

## LEGISLATIVE UPDATE

October 2023

## Backgrounder

### Bill 135: *Convenient Care at Home Act, 2023*

#### Context

On October 4, 2023, the provincial government introduced Bill 135: *Convenient Care at Home Act, 2023* (Bill 135). The Bill follows the government's [announcement](#) that it intends to modernize home care delivery in Ontario and will transition home and community care to Ontario Health Teams.

If passed, Bill 135 will amend the *Connecting Care Act* (CCA) to consolidate the 14 Local Health Integration Networks (LHINs) into a new service organization named "Ontario Health atHome." Bill 135 sets out the requirements and powers of the new service organization. The legislation also includes minor technical amendments aimed at transferring and transitioning existing legal requirements or references to LHINs to Ontario Health atHome.

For further information about Bill 135, please visit the provincial government's news release, linked [here](#). You can find a copy of the proposed Bill linked [here](#).

#### I. Amalgamation of LHINs

Bill 135 creates a new section under the CCA, "Part III.1", which outlines the composition and requirements of the new service organization. In this Part, the CCA would amalgamate the 14 LHINs which will be continued as a corporation<sup>1</sup> under the name of "Ontario Health atHome."

The new organization would assume all staff, service contracts, assets, liabilities, rights and obligations of the existing LHINs. Ontario Health atHome would be a crown agency, a subsidiary of Ontario Health (OH) and considered a health service provider under the CCA. OH would be responsible for funding and overseeing Ontario Health atHome.

The government has proposed that, as Ontario Health Teams (OHTs) mature, responsibility for providing home care would be transitioned to designated OHTs (and/or health service providers working within designated OHTs) and Ontario Health atHome's role would shift to providing designated OHTs and/or health service providers with back-office and care coordination supports, including by assigning care coordinators to work under the direction of client providers. It is anticipated health service providers would enter into service contracts with Ontario Health atHome to purchase these operational supports.

#### II. General Powers and Objectives of Ontario Health atHome

##### Main Objectives

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<sup>1</sup> Ontario Health atHome would not be subject to the *Not-for-Profit Corporations Act, 2010, Corporations Information Act* nor the *Charities Accounting Act*, except where prescribed in legislation.

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The objectives of Ontario Health atHome as set out in the legislation, are to:

1. Provide home and community care services.
2. Provide the following operational supports to client providers to enable them to deliver home and community care services to their patients:
  - a. Care co-ordination services.
  - b. The assignment of employees of the Ontario Health atHome to work under the direction of a client provider to deliver care co-ordination services.
  - c. Any of the following shared services:
    - i. Administrative or business support services that facilitate the management of service contracts with providers of home and community care services.
    - ii. Enablement and support of patient care technology platforms.
    - iii. Any other shared services that may be prescribed.
    - iv. Any other operational supports that may be prescribed.
3. Provide information to the public about, and referrals to, health and social services.
4. Provide placement management services to their patients or to patients of other health service providers or OHTs.

### Use of Revenue

The legislation outlines the powers of Ontario Health atHome that require either Cabinet or Minister approval, which includes but is not limited to: borrowing or lending money; making charitable donations; or entering into an agreement for the provision of services outside Ontario. A full list of powers requiring approval is found at s. 27.8(3) to (4) of the legislation.

### Personal Health Information

The legislation provides authority for a health service provider or OHT that is funded to provide home and community care services, to disclose a record of personal health information for the purpose of enabling the Minister to do the following:

- i. Monitor and evaluate home and community care services; or
- ii. Monitor and assess the health, safety and wellbeing of persons applying for or receiving home and community care services.

### Ontario Health (OH) Directives

The legislation grants authority for OH to issue directives to Ontario Health atHome. Any directives issued must be published by OH on its website.

## III. Governance and Corporate Requirements of Ontario Health atHome

The legislation sets out the governance and corporate obligations of Ontario Health atHome.

### Board of Directors

Ontario Health atHome will have a board of directors consisting of members who are appointed by the Minister. The board must consist of no more than 6 members appointed by the Minister and no more than 3 members appointed by the Minister on the recommendation of OH.

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The legislation sets out additional requirements of the board and its officers under s.27.9 to 27.14. Additional details, such as member terms, will be prescribed in future regulations.

### Duties of Directors

The legislation confirms that the standard of care obligations under Ontario's *Not-for-Profit Corporations Act, 2010* (ONCA) applies to Ontario Health atHome. The obligations apply to directors and officers in exercising their duties and include the requirement to act honestly and in good faith with a view to the best interests of the corporation and to exercise the care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances.

### Liability and Indemnity

The legislation also allows for the indemnification of the board and its directors as allowed under s. 46 of ONCA. These indemnities are subject to Ministerial approval.

## IV. Contractual Impacts

### Disclosure of Information re: Service Contracts

The legislation grants OH the authority to require Ontario Health atHome to disclose information relating to service contracts between it and home and community care services, including confidential pricing and volume information. The Minister is also granted authority to direct OH to disclose this information, if the Minister requires it for the purposes of exercising powers and duties under the CCA.

### Commentary re: Anticipated Benefits

The provincial government has indicated that it anticipates a potential benefit of amalgamation will be that service provider organizations who currently manage contracts with multiple LHINs would benefit from reduced administrative burden by having all their contracts with a single organization. It is also anticipated that OHTs and health service providers would benefit from the efficiencies of a central shared services model to support their local provision of home care.

## V. OHT Designations

Bill 135 enables technical amendments to the CCA to offer greater clarity around OHT designations. Substantively, the requirements remain the same as currently outlined in the CCA and includes a requirement that at least 3 of the following type of services be provided within an OHT:

- i) Hospital Services;
- ii) Primary care services;
- iii) Mental health or addictions services;
- iv) Home and community care services;
- v) Long-term care home services;
- vi) Palliative care services; or,

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- vii) any other prescribed health care service or non-health service that supports the provision of health care services.

As is required under the CCA currently, the requirement to deliver the above-noted services in an integrated and co-ordinated manner remains the same.

The Lieutenant Governor in Council would maintain their authority to make regulations setting out criteria that OHTs must meet to be considered by the Minister for designation, with specificity that regulations may be made pertaining to the types of services an OHT must provide.

### **Amended or Revocation of OHT Designation**

The amendments specify that the Minister may impose additional terms and conditions on a designation. It also permits the Minister to revoke or amend a designation at any time.

## **VI. Related Labour Legislation**

The legislation specifies that the single employer rule under the *Labour Relations Act, 1995*, does not apply to Ontario Health atHome. The single employer rule grants the Ontario Labour Relations Board the power to treat related or associated business as a single employer for the purposes of preserving institutional or contractual rights of a union, by attaching them to a commercial activity rather than the corporate vehicle used.

*The Public Sector Labour Relations Transition Act, 1997* which covers mergers, amalgamation and other restructuring in the public sector, applies upon the amalgamation of the 14 LHINs into the Ontario Health atHome. The predecessor LHIN corporations are considered the predecessor employers and Ontario Health atHome is considered the successor employer for the purposes of the Act.

The OHA will continue to monitor the potential impacts of the above and update members as this issue evolves.

## **VII. Future Regulation-Making Authority**

Bill 135 grants the Lieutenant Governor in Council the authority to make future regulations related to the provision and funding of home and community care services, including governing standards or requirements with respect to these services.

## **VIII. Amendments to Other Legislation**

Bill 135 makes a number of minor technical amendments to the following legislation for the purpose of transferring previous language or requirements of LHINs to Ontario Health atHome:

*Broader Public Sector Accountability Act, 2010*

*Community Safety and Policing Act, 2019*

*Police Services Act*

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*Excellent Care for All Act, 2010*

*Health Protection and Promotion Act*

*Ombudsman Act*

*Pay Equity Act*

*Public Hospitals Act*

*Simpler, Faster, Better Services Act, 2019*

*Smoke-Free Ontario Act, 2017*

*Connecting People to Home and Community Care Act, 2020*

*The People's Health Care Act, 2019*

## Timeline and Next Steps

The Ministry of Health has opened the proposed legislation to public consultation until November 11, 2023. The Ministry has indicated that it is particularly interested to hear about anticipated impacts of the proposed changes including operating and administrative costs or other concerns and challenges.

The OHA is seeking member feedback, if any, and would greatly appreciate your comments by **November 1, 2023**. For further information about the consultation, please visit the link [here](#).

The OHA will provide further updates as they become available. In the meantime, if you have any questions or wish to submit comments, please contact Lindsay Carbonero, Senior Legal Advisor at [lcarbonero@oha.com](mailto:lcarbonero@oha.com) or Ashley MacDougall, Legal and Policy Advisor at [amacdougall@oha.com](mailto:amacdougall@oha.com).