



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

March 23, 2023

Goldie Ghamari
Chair of the Committee
Standing Committee on Social Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Ghamari:

RE: Written Submission of the Information and Privacy Commissioner of Ontario on Bill 60, *Your Health Act, 2023*

I am writing with reference to Bill 60, *Your Health Act 2023*, which includes:

- Schedule 1, which repeals the *Independent Health Facilities Act* and the *Oversight of Health Facilities and Devices Act, 2017*, and enacts the *Integrated Community Health Services Centres Act, 2023*;
- Schedule 2, which amends several health-specific statutes to enable the making of regulations that would allow regulated health care workers from other provinces and territories to start working in Ontario “As of Right” without first registering with one of Ontario’s regulatory colleges; and
- Schedule 3, which amends the *Freedom of Information and Protection of Privacy Act* (FIPPA) with respect to extra-ministerial data integration units.

My office recommends the following amendments to address the privacy implications of Bill 60.

SCHEDULE 1: INTEGRATED COMMUNITY HEALTH SERVICES CENTRES ACT, 2023

If Bill 60 is passed, the *Integrated Community Health Services Centres Act, 2023* would be enacted and would replace the *Oversight of Health Facilities and Devices Act, 2017* and the *Independent Health Facilities Act*. I am pleased that some of the recommendations put forward by my predecessor, Commissioner Brian Beamish, on the *Oversight of Health Facilities and Devices Act, 2017* were incorporated into that statute before it received Royal Assent. However, that statute never came into force.¹

¹ See [Comments of the Information and Privacy Commissioner of Ontario on Bill 160 \(November 20, 2017\)](#), pages 13-17.



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I recommend therefore that the outstanding concerns flagged by my predecessor, in his November 20, 2017 submission on (then) Bill 160, be addressed in the proposed *Integrated Community Health Services Centres Act, 2023*. Namely, that the privacy and confidentiality obligations be extended to apply more consistently to all actors who may be called upon to handle personal information in the course of administering this proposed act. I also recommend Schedule 1 of Bill 60 be further amended to require the removal of personal information from prescribed documents and information prior to being posted and to require that public consultations be undertaken before making regulations.

1. Limits to apply to collections, uses and disclosures of information

Several sections within Schedule 1 refer to collections, uses or disclosures of information by the Minister of Health (the Minister), the Director, an inspector, an inspecting body, and their employees.² My office recommends the addition of the following underlined terms to subsection 58 (6) to limit collections, uses and disclosures of information by these and other persons:

58 (6) In the course of performing a function or duty or exercising a power related to the administration of this Act, the Minister, the Director, an inspecting body or inspector appointed by an inspecting body, a licensee or other persons shall not,

(a) collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure; and

(b) collect, use or disclose more personal information than is reasonably necessary to meet the purposes of the collection, use or disclosure.

2. Confidentiality of reports of inspections and other information

As drafted, the *Integrated Community Health Services Centres Act, 2023* proposed in Schedule 1 stipulates confidentiality requirements only for inspecting bodies and inspectors under subsections 57 (1) and (2).³ The proposed Act, however, also references other persons who may become privy to information in the course of performing a function or duty or when exercising a power related to the administration of the Act.

To ensure the consistent application of confidentiality obligations within the *Integrated Community Health Services Centres Act, 2023*, my office recommends the addition of the following underlined terms to subsection 57 (1) to require the Minister, the Director, an inspecting body, an inspector appointed by an inspecting body, a licensee or other persons to keep confidential all information, including personal information they may be provided access to in the course of completing their responsibilities under the Act:

² For example, in section 19, subsection 41 (11), subsections 43 (3) and (8), subsection 57 (2), and sections 58 and 59.

³ For example, clause 19 (1) (b) and paragraph 5 of subsection 43 (3).

57 (1) Every Minister, Director, inspecting body and every inspector appointed by an inspecting body, licensee or other persons shall keep confidential all information, including personal information, that comes to their knowledge in the course of performing a function or duty or exercising a power related to the administration of this Act, subject to subsection (2).

3. Limits to apply to postings of prescribed documents and information

I further recommend that to protect the confidentiality of patients' information, an additional limitation should be applied to the prescribed documents and information that a licensee is required to post under section 24 by adding the following provision at the end of the section:

(3) Before posting prescribed documents and information under this section, every licensee shall remove all personal information, from the prescribed documents and information that it is required to post.

I also recommend that the government consider amending other similar provisions within the *Integrated Community Health Services Centres Act, 2023* by requiring the removal of personal information or personal health information, as appropriate, from any information, document or order that may be posted.⁴

4. Requirement for public consultation before making regulations

Provisions of Schedule 1 would require or permit various matters to be prescribed in regulations. Some of these matters relate to collections, uses and disclosures of personal information and personal health information.⁵

My office recommends that Schedule 1 be amended to add provisions similar to section 74 of the *Personal Health Information Protection Act, 2004* (PHIPA) that require the Minister of Health to consult with the public and provide adequate notice before making any regulations under Schedule 1. In our view, these added steps would greatly enhance transparency and help ensure that personal information and personal health information are adequately protected.

I recommend that the following provisions be added to Schedule 1:

XXX (1) The Lieutenant Governor in Council shall not make any regulation under Part VIII unless,

(a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other

⁴ See, for example, subsection 43 (5), subsection 56 (1), and clause 57 (2) (b).

⁵ See, for example, subsection 24 (1), paragraph 5 of subsection 43 (3), subsection 43 (8), clause 57 (2) (g), subsections 58 (1)-(2), (5), and subsection 59 (1).

means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

(b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate.

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) all prescribed information; and

(f) all other information that the Minister considers appropriate.

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a).

SCHEDULE 2: REGULATED PROFESSIONS AMENDMENTS

Schedule 2 of Bill 60 amends a number of health-specific statutes to enable regulations to be made which would allow prescribed health care providers to work in Ontario without first having to register with one of Ontario's regulatory colleges. Section 17.1 of the *Personal Health Information Protection Act, 2004* (PHIPA) describes the notices a health information custodian must issue to a regulatory college when a health care practitioner who is a member of the regulatory college resigns or is terminated or suspended due to an unauthorized collection, use, disclosure, retention or disposal of personal health information.

It is not clear whether a health care provider who commences work in Ontario "As of Right" would be a member of a regulatory college for the purpose of section 17.1 of PHIPA. My office recommends therefore that Schedule 2 be amended to include a

consequential amendment to PHIPA clarifying that the health information custodian's reporting obligations in section 17.1 of PHIPA would also apply to health care providers who commence working in Ontario "As of Right".

In the spirit of openness and transparency, we are providing copies of this letter to the Ministry of Health and the Ministry of Public and Business Service Delivery.⁶ We will also be posting this letter on my office's website.

Thank you for receiving our comments on Bill 60 and we would be pleased to answer any questions Committee members may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Kosseim", with a stylized flourish underneath.

Patricia Kosseim,
Commissioner

cc: Hon. Sylvia Jones, Minister of Health
Hon. Kaleed Rasheed, Minister of Public and Business Service Delivery
Dr. Catherine Zahn, Deputy Minister of Health
Renu Kulendran, Deputy Minister of Public and Business Service Delivery
John Roberts, Associate Deputy Minister (Acting), Privacy, Archives, Digital and Data, Ministry of Public and Business Service Delivery

⁶ See proposals [23-HLTC021](#), [23-HLTC015](#) and [23-HLTC022](#) posted to the Ontario Regulatory Registry respectively addressing content within Schedules 1, 2 and 3 of Bill 60.