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Bill 7

An Act to amend the Fixing Long-Term Care Act, 2021 with respect to patients requiring an alternate level of care and other matters and to make a consequential amendment to the Health Care Consent Act, 1996

The Hon. P. Calandra
Minister of Long-Term Care

Government Bill

1st Reading August 18, 2022
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill amends the *Fixing Long-Term Care Act, 2021* to add a new provision for patients who occupy a bed in a public hospital and are designated by an attending clinician as requiring an alternate level of care. This new provision authorizes certain actions to be carried out without the consent of these patients. The actions include having a placement co-ordinator determine the patient's eligibility for a long-term care home, select a home and authorize their admission to the home. They also include having certain persons conduct assessments for the purpose of determining a patient's eligibility, requiring the licensee to admit the patient to the home when certain conditions have been met and allowing persons to collect, use and disclose personal health information, if it is necessary to carry out the actions. Sections 49 to 54 of the Act do not apply to these actions, and instead they shall be carried out in accordance with the regulations.

Certain limitations apply. The actions cannot be performed without first making reasonable efforts to obtain the patient's consent. If consent is later provided by an ALC patient, the parts of the process that have been consented to must be conducted in accordance with sections 49 to 54 of the Act, subject to the regulations. The section does not authorize the use of restraints in order to carry out the actions or the physical transfer of an ALC patient to a long-term care home without their consent. Regulation-making powers are set out in relation to this new provision and the actions it authorizes.

Other minor amendments to the Act are made. These include setting out a general definition of "personal health information" that applies throughout the Act and making related consequential amendments.

A consequential amendment is made to section 47 of the *Health Care Consent Act, 1996* to clarify the relationship between crisis admissions under that section and admissions under the new provision of the *Fixing Long-Term Care Act, 2021*.

An Act to amend the Fixing Long-Term Care Act, 2021 with respect to patients requiring an alternate level of care and other matters and to make a consequential amendment to the Health Care Consent Act, 1996

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Subsection 2 (1) of the *Fixing Long-Term Care Act, 2021* is amended by adding the following definition:

“personal health information” has the same meaning as in the *Personal Health Information Protection Act, 2004*; (“renseignements personnels sur la santé”)

2 The Act is amended by adding the following section:

ALC patients

60.1 (1) This section applies to a person who,

- (a) occupies a bed in a hospital under the *Public Hospitals Act*; and
- (b) has been designated by an attending clinician in the hospital as requiring an alternate level of care because, in the clinician’s opinion, the person does not require the intensity of resources or services provided in the hospital care setting.

Definitions

(2) For the purposes of this section,

“ALC patient” means a person described in subsection (1); (“patient en NSD”)

“attending clinician” means a person who is authorized under the *Public Hospitals Act* to issue a discharge order for the ALC patient. (“clinicien traitant”)

Certain actions may be performed without consent

(3) This section authorizes the following actions, or any part thereof, to be performed in respect of an ALC patient without their consent or the consent of their substitute decision-maker, despite any other provision of this Act, the regulations or any other Act:

1. An attending clinician who reasonably believes that an ALC patient may be eligible for admission to a long-term care home may request that a placement co-ordinator carry out any of the actions listed in subparagraphs 2 i to iv.
2. A placement co-ordinator may do the following, with or without a request from an attending clinician:
 - i. Determine the ALC patient’s eligibility for admission to a long-term care home.
 - ii. Select a long-term care home or homes for the ALC patient in accordance with the geographic restrictions that are prescribed by the regulations.
 - iii. Provide to the licensee of a long-term care home the assessments and information set out in the regulations, which may include personal health information.
 - iv. Authorize the ALC patient’s admission to a home.
 - v. Transfer responsibility for the placement of the ALC patient to another placement co-ordinator who, for greater certainty, may carry out the actions listed in this paragraph with respect to the ALC patient.
3. A physician, registered nurse or person described in paragraph 3 of subsection 50 (5) may conduct an assessment of the ALC patient for the purpose of determining the ALC patient’s eligibility for admission to a long-term care home.
4. A licensee of a long-term care home must do the following:
 - i. Review the assessments and information provided by the placement co-ordinator in respect of the ALC patient.
 - ii. Approve the ALC patient for admission as a resident of the home after reviewing the assessments and information provided by the placement co-ordinator, unless a condition for not approving the admission listed in subsection 51 (7) is met.

- iii. Admit the approved ALC patient when they present themselves at the home as a resident after,
 - A. the placement co-ordinator has determined the patient’s eligibility for admission to the home,
 - B. a bed becomes available, and
 - C. the placement co-ordinator has authorized the patient’s admission to the home.
- 5. A person with authority to carry out an action listed in paragraph 1, 2, 3 or 4, a hospital within the meaning of the *Public Hospitals Act* or any other person prescribed by the regulations may collect, use or disclose personal health information if it is necessary to carry out an action listed in paragraph 1, 2, 3 or 4.

Limitation, reasonable efforts to obtain consent required

(4) The actions listed in subsection (3) may only be performed without consent if reasonable efforts have been made to obtain the consent of the ALC patient or their substitute decision-maker.

Actions to be performed in accordance with regulations

(5) Subject to subsection (6), sections 49 to 54 do not apply to the actions listed in subsection (3), and instead the actions shall be performed in accordance with the procedures, requirements, criteria, restrictions and conditions, if any, that are set out in the regulations.

If consent provided

(6) An ALC patient or their substitute decision-maker may provide their consent to any stage of the process described in this section and, if the consent is provided, the relevant portions of sections 49 to 54 and the regulations apply to the stages of the process to which they have consented, subject to any modifications or exemptions set out in the regulations.

Limitation

(7) Nothing in this section authorizes any person to restrain an ALC patient to carry out the actions listed in subsection (3) or to physically transfer an ALC patient to a long-term care home without the consent of the ALC patient or their substitute decision-maker.

Review of determination of ineligibility

(8) An ALC patient may apply to the Appeal Board for a review of a determination of ineligibility made by a placement co-ordinator under this section, and the Appeal Board shall deal with the appeal in accordance with section 59.

Interaction with Residents’ Bill of Rights

(9) Despite subsection 3 (2), this section and any regulations made under clause 61 (2) (h.1) or (h.2) shall not be interpreted or construed as being inconsistent with the Residents’ Bill of Rights.

3 Subsection 61 (2) of the Act is amended by adding the following clauses:

- (h.1) governing the actions that may be performed under section 60.1 with respect to ALC patients, including,
 - (i) prescribing and governing any procedures that must be followed in performing the actions,
 - (ii) specifying any requirements, criteria, restrictions or conditions that apply to the actions,
 - (iii) modifying the application of any provision of this Act or the regulations to the actions, subject to any requirements, restrictions or conditions that may be set out,
 - (iv) providing exemptions from any provisions of this Act or the regulations in relation to the actions, subject to any requirements, restrictions or conditions that may be set out,
 - (v) governing the collection, use and disclosure of personal health information as described in paragraph 5 of subsection 60.1 (3), which may include prescribing additional persons who can collect, use or disclose personal health information in accordance with that paragraph;
- (h.2) modifying the application of any provision of sections 49 to 54 or the regulations, or providing exemptions from them, with respect to ALC patients who have consented to the application process as described in subsection 60.1 (6);

4 The following provisions of the Act are amended by striking out “section 104 and subject to section 105” wherever it appears and substituting in each case “section 100 and subject to section 101”:

1. Section 102.
2. Subsection 103 (1).
3. Subsection 108 (3).

5 Paragraph 2 of subsection 113 (4) of the Act is amended by striking out “section 100” and substituting “section 101”.

6 Paragraph 2 of subsection 116 (4) of the Act is amended by striking out “section 104” and substituting “section 100”.

7 The definition of “record” in subsection 150 (9) of the Act is amended by striking out “within the meaning of the *Personal Health Information Protection Act, 2004*” at the end.

8 Subsection 192 (9) of the Act is repealed.

Health Care Consent Act, 1996

9 (1) Subsection 47 (1) of the *Health Care Consent Act, 1996* is amended by striking out “Despite any law to the contrary” at the beginning and substituting “Despite any law to the contrary, but subject to subsections (3) and (4)”.

(2) Section 47 of the Act is amended by adding the following subsections:

Exception

(3) Subsections (1) and (2) do not apply to an authorization by a placement co-ordinator of an ALC patient’s admission to a long-term care home in accordance with section 60.1 of the *Fixing Long-Term Care Act, 2021*.

Distinct from ALC patient admission

(4) For greater certainty, an admission of an ALC patient to a long-term care home under section 60.1 of the *Fixing Long-Term Care Act, 2021* is distinct from, and does not preclude, an admission to a care facility under this section.

Commencement

10 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) Sections 2, 3 and 9 of the Act come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11 The short title of this Act is the *More Beds, Better Care Act, 2022*.