Bill 84: Medical Assistance in Dying Statute Law Amendment Act, 2016

Context

On December 7, 2016, the provincial government introduced Bill 84, the Medical Assistance in Dying Statute Law Amendment Act, 2016.

This bill proposes a series of amendments on provincial issues related to medical assistance in dying (MAID). It follows the passage of federal legislation on MAID in June 2016, which outlined eligibility requirements for patients, and established safeguard measures around the provision of MAID.

The Ontario Hospital Association (OHA) has prepared this backgrounder to provide members with an overview of the proposed legislation, and identify relevant considerations from a hospital perspective. For further information on Bill 84, please refer to the government’s news release or its backgrounder.

General information about MAID is also available through the Ministry of Health and Long-Term Care and the OHA’s End of Life Care and MAID webpage.

Key Highlights of the Proposed Legislation

Bill 84 would amend a number of pieces of legislation to address issues falling under provincial jurisdiction:

- Protections from civil liability for providing MAID would extend to physicians, nurse practitioners (NPs) and persons assisting them, except where a claim is brought for negligence;
- Freedom of information legislation would protect “identifying information” about health care providers and facilities from access to information requests;
- The Coroner of Ontario would be notified of a MAID-related death, but would have discretion over whether to initiate an investigation into the circumstances of the death; and
- Entitlements under contract or statute, including insurance payouts and workplace safety benefits, could not be denied only because of a medically-assisted death.

Legislative Amendments related to Medical Assistance in Dying

The bill proposes to amend the law in four areas, as outlined below.

A. Protections from civil liability

Bill 84 proposes to amend the Excellent Care for All Act, 2010 (ECFAA) to grant protections against civil liability for individuals involved in providing MAID. Specifically, the bill proposes that no action or proceeding for damages can be commenced against a physician, NP, or any other person assisting him or her, where that individual lawfully provides MAID.
LEGISLATIVE UPDATE

This proposed immunity provision would not apply if an action or proceeding was commenced for negligence in the provision of MAID.

These proposed provisions seek to prevent litigation over lawful provision of MAID (i.e. where all the requirements of the Criminal Code are met). It does not extend to other potential areas of liability relating to the provision of MAID, including actions in negligence.

The bill does not make explicit reference to comparable protections from civil liability for institutions such as hospitals and long-term care (LTC) homes.

B. Freedom of Information

Amendments are also proposed to the Freedom of Information and Protection of Privacy Act (FIPPA) and its counterpart, the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The stated aim of these amendments is to “protect clinicians and facilities that provide MAID from being identified under access to information requests.”

The bill proposes that any “identifying information” about MAID be excluded from the application of FIPPA and MFIPPA. “Identifying information” would be defined as being “information that identifies a person or facility or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify a person or facility.”

While the bill proposes a new definition for “identifying information”, the term “facility” is not defined in the bill or through existing provisions of FIPPA or MFIPPA.

C. Coroner’s Processes and Death Reporting

Bill 84 also proposes a number of amendments to the Coroners Act with respect to deaths resulting from MAID. The bill proposes that where a person dies as a result of MAID, the physician or NP who provided MAID would have to notify the Coroner of Ontario (Coroner). The Coroner would then make a determination as to whether an investigation should ensue into the circumstances of the death.

The physician or NP notifying the Coroner would have to provide all information about the facts and the circumstances relating to the death, to inform the Coroner’s opinion about the need for an investigation. Other individuals who have knowledge of the death would also have to provide such information at the request of the Coroner.

The proposed legislation would also clarify that the requirement under the Coroners Act to investigate deaths from “any cause other than disease” would not apply to MAID cases. Corollary amendments would be made to the Vital Statistics Act with respect to registration of deaths in such cases. These amendments would clarify that the Coroner does not need to sign the medical certificate of death unless the Coroner investigates the death.

The bill also proposes to establish a process to review the role of the Coroner in MAID cases, within two years of the bill being passed.

Hospitals should ensure that thorough documentation and record-keeping practices are in place to facilitate any requests from the Coroner for information around MAID cases.
D. Entitlement to Benefits

Through amendments to ECFAA, the bill would also clarify that rights and benefits which would otherwise be available cannot be refused only because of a medically-assisted death. This would apply to entitlements under contract or statute, for example, life insurance payouts or pension benefits.

The Workplace Safety and Insurance Act (WSIA) would also be amended to clarify that a worker who receives MAID is deemed to have died as a result of the underlying injury or disease which led to the MAID request. This would apply to a number of claims and entitlements under WSIA, including survivor benefits.

Non-Legislative Measures

The Government’s news release for Bill 84 also indicated that the province will work to establish a “Care Coordination Service” (CCS) in order to “assist patients and caregivers in accessing additional information and services for MAID and other end-of-life options.” This service would supplement the existing Clinical Referral Service. The Ministry of Health and Long-Term Care has committed to sharing further information regarding the CCS in early 2017.

Additional Information and Next Steps

If passed, Bill 84 would take effect on Royal Assent. The OHA expects this proposed legislation will receive further debate and review at a Legislative Committee when the Legislature returns after its winter break in February 2017.

The OHA continues to monitor legislative developments related to MAID, and will provide members with additional updates and further supports, as necessary.

For more information, please contact Melissa Prokopy, Director, Legislative, Legal and Professional Issues at 416 205 1565 or mprokopy@oha.com or Alice Melcov, Legal and Policy Advisor at 416 205 1359 or amelcov@oha.com