

April 2021

## Backgrounder

# Ontario Announces the *Advancing Oversight and Planning in Ontario's Health System Act, 2021*

### Context

On April 27, 2021, the provincial government introduced Bill 283, the [\*Advancing Oversight and Planning in Ontario's Health System Act, 2021\*](#). If passed, this bill would create three new Acts:

- The *COVID-19 Vaccination Reporting Act, 2021*;
- The *Health and Supportive Care Providers Oversight Authority Act, 2021*; and
- The *Psychology and Applied Behaviour Analysis Act, 2021*.

In addition, Bill 283 proposes to amend the *Medicine Act, 1991*, to include the regulation of physician assistants under the College of Physicians and Surgeons of Ontario (CPSO).

The Ontario Hospital Association (OHA) has prepared this backgrounder to provide members with a high-level and non-exhaustive overview of the components of Bill 283 that may be of interest to hospitals. For further information on the legislation, please refer to the provincial government's news release ([link](#)) and accompanying backgrounder ([link](#)).

### Key Highlights of Legislation

Bill 283 is an omnibus bill with various legislative changes that are aimed at strengthening Ontario's health care workforce and the delivery of high-quality care. Another stated focus is to enhance the province's response to the COVID-19 pandemic by promoting the timely reporting of COVID-19 vaccine data to the Ministry of Health (MOH).

The following non-exhaustive list of proposed changes may be relevant to hospitals:

- [Schedule 1](#) establishes the *COVID-19 Vaccination Reporting Act, 2021*, which if passed, would require persons or entities who administer the COVID-19 vaccine to disclose to the MOH COVID-19 vaccine related data collected from individuals who consent to the disclosure of this information.
- [Schedule 2](#) establishes the *Health and Supportive Care Providers Oversight Authority Act, 2021*, which if passed, would establish the Health and Supportive Care Providers Oversight Authority (Authority) as a new regulatory body that would provide oversight of personal support workers (PSWs). The Authority is also be designed to allow for the addition of other health and supportive care providers in the future.
- [Schedule 3](#) amends the *Medicine Act, 1991*, to establish physician assistants as a new class of members and protect the title of "Physician Assistant" in Ontario.

## LEGISLATIVE UPDATE

- Schedule 4 would repeal the *Psychology Act, 1991*, and replace it with the *Psychology and Applied Behaviour Analysis Act, 2021*, to regulate the profession of Applied Behaviour Analysis (ABA) as a new profession under the current College of Psychologists of Ontario.

### I. **Creation of the *COVID-19 Vaccination Reporting Act, 2021***

Schedule 1 proposes to establish the *COVID-19 Vaccination Reporting Act, 2021*, legislation that creates a range of information provision requirements with respect to individuals receiving the COVID-19 vaccine, information about the vaccine itself, as well as information relating to the vaccinator. A vaccinator is defined in section 1 as “any person or entity who administers a vaccine to an individual in Ontario”, while the vaccine is defined as “a vaccine to protect against COVID-19”.

Pursuant to section 2, this legislation requires that each vaccinator ensure the following information is disclosed to the Ministry of Health in respect of “every individual to whom the vaccinator administers a vaccine and every individual to whom the vaccinator declines to administer a vaccine”, unless the individual has not supplied the information to the vaccinator:

1. The name or names of the individual, including a legal name, an alternate name or an alias.
2. The telephone number or email address of the individual.
3. The individual’s date of birth.
4. The individual’s sex.
5. The individual’s Ontario health card number.
6. Any other information provided for in the regulations.

Every vaccinator is also required in the proposed section 3 to “ensure that the following information is disclosed to the [Ministry of Health] with respect to each dose of a vaccine administered by the vaccinator”:

1. Product name and manufacturer.
2. Date of administration.
3. Lot number.
4. Expiry date.
5. Dose number for the individual it was administered to.
6. The responsible public health unit for the geographic area in which the dose was administered.
7. The anatomical location of injection.
8. The route of administration.
9. Any other information provided for in the regulations.

Pursuant to the proposed section 4, every vaccinator is required to ensure that the following information is disclosed to the Ministry of Health with respect to the vaccinator:

1. The vaccinator’s name.

## LEGISLATIVE UPDATE

2. The vaccinator's contact information.
3. The vaccinator's professional designation and licence number.
4. Any other information provided for in the regulations. [Note: No regulations are currently in place under the proposed *COVID-19 Vaccination Reporting Act, 2021*]

With respect to personal health information, the proposed section 5 grants the Ministry of Health the authority to use and disclose the above-noted information in accordance with the *Personal Health Information Protection Act, 2004* and in accordance with requirements provided for in the regulations under the *COVID-19 Vaccination Reporting Act, 2021*.

Hospitals should be mindful that the significant information gathering requirements found in section 2 do not apply where an individual has not supplied this information to the vaccinator. However, the remaining requirements found in sections 3 and 4 do not have similar language waiving compliance in select circumstances. It should be noted that the Minister of Health also has authority under a proposed subsection 6(1) to make directives respecting the "form, manner and timing of the disclosures" required under sections 2, 3 and 4. Every vaccinator, including hospitals, will be required to comply with these directives, if they are issued.

## II. The Health and Supportive Care Providers Oversight Authority

Schedule 2 proposes to enact the *Health and Supportive Care Providers Oversight Authority Act, 2021*, which if passed, would create the Health and Supportive Care Providers Oversight Authority (the "Authority") to serve as a new regulatory body providing oversight of personal support workers (PSWs) and "any other prescribed class" of health and supportive care providers in the future.

As stated in the government's news release, the *Health and Supportive Care Providers Oversight Authority Act, 2021* is broadly structured as enabling legislation, with further operational details to be set out in regulation, by-laws and policies following consultation with system partners.

Part I of Schedule 2 sets out its interpretive provisions, while Part II goes on to establish the Authority and its governing rules. Pursuant to section 4, the Authority is proposed to be governed by a board composed of "no fewer than eight and no more than 12 directors" appointed by the Lieutenant Governor in Council (LGIC), with additional directors appointed by the members of the board. The board further appoints a Chief Executive Officer (CEO) to discharge a number of duties and obligations under the legislation.

The objects of the Authority are found in section 12 and include, without limitation, administering the legislation and its regulations (including enforcement), establishing and maintaining educational and skills-based qualifications for each class of registrants, and establishing and maintaining codes of ethics applicable to each class of registrants. The Authority must also enter into a memorandum of understanding with the Minister of Health, who is entitled to appoint a supervisor to assume control of the Authority if the Minister considers it to be in the public interest pursuant to the proposed section 14. The Authority must comply with policy or operational directions issued by the Minister as well.

## LEGISLATIVE UPDATE

### Registration with the Authority

Part III establishes the process for applying for registration with the Authority. Pursuant to section 26, applicants can apply to join the PSW class of registration or any other prescribed class of registration. Applicants must meet the prescribed criteria for registration and shall be refused registration if they meet the prescribed prohibited grounds for registration, all of which shall be included in regulations.

Refusals to register an applicant and decisions to impose conditions on a registrant may be submitted to the Health Professions Appeal and Review Board (HPARB) for a written review under the proposed sections 28 and 29.

Part IV establishes the rules that apply to registrations. As listed in section 32, the CEO is authorized to establish and maintain a registration of registrants, and to make available to the public:

- The names of registrants;
- Any other information that may be prescribed in respect of registrants; and
- Any other information that may be required by the Authority's by-laws.

Notable for registrants, section 33 proposes to require mandatory reporting with the Authority if a registrant is found guilty of an offence, other than a prescribed offence, and requires disclosure of detailed information, including the nature and description of the offence, among other requirements in subsection 33(3). Similar reporting requirements are found in section 34 if a registrant is charged with an offence or has bail conditions imposed.

Subsection 35(1) proposes to create a positive obligation on registrants to “file a written report with the Authority if the registrant has reasonable grounds to believe that another registrant has sexually abused a person who receives health services or supportive care services.” A similar obligation, with respect to reporting a member of a College within the meaning of the *Regulated Health Professions Act, 1991*, is also included at subsection 35(2). The term “sexual abuse” is defined in detail in subsection 1(1) and is substantially similar to the defined term in the *Regulated Health Professions Act, 1991*.

At the request of the Minister, the Authority is required to collect information directly from registrants as is “reasonably necessary for the purpose of human resources planning or research” [subsection 36(1)]. The phrase “human resources planning” is defined in the legislation to mean “ensuring the sufficiency and appropriate distribution of registrants in Ontario.” While this Ministerial power is subject to limitations in subsection 36(6), registrants will be required to comply with such information requests from the Authority pursuant to subsection 36(4).

Finally, pursuant to section 37, any person who chooses not to register with the Authority may still provide health services or supportive care services, but they cannot hold themselves out as a registrant with the Authority or use any visual mark or other identifier established by the Authority for registrants.

## LEGISLATIVE UPDATE

### Complaints, Investigations, Discipline and Offences

Part V establishes the procedures for complaints and investigations. Pursuant to the proposed section 38, the CEO has authority to investigate complaints and may appoint investigators on their own initiative. Investigators have a number of powers detailed in sections 39 – 42 to investigate contraventions of the legislation and its regulations.

As a result of receiving a complaint or following the appointment of an investigator, the CEO also has a range of proposed actions that may be taken, including, without limitation: requiring additional training for registrants, applying conditions to their registration, or referring contraventions of the prescribed code of ethics to the discipline committee. The prescribed code of ethics will be developed in future regulations. Urgent interim action may also be taken pursuant to section 45 in certain circumstances.

Section 46 proposes to authorize the discipline committee, as established by the board, to hear allegations of contraventions of the prescribed code of conduct. They may direct the CEO to revoke, suspend or impose conditions on a registration. Their decisions may be appealed to the appeals committee, which is also established by the board.

Offence provisions are found in the proposed sections 55 and 56 of Schedule 2. These provisions create a range of offences, including furnishing false information in any application of registration or renewal, obstruction of investigations, and failure to comply with sexual abuse reporting, among other listed requirements.

An individual who is found guilty of an offence under section 55 is liable on conviction to a fine of not more than \$25,000, while corporations may be liable to a fine of not more than \$50,000. It should be noted that every director or officer of the corporation who “authorized, permitted or acquiesced in the commission of the offence” is deemed to be a party to and guilty of the offence and on conviction is liable to a fine of not more than \$25,000.

### Regulations and Other Matters

As previously noted, the *Health and Supportive Care Providers Oversight Authority Act, 2021* is broadly structured as enabling legislation, with further operational details to be set out in regulations. Section 62 proposes a broad range of areas that may be addressed by these regulations, including, the following non-exhaustive list:

- exempting any person or class of person from any part of the legislation;
- prescribing classes of registrants in addition to the PSW class, and prescribing rules that apply to such classes;
- prescribing the code of ethics for classes of registrants; and
- issues respecting the issuance of visual marks and other identifiers established and maintained by the Authority.

Part X of Schedule II also proposes to make consequential amendments to various other pieces of legislation consistent with the above legislation. These amendments include, without limitation,

## LEGISLATIVE UPDATE

changes to the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*, the *Excellent Care for All Act, 2010*, the *Quality of Care Information Protection Act, 2016* and the *Personal Health Information Protection Act, 2004*.

### III. Other Regulatory Health Profession Changes

#### ***Regulating “Physician Assistants” under the Medicine Act, 1991***

Schedule 3 of Bill 283 proposes to amend the *Medicine Act, 1991* by creating a new section 4.1 establishing “physician assistants” as a class of members under that legislation.

Similar to restrictions on authorized acts set out in the *Medicine Act, 1991*, a member who is a physician assistant shall not perform an act under the authority of section 4 [of the *Medicine Act, 1991*], unless:

- (a) the performance of the act by the member is permitted by the regulations and the member performs the act in accordance with the regulations; or
- (b) the act is ordered by a person who is a member of the College, other than a physician assistant, and who is authorized to perform the act.

#### ***Enacting the Psychology and Applied Behaviour Analysis Act, 2021***

Schedule 4 of Bill 283 proposes to enact the *Psychology and Applied Behaviour Analysis Act, 2021*, while repealing *The Psychology Act, 1991*. If passed, a person who was a holder of a certificate of registration under the previous legislation on the day before entry into force, will be deemed to be a holder of certificate of registration under the new legislation, subject to any terms, conditions or other limitations on their registration.

Members of the College will be required to comply with the authorized acts requirements in section 4, while the scope of practice for psychology and applied behaviour analysis is set out in subsections 3(1) and 3(2):

- The practice of psychology is the “assessment of behavioural and mental conditions, the diagnosis of neuropsychological disorders and dysfunctions and psychotic, neurotic and personality disorders and dysfunctions, the prevention and treatment of behavioural and mental disorders and dysfunctions and the maintenance and enhancement of physical, intellectual, emotional, social and interpersonal functioning.”
- The practice of applied behaviour analysis is the “assessment of covert and overt behaviour and its functions through direct observation and measurement, and the design, implementation, delivery and evaluation of interventions derived from the principles of behaviour in order to produce meaningful improvements.”

## LEGISLATIVE UPDATE

The previous “College of Psychologists of Ontario” is proposed to continue under the name “College of Psychologists and Behaviour Analysts of Ontario”. Related amendments are made to the *Regulated Health Professions Act, 1991*.

### Timeline and Next Steps

If passed, Bill 283 would come into force on the day it receives Royal Assent. However, several of the Schedules to Bill 283 and certain provisions within these Schedules would come into force on a day to be named by proclamation of the LGIC.

The OHA will continue to monitor developments related to Bill 283 and will be soliciting member feedback as the bill moves forward through the legislative process. Members are welcome to provide feedback at any time.

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