

Brief submitted as part of the examination of Bill 175: *Connecting People to Home and Community Care Act, 2020*

and

the consultations on the regulations: *Proposed new regulation under the Connecting Care Act, 2019 (Pending passage of the Connecting People to Home and Community Care Act, 2020)* and *Regulations Under the Excellent Care for All Act, 2010, and the Ministry of Health and Long-Term Care Act and Other Acts*

**Home and Community Care
French Language Services Issues**

April 14, 2020

On February 25, 2020, the Government of Ontario launched its plan to modernize home and community care.

To this end, Ontario introduced the *Connecting People to Home and Community Care Act* and posted proposed new regulations under the *Connecting Care Act, 2019*.

Bill 175 (<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-175>) was carried in second reading and referred to the Standing Committee on Social Policy.

The Bill is accompanied by two proposed regulations:

- *Proposed new regulation under the Connecting Care Act, 2019 (Pending passage of the Connecting People to Home and Community Care Act, 2020)*
(<https://www.ontariocanada.com/registry/showAttachment.do?postingId=31727&attachmentId=42836>)
- *Regulations Under the Excellent Care for All Act, 2010, and the Ministry of Health and Long-Term Care Act, etc. (Pending passage of the Connecting People to Home and Community Care Act, 2020)*
(<https://www.ontariocanada.com/registry/showAttachment.do?postingId=31727&attachmentId=42837>)

The Regulations have been posted for public comment until April 14, 2020.

This document presents the findings and recommendations of the *Regroupement des entités* on examining the different elements of the legislative framework: the 2020 Act and the proposed regulations. The aim of these recommendations is to guarantee access to quality home and community care in French for Francophone patients.

Summary of proposed changes to the legislative framework

The *Home Care and Community Services Act, 1994* and its regulations govern the provision of publicly funded home and community care in Ontario.

The *Connecting Care Act, 2019* established a framework for a connected health care system. The *Act* also identified criteria for the establishment and oversight of Ontario Health Teams and established an agency of the government – Ontario Health – to fund and oversee health system services.

The *Connecting People to Home and Community Care Act, 2020*, if passed by the Ontario legislature, will amend a number of acts, including the 2019 Act, and repeal the 1994 Act.

The Ministry is proposing to leverage existing powers in the *Connecting Care Act, 2019* to govern the funding and oversight of home and community care. The majority of the elements of the legal framework will be detailed in a regulatory framework to ensure quality, consistency and accountability, while maintaining ongoing patient rights and complaint mechanisms. Many of the provisions of the 1994 Act will be enshrined in a series of regulations.

Full implementation

It is anticipated that, when fully implemented, home and community care will be coordinated by Ontario Health Teams. As Ontario Health Teams are not yet operational and do not cover the entire province, the government is planning to move forward incrementally.

Transition phase

To ensure the ongoing stability of services while home and community care transitions into Ontario Health Teams, Local Health Integration Networks (LHINs) are being restructured into interim and transitional organizations with a singular mandate of delivering home and community care, as well as long-term care home placement. To reflect this focused mandate, they are being rebranded as Home and Community Care Support Services.

At the same time, the Act will allow Ontario Health Teams to develop home and community care coordination models.

Impact on French language services of the 2020 Act and the proposed regulations

The 2020 Act and its regulations present opportunities to improve home and community care for all, and especially for Francophone patients. They include:

- **Expansion of home and community care services settings** by adding hospitals and residential congregate care services.
- **Virtual care as a service delivery method:** Virtual care will give Francophones access to bilingual professionals to whom they do not necessarily have access locally. This opportunity must be accompanied by thorough efforts to identify bilingual human resources and promote their capacity to provide French language services to patients.
- **Elimination of service maximums.**
- **Broader provisions for self-directed care.**

Nevertheless, the 2020 Act and its regulations raise a number of issues around French language services (FLS).

1. Obligations under the *French Language Services Act (FLSA)*

Current situation

At present, the LHINs are responsible for coordinating home and community care. As Crown agencies, the 14 LHINs' obligations under the FLSA are very clearly defined.

They are also subject to the regulation governing service provision by third parties (O. Reg. 284/11: *Provision of French language services on behalf of government agencies*). This means, among other things, that contracts with third parties signed by the LHINs for the delivery of home and community care must include specific provisions on French language services.

It should also be noted that prior to their amalgamation, two CCACs were designated under the FLSA (North East and Champlain).

Currently, Francophones are guaranteed FLS for services coordinated by the LHINs.

Transition phase

During the transition phase, it is **not clear whether the LHINs**, rebranded as Home and Community Care Support Services, **will be subject to the FLSA.**

Section 4 of Bill 175 states: “a local health integration network is deemed to be a health service provider, and to have been funded by the Agency”.

As, according to the Ministry of Health, health service providers are not subject to the FLSA unless they are designated, it is vital to ensure that either LHINs retain their status as Crown agencies or that they become **designated** health service providers following passage of the Act.

During the transition phase, Ontario Health Teams will begin to coordinate home and community care and develop new care delivery models. It is still unclear as to whether the **Ontario Health Teams (OHTs) are subject to the FLSA and to date no obligation to deliver French language services has been established.**

During the transition phase, Francophones may potentially, if the LHINs are Crown agencies, be guaranteed French language services for the portion of the services coordinated by the LHINs, rebranded as Home and Community Care Support Services. For the portion of the services coordinated by OHTs or providers, they will not be guaranteed French language services unless they can be designated under the FLSA.

Full implementation

On full implementation, Ontario Health Teams will be responsible for delivering and coordinating home and community care. **Ontario Health Teams (OHTs) are not subject to the FLSA at this time and to date no requirement to deliver French language services has been established.**

On full implementation, Francophones will not be guaranteed French language services for home and community services, except if some providers are designated under the FLSA.

Given that this is a transfer of the obligations of agencies subject to the FLSA to new agencies, it is imperative that the government ensure that French language service obligations are also transferred.

2. Coordination of home and community care

The proposed regulation under the 2019 Act (section on care coordination functions) states: “... The ministry is proposing to require home and community care Health Service Providers (as defined under the Connecting Care Act, 2019, which would include LHINs) to ensure the performance of care coordination functions... These Health Services Providers would be

responsible for care coordination – whether they are part of an Ontario Health Team or not – and would have the flexibility to assign care coordination functions to contracted providers or, through mutual agreement, to partner organizations with the goal of improving system navigation, reducing transitions for clients and eliminating duplication in assessment and care planning.”

The regulation then outlines the care coordination functions and the government’s expectations.

The regulation does not set out any obligation to identify the patient’s linguistic identity or the language of service delivery. Yet these elements are essential if Francophone patients are to have access to services in their language.

In addition, the regulation does not say whether the transfer of care coordination functions from the LHINs to OHTs and health service providers will be accompanied by a transfer of designated positions. Because of their obligations under the FLSA, LHINs have designated some of their care coordinator positions as bilingual along with other positions in the home and community care branch.

With care coordination functions being transferred to Ontario Health Teams, it will be essential to maintain the bilingual designation of these positions and to ensure that Ontario Health Teams serving designated areas have bilingual capacity.

Within OHTs, these positions should be assigned to service providers that have French language services responsibilities (identified or designated), serve Francophone patients and have the bilingual human resources to ensure the best possible alignment of resources.

3. FLS provisions in contracts with service provider organizations (SPOs)

The vast majority of home and community care services are provided through third parties under contract to the LHINs. These contracts include specific French language services provisions.

The proposed regulation under the 2019 Act (section on eligible providers) says: “... organizations receiving direct funding from Ontario Health to provide home and community care services to be not-for-profit... Like the model currently, the ministry is proposing that these not-for-profit organizations will be able to deliver services directly or indirectly through contracts with for-profit and not-for-profit providers. It is anticipated that Ontario Health would fund home care services through an integrated model of care delivered by a Health Service Provider or **Ontario Health Team**. Reflecting current practice, these organizations would then generally **contract for the delivery of those services. A direct funding relationship between a home care service provider organization and Ontario Health is not anticipated.**”

The regulation states that there will be no direct relationship between a home care service provider organization and Ontario Health and that OHTs will contract with service provider organizations. To maintain access to French language services for Francophones it is essential that the regulation state that contracts Ontario Health Teams and health service providers sign

with service provider organizations (SPOs) include provisions on delivery of French language services.

To ensure that these provisions are really implemented by service provider organizations, they must include an oversight mechanism.

4. Bill of Rights for Francophone patients

The Ministry is proposing to include a Bill of Rights for home and community care patients in the regulation, similar to that contained in the *Home Care and Community Services Act, 1994*. As the Bill was developed in 1994, the Ministry is seeking feedback on updates that may be required related to the equitable inclusion of all Ontarians in the delivery of home and community care services.

The Bill states: “A person receiving a community service has the right to be dealt with by the service provider in a manner that recognizes the person’s individuality and that is sensitive to and responds to the person’s needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.”

The Bill should also state that a person has the right to receive services in the official language of the person’s choice.

5. Complaints

The proposed regulation under the 2019 Act (section on complaints) says: “... require home and community care Health Service Providers to establish a process for reviewing complaints made by patients with respect to home and community care services... The ministry is proposing to maintain the list of complaint topics outlined in the *Home Care and Community Services Act, 1994* in regulation, with some additions”.

To provide Francophone patients with assurance that they will receive services in the official language of their choice, the list of complaint topics should include the official language of service as a complaint topic.

Recommendations on French language services

The *Regroupement des entités de planification des services de santé en français* is making eight recommendations in response to the French language services issues identified.

Recommendations on obligations under the FLSA

Recommendation 1: Confirm that the LHINs, rebranded as Home and Community Care Support Services, will be Crown agencies in order to limit the loss of obligations under the FLSA during the transition phase.

Recommendation 2: Amend Bill 175 to state in the *Connected Care Act, 2019*, that Ontario Health Teams are subject to the FLSA. Since this is a transfer of obligations from agencies subject to the FLSA to new agencies, it is imperative that the government ensure that French language services obligations are also transferred.

Recommendation 3: Include in the agreements signed between Ontario Health and Ontario Health Teams, as defined under the 2019 Act, specific obligations regarding delivery of FLS, particularly with respect to care coordination.

Recommendations on the transfer of positions from LHINs to OHTs

Recommendation 4: Include in the section of the regulation on care coordination functions, the obligation to practise active offer, and to identify the patient's linguistic identity and language of service delivery (French-English).

Recommendation 5: Conduct an analysis of the LHINs' bilingual capacity and require that the bilingual nature of designated positions be maintained when positions are transferred from the LHINs to OHTs or health service providers. Within OHTs, assign these positions to service providers that have French language service responsibilities (identified or designated), serve Francophone patients and have a bilingual human resource capacity to ensure the best possible alignment of resources.

Recommendations on contracts with care services providers

Recommendation 6: Include, in the section of the regulation on eligible providers, the requirement that the contracts between Ontario Health Teams or health service providers and care services providers must include provisions on delivery of French language services.

Other: Bill of Rights and complaints

Recommendation 7: Add to the revised Bill of Rights that a person has a right to receive services in the official language of the person's choice.

Recommendation 8: Include the official language of service as a complaint topic in the section of the regulation on complaints.

The *Regroupement des entités de planification des services de santé en français* is convinced that these eight recommendations will help to guarantee access to quality home and community care services in French for Francophone patients.