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Monday 7 May 2007

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Lundi 7 mai 2007

**Standing committee on
social policy**

Health System
Improvements Act, 2007

**Comité permanent de
la politique sociale**

Loi de 2007 sur l'amélioration
du système de santé

Chair: Ernie Parsons
Clerk: Trevor Day

Président : Ernie Parsons
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 7 May 2007

Lundi 7 mai 2007

*The committee met at 1542 in committee room 1.*HEALTH SYSTEM
IMPROVEMENTS ACT, 2007
LOI DE 2007 SUR L'AMÉLIORATION
DU SYSTÈME DE SANTÉ

Consideration of Bill 171, An Act to improve health systems by amending or repealing various enactments and enacting certain Acts / *Projet de loi 171, Loi visant à améliorer les systèmes de santé en modifiant ou en abrogeant divers textes de loi et en édictant certaines lois.*

The Chair (Mr. Ernie Parsons): I would like to call to order the standing committee on social policy. We are all trapped inside on this beautiful, sunny day to deal with amendments and clause-by-clause of Bill 171.

If all members are in agreement, we would like to stand down at this time sections 1, 2 and 3 and deal with the schedules initially, and then return at the end and do the three sections. Do we have agreement on that?

We will move first to amendment 1.

Interjection.

The Chair: Oh, no amendments here? Okay. We actually get to vote early on.

Shall schedule A, sections 1 to 4 inclusive, carry? Carried.

Shall schedule A carry? Carried.

Schedule B: We're not aware of any proposed amendments to schedule B, sections 1 to 13. Shall schedule B, sections 1 to 13 inclusive, carry? It is carried.

Schedule B, section 14: We are now going to deal with amendment 1, which is an NDP amendment.

Ms. Shelley Martel (Nickel Belt): Before I start, I want to thank the legislative counsel, Ralph Armstrong, for his help with all these amendments. I know he had two bills to deal with last week, so I appreciated his working overtime to get these done. Thank you very much.

I move that section 14 of schedule B to the bill be amended by adding the following subsection:

“(0.1) Paragraph 3 of subsection 5.1(1) of the Nursing Act, 1991 is repealed and the following substituted:

“3. Prescribing or dispensing a drug.

“3.1 Setting or casting a fracture of a bone or dislocation of a joint.

“3.2 Applying or ordering the application of a form of energy prescribed by regulation.”

The Chair: Thank you. I'm afraid I have to rule this amendment out of order, as subsection 5.1 of the Nursing Act is not open.

Ms. Martel: Can I just ask for a clarification? The Nursing Act is being amended on page 9 of the bill.

The Clerk of the Committee (Mr. Trevor Day): Section 5.1 of the act is not open.

Ms. Martel: So that particular section has to be open before we can move the amendment, even though the Nursing Act is being amended under this schedule?

The Clerk of the Committee: Yes.

Ms. Martel: Okay, Mr. Clerk, I would never want to—

The Chair: He's smarter than me. If he says that's it, that's it.

Ms. Martel: So just to be clear so that it's on the record: It's being ruled out of order?

The Chair: It's being ruled out of order. That's correct.

Is there any additional debate on schedule B, section 14? Hearing none, shall schedule B, sections 14 to 19, carry? Carried.

Interjections.

Ms. Elizabeth Witmer (Kitchener–Waterloo): I would ask for unanimous consent that we go back to schedule B to the bill, section 5.

The Chair: There has been a request for unanimous consent to revisit schedule B, section 5. Do I hear—

Interjection.

The Chair: I'm not sure what I heard so I will ask again.

Mr. Khalil Ramal (London–Fanshawe): No. We dealt with it.

Mrs. Witmer: I guess we have the answer. I guess people aren't too interested in making changes to this act.

Mr. Ramal: Sorry, we didn't see that amendment. We didn't have the amendment.

The Chair: Okay. I'm not that good hearing in my right ear. I'm going to ask one more time because I did not hear well. Do we have unanimous consent to reopen section 5?

Interjection.

The Chair: Hearing no “No,” I have agreement. Mrs. Witmer, we will return to section 5.

Mrs. Witmer: Okay. I would like to move that clauses 5(1)(a) and (b) of the Dental Hygiene Act, 1991,

as set out in schedule B to the bill, be struck out and the following substituted:

“5(1) A member shall perform a procedure under the authority of paragraph 1 of section 4 in accordance with any requirements prescribed in the regulations, and may perform such a procedure,

“(a) on the member’s own initiative,

“(i) if none of the contraindications prescribed in the regulations to performing the procedure are present, and

“(ii) as long as the member ceases performing the procedure should any of the prescribed contraindications to continuing to perform the procedure be present, or

“(b) if the procedure is ordered by a member of the Royal College of Dental Surgeons of Ontario.”

This is being introduced. It doesn’t change the intent of the schedule. It simply clarifies what the intention is. If you go back and you take a look at the original amendment, this clarifies (a) in particular, (i) and (ii).

The Chair: Any debate? Mr. Fonseca?

Mr. Peter Fonseca (Mississauga East): We’ll say no, and we’ll ask legislative counsel to clarify. The ministry will clarify.

1550

The Chair: If you would state your name for Hansard.

Mr. Ryan Collier: Ryan Collier. Can I get clarification on the number of the bill that is being amended? Which section of the schedule?

Mrs. Witmer: Schedule B to the bill, section 5.

Mr. Collier: Section 5?

Mrs. Witmer: Yes.

Mr. Collier: It deals with the Dental Technology Act?

Mrs. Witmer: It’s 5(1)(a) and (b). It’s a substitution for what’s written here in order to provide clarification. I don’t believe it changes the intent.

It’s section 4 of our bill, which is actually section 5 of the Dental Hygiene Act.

The Chair: Well, the first problem is, we’ve reopened the wrong section.

Because we’ve reopened section 5, we now need to close it, so I’m going to ask, shall section 5 carry? Carried.

Now, in order to deal with the amendment that is proposed, we require unanimous consent to reopen section 4. Do I have unanimous consent? We’ve got a no. I heard a no.

Moving next to—

Mrs. Witmer: Mr. Chair, as I move forward today with the clause-by-clause of this particular piece of legislation, Bill 171, I just want to get it on the record: I have grave concerns about the introduction of this omnibus bill. I have grave concerns that many of the stakeholders are just starting to understand the consequences of what is contained herein. I personally don’t believe that those of us in opposition have the resources to introduce the huge number—hundreds—of amendments that could possibly have been introduced today. When I think of how much time we spent on the Chinese act—the acupuncture and the TCM and what have you; the traditional Chinese—I’ll tell you, I find it unbelievable that we

would sit here and we would push this bill through as quickly as we have. I don’t think there has been enough consultation with the stakeholders. Many of the amendments here, the act, are a deviation from the recommendations of the report done by Barbara Sullivan. I’m afraid, in our haste, we’re not going to have a bill that really responds to the needs and protection of the public as it should. That’s throughout the entire body of the bill; I have grave concerns about our ability to do justice to the bill in making it the best it can be for the public and the province of Ontario.

Mr. Fonseca: For this piece of legislation, we have consulted widely with all stakeholders. We’ve heard from all stakeholders; they have brought forward improvements to this piece of legislation. That’s what we’re going through here today.

It was brought forward in December of last year. It’s about transparency; it’s about emergency preparedness; it’s about improving our health care system, and we must move forward, Mr. Chair.

Mr. John O’Toole (Durham): I just want to support Ms. Witmer’s observation—just now in my own riding, as each of us has a responsibility to consult with those individuals in professions—that it is being rushed. It’s an omnibus bill, and I think as a courtesy we should at least read the amendments and then understand them—have legislative counsel, who are involved in drafting this, because it is very technical and highly problematic for a number of what I’d call subordinate stakeholders in health care provision in a changing society where other treatment modalities are preferred.

You have a doctor over there. I’m sure comment during this clause-by-clause is extremely important. I’m concerned, if we rush an omnibus bill through without taking the courtesy of time, we won’t do service to the people of Ontario.

The Chair: Okay. We’ll proceed, then, to amendment 2, which is part of schedule B, section 20.

Ms. Martel: I move that section 20 of schedule B to the bill be amended by adding the following subsection:

“(0.1) Subsections 8(1) and (2) of the Psychology Act, 1991 are repealed and the following substituted:

“Restricted titles

“8.(1) No person other than a member shall use the title ‘psychologist’ or ‘doctoral psychologist,’ a variation or abbreviation or an equivalent in another language.

“Representations of qualification, etc.

“(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychologist or doctoral psychologist or in a specialty of psychology.”

The Chair: I am afraid I have to rule that out of order, as section 8 of the Psychology Act is not open at this time.

Ms. Martel: If I might, I would ask for unanimous consent for the committee to hear the reason I would like to have this moved forward.

The Chair: There has been a request for unanimous consent to consider amendment 2. Do I have unanimous consent? Yes.

Ms. Martel: I appreciate that. I'm going to go as quickly as I can. I hope the committee will bear with me, because this comes from a presentation that we did not hear orally during the public hearings because there just wasn't enough time to hear enough groups. But it is a presentation that all of us were sent, a submission to the committee by the Ontario Association of Psychological Associates. So that is where the amendment comes from, and the reasoning is this. As quickly as I can, I'm just going to read into the record portions of their submission which outline the reason I'm moving forward with the change.

"A two-titled system for the College of Psychologists was set up in 1991 with the passing of the Regulated Health Professions Act and the Psychology Act. Doctoral-level members were to be called 'psychologists' and master-level members were to be called 'psychological associates.' Based on the 13 years' experience since over 500 psychological associates were accepted into the college, this two-titled system was an experiment that has not served the public or the profession particularly well.

"The restricted title 'psychological associate,' as contained in section 8(1) of the Psychology Act, has been a source of major confusion for the public seeking high-quality health care. The title has been a frequent barrier to clients seeking reimbursement from both private insurance companies and public agencies for services regulated and approved under both provincial and federal legislation.

"Reimbursement for psychological assessments, psychotherapy and other interventions by psychological associates has been denied or delayed while families worry and wait. The cause is confusion over the title: Insurance companies and government agencies continually question the regulated and autonomous status of psychological associates providing the service. Sometimes these reimbursement decisions are reversed and sometimes they are not.... Because insurance policies and government service programs are often tied to the term 'psychologist' so as to accommodate regulatory models across the country, the title 'psychological associate' can result in refusal. After 13 years, OAPA and the College of Psychologists still regularly need to intervene on behalf of clients with programs such as the Ontario disability support program, the Workplace Safety and Insurance Board, the statutory accidents benefits schedule and the tax credit program for the disabled. Recently, an issue with the federal disability tax credit seemed resolved via a letter from Minister Flaherty, yet clients of psychological associates are still having tax credit claims denied. Our confusing and unrecognized title creates a needless barrier which has proven very resistant to many efforts by OAPA and the College of Psychologists to educate and inform third-party payers....

"We would like to point out that psychological associates have the same or equivalent registration requirements for autonomous practice as psychologists do. They become eligible to apply for registration after a minimum

of 11 years of preparation: four years in undergraduate psychology programs, a minimum of two years in graduate programs and four years in relevant professional practice. Their academic coursework must cover the same core areas as psychologists. In addition, candidates for both titles must have at least one year on the college's register for supervised practice. Candidates for both titles must also pass the same demanding written and oral exams....

"The current composition of the College of Psychologists in Ontario is 80% doctoral-level and 20% master-level members. The college has not been able to remedy the difficulties over title. The solution of adopting one title 'psychologist' must come from outside the college. The options are (1) through the court system or (2) through the legislative process by way of an amendment to the Psychology Act.... The second option is available to the committee now.

"We ask the minister and members of this standing committee to reach a consensus on an amendment to the Psychology Act, 1991 to resolve this title issue and provide clarity, consistency and ease of access for residents of Ontario to this essential health care service."

1600

The recommended wording is used in the Saskatchewan legislation, and they propose that it be amended to read: "No person other than a member shall use the title 'psychologist' or 'doctoral psychologist,' a variation or abbreviation or an equivalent in another language."

This has been in place in Saskatchewan since 1997 under subsection 24(1) of Saskatchewan's Psychologists Act. What it does is permit all members of the Saskatchewan College of Psychologists to use the title "psychologist." Section 20 of the act requires the members of the college to be in possession of either a master's or a doctoral degree in a program consisting primarily of psychology classes from an educational institution recognized by the council. However, subsection 24(2) of the act limits the use of the title "doctoral psychologist" to those members of the college who have doctoral degrees.

I'm moving the amendment on behalf of the association in the hope that there will be no further confusion around psychologists versus psychological associates. For those who have additional degrees or additional education, they would certainly be permitted to use the title "doctoral psychologist" but, once and for all, I trust it would end the confusion that comes from insurance companies etc. not wishing to sign for reimbursement of services provided by psychological associates because they consider them to be of a lesser standing, have lesser education, lesser competencies and capabilities than those who use the title "psychologist." That is the purpose and the intent of the amendment.

The Chair: Thank you. Any further discussion? Hearing none, I will call the vote. Those in favour of the amendment? Those opposed? The amendment is lost.

Shall schedule B, section 20, carry? It is carried.

Shall schedule B, sections 21 to 24, carry? Carried.

Shall schedule B carry? It is carried.

That moves us now to schedule C. Shall schedule C, sections 1 to 4, carry? Carried.

Shall schedule C carry? Carried.

Schedule D, section 1: We now have an amendment from the official opposition.

Mrs. Witmer: I move that section 1 of schedule D to the bill, amending the Health Protection and Promotion Act, be amended by adding the following section:

“(3.1) Section 5 of the act is amended by adding the following section:

“Cost of water testing

“(2) Despite paragraph 1.1 of subsection (1), the cost of testing water in small drinking-water systems shall be borne by the province and shall result in no additional costs being borne by boards of health.”

The Chair: Because this adds a cost component for the government, I have to rule this amendment out of order.

Mr. O’Toole: Chair, could we get a response on the government’s intention going forward on source water protection? Bill 43 specifically has raised a fairly high level of concern in rural and northern Ontario about metering and then charging for water from wells. This is out there. Is there anything in this bill that could end up costing people money? As Chair, you’ve ruled that this is out of order because it implies costs, so there are costs.

The Chair: This indicates that there is a requirement for government of that. I have to rule it out of order. This amendment is now completed, so we cannot debate it. If you wish to debate this concept, you can debate it when we have the motion dealing with section D. I’m not ruling it can’t happen, but it can’t happen under this particular motion.

Mr. O’Toole: Yes. I think, for clarification and on the record, our concern on Bill 43 was not safe water; it’s the fact that it’s being downloaded. The costs, which have not been fully disclosed, despite the \$24 million and the \$120 million, are going to be borne at the municipal level in your water bill. This is the concern.

The Chair: I’m not disagreeing with what you’re saying. I’m disagreeing with the process. If you wish to speak to that, first of all we need to move schedule D. Once we have a motion, then you can speak to it and debate it.

I am about to ask, shall schedule D, section 1, carry? Any discussion? Are you finished?

Mr. O’Toole: No. My point there was the same. I’d like to have, on the well issue, a recorded vote that there will be no costs. It’s my understanding there will be no costs downloaded to the municipal tax bill or other bill issued by way of the orders in this act. I’m concerned about the consultation. This is something we all share. We all want safe, clean drinking water but we want it done openly so that people, whose lives and welfare depend on safe, clean drinking water—which we all support—have a full understanding of the implications for rural and remote parts of Ontario.

Mr. Fonseca: Mr. Chair, what we’re bringing forward, if passed—AMO first asked for this, and it is much less stringent than what we had under MOE. A letter was sent by the ministry to all public health units on April 3 of this year, which said if the legislation passed, provincial support would be provided on a 100% basis for start-up costs, including an initial planning period, followed by a two-year period of conducting the initial site-specific risk assessments. They referred to the fact that technical laboratory supports necessary for the work for public health inspectors would need to be in place. This included the funding of the related laboratory testing, which would be covered for all health units.

Mr. O’Toole: So the implication is that the costs associated with testing today under public health is borne by the public and in the future will be charged when you bring in the little bottle.

Mr. Fonseca: Yes. I’ll repeat: All the start-up costs and an initial planning period of two years will be ministry-provided.

Mr. O’Toole: And going forward there would be no further costs. When I bring in the little testing bottle, I get the bill. Ultimately, that would be a change. We’ve been ruled out of order, as Mrs. Witmer, our critic in health, has drawn to your attention. I’m sure all members here—I’m satisfied that they support raising this surreptitiously and we don’t. We’re all in favour of clean drinking water; only, who is paying is the issue.

The Chair: Any additional discussion on schedule D, section 1?

Ms. Martel: Just on a point raised by Mr. O’Toole, I wonder if the parliamentary assistant can make available a copy of the letter he referenced to the two opposition health critics?

Mr. O’Toole: We will need that during the election. You’ll say we voted against clean water, and we didn’t. We voted for accountability and transparency.

Mr. Fonseca: You just said you voted against clean water.

Mr. O’Toole: You said it today in the House.

Mrs. Witmer: We didn’t vote against clear water. We just wanted to make sure that you were going to pay for it, not download it.

Mr. O’Toole: Exactly; transparency. The people who are here from health know how important water is to humans and other species—plants—but they portray this—

The Chair: Mr. Arnott, you’re a Deputy Speaker. What happens when you lose control? Give me some advice.

Mr. Ted Arnott (Waterloo–Wellington): I resign.

Mrs. Witmer: He said to resign.

The Chair: Tempting as that is—okay, if there is no additional debate—

Mr. O’Toole: We would ask for a recorded vote on this one.

The Chair: Shall schedule D, section 1, carry?

Ayes

Fonseca, Kular, Martel, Milloy, Ramal, Sandals.

The Chair: It is carried.

Shall schedule D, sections 2 to 4, carry? Carried.

Shall schedule D carry? It is carried.

Shall schedule E, sections 1 to 3, carry? Carried.

On schedule E, section 4, we have an NDP amendment.

Ms. Martel: I move that section 10 of the Immunization of School Pupils Act, as set out in section 4 of Schedule E of the bill, be amended by adding the following subsection:

“Report

“(2) The physician or member shall, with the consent of the parent, forward a copy of the statement to the medical officer of health for the health district in which the child resides.”

1610

If I could speak to it, this comes from a presentation that was made to the committee by Dr. Rosanna Pellizzari, who is the medical officer of health for the Perth district board of health. You will recall that she raised with the committee her serious concerns, as but one medical officer of health, about the number of times they discovered that immunization reports are not updated on school files and that children are then at risk of being suspended from school until such time as that immunization record can be provided to the health unit. In many cases, the immunization has already taken place, but there has been no mechanism to provide that particular information to the health unit.

She also mentioned that it had been a significant cost for their particular board of health, both in human and financial resources, to work with the various school boards to try to sort out where immunizations had been done this year, and if we had a mechanism whereby, with the parents' consent, the physician who provides the immunization sends a copy of that to the board of health, it would significantly decrease the work the board has to do to sort this out later. So it's being moved as a result of her presentation.

Mr. Fonseca: One of the challenges to this would be operationalizing this legislative requirement. What the ministry is looking at is best practices in data collection as we move forward on e-health. At this time, it would not be prudent for us to move forward on this.

Ms. Martel: If I might, I don't know how long it's going to take for the government to move forward on e-health. We've been moving forward on e-health for quite some time, and we are nowhere near to being adequately linked in the province through physicians' offices to hospitals etc. If you want to figure out something later on e-health, that's fine with me, and we can incorporate that at the time. I do think, because this is a problem not just in Perth county but right across the province, that as an interim step until the government sorts out where e-health is going, we could put this mechanism in place

to ensure that boards of health are aware that children have been immunized so that we don't have further resources being spent by the board of health, and then by the school and the school board, determining which child should be suspended and which shouldn't. This is a no-brainer, from my perspective, and would resolve a lot of problems at the health units right now, because they don't have that information.

Mr. Fonseca: We are committed to data collection and improving our data collection, and to e-health. In this last budget, \$64 million was set aside for our e-health strategy. But we are also consulting with our physicians and other health care providers to see the best way to collect this data. There are also some privacy implications, as we look at this legislation.

Ms. Martel: If I might, I don't know where the privacy concerns are. It says “with the consent of the parent.” As long as consent is provided by the parent to the physician to provide a copy of the immunization record to the chief medical officer of health or the health authorities, I don't see where the privacy issues are.

The final question I'd like to ask the parliamentary assistant is, how long does he think it will be till we have something in place that would respond appropriately to Dr. Pellizzari's concern? I can tell you that it's not just her concern, but a concern with all medical officers of health right across the province.

The Chair: Further debate?

Ms. Martel: I'd just like an answer about how long it is going to take before we have a solution—any solution—to this.

Mr. Fonseca: It is actually being worked on presently through the LHINs, in terms of the data collection. The LHINs are working on this.

Ms. Martel: They're working on a system to have this work?

Mr. Fonseca: Presently; that's what I have here.

Ms. Martel: But their response could vary from LHIN to LHIN, correct, on how this is implemented?

Mr. Fonseca: What I've got is “the LHINs,” so that would be all LHINs.

Ms. Martel: Yes. I'd like a recorded vote on this, Chair.

The Chair: Further debate?

Mr. O'Toole: If I may, the parliamentary assistant seems to have a fairly good idea on this. I was on the Smart Systems for Health board—

Mr. Fonseca: Just a clarification: I am not the parliamentary assistant.

Mr. O'Toole: Well, you're doing all the answering, which is fine. Who is the parliamentary assistant?

Mr. Fonseca: It was Tim Peterson. He's now—

Mr. O'Toole: Oh, Tim, and he was so disappointed, he crossed the floor. Anyway, that's a whole other issue.

The Chair: This was the issue that did it, was it?

Mr. O'Toole: On Smart Systems for Health, could we ask, through this committee, for an update on how much has been spent, and of the nine modules, what's deliverable? A lot of the implications on this and the regulations

etc. are dependent on having this great, huge Smart Systems e-Health thing in place. Could we have a date and an update on that? It's a fair question, because a lot of these questions emanate around health privacy, consent, informed consent and implied consent.

Mr. Fonseca: Smart Systems actually does an annual report, and that annual report is tabled in the House.

Mr. O'Toole: So it's not operational, then.

Mr. Fonseca: There's an annual report that is tabled in the House.

Mr. O'Toole: Spending money; that's good.

The Chair: If there's no further debate, I will call the vote. There has been a request for a recorded vote.

Ayes

Martel, O'Toole, Witmer.

Nays

Fonseca, Kular, Milloy, Ramal, Sandals.

The Chair: The amendment is lost.

Shall schedule E, section 4, carry? Carried.

Shall schedule E, sections 5 and 6, carry? Carried.

Shall schedule E carry? Carried.

That brings us to schedule F. Shall schedule F, section 1, carry? Carried.

There is a new section, the NDP, and that is amendment 5. Ms. Martel.

Ms. Martel: I move that schedule F to the bill be amended by adding the following section:

"1.1 Section 4 of the act is amended by adding the following subsection:

"Precautionary principle

"(2) A board of health shall not await scientific certainty before acting."

This recommendation came to us by both the Ontario Nurses' Association and the Registered Nurses Association of Ontario.

The Chair: I have to rule the amendment out of order.

Ms. Martel: Okay. Then I will ask for unanimous consent for me to outline the motion and why it's being put.

The Chair: There has been a request for unanimous consent to consider amendment number 5. Do I hear consent? Yes.

Ms. Martel: Thank you, Chair.

Very briefly, both the Ontario Nurses' Association and the Registered Nurses Association of Ontario in their presentations before the committee suggested very strongly that the government heed the recommendations that had been made in the Campbell report. There are a number of recommendations, and I will reference them in several of the amendments we've put forward. I'm just going to quote from ONA's presentation to the committee, which said as follows:

"However, we urge the government to heed the recommendation of the Campbell report to incorporate

the precautionary principle into the act. We would recommend that the precautionary principle be incorporated in the duties of boards of health into part II, section 4 of the act." That's what this amendment proposes to do.

The Chair: Further discussion?

Interjection.

The Chair: I'm going to call the vote. I've had a request for a recorded vote.

Ayes

Martel, O'Toole, Witmer.

Nays

Fonseca, Kular, Milloy, Ramal, Sandals.

The Chair: The amendment—

Mr. O'Toole: Just to the clerk, I'm wondering why, in all fairness, if legal counsel is advising that these things are out of order, and as a courtesy Mr. Fonseca is allowing Ms. Martel or Mrs. Witmer to read the amendment, why are we voting on it? Or are you just voting on the section?

1620

The Chair: It is out of order because that section is not open, and so unanimous consent allows it to be opened.

Mr. O'Toole: You're just voting on the section, ignoring it.

The Chair: The unanimous consent is to allow the committee to consider it anyway, and it can be done if there's unanimous consent.

Mr. O'Toole: You're allowing unanimous consent to open a section that was not otherwise open. I think that, through the Chair, you might just ask that first, when somebody submits an amendment, if it's out of order, and that's the end of it.

The Chair: I'll bear that in mind my next term.

Shall schedule F, sections 2 to 13, carry? Carried.

We now have a new section, which is amendment number 6, a Progressive Conservative motion.

Mrs. Witmer: I move that schedule F to the bill be amended by adding the following section:

"13.1 Section 62 of the act is amended by adding the following subsections:

"Report, CMOH

"(3) The annual report of the chief medical officer of health shall include a status report with respect to vacancies among medical officer of health and associate medical officers of health and among physicians in the public health division, and a report as to activities take to fill vacancies.

"Where failure to appoint

"(4) Where a board of health has failed to appoint a medical officer of health, the chief medical officer of health shall appoint an assessor to investigate the situation and make recommendations.

“Additional powers, MOH

“(5) A medical officer of health has, subject to accountability to the board of health, full chief executive officer authority for local health services,

“Same

“(6) Every medical officer of health has the same authority as the chief medical officer of health to speak out about and to manage local outbreaks of infection.”

The Chair: It is out of order, as section 62 of the Health Protection and Promotion Act is not open. You could request unanimous consent.

Mrs. Witmer: Sure, I could request unanimous consent, and I will.

The Chair: There has been a request for unanimous consent to consider amendment number 6. Is there unanimous consent? Agreed.

Mr. Fonseca: For this?

The Chair: I’m going to ask if there is unanimous consent to consider amendment number 6. Agreed? It is agreed.

Mr. Fonseca: I’d like to move an amendment, Chair.

The Chair: You wish to move an amendment to the amendment?

Mr. Fonseca: Correct. Schedule F to the bill, section 13.1, Mrs. Witmer’s motion.

I move that Mrs. Witmer’s motion to add section 13.1 to schedule F of the bill be amended to read as follows:

“13.1 Section 62 of the act is amended by adding the following subsection:

“Report, CMOH

“(3) The annual report of the chief medical officer of health under section 81 shall include a summary of the medical officer of health and associate medical officer of health vacancies in Ontario.”

The Chair: We are now, I believe—because there has been an amendment made to the amendment—debating the government amendment, which has been distributed. Any further discussion on the amendment to the amendment?

Ms. Martel: I should point out that Mrs. Witmer’s amendment is the same as mine, which is coming next. We were told that the government was going to move a friendly amendment—that’s fine. What worries me about what I see the government moving is that three sections that appear in my amendment and Mrs. Witmer’s are now dropped from the government amendment. That’s not as friendly as I thought it was going to be, to be quite blunt about it.

I agree with provision 1, that there should be an annual report and it should include a summary of the vacancies of medical officers of health. But I also agree, as per the presentation that was put to us by the chief medical officers of health across the province, that the remaining other three should also take effect. For example, if every medical officer of health has the same powers as the chief medical officer of health around exercising powers in good faith, if there has been a failure to appoint, then the chief medical officer of health

shall appoint an assessor, and also, they have the same authority.

I’m a bit concerned that there have been some things that have been dropped here that were put forward in both Mrs. Witmer’s and my amendments. I don’t really know why those things have now been dropped.

The Chair: Mrs. Witmer.

Mrs. Witmer: I could not support this amendment to my amendment because I have grave concerns about what is being omitted. We need much more than an annual report telling us the number of vacancies. For example, we know at the present time 12 of 36 are in that position. What we need to do is make sure that we can take action on filling those vacancies.

In listening to the medical officers of health, they are very concerned about the inability to fill these vacancies and obviously the impact that it’s going to have in this particular situation; we talk about managing local outbreaks of infection. So I could not support this amendment.

The Chair: Any further debate?

Mr. Fonseca: I would just bring clarification that subsections (4), (5) and (6) are not necessary because they are redundant. I’ll give you an example. Subsection (5): The chief medical officer of health already has the power to appoint an assessor to examine the MOH vaccines where deemed necessary; that’s in section 82. It would be inappropriate for assessors to have to always be appointed, in that the reason for the board’s failure may be the shortage of medical officers of health in the health unit or the province and outside the board’s control. There is also reasoning for subsections (4) and (6), if you’d like it.

Interjection.

The Chair: Ms. Martel had her hand up first.

Interjection.

The Chair: You defer to Mrs. Witmer?

Mrs. Witmer: My concern is, even in subsection (3) in my amendment and Ms. Martel’s, we talk about not only identifying the vacancies; we talk about the need for a report to identify what activities should be undertaken to fill those vacancies. That’s extremely important, and that is nowhere in this new amendment. I think the issue is not who’s there, but who’s not there, and how are you going to make sure that we do have all of these positions filled? We’ve seen this situation worsen in recent years, and it is of grave concern to local medical officers of health and their ability to deal with situations locally.

The Chair: Further discussion? Hearing none, I will call for the vote on the amendment to the amendment. Those in favour? Opposed? The motion is carried.

Is there any additional discussion on the amendment as amended?

Ms. Martel: Can we have a recorded vote?

Mr. O’Toole: The amendment carried, so it applies that the amendment, as amended, carries.

The Chair: No. There needs to be a vote on the original amendment.

Mr. O’Toole: We just passed a motion on the amendment.

The Chair: Yes, which is now an amended amendment. If I have in any way given an indication that I know what I'm doing, I apologize for that. It is misleading. We will now vote—

Ms. Martel: I'm sorry, Chair. I don't want to prolong this. I'm assuming our next vote is on Mrs. Witmer's amendment?

The Chair: Mrs. Witmer's, as amended, yes.

Ms. Martel: So the first vote was on Mrs. Witmer's before it was amended—the one that we just took.

The Chair: No. The first vote was on the government amendment to the official opposition amendment. The amendment to the amendment has now passed. I would now like to call the vote on the amendment.

Mrs. Witmer: But isn't it really just a replacement?

The Chair: The amendment has had the effect of replacing Mrs. Witmer's motion with the government motion—

Mrs. Witmer: Right.

Interjections.

The Chair: —but it is still the official opposition's motion.

Mr. O'Toole: Well, I might just add to that that this is a new section. We have adopted an amendment. The government has forced this amendment to the amendment, which added a section, and it nulls the other amendment.

The Chair: Yes.

Mr. O'Toole: So why are we voting on it?

Mrs. Witmer: Good question.

The Chair: Because we're required to vote on the original motion, as amended.

Interjections.

The Clerk of the Committee: Sorry; if I may, Mrs. Witmer had a motion she put on the floor, and we had that. Before we could vote on that motion, the government suggested that we change that motion, that we amend it. We voted on that amendment, and it is now changed. It's still on the floor, but it's changed. Now that it's changed, we have to vote on that original motion, as it was amended, to see if 13.1 becomes a section to this bill.

Mr. O'Toole: So, logically, we would vote against this—

The Chair: I do not give advice on how one votes.

Mr. O'Toole: Well, I am going to give you some. We would vote against it because it doesn't do what it's intended to do.

The Chair: I'm conscious of the clock, and I'm going to give you the opportunity to do that.

Ms. Martel: Chair, very quickly, because we have concerns—I think the concerns are similar—that the government amendment is far less than what is necessary and what we put forward, I just want to be clear that if we vote against the next motion that you're putting on the floor, the sum total of that is for us to be able to express our concern with what the government has done and that the government didn't accept an amendment that would have been much fuller and, from our perspective, a much better amendment.

Is that the end result? I'm a little bit nervous now.

The Chair: I'm going to call the vote. Those in favour of the amendment, as amended? Those opposed? It is carried.

I am now going to call a recess in order for the committee to attend at the vote, and we will recommence immediately after. The committee is in recess.

The committee recessed from 1632 to 1643.

The Chair: The committee is back in session. This brings us to NDP motion 7.

Ms. Martel: This is a motion that's similar to the one that Mrs. Witmer moved and that was amended in a less than satisfactory way by the government. But the dilemma is that it's essentially the same, so I will have to withdraw it.

The Chair: The amendment is withdrawn.

We move now to schedule F, section 14. The first item to deal with is government amendment 8.

Mr. Fonseca: I move that section 77.5 of the Health Protection and Promotion Act, as set out in section 14 of schedule F to the bill, be amended by adding the following subsection:

“Other provinces and territories

“(1.1) Nothing in this section shall require a person subject to an order to provide to the minister or to another person specified in the order a quantity of medications and supplies if there exists or may exist an immediate risk that the health of patients in another province or territory of Canada would be jeopardized.”

The Chair: Do you wish to speak to the amendment?

Mr. Fonseca: No.

The Chair: Any additional discussion?

Hearing none, shall amendment 8 carry? It is carried.

That brings us to Progressive Conservative motion 9.

Mrs. Witmer: I move that section 77.5 of the Health Protection and Promotion Act, as set out in section 14 of schedule F to the bill, be amended by adding the following subsection:

“Appeal

“(9.1) An order under this section may be appealed to the Superior Court of Justice within 30 days of being made.”

The Chair: Do you wish to speak to the motion?

Mrs. Witmer: No.

The Chair: Any additional discussion? I will call the vote, then. Those in favour? Those opposed? The motion is lost.

That brings us to government motion 10. Mr. Fonseca?

Mr. Fonseca: I move that section 77.7 of the Health Protection and Promotion Act, as set out in section 14 of schedule F to the bill, be amended:

1. By adding the following subsection:

“Precautionary principle

“(1.1) In issuing a directive under subsection (1), the chief medical officer of health shall consider the precautionary principle where,

“(a) in the opinion of the chief medical officer of health there exists or may exist an outbreak of an infectious or communicable disease; and

“(b) the proposed directive relates to worker health and safety in the use of any protective clothing, equipment or device.”

2. By adding the following definition to subsection (5):

“‘precautionary principle’ has the meaning prescribed in regulations made by the Lieutenant Governor in Council; (‘principe de precaution’).”

I know I did not do justice to that.

The Chair: Oh, that was a different language.

Mr. Fonseca: My French, yes.

The Chair: Okay. Sorry. Do you wish to speak to—

Mr. Fonseca: No.

The Chair: Any additional? Mr. O’Toole?

Mr. O’Toole: If I may, I’m just wondering what this section actually does. Today, it would be the Ministry of Labour that would investigate a work-related incident. It may even have a hearing and an order. Is this going to require the municipality or the regional level of government, upper tier, to investigate work-related accidents and then issue orders?

Mr. Fonseca: For Mr. O’Toole, I’ll just let you know that this was the main theme in Justice Campbell’s report on SARS. This is where this is coming from.

I’ll ask for a recorded vote here, Chair.

The Chair: Any additional discussion on amendment 10?

Mr. O’Toole: Quite frankly, I need to know. You’re saying here that this function of looking at a hospital level—don’t you see the province would have an overarching responsibility to invoke some very high-level orders to require all hospitals to comply in the event of a thing like SARS where they had to utilize all the resources of the province even to figure out what the cause was? If you think that I’m going to accept this based on your downloading it to Dr. Robert Kyle, the medical officer of health for Durham, to have all the resources and the costs to determine labs and all these things—is this what this does?

The medical officer of health is going to say that there is existing or may exist “an outbreak of infectious or communicable disease” or “(b) the proposed directive relates to worker health and safety in the use of any protective clothing, equipment or device.” That’s a provincial responsibility. I guess you’re saying it’s the chief medical officer of health. I just want to be clear that it isn’t the medical officer of health by region; it’s the provincial medical officer of health.

Mr. Fonseca: Yes, the chief medical officer of health.

Mr. O’Toole: Okay. I get it.

The Chair: Okay. Any additional discussion? I will call the vote. There has been a request for a recorded vote.

Ayes

Fonseca, Kular, Martel, Milloy, O’Toole, Ramal, Sandals, Witmer.

The Chair: The motion is carried.

That brings us to Progressive Conservative motion 11. Mrs. Witmer.

Mrs. Witmer: I move that section 77.7 of the Health Protection and Promotion Act, as set out in section 14 of schedule F to the bill, be amended by adding the following subsection:

“Objections to directive

“(2.1) Despite subsection (2), a health care provider or health care entity that is served with a directive may advise the chief medical officer of health of its objections, and may apply for an exemption in whole or in part.”

The government is being given extensive powers without a mechanism of appeal. This is why it’s here.

1650

The Chair: Any additional discussion? I will call the vote.

Those in favour of the motion? Those opposed? The motion is lost.

Shall schedule F, section 14, as amended, carry? It is carried.

Schedule F, section 15, moves us to government motion 12.

Mr. Fonseca: I move that Section 81.1 of the Health Protection and Promotion Act, as set out in section 15 of schedule F to the bill, be struck out and the following substituted:

“Associate chief medical officer of health

“81.1 (1) The position of associate chief medical officer of health is established.

“Person who shall hold position

“(2) Subject to subsection (3), the position of associate chief medical officer of health shall be held by the person or persons who, by virtue of their position, hold the title of ‘associate chief medical officer of health’ in the ministry.

“Qualifications

“(3) No person is qualified to be or to act as an associate chief medical officer of health unless he or she is a physician of at least five years standing and possesses the qualifications prescribed by the regulations for the position of medical officer of health.

“Functions, duties, etc.

“(4) An associate chief medical officer of health,

“(a) shall perform such functions and duties as the chief medical officer of health may specify in writing; and

“(b) shall act in the place of the chief medical officer of health when the chief medical officer of health is absent or is unable to perform the functions of his or her office or when the office of chief medical officer of health is vacant.

“Regulations

“(5) The minister may make regulations clarifying, modifying or restricting the functions, powers and duties of associate chief medical officers of health.”

The Chair: Do you wish to speak to the amendment?

Mr. Fonseca: No.

Ms. Martel: I'm not sure if Mr. Fonseca can answer them or if we can have some ministry staff. Just for clarification on the regulations section, it's in the plural, so it speaks to the duties of the associate chief medical officers of health. Are we presuming there's going to be more than one?

Mr. Fonseca: Yes, it would allow for more than one.

Ms. Martel: For the purposes of the rest of the bill, does it have to be clarified that it's in the plural for the rest of the duties and responsibilities that are assigned? Right now, it's in a singular tense.

The Chair: I would ask that you state your name before responding.

Mr. Liam Scott: Liam Scott, legal counsel with the Ministry of Health.

With respect to other amendments, the only other place in the bill where the associate chief medical officer of health appears is in section 95, which is liability protection, and in that respect we believe that, given the context, we wouldn't need to amend section 95 as well as a result of adding more than one associate chief medical officer of health to be appointed.

Ms. Martel: Just for clarification, for the amendment that we're dealing with right now, even though subsection 5 talks about associate medical officers of health, you don't have to have that reflected in the rest of the amendment, in the sections above? It doesn't have to be reflected that you're talking about the potential for more than one?

Mr. Scott: It actually does. In subsection 81.1(2), it now says: "...the position of associate chief medical officer of health shall be held by the person or persons who, by virtue of their office..."

Ms. Martel: My apologies.

Mr. Scott: That's intended to reflect the fact that there could be more than one associate chief medical officer.

Ms. Martel: My next question is, how does this person get their position? Are they appointed by the Lieutenant Governor in Council or are they hired by the Ministry of Health?

Mr. Scott: Currently, the position of the associate chief medical officer of health is an existing administrative position within the Ministry of Health and Long-Term Care, so it's a bureaucratic appointment.

Ms. Martel: So if it already exists, what's the purpose of the amendment?

Mr. Scott: The purpose of the amendment is to give the administrative officer of the associate chief medical officer of health, in the absence or the inability of the chief medical officer of health to act—the associate chief currently, before this amendment goes through, cannot exercise any of the chief medical officer of health's statutory powers. By creating this position in statute, it allows, in the event that there is a sudden departure of the chief medical officer of health—if the position suddenly becomes vacant—that there isn't a gap, so to speak, or a need to appoint on an urgent basis an interim chief medical officer of health to allow for the statutory powers to be exercised.

Ms. Martel: So what it gets away from is what we have ended up doing as a result of Ms. Basrur's departure. We had to have an order in council by the Legislature to allow Dr. Pasut to take that position. We had to do it by order in council because it was not in the legislation. Is that correct?

Mr. Scott: That is correct.

Ms. Martel: Okay. My other question: Under "qualifications," where it says "physician of at least five years standing and possesses the qualifications prescribed by the regulations," can you give us some indication of what those would be? I ask that question because right now, Mrs. Witmer and myself are involved in the hiring process for the new chief medical officer of health/ADM for public health. We have, at the request of a number of medical officers of health, put in some specific requirements for that position which I hope would hold for an associate, but all we have here is at least five years' standing and we had some views—in fact, in the ad we go further than that. Can you give the committee some idea of what you're talking about in terms of who would be qualified?

Mr. Scott: It is intended to be the same. The reason why there is a reference to the regulations is that it is intended to be the same for the associate chief medical officer of health, the medical officer of health and the chief medical officer of health. Regulation 566, under the Health Protection and Promotion Act, specifies a number of different requirements that must be met by a medical officer of health before assuming that position. I could obtain the regulation and give you more specifics, if that is desirable.

Ms. Martel: That would be helpful, so that we can see what that regulation already says in terms of what the expected requirements are of somebody in that position, because we've had to make that clear through the ad.

Mr. Scott: I can certainly do that. I'll have to retire for a moment to obtain the regulation to cite for you all of the requirements.

Ms. Martel: I'll let you answer Mrs. Witmer's questions first before you do that. Thank you.

Mrs. Witmer: Actually, my questions have now been answered. There's only so much in there.

Mr. O'Toole: Just to be clear, the only thing that it's really changing is under the section where it's actually adding the phrase "or persons" and it drops an "s" from "holds"?

Mr. Scott: Yes.

Mr. O'Toole: That's about all it does. Everything else is word for word what the existing section is.

Mr. Scott: There is one additional change, the addition of the words "or persons." If you note, in 81.1, clause 4(b), it indicates now, "shall act in the place of the chief medical officer of health when the chief medical officer of health is absent or is unable to perform the functions of his or her office." That change is to be consistent. Previously, the wording simply said, "is absent or when the chief medical officer of health is vacant," which did not cover a situation where you could

have a chief medical officer of health still in office but mentally incapable of making decisions. That change reflects that possibility. So there are two changes in the previous wording of that section.

The Chair: Do you still require additional—

Ms. Martel: No.

The Chair: Is there any other discussion?

Mr. O'Toole: Dr. Basrur was the chief medical officer of health and unfortunately became ill and unable. Would this be addressing those circumstances if it came up in the future?

Mr. Scott: Yes. If say, the current acting interim chief medical officer of health suddenly became ill or incapacitated, it would mean that the associate chief medical officer of health could exercise the statutory powers of the chief medical officer of health in that urgent type of situation, yes.

Ms. Martel: In that case, they're only exercising the power of the chief medical officer of health. You'd continue to have a scenario like we do right now, where someone else is exercising the ADM position. Is that correct? You're talking about an individual who's only replacing one part of that dual role?

Mr. Scott: We are only addressing here the statutory powers of the chief medical officer of health. We're not addressing any administrative functions that may exist within the Ministry of Health and Long-Term Care. That's correct.

The Chair: I'm going to call the vote.

Those in favour of the motion? Those opposed? The motion is carried.

Shall schedule F, section 15, as amended, carry? It is carried.

Shall schedule F, sections 16 to 24, carry? Carried.

Lastly, because we are now finished schedule F, shall schedule F, as amended, carry? That's carried.

Moving us now to schedule G. Shall schedule G, section 1, carry? Carried.

Moving us now to schedule G, section 2, there's a government amendment, number 13.

1700

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): I move that subsection 5(7) of the Health Insurance Act, as set out in subsection 2(1) of schedule G to the bill, be struck out and the following substituted:

“List

“(7) Immediately upon the coming into force of this subsection, there shall be published on the Internet at a website that is accessible to physicians a list of circumstances described in subsection 18(2) for which payments are subject to correction. The list will initially be established by the medical services payment committee established by agreement between the Ontario Medical Association and the crown in right of Ontario.

“Payment correction list

“(7.1) For greater clarity, a circumstance described in subsection 18(2) may be listed or described on the payment correction list without specific reference to subsection 18(2).”

The Chair: Do you wish to speak to the motion? Any discussion?

Mr. O'Toole: Yes, I just notice it says, “immediately upon coming into force,” so this section must already be ready, because in the previous section, subsection (7), it said, “90 business days after the coming into force of this subsection.” So they already have this ready, I guess. Is that it? It's ready to go?

Mr. Kular: This is what the—

Mr. O'Toole: You're just reading it. I get that; I understand that. Somebody who had actually written it could tell us what that is about.

Mr. Kular: This is how the OMA wanted it, so we are amending it according to the OMA.

The Chair: Okay. If there's no other discussion, I will call the vote. Those in favour? Opposed? It is carried.

So shall schedule G, section 2, as amended, carry? It's carried.

Now, shall schedule G, sections 3 to 7, carry? Carried.

We are now at schedule G, section 8, and first we have government motion number 14.

Mr. Kular: I move that section 8 of schedule G to the bill be amended by adding the following subsection:

“(0.1) Subsection 18(1) of the act is repealed and the following substituted:

“Payment of accounts

“(1) The general manager shall determine all issues relating to accounts for insured services in accordance with this act and shall make the payments from the plan that are authorized under this act.”

The Chair: Any discussion? There being none, I will call the vote. Those in favour of motion 14? It is carried.

I am now going to call a recess until after the vote. Do you want to continue going?

Mrs. Witmer: There are still six minutes left.

The Chair: Yes, but you don't walk as slowly as I do. We'll move on, then. I haven't hit the gavel. Technically I'm still okay, but if I'm late for the vote it's on your conscience.

Government motion number 15.

Mrs. Witmer: We're not going, so you can stay.

Mr. O'Toole: We lose every vote.

The Chair: You're going to let them lose without you?

Mr. Kular: I move that subsection 18(4) of the Health Insurance Act, as set out in section 8 of schedule G to the bill, be struck out and the following substituted:

“Refusal to pay

“(4) Despite subsection (2), the general manager may refuse to pay a physician for a service or pay a reduced amount for the service only if a circumstance described in subsection (2) that is also set out or described in the payment correction list exists in respect of the claim or claims, or if permitted to do so by an order of the review board.

“Referral to review board for expedited hearing

“(4.1) Where the general manager is of the opinion that for a claim or claims submitted for insured services rendered by a physician, a circumstance described in

subsection (2) that is not also set out or described in the payment correction list exists in respect of the claim or claims, and is of the opinion that the physician knew or ought to have known that the claim or claims were false, the general manager may give a notice to the review board requesting it to hold an expedited hearing.

“Expedited hearing, notice

“(4.2) The general manager may request an expedited hearing without notice to the physician, but shall promptly afterwards give notice to the physician.”

The Chair: Any discussion?

Mr. O’Toole: Could you give us an example of where there’s a dispute? This is a process for refusal to pay from the board and the doctor. There could be an expedited hearing without notice, deemed in the opinion of the general manager that they ought to have known, and so he’ll just be told, “You’re not getting paid for that service.” It says here “without notice ... an expedited hearing.” The next day they have a hearing, they decide he ought to have known about certain circumstances and they refuse to pay him.

The Chair: We will respond to that after the recess. The committee is now in recess.

The committee recessed from 1706 to 1716.

The Chair: The committee is back in session. When we left, Mr. O’Toole had asked a question. Mr. Kular.

Mr. Kular: The government believes most of the physicians are honest professionals. This amendment came through our discussions with the Ontario Medical Association. Definitely the physician will receive notice after a hearing has been requested.

The Chair: Any other discussion? We have amendment 15 on the floor. Those in favour? Opposed? It is carried.

That moves us to government motion 16.

Mr. Kular: I move that subsections 18(8) and (9) of the Health Insurance Act, as set out in section 8 of schedule G to the bill, be struck out and the following substituted:

“Notice, physician, refusal to pay or reduced payment

“(8) The general manager shall give notice to a physician of a decision to refuse to pay for a service or to pay a reduced amount because a circumstance described in subsection (2) that is set out or described in the payment correction list exists in respect of the claim or claims.

“Notice, physician, re payment correction list after payment

“(9) Despite subsections (12) to (16), if the general manager is of the opinion that an amount paid to a physician for a service should not have been paid or should have been paid at a reduced amount because a circumstance described in subsection (2) that is set out or described in the payment correction list exists in respect of the claim or claims, the general manager may give notice to the physician of the circumstance and of the amount the general manager believes is owing.”

The Chair: Any discussion? Those in favour of the motion? Opposed? It is carried.

That brings us now to government motion 17.

Mr. Kular: I move that subsection 18(16) of the Health Insurance Act, as set out in section 8 of schedule G to the bill, be struck out and the following substituted:

“Immediate referral for false claims by physician

“(16) Despite subsection (15), the general manager may give a notice to the review board requesting it to hold a hearing without giving a notice to the physician under subsection (13), but shall promptly afterwards give notice to the physician of the request for a hearing, if the general manager is of the opinion that a circumstance described in subsection (2) exists in respect of one or more claims paid for services provided by the physician, and that the physician knew or ought to have known that the claims submitted to the plan were false.”

The Chair: Discussion? Hearing none, I’ll call the vote. Those in favour of the motion? Opposed? It is carried.

Shall schedule G, section 8, as amended, carry? That’s carried.

We’re moving now to schedule G, section 9, government motion 18.

Mr. Kular: I move that section 9 of schedule G to the bill be struck out and the following substituted:

“9. Section 18.0.1 of the act is repealed and the following substituted:

“Physicians

“18.0.1(1) During the period that commences when section 9 of schedule G to the Health System Improvements Act, 2007 comes into force and ends when this section is repealed, this section applies with respect to requests for review by the review board made by physicians and the general manager.

“Panel review

“(2) Subject to the other provisions of this section, on the request of a physician pursuant to subsections 18(11) or (14) or the general manager pursuant to subsection 18(4.1), (15) or (16), the transitional physician audit panel shall, in accordance with this section, conduct any review that would be conducted by the review board under this act if this section were not in force.

“If review requested

“(3) If a physician or the general manager requests a review under subsection (2), the chair of the appeal board shall designate members of the transitional physician audit panel to deal with the review and set a time for the review and the panel shall conduct the review and render its direction as expeditiously as may be reasonably possible, and in any case shall render its direction no more than 45 days after the last day on which evidence in the review was adduced before the panel, unless the general manager and the physician consent to an extension.

“Parties

“(4) Only the general manager and the physician are parties to a review by the transitional physician audit panel.

“Directions

“(5) Following the review, the transitional physician audit panel may give any of the following directions:

“1. That the decision or opinion of the general manager be confirmed.

“2. That the general manager make a payment in accordance with the submitted account.

“3. That the general manager pay a reduced amount, as calculated by the general manager in accordance with the direction.

“4. That the physician reimburse the plan in the amount calculated by the general manager in accordance with the direction.

“Interest, payable by physician

“(6) If, as a result of a direction by the transitional physician audit panel, an amount is payable by a physician, interest calculated in the prescribed manner is payable on the amount, payable from the date the account was paid by the plan.

“Interest, payable to physician

“(7) If, as a result of a direction by the transitional physician audit panel, an amount is payable by the general manager, interest calculated in the prescribed manner is payable on the amount, payable from the date the amount was recovered from the physician by the plan.

“Applicability of certain provisions

“(8) The following provisions apply, with necessary modifications, to a review by the transitional physician audit panel:

“1. Subsection 21(2).

“2. Subsections 23(1) to (4) and (6).

“3. Subsection 27.2(1).

“Appeal to Divisional Court.

“(9) Any party to a review before the transitional physician audit panel may appeal from the panel’s direction to the Divisional Court in accordance with the rules of the court, but,

“(a) personal health information contained in any document or evidence filed or adduced with regard to the appeal, or in any order or decision of the court, shall not be made accessible to the public; and

“(b) the Divisional Court may edit any documents it releases to the public to remove any personal health information.”

The Chair: Any discussion?

Mr. O’Toole: It’s a fairly lengthy amendment to what was otherwise reduced to a couple of black lines in the book. I’m just going to ask a general question: Is this in response to the MRC, the Medical Review Commission, which had undergone quite a few questions in terms of the review of practice brought on by the Cory report and a few other things. There was a lot of outrage. So I ask, is this in response to that process?

Mr. Kular: Yes, it’s a response to the auditing process. That’s why this amendment—

Mr. O’Toole: A lot of this stuff here is just going to be done—in this case, there’s a section where there are 45 days from the last adducing of evidence. Is everybody going to be happy with this? I’m taking it on you that you’ve consulted with the OMA, they gave you the amendment, and you’re reading it.

Mr. Kular: Yes. We had discussions with the Ontario Medical Association, and that’s why we are bringing these amendments.

Mr. O’Toole: So they’re happy with it, and I can send them all a letter in my riding and say, “Your problems are solved”?

Interjection.

Mr. O’Toole: Thank you.

The Chair: You might even want to take credit for it.

Mr. O’Toole: I’m always there to defend my constituents, is how I put it. They’re professionals. I sent copies of Bill 171. They were surprised and delighted that I’d asked.

Mr. Ramal: We’re trying to help, here; we’re trying to help you out.

Mr. O’Toole: I’m a trusting person.

The Chair: Hearing no other discussion, I would call the vote. Those in favour of the amendment? Opposed? It is carried.

Shall schedule G, section 9, as amended, carry? Carried.

Shall schedule G, section 10, carry? Carried.

Moving now to schedule G, section 11, we have government motion 19.

Mr. Kular: I move that subsection 18.0.6(3) of the Health Insurance Act, as set out in subsection 11(3) of schedule G to the bill, be struck out and the following substituted:

“Same

“(3) If, during the time that section 18.0.1 was in force, a physician had requested a review by the transitional physician audit panel under subsection 18.0.1(3), as it read before section 9 of schedule G to the Health System Improvements Act, 2007 came into force, and where at the time this subsection comes into force there has been no agreement between the physician and the general manager with respect to the matter, the decision of the general manager referred to in subsection 18.0.1(3) is deemed to be withdrawn and the general manager is authorized to reimburse any amounts recovered plus interest, if applicable.”

The Chair: Discussion? Those in favour of the amendment? Opposed? Carried.

Shall schedule G, section 11, as amended, carry? It is carried.

Moving now to schedule G, section 12, government motion 20.

Mr. Kular: I move that section 18.0.7 of the Health Insurance Act, as set out in section 12 of schedule G to the bill, be amended by adding the following subsection:

“Same

“(2) Where, during the time that section 18.0.1 was in force, the transitional physician audit panel commenced a review, it has the authority to complete the review and issue a direction in accordance with that section.”

The Chair: Any discussion? I call the question. Those in favour of the motion? Opposed? It is carried.

I will now ask: Shall schedule G, section 12, as amended, carry? It is carried.

I will now ask: Shall schedule G, sections 13 to 32, carry? Carried.

That moves us to schedule G, section 33, and there is a government amendment: 21.

Mr. Kular: I move that section 33 of schedule G to the bill be amended by adding the following subsection:

“(5) Section 45 of the act is amended by adding the following subsection:

“Consultation

“(1.3) The Lieutenant Governor in Council shall not make a regulation providing for additional requirements that physicians must comply with in maintaining records under clause 37.1(4.1)(b) unless the minister has first consulted either or both of the following:

“1. The payment committee.

“2. The medical services payment committee established by agreement between the Ontario Medical Association and the crown in right of Ontario.”

The Chair: Discussion? I call the vote. Those in favour of the motion? Opposed? It is carried.

Shall schedule G, section 33, as amended, carry? It is carried.

Now we're at schedule G, section 34, starting with government motion 22.

Mr. Kular: I move that schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be amended by adding the following section:

“Expedited hearings

“3.1(1) When the review board has received a request for an expedited hearing under subsection 18(4.1) of the act, the chair of the review board or, in his or her absence, a vice-chair shall promptly select a panel to deal with the request, and the panel shall hear the matter and make an order as expeditiously as possible or, if a time has been prescribed, within that time.

“Same

“(2) The review board may make rules respecting the holding of expedited hearings.”

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The Chair: Any discussion? All those in favour? Opposed? Carried.

Government motion 23.

Mr. Kular: I move that subsection 10(1) of schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be amended by adding the following paragraph:

“2.1 Where the physician has breached a previous order of the review board, an order that the general manager refuse to pay, or pay a reduced amount as determined by the review panel, with respect to identical future claims submitted during a time period determined by the review panel.”

The Chair: Discussion? Those in favour of the motion? Opposed? Carried.

Government motion 24.

Mr. Kular: I move that paragraph 4 of subsection 10(1) of schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be struck out and the following substituted:

“4. An order that, despite subsections 4(1) and (2), the period of review for reimbursement be for a period of more than 12 months, or that the period of review for reimbursement be for a period commencing prior to the date provided for in subsection 4(2), or both, where the review panel determines that the physician knew or ought to have known that claims submitted to the plan or to an insured person were false.”

The Chair: Discussion? Those in favour of the motion? Opposed? It is carried.

Government motion 25.

Mr. Kular: I move that subsection 10(2) of schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be struck out and the following substituted:

“Additional orders

“(2) The general manager may enter in evidence before the review panel a random sample of claims submitted by the physician to the plan in respect of a fee code during the period of review and, in addition to any other order it may make, the review panel may order that the general manager calculate the amount to be reimbursed for that fee code for that period, or a portion of that period, by assuming the results observed in the random sample are representative of all the claims during the period in question, where the review panel determines that,

“(a) the physician is liable to reimburse the plan;

“(b) there has been a previous finding or order by a review panel that the physician reimburse the plan and the physician has continued to make billing errors despite documented efforts to educate the physician regarding billing requirements; and

“(c) the sample was random and had a reasonable confidence interval.”

The Chair: Any discussion? Those in favour? Those opposed? It is carried.

Government motion 26.

Mr. Kular: I move that subsection 10(5) of schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be struck out and the following substituted:

“Suspension

“(5) An order under paragraph 5 of subsection (1) shall not be made unless the review panel finds that the physician knew or ought to have known that the claims submitted to the plan or to insured persons were false.”

The Chair: Discussion? Those in favour? Opposed? Carried.

Government motion 27.

Mr. Kular: I move that subsections 11(5) and (6) of schedule 1 to the Health Insurance Act, as set out in section 34 of schedule G to the bill, be struck out and the following substituted:

“Lift of stay

“(5) Despite the Statutory Powers Procedure Act or any other act, within 30 days of the physician filing an appeal to the Divisional Court under this section, the general manager may bring a motion to the Divisional

Court requesting it to lift the stay of an order made under paragraph 5 of subsection 10(1) and the Divisional Court may order that the stay be lifted.”

The Chair: Discussion? Those in favour of the motion? Opposed? It is carried.

I will ask the question: Shall schedule G, section 34, as amended, carry? Carried.

Mr. O’Toole: Mr. Chair, if I may make a comment. With so many amendments to that one section, in such an important area, I think it does demonstrate our caution and concern with this omnibus bill. I just want to put it on the record because I read along with them and I read every page. I still remain concerned when there are so many errors in drafting that—take your time and get it right. This is the health care system of Ontario that’s in jeopardy here.

The Chair: Okay. I’m going to ask, schedule G, sections 35 and 36: Shall they carry? Carried.

Shall schedule G, as amended, carry? Carried.

Shall schedule H, section 1, carry? Carried.

Schedule H, section 2: We have government amendment number 28—moved by Mr. Fonseca?

Mr. Fonseca: Yes. I move that subsection 2(2) of schedule H to the bill be struck out.

The Chair: Discussion? I will call the question. Those in favour? Opposed? It is carried.

Shall schedule H, section 2, as amended, carry? Carried.

I will now ask, shall schedule H, sections 3 to 23, carry? They are carried.

I will now ask, shall schedule H, as amended, carry? It is carried.

That brings us to schedule I. We have NDP motion number 28.1. Ms. Martel.

Ms. Martel: Legislative counsel is going to tell me if I need to ask for unanimous consent here. Yes? No?

The Chair: This amendment is in order.

Ms. Martel: Thank you so much, Chair; thank you, Ralph.

I move that schedule I to the bill be amended by adding the following section:

“0.1 The Public Hospitals Act is amended by adding the following section:

“Ombudsman

“3.1 The Ombudsman shall have oversight over public hospitals.”

When I sat on the Bill 140 committee hearings, which are changing the Long-Term Care Homes Act, as a result of what we heard during the course of the public hearings, I moved an amendment at that time to extend oversight of long-term care to the current Ombudsman. We heard during the course of those public hearings concern generally about the Ombudsman having oversight over other health sectors as well. Clearly, I believe that the Ombudsman should have final oversight over Ontario hospitals so that patients and their families have an independent body to go to in order to get their concerns dealt with when they feel that these are not being dealt

with by the hospital, by the CEO of the hospital or by the board of the hospital.

The Ontario Society of Senior Citizens’ Organizations in particular during Bill 140 was very supportive of a broader oversight mandate for the Ombudsman, including other health sectors like hospitals. It’s in that context, in terms of their concerns and in terms of ensuring that there is some independent oversight, somewhere to go at the end of the day when you can’t get your concerns dealt with by the hospital or hospital board, that the current Ombudsman would then have the authority to investigate complaints and essentially make orders to the government about what changes have to occur.

The Chair: Any discussion?

Mr. Fonseca: I have to say that our government’s record in terms of transparency and opening up institutions that are publicly funded like hospitals—unlike some previous governments, we’ve allowed the Provincial Auditor to now go into the hospitals. In his report, I was able to find some of the errors that were happening when it came to CT scans and other procedures that are taking place in hospitals.

The Chair: Ms. Martel?

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Ms. Martel: Chair, if I might, I don’t see the similarity at all with respect to the work of the Ombudsman or the Auditor General. In fact, the work that they do is quite different. The Auditor General can conduct value-for-money audits of public hospitals and broader public institutions in the MUSH sector.

We are talking about the Ombudsman and his or her role under the Ombudsman Act of investigating complaints from individuals who believe the system is failing them, or for dealing with systemic barriers, problems, concerns or complaints within a particular system; in this case, in the hospital system. So it is irrelevant, frankly, to offer up the additional role of the Auditor General as a response or defence to allowing the Ombudsman to investigate complaints. The two have completely different roles. We should be supporting more independence, just as we supported more independence in the role of the Auditor General.

So this allows the Ombudsman, who has a staff that investigates complaints, to expand his authority, to expand his role in terms of dealing with complaints and systemic barriers that occur in the hospital system. It has nothing to do with value-for-money audits.

Mr. O’Toole: Ms. Martel makes a point. I’d like to see a bit more fairness in health care. At Lakeridge Health in Durham region, where I try to represent people, they were directed by the Ministry of Health to actually cut services. I have the memo from George—Minister Smitherman, pardon me—furious George. The GTA/905 survey clearly demonstrates, scientifically and objectively, that they are short over \$200 per person in our hospitals.

Mr. Fonseca, you mentioned in your opening remarks that you pride yourself as a government on transparency and openness. I read an article in the paper today by Ian

Urquhart on the responses from the Minister of Citizenship and Immigration on this openness and transparency. Let's put the record straight. We haven't had an answer for two weeks, and now you're saying, "Trust me." I don't know. I need to get that on the record because I want every citizen of Ontario to at least get their fair share of funding, and whether it's enough or not is an order of cabinet and an order of the economy, I suppose. Anyway, that's how I feel about it—strongly.

Ms. Martel: Recorded vote.

Mrs. Witmer: Mr. Chair, I have a question. I personally don't believe that this is the appropriate place to be making this type of decision. I would be voting against this particular amendment.

The Chair: No other discussion? I will call the vote.

Ayes

Martel.

Nays

Fonseca, Kular, Milloy, Ramal, Sandals, Witmer.

The Chair: The motion is lost.

I will now ask, shall schedule I, section 1, carry?
Interjection.

The Chair: I'm going to rephrase that. Shall schedule I, sections 2 to 4, carry? Carried.

Shall schedule I carry? Carried.

Shall schedule J, sections 1 to 6, carry? Carried.

Shall schedule J carry? Carried.

Schedule K, section 1: We have first NDP motion number 29.

Ms. Martel: I move that section 1 of schedule K to the bill be struck out and the following substituted:

"Purpose

"1. The purpose of this act is to enhance the protection and promotion of the health of Ontarians and reduce health inequities through the establishment of an agency to provide scientific and technical advice and support to those working across sectors to protect and improve the health of Ontarians and to carry out and support activities such as population health assessment, public health research, surveillance, epidemiology, planning, and evaluation."

The Chair: Do you wish to speak to the motion?

Ms. Martel: Yes, I would, actually. The wording that I have used in this purpose clause is the exact wording that was provided to the committee by the Registered Nurses Association of Ontario in its proposed amendments and proposed changes. I understand that the government is going to move a friendly amendment to my amendment, and I would point out that the government's friendly amendment changes five—note, five—words from my amendment to theirs. The five words do not change the spirit or the intent at all of the motion that I put forward. So I think it's a little silly that at this point the government has to move five words in order to have

an amendment that comes from the government versus an amendment that is accepted by an opposition member.

The Chair: Any other discussion?

Mr. Fonseca: If I could clarify, Chair, this wording change is that the agency can't be ultimately responsible and contribute to the efforts that reduce health inequities.

The Chair: You're speaking about a motion that you've not moved.

Mr. Fonseca: Yes, I'm speaking to a comment that Ms. Martel made in regard to a government motion that I am going to move now, that I'd like to bring forward. Would you like me to read it into the record?

Ms. Martel: Well, before you do that, since it's started, let me just read the two sections. Here's my amendment. It says: "The purpose of this act is to enhance the protection and promotion of the health of Ontarians and reduce health inequities...." Here's the government's proposal that's coming next: "The purpose of this act is to enhance the protection and promotion of the health of Ontarians and"—this is the new section—"to contribute to efforts to reduce health inequities...." That's how silly this is.

Mr. Fonseca: It just would not hold the agency ultimately responsible. That's what that would do.

Ms. Martel: Peter, come on. This is so sad. It's silly.

The Chair: Okay. Just from a procedural viewpoint, you're debating an amendment to an amendment that has not yet been moved. You need to move it before we debate it.

Mr. Fonseca: Okay, I will move this. I move that Ms. Martel's motion concerning section 1 of schedule K to the bill be amended to read as follows:

I move that section 1 of schedule K to the bill be struck out and the following substituted:

"Purpose

"1. The purpose of this act is to enhance the protection and promotion of the health of Ontarians and to contribute to efforts to reduce health inequities through the establishment of an agency to provide scientific and technical advice and support to those working across sectors to protect and improve the health of Ontarians and to carry out and support activities such as population health assessment, public health research, surveillance, epidemiology, planning and evaluation."

The Chair: Is there now any additional discussion on the amendment to the amendment?

Mrs. Witmer: Well, this does seem a little bit silly, the addition of these five words. I'd really appreciate if the legal folks at the Ministry of Health would tell us why this change in those words, which seem rather insignificant, is necessary and why we couldn't just accept Ms. Martel's motion.

The Chair: If you would state your name, please.

Ms. Paula Kashul: Paula Kashul, legal counsel, Ministry of Health and Long-Term Care. I believe the question was—

Mrs. Witmer: The question was that it appears that Ms. Martel had a motion which certainly, if you take a look at it, would appropriately address the issue, and the government has now introduced an amendment that has

added five words—“to contribute to efforts to”—and I’m not sure why that would be necessary and why we couldn’t support Ms. Martel’s motion.

Ms. Kashul: My understanding of the change is that the agency itself is only one player, so the words have been added to reflect that—only one player in the health care system in terms of action and directing action. In fact, the agency is primarily a research organization.

The Chair: Any additional discussion?

Ms. Martel: If I might, Chair, it has nothing to do with players. God, my words say “reduce health inequities”; the government’s say “to contribute to efforts to reduce health inequities.” There’s no mention of players or anything like that. I’m not disputing legal counsel; you may have been told you had to do that. I just think it’s really silly that we’re in this position just to make sure we can’t accept an opposition amendment, honestly.

Mr. O’Toole: Well, I personally see it as an aberration. It’s changing substantively the direction of Ms. Martel. It says to “reduce health inequities.” That’s a very specific direction. The other one says “to contribute to efforts to reduce.” It avoids any responsibility for health promotion and protection, as they see it. Do you see? It becomes fuzzy and vague. I mean, you’re trained in legal language. This is an example of what the treach-

ery of words does. One is very specific: “Reduce health inequities.” It’s very specific. This one here says, “Contribute to efforts to reduce.” It’s sort of soft—it’s Liberal language. I hate to be so partisan here, but it turns out that’s my job.

Hey, look, you’ve changed the whole thing. It’s sort of like apples and oranges here. This is a purpose clause which sets out in broader terms the intent of that particular schedule K.

The Chair: I’m conscious of the time.

Mr. O’Toole: Thank you very much for that.

The Chair: I would now ask the question on the amendment to the amendment. Those in favour? Opposed? The amendment to the amendment is carried.

We will now vote on the original motion, as amended. Those in favour? Those opposed? It is carried.

I will now adjourn this committee until tomorrow afternoon, when we meet to consider further amendments.

Mrs. Witmer: And then next week?

The Chair: If we don’t finish, then it’s next week.

We are adjourned.

The committee adjourned at 1752.

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Ms. Paula Kashul, legal counsel,

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