



Association of
Ontario **Midwives**
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Association of Ontario Midwives

Submission to the Standing Committee on the Legislative
Assembly on the Protecting Patients Act (Bill 87)

May 2017

Introduction

The Association of Ontario Midwives (AOM) appreciates the opportunity to respond to the *Protecting Patients Act* (Bill 87) on behalf of all Ontario midwives. Midwives have provided comprehensive primary care to nearly 225,000 pregnant women and their newborns since 1994. There are approximately 800 midwives providing care in more than 86 communities, including more than 90 hospitals across the province.

We understand that Bill 87 is a legislative response to the Report of the Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act (the Report). Ontario midwives support a zero tolerance approach to sexual abuse of clients. However, we are concerned that the Bill extends beyond protecting clients and introduces extraordinary Ministerial powers over self-regulation. Leaving much of the detail to regulation makes it challenging for those affected by the Bill to understand its potential impact and to assess and comment on those proposed changes.

The AOM's concerns about the proposed amendments are as follows:

1. The proposed amendments that allow the Minister to compel Colleges to provide health professionals' personal health information to the Ministry are without a pressing objective and compromise the ability of health care professionals to access needed healthcare; this may in itself compromise patient safety.
2. The proposed amendments to the *Laboratory and Specimen Collection Centre Licensing Act* add additional barriers to the access of healthcare services.
3. The proposed amendments to the Regulated Health Professions Act (RHPA) do not provide procedural fairness where there is no finding of professional misconduct or incompetence.
4. The proposed amendments to the RHPA could compromise the effectiveness and processes of health provider self-regulation in Ontario.

Each of these concerns is addressed in greater detail below.

- 1. The proposed amendments to allow the Minister to compel Colleges to share health professionals' personal health information is without a pressing objective and compromises the ability of health care professionals to access needed healthcare; this may in itself compromise patient safety.**

The Bill would require a College Council to include a health care provider's personal health information in reports to the Minister. We strongly object to this provision as we see no rationale for it that could not be met through other means. This inclusion would deter healthcare providers from seeking needed treatment for their own health, particularly in the realm of mental health and infectious diseases.

Health care providers are also patients with the same rights to the privacy of health information. The traditional privacy principles and the tenets of the *Personal Health Information Protection Act* (PHIPA) limit disclosure to very limited circumstances where there is a pressing need for it (e.g., a serious and immediate threat of harm). These amendments permit access to personal health information without any demonstration of need. There is no explanation of what specific type or amount of personal health information would be required for the Minister to assess whether or not "the College is fulfilling its duties and carrying out its objects". There are no real parameters on this disclosure requirement and it is unnecessary to leverage midwives' personal health information for the purposes of regulatory oversight. Aggregated and de-identified data should suffice for the government's goals.

Further, knowing that this information may be disclosed, healthcare providers may be reluctant to seek diagnosis, treatment and support that they need, which could compromise client safety. A health care provider may be reluctant to seek health care with the knowledge that someday it could be shared with the government. We recommend that the authority to compel disclosure of personal health information to the Ministry be removed from the Bill entirely.

- 2. Proposed amendments to the *Laboratory and Specimen Collection Centre Licensing Act* add additional barriers to the access of healthcare services.**

Ontario midwives provide complete primary care for pregnant and laboring people as well as postpartum care and care to the newborn for 6 weeks after the baby is born. This primary care includes all of the specimen collection of blood, urine, swabs and pap smears that would be collected by a family physician during pregnancy, labour and postpartum care, under the midwife's own authority.

It is unclear in the legislation whether the government intended to remove the exemption of midwives' offices from the definition of "Specimen Collection Centre" and if so, what the rationale is for that change. While this exemption may be captured in the regulations, it is critical that this be explicit. Removing the exemption would result in additional licensing requirements for all midwives' offices that collect specimens such as urine, blood, and pap smears. It would also result in additional costs and reporting obligations.

It is also unclear whether the government has contemplated the impact that this change may have on clients' access to services, compliance with health recommendations and healthcare costs. Most midwives provide specimen collection services as a convenience to clients. The introduction of new compliance requirements might make providing the service untenable, forcing clients to attend a laboratory separately. Inevitably, some clients will fail to do so – preventing or delaying diagnosis and treatment. Other clients will attend a laboratory, which will bill the Ontario Health Insurance Plan for the specimen collection. This will result in a double payment by the Ministry of Health, as this is a service that the Ministry already pays midwives to provide through a bundled course of care fee.

This amendment is not aligned with the Government's stated objectives of Right Care, Right Time, Right Place; nor is it aligned with the Patients First objective of Access to care. The AOM recommends that the government clearly state whether it intends to move the exemption for midwifery offices into regulation. If it does not intend to do so, the government should understand the implications of that change and work with stakeholders to meet its objective without undermining access to primary care.

3. The proposed amendments to the Regulated Health Professions Act (RHPA) undermine the procedural fairness afforded where there is no finding of professional misconduct or incompetence.

There are provisions in the Bill geared towards improving College transparency. While the AOM sees the need for transparency in self-regulation, that transparency needs to be balanced against the harm that is caused where the ultimate finding is one of no professional misconduct or incompetence. Publicly posting details about an allegation before there is a finding of incompetence or professional misconduct is highly prejudicial; the damaging effects of which are long-lasting, even after the information is removed. The AOM is aware of situations where the mere allegation of professional misconduct has resulted in regulated health professionals being unable to continue practice. When the information provided in the register presents no benefit for the patient or the public, disclosure is purely punitive in nature and thus unwarranted. **The AOM recommends that information not be posted on the college register until a final finding has been made that is no longer subject to appeal.**

Similarly, an allegation of sexual abuse can have a catastrophic impact on a health care professional's life. The AOM strongly supports efforts to protect clients from sexual abuse. In cases in which the healthcare provider's record is cleared, the implications on their livelihood and reputation are severe and may be insurmountable. Specifically, the innocent healthcare provider will be unable to practice and earn income during the period of investigation and suspension and may forever suffer reputational impact.

The AOM appreciates that every allegation of sexual abuse must be properly investigated; however, **the AOM recommends that these cases be investigated in a swift and efficient manner in order to ensure that the impact is minimized for those wrongly accused.**

4. The proposed amendments to the RHPA could compromise the effectiveness and processes of health provider self-regulation in Ontario.

There are a number of proposed regulation-making powers in this Bill that give the Minister significant influence over regulatory college processes. The AOM supports the stated goal of these powers – the enhancement of regulatory process and additional transparency to College processes. However, these changes fundamentally impact self-regulation without a comprehensive review and discussion of the current self-regulatory landscape to assess where changes can and should be made. For example, the Bill gives the Minister the authority to make regulations over the composition of college committees. However, self-regulation demands professional representation on all committees and that they not be comprised entirely of lay people. This professional representation ensures the committee benefits from the healthcare providers' contextualized knowledge and experience.

Summary

In summary, the AOM supports efforts to protect clients from sexual abuse by trusted regulated health professionals. However, the AOM has urgent concerns regarding many of the specific provisions of the Bill. In amending the Bill, the government should focus its efforts on:

1. Collaborating with stakeholders to ensure any provisions are reasonable and address true system issues without unintended consequences.
2. Expanding on details, and clarifying language within the Bill, so that stakeholders are fully able to comment on provisions.
3. Safeguarding that general rules for procedural fairness, natural justice, and personal privacy are respected.
4. Preserving the fundamental tenets of self-regulation.

We are confident that the goal of enhanced patient protection can be achieved without compromising fundamental principles of natural justice, procedural fairness and transparency.

Please see below for details of the AOM's proposed amendments for Bill 87. Thank you for considering our comments on Bill 87.

For more information, contact:

Allyson Booth, RM, Director, Quality and Risk Management

allyson.booth@aom.on.ca; 416-425-9974 ext. 2228 or 1-866-418-3773 ext. 2228

AOM Proposed Amendments for Bill 87

Schedule 2: Laboratory and Specimen Collection Centre Licensing Act

1. Exemption of Healthcare Provider Offices: *s.1 (6) of Bill:*

The AOM recommends including an exclusion (language below) as part of legislation:

“specimen collection centre” means a place where specimens are taken or collected from the human body for examination to obtain information for diagnosis, prophylaxis or treatment, and any other place that may be provided for in the regulations, but does not include,

(a) a place where a legally qualified medical practitioner is engaged in the practice of medicine or surgery,

(b) a place where a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991* is engaged in the practice of nursing,

(c) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

(d) a place where a member of the College of Midwives of Ontario is engaged in the practice of midwifery,

(e) a laboratory that is established, operated or maintained under a licence under this Act, or

(f) a place that is excluded from this definition by the regulations; (“centre de prélèvement”)

Schedule 4: Regulated Health Professions Act

1. Compelling Disclosure of Personal Health Information: *Schedule 4, Section 2 of Bill (to amend s.5 of RHPA):*

The AOM recommends that the provisions that permit the release of PHI and PI be struck.

2. Minister's Regulation-Making Authority Regarding Committee Composition: *Schedule 4, Section 6 of Bill (amending 43(1) of RHPA pursuant to 10(1) and 10(3) of Code, 17(2),(3) of Code, 25(2)(3) of Code, 38(2),(3) of Code):*

The AOM recommends that sections (p)-(s) should be struck. Committee composition should continue to be determined by the by-laws and/or policy of each health professional college.

3. Information in Register: *Schedule 4, Section 12 and Section 6(3)(t) of Bill (amending 43(1) of RHPA, 23(2) of Code):*

The AOM recommends that that subsections 12(1)(2) 7,8,9,10, 11, 12 be struck from this list. In addition, the AOM submits that 6(3)(t) of Bill 87 be struck.

4. Interim Suspension: *Schedule 4, Section 17 (repealing s. 37 of Code):*

The AOM recommends that this section be reinstated.