

ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

**Proposed Regulations under
the Integrated Community Health Services Centres Act, 2023**

July 7, 2023



Ontario Nurses' Association

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The Ontario Nurses' Association (ONA) is the union representing 68,000 registered nurses and health-care professionals across Ontario, and more than 18,000 nursing students. Our membership includes thousands of front-line nurses and health-care professionals providing care in hospitals, long-term care (LTC) facilities, public health, community, industry, and clinics.

ONA has spoken out at every stage of Bill 60, the *Integrated Community Health Services Centres Act, 2023* and continues to have foundational concerns with the private delivery of health-care services. The regulations proposed under this Act fail to adequately address these concerns and leave significant gaps that will undermine patient care.

In addition to providing recommendations on how the proposed regulations should be amended to improve patient care and safety, we must draw attention to areas of concern that are completely ignored by these regulations.

The proposed regulations make no mention of staffing plans for the privately-operated clinics, despite repeated assurances from government that the proposed clinics will be required to submit staffing plans demonstrating that nurses and health-care professionals will not be drawn from the public system. It is essential that the government set clear parameters on the staffing models in private surgical clinics, to ensure that appropriate nursing staff are available to respond in an emergency. There is a critical staffing shortage at public hospitals already resulting in surgical delays and the temporary closures of emergency departments, labour and delivery wards, operating rooms, and other areas of care. The government must ensure that privately operated clinics do not exploit the poor working conditions in our public hospitals, created by decades of under-funding, wage-suppression through Bill 124, and the staffing shortage itself, to further deplete public hospital health human resources by pulling nurses and health-care professionals from the public system.

Of further concern is the absence of a prohibition on the privately-operated clinics allowing uninsured services (i.e., those paid for out-of-pocket by patients) to be prioritized over insured services. There is no mechanism to restrict profits made from publicly-funded surgeries or procedures, or restrict payments of profits to shareholders. Publicly-funded surgeries and diagnostics must not be an opportunity for private profit as this will increase the burden on taxpayers. Public health care spending should be allocated exclusively to the delivery of patient care, with no profits skimmed off the top by corporate owners or their shareholders.

Also absent from the regulations is any requirement that private clinics establish a corporate board of management, as is required for our public hospitals, nor is there any

mention of public accountability through publicly available disclosures of finances, complaints, inspections, or any other records.

These regulations, as currently written, propose to allow privately-owned surgical centres to receive public funding to perform publicly-insured services while exempting these centres from the oversight, transparency, and accountability to which public hospitals are held. Indeed, these private clinics are not to be required to follow any of the standards required of public hospitals when it comes to patient records and privacy, quality assurance and safety, oversight from regulatory bodies such as the College of Nurses of Ontario, employee record keeping and oversight, or governance and financial accountability. If these privately-owned clinics are to deliver the same services as public hospitals, to the same patients, with the same source of funding, surely, they should be subject to the same oversight provisions as well.

Ultimately, while we hope the government will revise the regulations to reflect the considered feedback provided by ONA herein, the best outcome would be to listen to the expertise of front-line nurses and health-care professionals who are clearly stating that publicly-delivered health care is the safest, most cost-efficient option for providing care to the people of Ontario. There are operating rooms across Ontario closed for more hours than they are open each week. Increasing funding to public hospitals to increase their OR time will allow more surgeries to happen sooner, with no capital expenditures required, using medical staff already in place, in safer environments. We urge the government to follow commonsense recommendations, such as expanding surgical hours in existing public hospital operating rooms, to improve access to public health care in Ontario. It is still not too late.

ONA Recommendations on the Proposed Regulations

Applications and Exemptions

Certain Health Facilities

We strongly recommend keeping references to the *Private Hospitals Act* in any regulation pertaining to the delivery of surgeries or diagnostics. The exclusion of the *Private Hospitals Act* from this section raises concerns that the government intends to eventually phase out the *Private Hospitals Act* in furtherance of privatization in Ontario. We recommend the regulations be amended to include the *Private Hospitals Act* in this section and to identify the private hospitals covered under that Act.

Private Hospitals

We recommend that an exemption to clause (3) be made for provision 26.1.2, “a list of prices for all uninsured services that are offered by licensee at the centre” so that all patients in Ontario receiving care from a private facility are made aware of pricing for uninsured services.

Laboratories, etc.

ONA recommends that Section 5 of the *Laboratory and Specimen Collection Centre Licensing Act*, 1990, along with its corresponding regulations must apply to all services rendered within the laboratory. This requirement emphasizes the need for comprehensive oversight and adherence to established standards across all aspects of laboratory operations. There is no reason why new private facilities should be exempt from the same requirements.

Standards

Quality assurance advisor

ONA has significant concerns that the proposed regulations establish a conflict-of-interest that will impede the impartial accounting of safety and professional standards in privately-owned clinics. The licensee should not be responsible for appointing their own quality assurance advisor and there should be clear regulations prohibiting the quality assurance advisor from having a vested financial interest in the operation of the private clinic. To be clear, no member of staff, owner, board member or shareholder should serve as quality assurance advisor.

ONA recommends that the quality assurance advisor be an independent third party, appointed by the Ministry of Health who is answerable only to the Ministry of Health.

On 7.6 specifically, ONA objects to the establishment of a mechanism for a licensee to appoint themselves as quality assurance advisor. This would present a conflict of interest if the licensee were self-appointed to the role. This could be viewed as a desire to self-govern by permitting the organization to appoint its own "quality assurance advisor," thus setting their own standards. This would never be permitted for a public hospital and is therefore inappropriate at a facility that provides services currently delivered in public hospital settings. It is concerning to think that standards could be developed and agreed upon that are not in the best interest of the patient and are not best practice or evidence based. The organization would be holding only themselves accountable and would have a financial incentive hanging over every assessment of quality of care.

Advisory Committee

Under the *Excellent Care for All Act, 2010*, public hospitals are required to have a quality committee, one third of the members from the hospital board, one member from the medical advisory committee, the chief nursing executive, a health-care worker who is not a doctor or nurse, the hospital administrator, and other appointees. ONA recommends this model should be applied to the advisory committee set out in these regulations, and appropriate whistleblower protections should be provided for nursing and health-care staff who serve on the committee.

With regards to section 8.2, ONA recommends that wherever nurses are employed, there must be a nurse member on the advisory committee. As such, section 8.4 is insufficient in that it requires only the licensee's "best effort" to include a representative from each health profession and each specialty and sub-specialty of medicine. The regulation should make this a mandatory requirement, with appropriate whistleblower protections in place to prevent fear of reprisals among staff.

Monitoring system

ONA recommends that the records kept through these monitoring systems be publicly accessible, in a manner that anonymizes patient information but allows for public understanding of the results of the services provided in the centre.

Records

Records of employees, etc. and Qualifications and work history

It is concerning that physicians are exempt from these clauses. Physician records of employment and qualifications are of crucial importance when providing safe, quality patient care.

Declaration of professional standing

Under clause 15.1 the regulation should be amended to clarify that the licensee is responsible for verifying that these declarations are accurate and true. Employers must be responsible for due diligence to ensure patient care is not compromised.

If the previous section is not amended to include physicians, this section must be amended to require that physician declarations of professional standing are kept on file for at least as long (2 years) as the records of employees outlined above.

Further, section 15.2.5 should be stricken in its entirety. There is no reason why physicians practicing at a private clinic for less than 12 weeks should be any less

accountable to the Director for their declaration of professional standing than a physician working long-term in the clinic.

Patient Records

The *Public Hospitals Act, 1990* dedicates nearly 2,000 words to address the procedures and guidelines for maintaining and handling personal health information records of patients. In contrast, the proposed regulations governing private clinics' patient record requirements are a scant 280 words. Given that surgical procedures currently delivered in public hospitals will now be delivered in private surgical centres, the requirements regarding patient record keeping should be consistent across both settings. Patients receiving care at a private surgical clinic should be entitled to the same standard of record-keeping as those receiving their care in a public setting.

It is ONA's position that the *Personal Health Information Protection Act, 2004* must be applied in its entirety and other pertinent regulations and acts as per the type of service provided (e.g., Diagnostics record keeping/documentation)

Retention of Records

Regarding section 17.1, the proposed regulations reduce the required retention period for patient records, relative to records kept by public hospitals, requiring records be kept for 6 years. Public hospitals must retain medical records for ten years following discharge or death, as stipulated in Section 20.3 of the *Public Hospitals Act, 1990*. For patients under 18 at the time of treatment, the retention period extends for ten years from their eighteenth birthday. ONA recommends that records retention in the centres be comparable to Public Hospitals.

Further, section 17.2.1 of the regulation should be amended to require the centres to keep imaging records for five years from the date of discharge or death or five years after the patient turns 18, as stipulated in section 20.4 of the *Public Hospitals Act, 1990*, as opposed to 3 years as proposed in the regulations.

Books and Accounts

ONA has significant concerns that there are no requirements to disclose private investors in the privately-owned but publicly-funded clinics. As these clinics receive funding from the Ministry of Health, it is essential that the public have access to information regarding the individuals or entities investing in, and profiting from, these facilities. Disclosing information about investors demonstrates a commitment to accountability by allowing stakeholders, including taxpayers, to understand the operation and decision-making processes of the privately-operated clinics.

Additionally, public disclosure of investors will assist regulatory bodies in overseeing fiscal management and compliance. Transparent reporting on investors will facilitate regulatory evaluations and audits, ensuring that financial arrangements comply with relevant laws and regulations. Lastly, disclosure helps to mitigate conflicts of interest, secures unbiased decision-making, and upholds the integrity of Ontario's health-care system. Making information about investors in privately-operated, publicly-funded surgical clinics available to the public would enhance trust, facilitate regulatory oversight, and foster a more informed and participatory health-care system.

Notice of changes

ONA recommends the inclusion of a stipulation regarding the continuity of record-keeping and ensuring accessibility of public records in the event of a name change. The provision underscores the significance of maintaining a seamless transition of public records under a new organizational name, facilitating ongoing access to historical data, and supporting organizational transparency and accountability principles.

Complaints

Complaints — reporting certain matters to Director

ONA proposes the regulations establish a publicly accessible system with a record of all complaints submitted to the Ministry of Health to allow public scrutiny and review. This measure promotes transparency, accountability, and public engagement in evaluating complaint-related matters in these privately-owned surgical centres.

Posting

Posting

ONA proposes including a provision within this section mandating that alongside posted pricing for uninsured services, the centres post a clear and explicit declaration that patients are not obligated to procure uninsured services as a prerequisite for receiving OHIP-insured services. This will ensure that patients are well-informed and aware of their rights and entitlements, fostering transparency and promoting equitable access to healthcare services without imposing additional financial burdens related to purchasing uninsured treatments or procedures.

Prescribed Persons and Bodies

Inspecting Bodies

This section must be amended to include the College of Nurses of Ontario as inspecting body, as any setting where nurses work must grant inspecting rights to the CNO.

Conclusion

ONA maintains that the *Your Health Act, 2023* and the proposed regulations under this Act decrease patient safety and increase costs. These proposed regulations permit investors and corporations to place profits ahead of quality patient care, forever altering Ontario's publicly-funded and delivered health-care system.

The policy-making process through regulations removes oversight, accountability, and transparency of the democratic process central to delivering public services. Despite assurances from the government that strict guidelines will be created through regulations to ensure the quality and safety of health-care services, the government has failed to establish a protocol for regulatory oversight of private, for-profit health clinics.

The proposed regulations primarily focus on creating internal processes within these clinics to handle complaints and leave out any provisions that would subject these privately-operated clinics to public scrutiny regarding their practices and care delivery. Although funded by taxpayer dollars, such facilities will have no real accountability to the public or the Ministry of Health. Moreover, the absence of requirements to disclose information about investors in these private surgical and diagnostic centres will result in prioritizing profits over patient care, eroding public trust in the health-care system.

ONA has significant concerns regarding the impact of these regulations on staffing in our public hospitals. The regulations do not require the private facilities created under the *Your Health Act, 2023*, to submit a staffing plan with information around pay and benefits, or indeed any staffing plan whatsoever. The regulations do not prevent privately-operated surgical clinics from siphoning staff from our over-burdened public hospitals, thereby worsening the existing staffing crisis.

We can invest in a more robust, more resilient public health care system. The government must not allow private profits and corporate interests to override patient safety and care. ONA calls on the government to listen to the voices of front-line nurses and health-care professionals rather than CEOs and corporate lobbyists, by investing in our publicly-delivered hospital system.