Ontario Health Coalition

Preliminary Analysis of Ford Government Health Care Omnibus Bill

February 27, 2019

This is a radical piece of legislation. It is an omnibus bill and it amends or repeals dozens of other health care Acts. Fundamentally, it sets up a new Super Agency and gives the power to the Minister of Health to merge a range of existing health care oversight agencies into it. Then it gives the new Super Agency extraordinary powers to order, negotiate, facilitate and coerce (through funding measures) mergers, amalgamations, service transfers, closures etc. It gives the Minister sweeping new powers to order mergers, closures, service transfers, etc. These powers include new powers to privatize entire sections of health care services. The public interest protections that we won, largely through amendments to the LHIN legislation, have all been removed. There will be no open Board meetings, no right to access documents, no appeals etc. The Super Agency is to be made up of political appointees. The new powers override the existing democratic structures of local community, public and non-profit health care providers. All health service providers, integrated conglomerates, the Super Agency are required to find endless "integrations" – defined as service transfers, mergers, closures, partnerships etc. This is a very very large health restructuring bill with no democratic process, no democratic protections and will result total loss of any remaining local community control over health care. The following gives a quick overview of the key elements of the legislation:

Title: The People's Health Care Act 2019

SCHEDULE I. Continuing Care Act 2019

General Overview

This Act takes the existing LHINs and other key health care agencies and transfers them into a new Super Agency. At the same time, the Super Agency and the Minister are given new powers to order mega-mergers, takeovers, closures, transfers of health care services, including the privatization of public and non-profit health care services. There is no progressive language about the goals and principles, there are no democratic protections, there is no ability for the public to intervene in the transfers/closures/mega-mergers/privatization of their health care services. This is a radical piece of health restructuring legislation first and foremost and it requires continual health care restructuring in perpetuity as long as this legislation is in existence.

Creation of New Super Agency, Transfer of Existing Entities into It

The Act creates a new Super Agency and gives the Minister powers to transfer into it: Cancer Care Ontario, eHealth Ontario, Health Force Ontario, Health Shared Services Ontario, Ontario Health Quality Council, Trillium Gift of Life Network, the LHINs, any other entity Cabinet includes later. It gives the power to the Minister to transfer the assets and employees of these organizations over into the Super Agency.

No Democratic Provisions/Public Input

The Super Agency will be unelected. It will be appointed by Cabinet (thus the Board is to be made up of 15 political appointees). Cabinet will determine their pay. There will also be a CEO and the Board will determine that person's pay within a range that may be set by the Minister.

There are no provisions that make the Super Agency or Minister accountable to the people of Ontario in any meaningful way. The already-weak public engagement language of the LHIN legislation has been further weakened and is almost non-existent in this legislation. The provision requiring open Board meetings for LHINs has been removed. There is no appeal for restructuring decisions and privatization, no public access to restructuring plans and documents, basically no public interest/democracy provisions.

Scope

The Bill gives the Super Agency and Minister extraordinary powers that cover much of the health system including: hospitals, psychiatric hospitals, long-term care homes, home and community services, community mental health and addiction services, non-profit family health teams, non-profit nurse practitioner-led clinics, primary care nursing services, maternal care or interprofessional primary care programs and services, hospices and palliative care providers, physiotherapy clinics, independent health facilities (private clinics), anyone else by regulation (which means that Cabinet can expand the entities covered without going back to the whole Legislature). These are called "health service providers" (HSPs).

Goals of Super Agency Do Not include Sound Planning, Public Health Care, Non-Profit Provision, Equity

There is a list of the goals of the Super Agency included in the new Act that pertain to directing the health system to follow the Minister's goals. But notably, none of the principles of public health care are among the goals of the Super Agency. There is nothing supporting public and non-profit provision of services. The Super Agency is not required to measure and plan to meet population need for care. The list of goals includes the possible takeover (including language that would enable the contracting out) of supply chain management across all health providers covered under the Legislation and any "related service" (not defined). Importantly the listed goals include "integration" of health service providers. Integrate means to: coordinate, merge, amalgamate, partner, transfer, start or cease providing services, cease operating and close down a health service provider. There is no language to support the health system creating better health, or equity, or improving access to care.

Exemptions and Changes to Labour Relations Protections for Health Care Workers

In the legislation the Ford government has given the Super Agency exemptions under the Labour Relations Act. We are looking more deeply into this.

Centralization

The health system will be run through funding /Accountability Agreements – a "command and control" structure that ties the funding relationship to an accountability agreement that can be forced on a service provider by the Super Agency. This system is the same kind of top down centralization of powers as under the existing LHINs only it will be further centralized to the Super Agency.

Endless Restructuring, Mega-Mergers and "Integrated Care Delivery Systems"

The Minister can order a person or entity or group thereof as an Integrated Care Delivery System (ICDS). Each one of these mergers has to be a mega-merger and must include 3 or more services including hospitals, home care, long-term care, primary care, mental health and addictions, palliative care, and any other services cabinet approves including non-health care services. Mergers can include for-profits taking over non-profit and public entities. The Legislation expressly allows the transfer of charitable good and assets.

The law requires the Super Agency, health service providers and ICDS to find integration opportunities in perpetuity. (Endless restructuring.)

The Super Agency has new powers to "integrate" services by changing the funding of Health Service Providers (HSPs) and ICDS, and facilitate mergers between HSPs and non-HSPs. In plain language, they can cut funding and force a Health Service Provider into one of the proposed mega-mergers.

The Minister has extraordinary powers to order transfers of all, or of part, or the closure of all of a health service, and the closure of Health Service Providers and ICDS.

Only with regards to the Minister's orders there shall be 30-days notice followed by 30-days to make an written submission. This is not called an appeal. There is no provision for appeals of restructuring/privatization decisions. There is no provision for notice for the the Super Agency's orders.

<u>Powers to Appoint Investigators/Supervisors</u>

The Super Agency can appoint Investigators for any Health Service Providers (HSPs) or Integrated Health Delivery Systems (IHDSs). Long-term care homes and ICDSs that include long-term care homes are excluded. In the case of public hospitals and ICDSs that include public hospitals, Cabinet (not the Super Agency) can appoint an Investigator. The Minister of Health can appoint Supervisor to take over a Health Service Provider or ICDS. (Same exclusions apply here). [The power to appoint Investigators and Supervisors existed in the Public Hospitals Act. Investigators can go into an organization, compel the production of documents financial and other to review, and then make a report. Supervisors can then be appointed to take over the powers of the CEO, Board and members for a period of time, run the service and replace the governance. These provisions have recently been expanded to other health care services. This Legislation gives different powers to the Super Agency, the Minister and Cabinet in this regard. Not clear how this works when the services are merged, then merged again and so on, as the Bill sets out.]

Cabinet may or may choose not to establish regulations for public consultation and various advisory councils.

There is one extraordinary regulation that bears mentioning allowing Cabinet to override any part of the legislation.

SCHEDULE II. Ministry of Health and Long-Term Care Act

This very perfunctory Schedule sets out an Indigenous and a French Language Health Council. All of the members of these councils would be appointed by the Minister of Health. They will not be elected. There are no specific powers set out for these councils. They don't have any specific role. There is no meaningful requirement to consult with them. They are no accountable in any way to their communities.

SCHEDULE III. Amendments & Repeal of other legislation

This schedule sets out pages and pages of amendments/repeal of other health care legislation. We have not had a chance to go through this section yet.

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