

2011 Bill 24

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Fourth Session, 27th Legislature, 60 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 24**

## **HEALTH QUALITY COUNCIL OF ALBERTA ACT**

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THE MINISTER OF HEALTH AND WELLNESS

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 24

2011

### HEALTH QUALITY COUNCIL OF ALBERTA ACT

(Assented to , 2011)

#### *Table of Contents*

1 Definitions

#### **Health Quality Council of Alberta**

2 Council continued

3 Objects

4 Appointment of board

5 Board powers

6 Committees

7 Bylaws

8 Chief Executive Officer

9 Responsibility of directors

10 Indemnification

11 Borrowing and guarantees

12 Access to information

13 Networking

14 Reports and advice

15 Assessments and studies

16 Inspection powers

#### **Health System Inquiries**

17 Authority to establish a public inquiry

18 Hearings

19 Considerations re in camera hearing

20 Disclosure of evidence from an in camera hearing

21 Witnesses

22 Report to the Legislative Assembly

### **General**

- 23** Protection from liability
- 24** Annual report
- 25** Regulations
- 26** Consequential amendments
- 27** Coming into force

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

### **Definitions**

**1** In this Act,

- (a) “board” means the board of directors established under section 4;
- (b) “Council” means the Health Quality Council of Alberta continued under section 2;
- (c) “health authority” means
  - (i) a regional health authority, and
  - (ii) a provincial health board established under section 17 of the *Regional Health Authorities Act*;
- (d) “health service quality” means the general quality of services in the health care system as measured by accessibility, acceptability, appropriateness, efficiency and effectiveness factors;
- (e) “inquiry” means an inquiry under section 17;
- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “Panel” means the Panel appointed to conduct an inquiry;

- (h) “patient safety” means the activities, strategies and mechanisms to avoid or mitigate health risks to users of the health care system;
- (i) “significant incident” means an event that has or could have contributed to, or resulted in, harm to or the death of a user of the health care system.

### **Health Quality Council of Alberta**

#### **Council continued**

**2(1)** The Health Quality Council of Alberta established under the *Health Quality Council of Alberta Regulation (AR 130/2006)* is continued as a corporation under this Act.

**(2)** The Council has the capacity and, subject to this Act and the regulations, the rights, powers and privileges of a natural person.

**(3)** The Council shall not engage in or carry on any activity that does not pertain to the objects of the Council.

**(4)** The Council is not an agent of the Crown.

**(5)** The Auditor General is the auditor for the Council.

**(6)** The fiscal year of the Council is April 1 to the following March 31.

**(7)** The Lieutenant Governor in Council may make regulations expanding or clarifying the powers, duties or functions to be exercised or performed by the Council.

#### **Objects**

**3(1)** The objects of the Council are to promote and improve patient safety and health service quality on a province-wide basis.

**(2)** The Council shall undertake the following activities in co-operation with health authorities:

- (a) measure, monitor and assess patient safety and health service quality;
- (b) identify effective practices and make recommendations for the improvement of patient safety and health service quality;

- (c) assist in the implementation and evaluation of activities, strategies and mechanisms designed to improve patient safety and health service quality;
- (d) survey Albertans on their experience and satisfaction with patient safety and health service quality;
- (e) other activities as provided for in the regulations.

#### **Appointment of board**

**4(1)** A board of directors is established consisting of not more than 10 members appointed by the Lieutenant Governor in Council for a term not exceeding 3 years.

**(2)** The Lieutenant Governor in Council shall designate one of the members as chair.

**(3)** A member of the board is eligible for reappointment, but no person shall serve more than 2 consecutive terms on the board.

**(4)** The Lieutenant Governor in Council may provide for the payment of expenses and remuneration of members of the board.

**(5)** The board may appoint officers of the board other than the chair from among its members.

**(6)** Despite the expiry of the term of office of a member of the board, the member remains in office until

- (a) the member is reappointed or a successor is appointed, or
- (b) a period of 4 months passes after the expiry of the term of office,

whichever occurs first.

**(7)** A member appointed under section 3 of the *Health Quality Council of Alberta Regulation* (AR 130/2006) is deemed to be a member of the board as if the member were appointed under subsection (1).

#### **Board powers**

**5(1)** The board shall manage or supervise the management of the business and affairs of the Council.

(2) The board may delegate to any director, to a committee of the board, to any employee of the Council or to any other person, on terms and conditions the board considers advisable, any of the board's powers, duties and functions except

- (a) the power to appoint the Chief Executive Officer under section 8, and
- (b) the power to make bylaws under section 7.

### **Committees**

**6(1)** The board may from time to time

- (a) establish any committees that it considers necessary for the efficient conduct of the business and affairs of the board and the Council;
- (b) prescribe the duties of any committee established pursuant to clause (a).

(2) A committee established under subsection (1) may be established as a quality assurance committee that has as its primary purpose the carrying out of quality assurance activities, in which case it is a quality assurance committee for the purpose of section 9 of the *Alberta Evidence Act*.

### **Bylaws**

**7(1)** Subject to this Act and the regulations, the board

- (a) may make bylaws governing
  - (i) the business and affairs of the board and the Council, and
  - (ii) the calling and conduct of board and committee meetings and the conduct of the business of the board and committees generally,
- and
- (b) shall make bylaws
  - (i) establishing and implementing a code of conduct for the board and the employees of the Council, and

- (ii) establishing an investment policy for the investment of the funds of the Council.

(2) The *Regulations Act* does not apply to bylaws made under this section.

(3) A bylaw made under this section does not have effect until it is approved by the Minister.

#### **Chief Executive Officer**

**8(1)** The board shall appoint an employee of the Council as Chief Executive Officer and shall determine the Chief Executive Officer's powers, duties and functions.

(2) The board shall set the compensation to be paid to the Chief Executive Officer subject to the Minister's approval.

(3) The Chief Executive Officer may, on terms and conditions the Chief Executive Officer considers advisable, delegate to any employee of the Council or any other person any of the Chief Executive Officer's powers or duties.

#### **Responsibility of directors**

**9** Every director, in exercising powers and discharging duties,

- (a) shall act honestly and in good faith and with a view to the best interests of the Council, and
- (b) shall exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

#### **Indemnification**

**10(1)** The Council may, subject to the regulations, indemnify

- (a) a present or former director of the Council,
- (b) an employee or former employee of the Council,
- (c) the heirs and legal representatives of a person referred to in clause (a) or (b), and
- (d) other persons as provided for in the regulations,



against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of holding such a position if that person acted honestly, in good faith and with a view to the best interests of the Council, and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, if that person had reasonable grounds for believing that the conduct was lawful.

(2) Except as authorized under subsection (1), the Council may provide indemnities only in accordance with the regulations.

#### **Borrowing and guarantees**

**11(1)** The Council may borrow money only in accordance with the regulations.

(2) The Council may give guarantees only in accordance with the regulations.

#### **Access to information**

**12** The Council shall have reasonable access to information held by health authorities as necessary to carry out its objects related to

- (a) collecting and analyzing information on patient safety, health service quality and significant incidents provided by quality assurance committees, health authorities or other sources,
  - (b) identifying factors causing or contributing to problems with patient safety, health service quality or significant incidents,
  - (c) reviewing reports made
    - (i) by a medical examiner or other investigative body, or
    - (ii) in the course of a public fatality inquiry,
- and
- (d) making recommendations on strategies for improving patient safety and health service quality and reducing significant incidents.

**Networking**

**13** The Council shall network with health professions, health authorities, organizations providing health services, academic health centres and other related organizations for the purposes of

- (a) sharing information on patient safety and health service quality issues,
- (b) identifying and assessing patient safety and health service quality issues, and
- (c) developing and recommending effective practices in patient safety and health service quality.

**Reports and advice**

**14** The Council shall

- (a) report to Albertans on any survey it conducts under section 3(2)(d),
  - (b) advise the Minister on
    - (i) the quality of health services in the health care system,
    - (ii) results and recommendations of the work of the Council on patient safety and health service quality, and
    - (iii) other matters as requested by the Minister,
- and
- (c) at the request of the Minister, prepare and submit to the Minister any reports respecting the activities of the Council that the Minister requires.

**Assessments and studies**

**15(1)** On the request of the Minister, the Council shall assess or study matters respecting patient safety and health service quality that are referred to it by the Minister.

**(2)** The Council may assess or study matters respecting patient safety and health service quality that are referred to it by a health authority.

**Inspection powers**

**16(1)** For the purposes of carrying out activities under sections 3(2)(a) to (c) and 15, the board may authorize a person to

- (a) enter and inspect any place under the jurisdiction of a regional health authority, community health council or subsidiary health corporation, and
- (b) require the production for examination of any documents or records in the possession of the regional health authority, community health council or subsidiary health corporation, and make copies of them or temporarily remove them for the purpose of making copies.

**(2)** A person who removes documents or other records under subsection (1) shall

- (a) give a receipt for the items to the person from whom the items were taken,
- (b) on request, provide a copy of the items removed to the person from whom they were taken or to a person who is entitled to custody of them, and
- (c) forthwith return the items to the person from whom they were taken when they have served the purposes for which they were taken.

**(3)** If anyone prevents a person from exercising powers under subsection (1) or obstructs or hinders a person in the exercise of those powers, a judge of the Court of Queen's Bench may on the application of that person make any order that the judge considers necessary to permit that person to exercise those powers.

**(4)** An application under subsection (3) may be made ex parte if the judge considers it proper in the circumstances.

## Health System Inquiries

### Authority to establish a public inquiry

**17(1)** The Lieutenant Governor in Council, where it considers it to be in the public interest that an inquiry be held concerning a matter relating to the health system, may by order

- (a) set out the nature and scope of the inquiry, including the date by which the report and recommendations, if any, of the Panel must be submitted under section 22, and
- (b) direct the board to appoint a Panel.

**(2)** The board shall, pursuant to an order under subsection (1)(b) and subject to subsection (3), appoint a Panel consisting of one or more qualified persons.

**(3)** If in the opinion of the board it is desirable that a judge of a court in Alberta be appointed to the Panel, the Minister of Justice and Attorney General shall consult with the Chief Judge or Chief Justice of that court regarding the appointment, and any appointment by the board of a judge of that court is subject to the agreement of the Chief Judge or Chief Justice of that court.

**(4)** A person appointed under subsection (2) shall not include a person who is or was

- (a) a member of the board, or
- (b) an agent, employee or contractor of the Council,

who has had any involvement in a matter that is the subject of the inquiry.

**(5)** In conducting an inquiry under this section, the Panel has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

**(6)** Subject to subsection (7), sections 6(2), 7, 9(1) to (5), 10, 11 and 12 of the *Public Inquiries Act* apply to an inquiry under this section.

**(7)** For the purposes of an inquiry under this section,

- (a) the following clause is deemed to be included in section 9(3) of the *Public Inquiries Act*:

- (c) *no person who is required to furnish information or to produce any document, paper or thing or who is summoned to give evidence at an inquiry shall refuse to disclose the information, or to produce the document, paper or thing, on the ground that an agreement that is relevant to the inquiry requires the person to maintain secrecy or not to disclose any matter.*
- (b) for greater certainty, a reference to the Minister in section 9 of the *Public Inquiries Act* as it applies to this Act is a reference to the Minister responsible for the *Public Inquiries Act*.

### **Hearings**

**18** A hearing that is part of an inquiry is open to the public unless the Panel determines, in accordance with section 19, that the hearing or a part of the hearing is to be held in camera.

### **Considerations re in camera hearing**

**19(1)** Where an application is made to the Panel to hold a hearing or a part of it in camera, the Panel shall weigh and consider the following matters, as applicable, before deciding to hold the hearing or any part of it in camera:

- (a) the private interests of a patient or person or, where the patient or person is deceased, of the patient's or person's next of kin;
- (b) whether disclosure of all or part of the diagnosis, medical records or information of a patient or person is likely to result in harm to the patient or person or to the treatment or recovery of the patient or person or is likely to result in injury or harm to the mental or physical condition of a third person;
- (c) whether disclosure of all or part of the diagnosis, medical records or information of a deceased patient or person is likely to result in injury or harm to the mental or physical condition of a third person;
- (d) whether the disclosure would be prejudicial to the interests of persons not concerned in the inquiry;

- (e) whether the holding of the hearing in camera is essential in the interests of justice or would be injurious to the public interest;
- (f) whether a patient or person or, if the patient or person is deceased, the patient's or person's legal representative has consented to having the diagnosis, medical records or information disclosed in a hearing open to the public;
- (g) whether any information to be disclosed or document, paper or thing to be produced to which section 9(2) or (3) of the *Public Inquiries Act* or 17(7)(a) of this Act applies is essential in the interests of justice or would be injurious to the public interest.

(2) No decision that a hearing or any part of it is to be held in camera or in public shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, whether by way of certiorari, mandamus, injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain that decision.

#### **Disclosure of evidence from an in camera hearing**

**20(1)** No person shall knowingly and wilfully release, publish or disclose or cause to be released, published or disclosed to anyone any oral testimony or documentary evidence introduced or heard in camera at a hearing.

(2) Subsection (1) does not apply to the report of the Panel referred to in section 22.

#### **Witnesses**

**21(1)** A witness may be examined under oath, may give evidence on all matters relevant to the hearing before the Panel and is not excused from answering a question because the answer may

- (a) tend to incriminate the witness, or
- (b) tend to establish the witness's liability in a civil proceeding or a prosecution or proceeding under any enactment.

(2) If an answer given by a witness under subsection (1) could

- (a) incriminate the witness, or
- (b) establish the witness's liability in a civil proceeding or a prosecution or proceeding under any enactment,

that answer may not be used or received against the witness in a civil proceeding or a prosecution or proceeding under any enactment, but that answer may be used or received against the witness in proceedings in respect of perjury or giving contradictory evidence under this Act.

**(3)** A witness must be informed whether the hearing is open to the public.

**(4)** If a person who has been given a notice to attend or a notice to produce records or information fails

- (a) to attend the hearing,
- (b) to produce the records or information set out in the notice to produce, or
- (c) to be sworn or to answer any question that the Panel directs the person to answer,

the Panel may apply to the Court of Queen's Bench for an order directing the person to comply with the notice and to be sworn and answer questions.

**(5)** An application for an order under subsection (4) may be made without notice to the other party if the Court is satisfied that it is proper to make the order in the circumstances.

**(6)** If a witness is outside Alberta, a judge of the Court of Queen's Bench may, on an application made by the Panel, without notifying the witness, direct the obtaining of evidence from the witness in the manner provided under the *Alberta Rules of Court* for the taking of the evidence of a person outside Alberta.

#### **Report to the Legislative Assembly**

**22(1)** On completion of an inquiry, the Panel shall prepare a report setting out the findings of the inquiry and, if required in the order under section 17, any recommendations resulting from the findings.

**(2)** Where it appears to the Panel that a report may adversely affect a person, the Panel shall inform the person of the particulars and

give the person the opportunity to make representations, either orally or in writing at the person's discretion, before the Panel completes the report.

**(3)** The findings of the Panel must not contain any findings of legal responsibility or any conclusion of law.

**(4)** The report must not disclose any matters heard or disclosed in camera unless the Panel is satisfied that the disclosure is essential to the completeness and integrity of the report and is in the public interest.

**(5)** On completion of the report, the Panel shall submit the report to the Speaker of the Legislative Assembly.

**(6)** On receiving a report under subsection (5), the Speaker of the Legislative Assembly shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

**(7)** The Legislative Assembly may refer a report tabled under subsection (6) to a special committee of the Legislative Assembly to review the report and make recommendations to the Assembly.

**(8)** If the Legislative Assembly is not sitting when the report is submitted to the Speaker, the Speaker shall make copies of the report available to the public.

**(9)** The findings contained in a report may not be used or received against a person in a civil proceeding, prosecution or proceeding under any enactment.

## **General**

### **Protection from liability**

**23** No action for damages may be commenced against the Crown, the Council, a member of the board or a member of a Panel for anything done or omitted to be done by that person in good faith while carrying out duties or exercising powers under this Act.

### **Annual report**

**24(1)** In each fiscal year, the board shall submit to the Speaker of the Legislative Assembly



- (a) a report on the activities of the Council for the preceding fiscal year, and
- (b) a financial statement showing the business of the Council for the preceding fiscal year in any form required by the Treasury Board.

**(2)** On receiving a report under subsection (1), the Speaker of the Legislative Assembly shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

### **Regulations**

**25** The Lieutenant Governor in Council may make regulations

- (a) defining terms that are used but not defined in this Act;
- (b) respecting appointments to the board, including eligibility and qualifications for appointment;
- (c) respecting conflict of interest guidelines, codes of conduct and any other guidelines and policies in respect of the board and employees of the Council;
- (d) prescribing other activities for the purpose of section 3(2)(e);
- (e) respecting bylaws that may be made by the board under section 7;
- (f) respecting any terms and conditions of an indemnity given under section 10(1), prescribing other persons or classes of persons to whom an indemnity under section 10(1) may be given and respecting indemnities provided under section 10(2);
- (g) respecting the investment of the Council's funds;
- (h) respecting the borrowing of money by the Council under section 11(1);
- (i) respecting the giving of guarantees by the Council under section 11(2);

- (j) respecting the collection, use and disclosure of information, including personal information and health information, under section 12;
- (k) prescribing other sources for the purpose of section 12(a);
- (l) respecting the costs of conducting an inquiry;
- (m) respecting generally the operation of the Council;
- (n) respecting any transitional matter arising from the continuation of the Council under this Act;
- (o) respecting the winding-up of the affairs of the Council;
- (p) generally to carry out the intent and purposes of this Act.

**Consequential amendments**

**26(1) The *Conflicts of Interest Act* is amended in Part 3 of the Schedule by adding the following after “Health Disciplines Board”:**

Health Quality Council of Alberta

**(2) The *Financial Administration Act* is amended in section 2(5) by adding the following after clause (f):**

(f.01) the Health Quality Council of Alberta,

## Explanatory Notes

**26(1)** Amends chapter C-23 of the Revised Statutes of Alberta 2000. Part 3 of the Schedule presently reads in part:

*Part 3  
Other Disqualifying Offices*

*The Lieutenant Governor in Council may by regulation amend this Part to add any office the Lieutenant Governor in Council considers appropriate for the purposes of this Act.*

*The office of chair or member of any of the following:*

*Health Disciplines Board*

**(2)** Amends chapter F-12 of the Revised Statutes of Alberta 2000. Section 2(5) presently reads in part:

*(5) This Act, except this section and sections 1, 5, 6, 7, 13(3), 77, 80 and 81, does not apply to the following:*

- (f) the initial governing authority of a technical institute under the Post-secondary Learning Act,*
- (f.1) a research and innovation corporation established under section 7 of the Alberta Research and Innovation Act,*

**(3) The *Freedom of Information and Protection of Privacy Act* is amended in section 1(g) by adding the following after subclause (ii):**

(ii.i) the Health Quality Council of Alberta,

**(4) The *Health Information Act* is amended**

**(a) in section 1(1)(f) by adding the following after subclause (ix):**

(ix.1) the Health Quality Council of Alberta;

**(b) in section 27(2) by adding “(ix.1),” after “(vii).”**

(3) Amends chapter F-25 of the Revised Statutes of Alberta 2000. Section 1(g) presently reads:

*1 In this Act,*

(g) “health care body” means

(i) *the board of an approved hospital as defined in the Hospitals Act other than an approved hospital that is*

*(A) owned or operated by a regional health authority under the Regional Health Authorities Act, or*

(ii) *the operator of a nursing home as defined in the Nursing Homes Act other than a nursing home that is owned and operated by a regional health authority under the Regional Health Authorities Act,*

(iii) *a provincial health board established under the Regional Health Authorities Act,*

(v) *a regional health authority under the Regional Health Authorities Act,*

(vi) *a community health council established under the Regional Health Authorities Act, or*

(vii) *a subsidiary health corporation as defined in the Regional Health Authorities Act;*

(4) Amends chapter H-5 of the Revised Statutes of Alberta 2000. Sections 1(1)(f) and 27(2) presently read:

*1(1) In this Act,*

(f) “custodian” means

(ix) *a health services provider who is designated in the regulations as a custodian, or who is within a class of health services providers that is designated in the regulations for the purpose of this subclause;*

*27(2) A custodian referred to in section 1(1)(f)(iii), (iv), (vii), (xii) or (xiii) may, in addition, use individually identifying health information in its custody or under its control to carry out the following functions within the geographic area in which the*

**Coming into force**

**27** This Act comes into force on Proclamation.

*custodian has jurisdiction to promote the objectives for which the custodian is responsible:*

- (a) planning and resource allocation;*
- (b) health system management;*
- (c) public health surveillance;*
- (d) health policy development.*

**27** Coming into force.

