act regulates “integrated community health services centres”, which are health facilities that may be licensed to provide services in respect of which facility costs are paid by the Ontario government, including surgical and/or diagnostic services (Centres). The IHFA includes a similar definition for health facilities currently referred to as “independent health facilities”, which does not specifically reference surgical or diagnostic centres. When the New Act comes into force, licences granted under the IHFA will continue to be in force and will be governed by the New Act, subject to the same limitations and conditions that applied to the licence under the IHFA.

The New Act defines “facility costs ” in a similar manner to the IHFA, and it may be the case that the facility costs applicable to the Centres under the New Act will be set out in the Schedule of Benefits and/or in transfer payment agreements that provide for global budgets for a Centre.

The New Act provides that the Director, a person appointed by the Minister of Health as the Director for integrated community health services centres, may specify, as a limitation or condition of a licence, the list of services or types of services in respect of which the Centre is licensed. We expect that the determination of the specific modalities or types of surgeries for which the Centres may bill facility costs will be left to the Director’s discretion. Licences issued under the IHFA similarly restrict licences to specific modalities for which the licence holder may charge the Ontario government facility fees. However, based upon the name “integrated community health services centres” used in the New Act, we anticipate that licences issued under the New Act will have broader application and will licence and enable ambulatory centres to offer patients a broader range of integrated surgical, diagnostic and other health services.

How will licences be issued?

Prior to recent initiatives by the current Ontario government, there were no new licences issued under the IHFA since the 1990s. The New Act, if passed, contemplates that new licences will be issued following a call for applications by the Minister of Health or the Director made either:

- directly to one or more specified persons, or
- by publishing a call for applications to the public.

What will licence applications need to include?

A licence application for a Centre under the New Act must include:

- a detailed description of the services to be provided in the proposed Centre and how it will provide connected and convenient care, including the applicant's:
 - capacity to improve patient wait times.
 - plans to improve patient experiences and access to care in the proposed Centre, and
 - plans to integrate with the health system.
- details of the applicant's quality assurance and continuous quality improvement programming, including policies for infection prevention and control.
- the business, clinical and professional experience of the applicant, including how the applicant will meet all governance and management responsibilities of the proposed Centre.
- details of the physical nature of the Centre, including address and distance to other Centres and hospitals.
- a detailed staffing model for the Centre and evidence of sustainability of the model, including:
 - staff classification with rates of compensation and ranges of compensation.
 - the number of staff required for each position.
 - the model for staffing anesthesia delivery, if applicable, and
 - information regarding the hospital privileges of physicians who provide services at the Centre, if applicable.
- a description of how the applicant has consulted with health system partners in the development of the application, including any endorsement of the application by health system partners.
- a description of current linkages with health system partners and how the applicant will maintain and improve those linkages to promote optimal patient care pathways.
- a description of how the proposed Centre will address the health equity needs of diverse, vulnerable, priority and underserved populations, taking into account linguistic needs in the region specified in the call for applications.
- a description of any uninsured services that are being provided or will be provided at the proposed Centre, including:
 - a description of any charges for the uninsured services, and

- a detailed description of the processes for providing information and obtaining patient consent in connection with any uninsured services, and
- such other information, as is specified in the call for applications.

The requirement for licence applicants to describe the uninsured services that will be provided at the Centre is a new requirement that has not previously been required by any other participant in the health industry in Ontario.

What will the Director consider when determining whether to issue a licence?

The New Act explicitly states that the issuance of a new licence is discretionary and the Director is not required to issue a licence to any person, and the Director may prefer any application for a licence over any other applications.

The Director will issue licences only when the applicant has provided the information referred to above, and the Director is of the opinion that:

- the Centre will be operated in accordance with specific standards set out in the New Act, including compliance with applicable law and quality and safety standards.
- the applicant's past conduct affords reasonable grounds to believe that the Centre:
 - will be operated with honesty and integrity and in accordance with the law, and
 - will not be operated in a manner that is prejudicial to the health, safety or welfare of any person.
- the licence should be issued after taking into consideration:
 - the nature of the services to be provided in the proposed Centre.
 - the extent to which the services are already available in Ontario.
 - the extent to which the services to be provided in the proposed Centre will promote connected and convenient care, including the applicant's:
 - capacity to improve patient wait times.
 - plans to improve patient experience and access to care in the proposed Centre, and
 - plans to integrate with the health system.
 - the current and future need for the services in Ontario, taking into account the needs of diverse, vulnerable, priority and underserved populations and linguistic needs.
 - the potential impact on health system planning, including the availability of sustainable health human resources
 - whether the issuing of the licence would improve the availability of the services in the region specified in the call for applications.
 - the potential impact on the co-ordination of health services, based on consultations with health system partners.
 - the protected cost in public money for the operation of the proposed Centre.
 - the availability of public money to pay for the operation of the proposed Centre, and
 - any other matter that the Director considers relevant to the management of the healthcare system.

What other considerations would be applicable to licences issued under the New Act?

Certain other key features of licences issued under the New Act include:

- explicit prohibitions to ensure that Centres do not charge patients for insured services, which generally repeat prohibitions already set out in other applicable legislation, including:
 - no person shall:
 - charge a facility cost or accept payment of a facility cost unless the facility cost is charged to, and the payment is accepted, from the Minister of Health or a person prescribed by regulation.
 - charge or accept payment for providing a person insured under the Ontario Health Insurance Plan with a preference in obtaining access to an insured service at a Centre.
 - obtain or accept a benefit, direct or indirect, for providing an insured person with a preference in obtaining access to an insured service at a Centre, or
 - refuse to provide an insured service for any reason relating to the insured person's choice not to pay for any product, device or service offered at a Centre.
- an inspection body will be appointed by regulation which will govern safety, quality and inspections of Centres, and the New Act has detailed provisions relating to these requirements.
- licences will be issued or renewed for no more than five years, unless a longer maximum term is set out in the regulations, and licence holders will be required to reapply for licences.
- licences will not be issued for a Centre that is located within the same building as, or in a building that is adjacent to, a private hospital, and regulations established in the future could prescribe additional locations where Centres may not be located.
- each licence holder will require Director approval for any relocation of the Centre or change of control of the licence holder (similar to existing requirements under the IHFA).
- the licence may not be used as security (similar to existing requirements under the IHFA).
- the Director may revoke or suspend a licence if certain criteria is met, including if services have not been provided at the Centre for a period of at least six months, and
- licence holders will not be able to rely on a due diligence defence for any failure to comply with the New Act.

The New Act includes a provision which states that no person shall obtain, receive or attempt to obtain or receive any of the following that the person is not entitled to obtain or receive under the New Act:

- payment for or in respect of a Centre; and
- payment for or in respect of a service provided in a Centre.

A similar provision is included in the IHFA.

Other Legislative Changes

Bill 60 also amends several other acts including the *Commitment to the Future of Medicare Act, 2004*, the *Fixing Long-Term Care Act, 2021* and the *Freedom of Information and Protection of Privacy Act*, the *Health Insurance Act*, and the *Public Hospitals Act* to broaden the definition of “physician” and certain other regulated health professionals to allow for the definition to include a person prescribed in the regulations.

The *Oversight of Health Facilities and Devices Act*, prior legislation previously passed to replace the IHFA, which has not received Royal Assent, will also be revoked if Bill 60 is passed.

Bill 60 also includes provisions which would allow healthcare providers that are registered in other provinces and territories in Canada to work in Ontario without having to register with the applicable health regulatory college in Ontario, referred to by the Ontario government as the “as of right” rules.

The considerations applicable to hospitals and other health facilities in Ontario engaging health professionals pursuant to the “as of right” rules are addressed in a separate [Osler Update](#).

Next steps

Bill 60 will need to undergo a second and third reading by the Legislative Assembly of Ontario before it can receive Royal Assent and be proclaimed into force.

Stakeholders should be cognizant of the application requirements and the considerations applicable to issuing new licences under the New Act and continue to monitor any changes or updates to the New Act that may be implemented prior to the New Act coming into force.

Those considering applying for licences under the New Act should ensure that they are engaging with public hospitals, physicians and other industry participants to establish Centres that will achieve the desired reduction in wait times, improved patient experience, and integration with the health system and other considerations described above.