COMPENDIUM

HEALTH SYSTEM IMPROVEMENTS ACT, 2006

This compendium summarizes the provisions of the *Health System Improvements Act, 2006* (the "Act") which, if passed, would provide as follows:

GENERAL

The *Health System Improvements Act, 2006* amends and repeals a number of statutes administered by the Minister of Health and Long-Term Care. These changes are intended to strengthen and support various programs, and services that are part of Ontario's health care system. The Act includes new legislation that creates the Ontario Agency for Health Protection and Promotion, establishes three new health profession colleges and provides liability protection in relation to the use of automated external heart defibrillators. The Act also includes amendments to various Ministry statutes. It amends two statutes administered by the Minister of the Environment in connection with the transfer of responsibility for regulating certain types of small drinking-water systems from the Ministry of the Environment to the Ministry of Health and Long-Term Care.

The *Health System Improvements Act, 2006* is comprised of 17 different schedules. The substantive content of these schedules is described below.

SCHEDULE A: AMBULANCE ACT

Currently, s. 4(3) of the *Ambulance Act* empowers the Minister to make grants only to upper-tier municipalities, local municipalities, delivery agents, and ambulance service operators. The proposed amendments broaden the Minister's grant-making powers to cover persons designated under the proposed Part IV.1.

Proposed Part IV.1 of the *Ambulance Act* allows for the creation of a new or expanded class of persons who have land ambulance service responsibilities. The proposed amendments empower the Minister to designate by regulation one or more qualified persons to provide or to ensure the provision of such services. The regulation would set out the duties, obligations, powers and responsibilities of a designated person and the applicable terms and conditions of service delivery. However, any designation would not detract from or otherwise affect the current duties, obligations, powers or responsibilities of an upper-tier municipality or delivery agent under the *Act*, except to the extent that the regulation provides otherwise.

Section 19 of the *Ambulance Act* deals with the sharing of personal health information (PHI), without the consent of the individual to whom the information relates, in the broader ambulance sector. Subsection 19(2) sets out the persons who are entitled to share such information with each other for the specific purposes described in s. 19(3). Amending s. 19(3), so that it refers expressly to communication (dispatch) services and base hospital programs, clarifies that the authorized sharing of PHI may occur for purposes related to the provision of all ambulance-related services (ambulance services, communication services and base hospital programs).

SCHEDULE B: AMENDMENTS CONCERNING HEALTH PROFESSIONS

All health profession acts listed in the first column of Schedule 1 to the *Regulated Health Professions Act, 1991* are being amended to repeal expired transitional council provisions.

All health profession acts are also being amended to increase fines to be consistent with other statutes relating to health care amended pursuant to Schedule I to the *Government Efficiency Act, 2002*. Every person who is guilty of an offence under a health profession act is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence.

Clause 23(2)(d.2) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991* is amended to clarify that the register shall only contain the names of the shareholders who are members of the College and not the names shareholders who are family members.

Other amendments are made as described below.

Chiropody Act, 1991

Section 13 is amended to clarify the regulation-making powers for the College. Regulations may designate the drugs or categories of drugs that may be prescribed or used by members.

Dental Hygiene Act, 1991

The Act is being amended to allow dental hygienists to perform the authorized act of scaling teeth and root planing including curetting surrounding tissue without requiring an order from a dentist, under certain circumstances.

Section 5 is amended to permit members of the College of Dental Hygienists of Ontario to initiate these acts, provided that no contraindications prescribed in regulations to perform or continue to perform these acts are present. The amendment will also permit members of the College to continue to perform the procedures upon receiving orders from dentists.

Section 12 is amended to introduce new regulation-making powers for the College. The amendments will allow the College to make regulations prescribing requirements for the performance of scaling teeth, root planing and curetting surrounding tissue, and contraindications that would preclude members from initiating or continuing to perform these procedures. Additionally, the College's current authority to make regulations "restricting" the drugs that a member may use in the course of engaging in practice is being amended to replace the word "restricting" with "specifying". This will require the College to identify the drugs or categories of drugs that may be used by members.

Midwifery Act, 1991

Section 11 is amended to clarify the regulation-making powers for the College of Midwives of Ontario. The College may make regulations "specifying" the drugs that a

member may use in the course of engaging in the practice of midwifery. Regulations may designate or specify the drugs or categories of drugs that may be prescribed or used by members.

Nursing Act, 1991

The Act is being amended to protect additional nursing titles. Subsection 11(1) is amended to prohibit any person other than a member of the College of Nurses of Ontario from using the title “nurse practitioner”. Subsection 11(4) is substituted with a provision that prevents any person from using the title “nurse anaesthetist”.

The current subsection 11(4) is being repealed because it is no longer needed. This provision allowed practical nurses to continue using the restricted title “nursing assistant” for a period of time which has now elapsed.

Subsection 11(4.1) is added to clarify that the prohibition against the use of the title “nurse anaesthetist” does not prevent members of the College of Nurses of Ontario from using other titles that indicate specialization in anaesthesia, provided that they comply with regulations made by the Council of the College.

Section 14 is amended to clarify the regulation-making powers for the College. Regulations made under clause 14(1)(d) may designate the drugs or categories of drugs that may be prescribed or used by members.

Optometry Act, 1991

The Act is being amended to allow optometrists to prescribe drugs. Section 4 is amended to permit members of the College of Optometrists of Ontario to prescribe a drug designated in regulations.

Section 12 is amended to provide the College the authority to make regulations designating individual drugs or categories of drugs that its members may prescribe. Additionally, the College’s current authority to make regulations “restricting” the drugs that a member may use in the course of engaging in practice is being amended to replace the word “restricting” with “specifying”. This will require the College to identify the drugs or categories of drugs that may be used by members.

Pharmacy Act, 1991

The Act is being amended to protect the title "pharmacy technician" and change the composition of the Council of the Ontario College of Pharmacists to include pharmacy technicians, which will be a new class of certificate of registration.

SCHEDULE C: HEALTH INSURANCE ACT

The amendments to the *Health Insurance Act* permit the Minister to change names on the list of physiotherapy clinics that can provide insured services, but not increase the total number of clinics, without requiring a regulatory amendment each time.

The *Health Insurance Act* amendments assist the General Manager in ensuring that only residents of Ontario obtain access to insured services by requiring residents to notify OHIP of changes in their residency information and by permitting regulations relating to the security and possession of health cards. The amendments clarify the General Manager's authority to make regulations regarding requirements for OHIP registration as well as ongoing requirements in order to remain registered as an insured person.

SCHEDULE D: HEALTH PROTECTION AND PROMOTION ACT, ONTARIO WATER RESOURCES ACT AND SAFE DRINKING WATER ACT, 2002

Health Protection and Promotion Act

Amendments to the *Health Protection and Promotion Act* (HPPA) will transfer the responsibility for regulating certain types of small drinking-water systems from the Ministry of the Environment to the Ministry of Health and Long-Term Care.

The *HPPA* is amended to add a definition of “small drinking-water system” and to change the definition of “operator” to include a reference to an operator of a small drinking-water system. The *HPPA* is also amended to add the provision of safe drinking water by small drinking-water systems to the list of mandatory health programs and services superintended, provided or ensured by boards of health and to add a provision to permit guidelines to adopt by reference codes, formulas, protocols or procedures and allow such adoptions to include adopting amendments to the code, formula, protocol or procedure made after the guideline is issued, although such amendments do not come into effect until the Ministry gives notice of them. A provision is added that, with respect to small drinking-water systems, authorizes a medical officer of health to vary specific provisions in regulations on a temporary basis and allows a medical officer of health to establish interim requirements in respect of a small drinking-water system, provided that the risk to users of the small drinking-water system is not increased. The right of entry and enforcement provisions in the *HPPA* are amended to include references to “small drinking-water systems”. Finally, the *HPPA* is amended by the addition of broad regulation making powers in respect of small drinking-water systems, to facilitate their regulation, and by the addition of the power to make regulations in respect of transitional matters.

Ontario Water Resources Act

Various changes are being made to update the terminology used in the *Ontario Water Resources Act*, and to prevent conflict with the *Health Protection and Promotion Act* and the *Safe Drinking Water Act, 2002*.

Safe Drinking Water Act, 2002

Subsection 3(3) of the *Safe Drinking Water Act, 2002* (*SDWA*) is being amended to broaden its scope so that the Minister of the Environment can enter into agreements with respect to the regulation of small drinking water systems. This will ensure that the Ministry of the Environment, the Ministry of Health and Long-Term Care and local health units can work cooperatively. Subsections 3(4) and 7(2) of the *SDWA* are being amended to broaden the scope of the Minister’s and Chief Drinking-Water Inspector’s

respective annual reports so that these reports can include information regarding small drinking water systems regulated under the *HPPA*.

Laboratories conducting drinking-water testing for small drinking water systems regulated under the *HPPA* will continue to be regulated, licensed and inspected under the *SDWA*. A number of amendments are being introduced to broaden the scope of the regulatory power under the *SDWA* to ensure it also applies to testing on drinking water from systems regulated under the *HPPA*. The definition of drinking-water test in section 2 of the *SDWA* is being amended to specifically refer to drinking-water tests under the *HPPA* with respect to small drinking water systems. A new section 18.1 is being added to ensure that laboratories must still immediately report adverse test results obtained from a small drinking-water system. As a result, a reference to section 18.1 must be added to the offence provisions of the *SDWA*, sections 140 and 143. Sections 74 and 76 of the Act are being amended to remove the references to "for the purposes of this act" to ensure that the Director that issues lab licenses is not constrained in exercising his or her discretion with respect to small drinking-water systems.

Minor corrective amendments to sections 18, 54, and 127 are being made, in order to improve the working of the *SDWA*.

SCHEDULE E: IMMUNIZATION OF SCHOOL PUPILS ACT

The *Immunization of School Pupils Act* (*ISPA*) is amended to permit registered nurses who hold an extended certificate of registration to sign a statement of medical exemption under the *ISPA* and to undertake other activities under the *ISPA*. Amendments also permit other nurses to undertake certain activities under the *ISPA*.

SCHEDULE F: HEALTH PROTECTION AND PROMOTION ACT

Sections 26 and 30 and subsections 1(1), 34(1), 32(2), 34(4), 38(2) and 40(1) of the Health Protection and Promotion Act (*HPPA*) are being amended to add references to "registered nurse in the extended class" and by adding a definition for that term.

The definition of "institution" in subsection 21(1) and of "practitioner" in subsection 25(2) of the *HPPA* is being amended to allow the Lieutenant Governor in Council to add to the list of practitioners and institutions by way of regulation.

Subsection 29(1) of the *HPPA* is amended to change the location of where the laboratories send reports of positive findings in respect of reportable diseases.

The *HPPA* is amended by adding sections 29.1 and 29.2 to allow reporting by medical officers of health to health facilities in regard of communicable diseases acquired at facilities and to allow for the issuance of orders against institutions or public hospitals for the purpose of dealing with communicable disease outbreaks.

Section 35 of the *HPPA* is amended to change references to "four months" to "six months". Section 35 is also amended to provide that an order under this section may be directed to any police force in the Province and is authority to enter any place provided for in the order for locating or apprehending the subject of the order.

Subsection 38(1) of the *HPPA* is amended by adding three additional diseases to the definition of “immunizing agent”.

Subsection 39(2) of the *HPPA* is amended to provide an exemption from the confidentiality requirement in subsection 39(1) where disclosure is authorized under the *HPPA* or the *Personal Health Information Act, 2004*.

The *HPPA* is amended by adding a new Part, Part VI.I, entitled “Provincial Public Health Powers”. Sections 86, 86.1, 86.2 and 87 of the Act are moved from Part VII “Administration” and placed under Part VI.I. Sections 86, 86.1, 86.2 and 87 will now become sections 77.1, 77.2, 77.3 and 77.4. In addition section 86 (which will become section 77.1) is amended to clarify that the powers of the board of health that the Chief Medical Officer of Health (CMOH) may exercise under this section include the power to appoint a medical officer of health or an associate medical officer of health. The *HPPA* is amended by adding section 77.5 to allow the Minister of Health and Long-Term Care (Minister) to issue orders in regard to the emergency procurement of medications and supplies. The *HPPA* is amended by adding section 77.6 to allow the CMOH to issue orders to health information custodians for the purpose of requiring such custodians to provide the CMOH with information, including personal health information. The *HPPA* is amended by adding section 77.7 to allow the CMOH to issue directives to health care providers and health care entities respecting precautions and procedures that must be followed to protect the health of persons anywhere in Ontario. The *HPPA* is also amended to add section 77.8 to allow the CMOH to issue collect, retain and use previously collected specimens.

The *HPPA* is amended by adding section 81.1 to provide for the position of an Associate Chief Medical Officer of Health (ACMOH) and to provide for the functions, powers and duties of that office holder.

The *HPPA* is amended by adding section 81.2 to allow the Minister to enter into accountability agreements with any board of health.

Section 95 of the *HPPA* is amended by adding the CMOH, ACMOH and employees of boards of health working under the direction of a medical officer of health to the list of persons that are protected from personal liability. Section 95 is also amended to offer protection from personal liability to persons acting pursuant to orders under 77.5 or 77.8 or directions under 77.7 of the Act. In addition, section 95 is amended to specify that the Crown is not relieved of liability for the acts or omissions of the CMOH or ACMOH.

Section 97 of the *HPPA* is amended to provide the Minister the power to specify diseases for the purpose of the definition of “immunizing agent” in subsection 38(1).

Subsection 100(3) of the Act is amended to update the list of specified provisions, the contravention of which constitutes an offence under the *HPPA*.

Section 102 of the *HPPA* is amended to provide the superior Court of Justice broader order making powers.

The service provisions in section 106 of the *HPPA* are amended to take into account the authority of the medical officers of health to issue class orders under section 22 of the Act.

SCHEDULE G: AMENDMENTS TO THE HEALTH INSURANCE ACT (REVISIONS TO MEDICAL AUDIT PROCESS)

Purpose/General

Amendments to the *Health Insurance Act* will set up a new medical audit process that will:

(i) educate and assist physicians in meeting the OHIP billing requirements,
(ii) support early resolution of payment concerns that might arise between the General Manager and a physician,
(iii) establish a fair and fairly-administered means of resolving any such concerns that can not be resolved by the General Manager and a physician, and
(iv) ensure the responsible use of public health-care funds.

Part of this process will be the creation of the Physician Payment Review Board and the Joint Committee on the Schedule of Benefits.

Additional amendments are made to the *Health Insurance Act* that repeal the Medical Review Committee (MRC) and remove other references to physicians that are associated with the processes concerning the MRC.

Section 1

Definitions

This section defines a number of terms used in the Act, including: Joint Committee, ministry, payment committee, payment correction list, Review Board, Schedule of Benefits. It also revokes the definition of “eligible physicians”

Subsection 2(1)

Joint Committee on the Schedule of Benefits

The minister is required to establish a Joint Committee on the Schedule of Benefits to:

- provide an opinion on its interpretation of any provision of the Schedule of Benefits, upon the written request of the General Manager or a physician
- make recommendations to the General Manager and the Ontario Medical Association on amendments to the Schedule of Benefits based on its requested opinion
- publish, maintain and amend the payment correction list
- perform other duties as may be prescribed.

Members

The Joint Committee shall consist of the prescribed number of members appointed by the Minister. One half will be appointed from among physicians nominated by the Ontario Medical Association and one half will be other physicians.

Limitation

The Joint Committee can only act in an advisory capacity and shall not hold hearings.

Responses and Final Report
The Joint Committee has 30 days to respond to a request for an opinion on its interpretation of a provision of the Schedule of Benefits unless another time period is prescribed.

If the Joint Committee is unable to come to an opinion, it shall issue a report to that effect.

Claims Correction List
A list of circumstances for which payments are subject to correction shall be published on the internet, accessible to physicians, within 90 days of the coming into force of this section. The Joint Committee shall maintain, amend and publish the claims correction list as required.

Remuneration and expenses
Members of the Joint Committee may be paid remuneration and receive reimbursement for expenses in the amounts determined by the Lieutenant Governor in Council.

Physician Payment Review Board
A Review Board will be established and will perform such duties as set out in the Act, and Schedule 1.

Payments
The Review Board may only order payments that are authorized under the Act.

Composition of Physician Payment Review Board
The Review Board will be comprised of no more than 40 members. No fewer than 20 and no more than 30 are to be physician members, of whom one-half are to be selected by the Minister for the Minister's recommendation and one-half are to be selected by the Ontario Medical Association for the Minister's recommendation. If there are not sufficient nominees to permit the minimum number of 20 physicians to be appointed, the Minister may recommend sufficient physicians to meet or exceed the minimum requirement. All Board members shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Board Member Qualifications
A physician must be a member of the College of Physicians and Surgeons of Ontario and must be in active practice (actively engaged in rendering insured services to insured persons and submitting accounts for insured services to the Plan) at the time of first appointment or have not been retired from active practice for more than three years in the case of a re-appointment.

Nominations
Both the OMA and the Minister must make best efforts to ensure that physicians appointed to the Review Board represent a broad a range of physician practices.

Further Qualifications
A person will not be appointed to the Review Board if they are employed in the public service of Ontario or by a Crown agency. [Placeholder re new *Public Service of Ontario Act* "PSOA"].

Chair and Vice-Chair
The Review Board must elect one of its members to be the Chair of the Board and at least one but not more than three of its members as vice-chairs.

Remuneration and expenses of Board Members
The Lieutenant Governor in Council determines the remuneration and expenses that Review Board members shall be paid except that remuneration for physician members will not be less than $500.00 a day.

Appointment of persons to assist
The Review Board may appoint from time to time, one or more persons having technical or special knowledge of any matter before it to assist, inquire into the matter and report to the Review Board. However, this person shall not sit as a member of the Review Board or of any review panel appointed to conduct a hearing.

Employees
Whatever employees the Board considers necessary to carry out its duties may be appointed under the *Public Service Act*.

Annual Meeting & Annual Report
The Review Board must meet annually to review its policies and procedures, and must prepare an annual report for the Minister, who shall provide a copy to the Lieutenant Governor in Council and table it in the Assembly.

Disclosure
A nominee or other potential appointee to the Joint Committee or the Review Board shall notify the Ministry of every finding of guilt for fraud under the *Criminal Code* and of every other finding of guilt under the laws of Canada or a province or territory that is relevant to the nominee/appointee's suitability to sit as a member, unless the finding of guilt is for an offence for which the nominee/appointee has received a pardon.

The requirement to disclose convictions continues during the term of the person's appointment or subsequent reappointment.

Disqualifications
A person may not be appointed or reappointed to the Joint Committee or the Review Board if he or she has been found guilty of fraud under the *Criminal Code* or has been found guilty of an offence under the laws of Canada or a province or territory that, in the opinion of the Minister, is relevant to the person's suitability to sit as a member of the Joint Committee or Review Board, unless the finding of guilt is for an offence for which the appointee has received a pardon.

A physician may not be appointed or reappointed to the Joint Committee or Review Board if he or she was the subject of a finding of professional misconduct, incompetence or incapacity whether in Ontario or another jurisdiction.

A physician may not be appointed or reappointed to the Joint Committee or Review Board if he or she has been required to reimburse the Plan as a result of a decision of the Medical Review Committee, the Review Board or the Health Services Appeal and

Review Board, until at least 10 years have passed since being required to reimburse the Plan.

Continuing qualifications
A physician who ceases to be a member of the College of Physicians and Surgeons of Ontario or a person who is otherwise disqualified or fails to provide information as outlined below will automatically cease to be a member of the Joint Committee or Review Board.

Waiver
The Minister may appoint or reappoint a person who is otherwise disqualified or terminated if he or she believes that the circumstances justify the appointment/reappointment unless the disqualification or termination results from a conviction of fraud under the *Criminal Code* for which the person has not received a pardon.

Information
As a condition of being appointed, reappointed, or continuing to be a member of the Review Board or Joint Committee, persons under consideration or current members shall, upon request of the General Manager provide the General Manager with any information relevant to determining the person's eligibility to be appointed or reappointed.

Subsection 2(2) – 2(4)
Public Service Act
These provisions amend the "Further Qualifications" and "Employees" provisions above to conform with the proposed language of Bill 158 (Public Service of Ontario Statute Law Amendment Act, 2006) should Bill 158 be passed.

Section 3
Physician Services Payment Committee
The minister must establish a committee to be known as the Physician Services Payment Committee which will have the responsibility for making recommendations to the Minister with respect to amendments to the Schedule of Benefits and other physician payment programs including:

- making timely and appropriate recommendations to amend the schedule of fees and other payment programs to reflect current medical practice and to meet the needs of the health care system;
- conduct specialty specific or service specific reviews
- provide its opinion on any proposed amendment to the Schedule of Benefits at the General Manager's request
- perform such other duties as prescribed.

Members
The Physician Services Payment Committee shall consist of the prescribed number of physicians appointed by the Minister, half of whom shall be appointed from those nominated by the OMA and half shall be other physicians.

Membership Qualifications, disclosures, etc.

The provisions relating to disqualifications, continuing qualifications, disclosure, waiver and information which apply to the Joint Committee and the Review Board will apply to the Payment Committee with any necessary modifications.

Chair
The Minister is required to appoint a chair for the Physician Services Payment Committee. The Chair will not be a member of the committee and will not have a vote in any proceedings of the committee.

Performing Role of Joint Committee
The Lieutenant Governor in Council may make regulations assigning any or all of the roles and functions of the Joint Committee to the payment committee and, where this occurs, every reference to anything that may be done by the Joint Committee is deemed to be a reference to the Physician Service Payment Committee. This will allow for the role of the Joint Committee to be taken over by the Payment Committee

Remuneration and expenses
Members of the payment committee may be paid remuneration and receive reimbursement for expenses in the amounts determined by the Lieutenant Governor in Council

Section 4 Eligible Physicians
Subsections 12(2) and (3) are repealed. These are provisions which deal with eligible physicians and which were supposed to come into effect upon proclamation but were not proclaimed. The provisions respecting eligible physicians were added to the HIA in order to permit the Ministry to restrict the list of physicians who are entitled to submit accounts to the Plan for insured services and be paid for such services, e.g. to those who are in specific locations or who have specified affiliations.

Section 5 Grand parented Opt-Out Physicians
Specific subsections of subsection 15.2(1)(2) (which are transitional provisions for grand parented opt-out physicians and practitioners) cease to apply to physicians when this provision comes into force because the provisions are no longer relevant to the new process.

Subsection 15.2(2) (which is a transitional provision for grand parented opt-out physicians and practitioners) is amended by striking out “physician or” as these provisions will continue to apply to practitioners but will no longer be relevant with respect to physicians in the new process.

Section 6 Direction to make payments to entity
Subsection 16.1(6) (which deals with record-keeping and inspection of records with respect to a person or entity to whom payment is made pursuant to a physician’s or practitioner’s direction) is repealed and replaced by separate record-keeping and/or inspection provisions for persons or entities to whom payment is made pursuant to a direction by a practitioner or pursuant to a direction by a physician.

Section 7 Fees payable for Insured services
Subsection 17.1(1) which deals with a physician, practitioner and insured person’s entitlement to submit accounts to the Plan for insured services and to be paid for those

services is repealed and new language is substituted to more clearly define the entitlement to be paid for physicians, practitioners or insured persons who submit accounts to the General Manager in accordance with the Act.

Eligible Physicians
Subsections 17.1(2) and (8) are repealed to remove references to eligible physicians.

Section 8 Payment of Accounts
Subsections 18(3) to (9) are repealed and either put back in with amendments or new sections added to specify when the General Manager may refuse to pay for a service. The new process for dealing with post payment issues is also added here.

Refusal to Pay
Unless there are extenuating circumstances, the General Manager is required to refuse to pay for an insured service if the account is not prepared in the required form, does not meet the prescribed requirements or is not submitted within the required time.

Refusal to pay, payment correction list
The General Manager may refuse to pay a physician for a service or pay a reduced amount if a circumstance described on the payment correction lists exists in respect of the account.

Reimbursement, practitioner or health facilities
The General Manager may require a practitioner or health facility to reimburse the plan for an amount paid for a service if, after the payment is make, the General Manager is of the opinion that a circumstance in 18(2) exists. However, the General Manager shall not require a practitioner to reimburse the Plan if the sole reason for requiring reimbursement is that the General Manager is of the opinion that all or part of the service was not therapeutically necessary or that all or part of the service was not provided in accordance with accepted professional standards and practice. The General Manager is required to notify the practitioner or health facility of a decision to refuse to pay for a service, to pay a reduced amount, or to require that the Plan be reimbursed.

Notice, physician, refusals to pay or pay at reduced amount
The General Manager is required to notify a physician of a decision to refuse to pay for a service or to pay a reduced amount either because a circumstance described in section 18(2) exists or that a circumstance described on the payment correction list exists.

Notice to physician, payment correction list after payment
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 set out on the payment correction list exists in respect of the account, the General Manager may notify the physician of the circumstance and the amount the General Manager believes is owing. No notice may be given more than 19 months after the service to which the claim relates is rendered.

Request for hearing by physician

If a physician disagrees with the decision or opinion of the General Manager to refuse to pay for a service, to pay at a reduced amount, or that payment should not have been made because a circumstance set out on the payment correction list exists, the physician may, within 20 business days of receiving the notice, give notice to the Review Board requesting it to hold a hearing and, at the same time, give notice of the request to the General Manager. In cases where the General Manager is of the opinion that an amount paid to a physician should not have been paid because a circumstance set out on the payment correction list exists, (a) the General Manager shall not take any steps to recover any amounts alleged to be owed by the physician to the Plan pending the Review Board's order if the physician makes a request for a hearing within 20 business days, or (b) the General Manager may direct the physician to reimburse the Plan if there is no request by the physician for a hearing within 20 business days.

Notice of initial opinion
If the General Manager is of the initial opinion that a circumstance in 18(2) exists in respect of one or more claims paid for services provided by a physician, notice may be given by the General Manager to the physician that (1) sets out a brief statement of facts giving rise to the initial opinion, (2) sets out the General Manager's interpretation of provisions of the Schedule of Benefits relevant to the matter, (3) advises the physician that his or her claims are under review and that he or she may, within business 20 days, provide written information to support the claim; and (4) advises that the physician may require that the General Manager seek an opinion from the Joint Committee on its interpretation of the provisions unless it has already been provided.

Notice
If, after reviewing records, other information and any opinion from the Joint Committee, the General Manager is of the opinion that a circumstance in 18(2) exists in respect of one or more claims paid for services provided by a physician, the General Manager may give notice to a physician(a) that provides the physician with reasons for his/her opinion and (b) advises the physician that unless future claims for those services are submitted in accordance with the General Manager's opinion future claims for those services may be referred to the Review Board and payments for those services may be subject to reimbursement in whole or in part after the date notice is given.

Request for hearing
The physician may, within 20 business days of receiving the notice under subsection 18(13), give notice to the Review Board requesting a hearing..

Where continuing inappropriate claims
If the General Manager has given a notice under subsection 18(13) and the physician has not requested a hearing within the 20 days and, if upon reviewing the claims for services rendered by the physician and any other information in the General Manager's possession, the General Manager is of the opinion that a circumstance in 18(2) continues to exist, the General Manager may, upon notice to the physician, give notice to the Review Board requesting a hearing.

Immediate referral
If the General Manager is of the opinion that a circumstance in 18(2) exists and is of the opinion that either the physician knew or ought to have known that claims submitted to the Plan were false or that the physician has demonstrated a history of submitting other

claims to the Plan or to insured persons that are not in accordance with the Act, whether or not the previous claims were subject to an order by the Medical Review Committee, the Appeal Board or the Review Board, the General Manager may, without giving notice to the physician, give notice to the Review Board requesting a hearing but then must promptly give notice to the physician of the referral.

Settlement with physician
The General Manager and the physician may settle at any time and despite any other provision of this Act any disagreement between the General Manager and the physician with respect to accounts.

Payment
If as a result of a settlement with the General Manager or an order of the Review Board money is owed to the Plan, or the General Manager directs a physician to reimburse the Plan in accordance with the Act, the money shall be paid to the Plan through any method permitted under the Act unless the settlement or Review Board order provides an alternative method of payment.

Section 9 Repeal of transitional provisions
Subsection 18.0.5(1) permits the Lieutenant Governor to repeal the transitional provisions put in place during the MRC suspension and the confidential information section for the Transitional Physician Audit Panel on proclamation

Section 10 Information confidential
The confidentiality and protection from liability sections of the Act apply, with necessary modifications, to the Transitional Physician Audit Panel, its members, employees or agents, if any.

Section 11 Settlement
Where the General Manager and the physician came to an agreement regarding a matter to which a transitional provision in 18.0.1, 18.0.2, 18.0.3 and 18.0.4 or paragraph 3 of subsection 20(1) applied, the General Manager shall be deemed to have had the authority to enter into the agreement and no action can be taken against the General Manager, the Minister, the Crown in right of Ontario, or an employee or agent of the Crown, the medical review committee or its members, inspectors or employees, or the Appeal Board or its members, employees, or agents , if applicable, as a result of entering into the agreement.

Where no settlement
Where a matter was referred to the Medical Review Committee pursuant to section 39.1 as it existed immediately before the provisions respecting the Transitional Physician Audit Panel came into effect and where no settlement had been reached at the time this section comes into force, the matter shall be deemed to have been withdrawn.

Where no settlement
Where during the time transitional provision 18.0.1 was in force, a physician requested a review by the Transitional Physician Audit Panel and no settlement has been reached at the time this section comes into force, the matter shall be deemed to have been withdrawn.

Section 12 Transitional - Continued suspension
Where payments to a physician were suspended for failure to provide information to an MRC inspector pursuant to section 40.2(6) of the Act as it existed before transitional provision 18.0.2(11) was enacted, and the suspension continued pursuant to 18.0.2(11) for failure to provide information to the satisfaction of the General Manager, the suspension remains in effect until the physician complies with the General Manager's request for information.

Section 13 Repeal and amendments
A large number of subsections in section 18.1 which deal with reviews by committees have been rewritten or repealed to eliminate references to the Medical Review Committee or to physicians but remain in force for practitioners.

Section 14 Review of Referrals
If in the opinion of the General Manager, a service performed by a physician, practitioner, health facility or independent health facility pursuant to a referral of the matter by another physician was not medically necessary, the General Manager may give notice to the Review Board requesting it to hold a hearing to review the provision of the service requested.

If the Review Board finds that the requested service was not medically necessary, the physician who requested the provision of the service shall pay to the Plan the amount paid by the Plan to the physician, practitioner, health facility or independent health facility who performed the service.

Physician payment review process
Where a physician or the General Manager gives notice to the Review Board requesting it to hold a hearing, the matter will be dealt with by the Review Board in accordance with the *Health Insurance Act* and Schedule 1.

A review panel of the Review Board may determine all issues relating to payments for insured services and make orders for payments from the Plan that are authorized under the Act.

Sections 15-18 Appeal to Appeal Board
Subsections 20(1)3., 21(1.0.1) & (1.1), 22(2) and 25(1), which deal with appeals to the Health Services Appeal and Review Board, have been rewritten or repealed to eliminate references to the Medical Review Committee, or to separate the provisions that no longer apply to physicians but remain in force for practitioners.

Section 19 Service of notice
Except as otherwise provided, any notice required by this Act may be served by personal service, by courier, by registered mail or by any other prescribed method and the service of the notice is effective on the day of delivery or as otherwise prescribed. .

Service by ordinary mail
Where service could not be effected as above, service may be made by regular mail and shall be effective 14 business days after the day of mailing unless the person or entity can establish that, through no fault of their own, the notice was received later.

Section 20 Set off
Section 27.2(2) has been amended such that provisions which allow set off prior to a hearing or appeal apply only to practitioners.

Section 21 Eligible Physicians
Section 29.1 to 29.8 which come into force upon proclamation are repealed as these provisions deal with eligible physicians and are not intended to be, proclaimed.

Section 22 General Information Requirement
Every physician and practitioner is required to give the General Manager such information including personal information as prescribed in the regulations for purposes related to the administration of this Act, the *Commitment to the Future of Medicare Act, 2004, the Independent Health Facilities Act* or for such other purposes as may be prescribed.

Where the General Manager requires a physician to provide records or other information, the following rules apply:

- the physician must submit copies of the requested records or other information and, where required by the General Manager, shall include a certificate of authenticity (on a form supplied by the General Manager) and a signed copy of the audit trail for electronic records.
- If the General Manager is not satisfied with the copies, he/she may require the physician to produce the original documents – after making copies, the originals shall be returned to the physician in a timely manner.
- Where a physician fails to produce the information, the General Manager may, on notice to the physician, apply to a provincial judge or justice of the peace for an order compelling production of the required records or other information.

Electronic records
Where records required to be kept by physicians are in electronic form, they must conform to the requirements as set out in the regulations under the *Medicine Act, 1991.*

Section 23 Record-keeping
The draft legislation will eliminate the references to physicians in the record keeping provisions set out in subsections 37.1(1), (2) and (3) as those sections will apply only to practitioners and health facilities.

Under the current draft, a revised record-keeping provision is aligned with the Report recommendations requiring that physicians maintain records that:
i. comply with any requirements respecting records set out in the regulations under the *Medicine Act, 1991* ; and
ii. comply with any additional requirements that may be provided for in the schedule of benefits

All records must be promptly prepared after the service is provided

Repeal
Subsection 37.1(6) of the HIA requires a physician, practitioner or health facility to provide relevant information to the General Manager, inspectors, and the Medical Review Committee where there is a question about whether an insured service was

provided. The references to physicians and the Medical Review Committee have been deleted because the MRC and its inspectors will no longer exist - the provision will just apply to practitioners and health facilities.

Presumption
Under the current legislation, where there are no records to show that an insured service was provided ,and was medically or therapeutically necessary, there is a presumption that an insured service was provided but the basic fee payable is nil. This presumption will no longer apply to physicians but will continue to apply to practitioners.

Presumption
Under the current legislation, where there are no records to establish that the service for which the account was submitted was the service actually provided, there is a presumption that the insured service provided was the one described by the records and not the one for which the account was submitted. This presumption will no longer apply to physicians but will continue to apply to practitioners.

Section 24 Information confidential and exceptions
Members, employees, agents and inspectors, if any, of the Review Board, the Appeal Board, a practitioner review committee and the Medical Eligibility Committee, as well as the General Manager and persons engaged in the administration of this Act, are required to maintain secrecy respecting all matters that come to their attention in the course of their employment or duties pertaining to insured persons and any insured services rendered and the payments made for those services except as otherwise provided in the *Health Insurance Act,* the *Personal Health Information Protection Act, 2004* and the *Freedom of Information and Protection of Privacy Act.*

Other amendments
The subsequent provisions in the HIA which allowed for disclosure of specific information for specific purposes and allowed for publication of anonymized information are being revoked and it is made clear in the draft legislation that information can only be disclosed if authorized under the HIA, the FOIPPA or PHIPA. One exception which allows for disclosure is left in the HIA-it requires the General Manager, the MRC and practitioner review committees to provide information to the appropriate regulatory college if they have reasonable grounds to believe that the physician/practitioner is incompetent, incapable or has committed professional misconduct. The reference to the MRC is being revoked as it will no longer exist.

Section 25 Filing with Court
This provision amends the current provision in the HIA by adding references to orders of the Review Board, agreements to reimburse the Plan signed by the physician and directions to given by the General Manager to reimburse the Plan because a circumstance on the payment correction list exists.

Section 26 Protection from liability
The current provision in the HIA which protects members and employees of the MRC, practitioner review committees, the MEC and the General Manager and persons engaged in the administration of the HIA from liability for acts done in good faith in the course of their employment is being amended to delete the reference to the MRC and to add a reference to the Review Board, the Joint Committee and the Payment Committee

as well as any agents or inspectors of all of the named persons/entities. In addition the wording of the protection from liability has been amended to update the wording.

Section 27 Review - Insured Services - Section 39.1
This section currently allows the General Manager to request the MRC or a practitioner review committee to review the provision of insured services rendered by physicians or practitioners. References to the MRC and physicians in section 39.1 are being repealed as they are no longer relevant.

Section 28 Inspectors, Medical Review Committee
The current provisions in the HIA (subsections 40(1) and (2)) which allow for appointment and functioning of MRC inspectors are being repealed as they are no longer relevant.

Section 29 Powers of Inspectors
The current provisions in section 40.1 of the HIA which deal with powers of inspectors are being amended to delete the references to physicians as they are no longer relevant.

Section 30 Obstruction of Inspectors
The current provisions in section 40.2 of the HIA which deal with the duty of physicians and practitioners to cooperate with inspectors and consequences of failure to cooperate are being amended to delete the references to physicians as they are no longer relevant.

Section 31 Suspension of payments
The General Manager may give notice to the Review Board requesting it to hold a hearing and issue an order suspending payments or a portion of payments to a physician from the Plan:

- to a physician during any period when he or she fails to comply with disclosure of records and other information requirements under this Act without just cause; or

In addition where a grand-parented opt-out physician fails to comply with the disclosure requirements or has already failed to comply with the disclosure requirements, the Review Board may require the physician to temporarily opt in (submit claims for payment directly to the Plan) and suspend the physician's payments until the physician produces the required information. The physician does not permanently lose his/her grand parented status as an opt-out physician when required to submit accounts directly to the Plan under this provision.

Section 32 No imprisonment for record-keeping offences
The current Act is amended so that no person may be sentenced to a term of imprisonment for failing to keep or maintain the records that are required to be kept under section 37.1.

Section 33 Regulations
Various clauses under subsection 45(1) have been amended or repealed to eliminate references to the Medical Review Committee, eligible physicians and to establish regulation making power to allow the General Manager to add additional duties for the

Joint Committee and payment committee. A power to make regulations respecting service of notice has also been added.

SCHEDULE 1
PHYSICIAN PAYMENT REVIEW PROCESS
(Section 34 of Schedule G)

Section 1
Purpose
Provides that the purpose of the Schedule is to establish procedures for the Physician Payment Review Board to hold hearings on payment matters that cannot be resolved between the General Manager and a physician through the provision of education and other assistance, and to provide for an appeal process from its decisions.

Section 2
Definitions
This section defines a number of terms used in the Schedule, i.e. peer, public member, review panel, specialty group.

Section 3
Request for a hearing
When the Review Board receives a notice that requests a hearing in accordance with the proposed legislation, the Chair or Vice-Chair shall select a panel to hear and determine the matter.

Timing of hearing
A panel shall conduct the hearing in a timely manner or within any time prescribed in the regulations and shall render its decision, with written reasons, within 30 business days after all submissions have been made or within another prescribed time.

Parties
The parties to a hearing are the General Manager and the physician(s) named in the notice that requests a hearing.

Order of Review Board
An order of a review panel is an order of the Review Board.

Section 4
Period of Review
Unless the Panel orders otherwise in accordance with the legislation, the physician under review shall only be required to reimburse the Plan for services provided in a period that is no more than 12 months in duration. Unless the panel orders otherwise, the period of review for reimbursement purposes is the later of the date of notice, if any, under 18(13) or 18 months prior to the date of the request for a hearing by the General Manager .

Relevant evidence regardless of date

Allows any party to a hearing to submit, and the Review Board to admit, as evidence any document, record or other information it deems relevant to the hearing regardless of the date of the document, record or other information.

Section 5

Panels

The Chair or Vice Chair of the Board will select four Review Board members for a panel Three of the members must be physicians and one must be a public member. One of the three physician members must be a peer of the physician who is the subject of the hearing. If the chair or vice chair determines that no peer is available or if the physician raises a concern about the peer member, including whether the peer is also a member of the same specialty as defined by the Royal College of Physicians and Surgeons of Canada as the physician who is the subject of the hearing, the chair or vice chair may appoint a physician advisor to provide advice to the panel.

The chair or vice-chair of the Review Board shall designate one panel member to act as the Panel Chair. The Panel Chair cannot be the peer of the physician who is party to the hearing.

Death, termination of membership

If a hearing has begun and a member of the Review Panel dies or, before his or her term expires, has their appointment terminated, or the member is unable or unwilling to continue as a member before the matter is concluded, the remaining three panel members may determine the matter, unless the member is a peer member, in which case the panel chair shall determine how to deal with the matter.

Expiry of Term

If a member's appointment to a review panel expires before the conclusion of a hearing, the member continues to be a member of the review panel until the matter is concluded.

Section 6

Hearing by Review Panel

A review panel will hear and determine the matter before it.

Members holding hearing

Members of the review panel shall not have taken part before the hearing in any consideration of the matter that is the subject of the hearing. In addition, Review Panel members shall not communicate directly or indirectly in relation to the matter with any person, party or representative of a party except upon notice and opportunity for the parties to participate.

Legal Advice

The Review Panel may seek independent legal advice from a person who is not counsel in the hearing and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Conflict of Interest

Upon discovery of a conflict of interest, a panel member will immediately disclose to the Chair of the Review Board the nature and extent of the conflict. The Chair will determine what course of action to take.

If Chair has conflict
If the Chair of the Review Board has a conflict of interest, he/she shall not assign himself/herself to a panel and if he/she becomes aware of a conflict after already being assigned to a panel, he/she shall report it to a vice-chair who shall determine what course of action to take in consequence.

Majority Determination
The final determination of a matter before a review panel shall be by majority vote. In the event of a tie, the vote of the panel chair will decide the matter.

Only Members at Hearing to Participate in Decision
Only members who are present throughout the hearing can participate in making the Review Panel's decision.

Section 7
Findings of Fact
The findings of fact of the Review Panel will be based entirely on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act.*

Section 8
Recording of Evidence
Oral evidence at a hearing shall be recorded and, if required, transcripts of the evidence shall be furnished upon the same terms as in the Superior Court of Justice of Ontario.

Section 9
Release of Documentary evidence
Documents and things put in evidence at a hearing must be released by the PPRB upon request to the party who produced them within a reasonable timeframe after the matter has been finally determined.

Section 10
Orders
After the completion of its hearing, the Review Panel may, as an order of the Review Board, make any order that it considers appropriate including, but not limited to, any one or more of the following:

- an order determining the proper amount to be paid, if any, to the physician in accordance with the Act and the regulations for the service provided and requiring that the General Manager pay the account in the amount set out in the order or that the physician reimburse the Plan for any amount paid by the Plan for a service that is in excess of the amount set out in the order
- an order that the physician submit future claims for insured services in accordance with the order of the Board
- an order that costs be awarded to either party in accordance with the *Statutory Powers Procedure Act*
- an order that the period of review for reimbursement be for a period greater than 12 months or that the period of review for recovery be for a period commencing prior to the date of specified notice to the physician, where the review board determines that one or more of the following circumstances exists:

- the physician knew or ought to have known claims submitted to the Plan were false
- the physician has demonstrated a history of submitting other claims o the Plan or to insured persons that were not in accordance with the Act, whether or not the other claims were subject to an order by the Medical Review Committee, the Appeal Board or the Review Board

- an order that the physician's right to submit claims for insured services to the Plan or to receive payments from a insured person cease or be suspended for a period of time provided for in the order if one or more of the circumstances set out below under Limitations on Suspension exist.

Additional orders

- 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 by assuming the results observed in the random sample are representative of all those claims and the samples utilized have reasonable confidence intervals, where the Review panel determines that the physician is liable to reimburse the Plan and there has been a previous 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.

A review panel may not order statistical inference be applied unless the above conditions are met.

Limitations on Costs

Costs shall not be awarded against a physician unless there has been a finding by the Board that one or more of the following apply:

- he or she unreasonably failed to provide information or produce records
- he or she unreasonably failed to cooperate with the Ministry
- he or she unreasonably failed to cooperate in the proceedings before the panel
- he or she was responsible for long or frequent delays in the proceedings
- he or she failed to comply with a previous order of the Review Board

Limitations on Suspension

An order to suspend or remove a physician's rights to submit claims shall not be made unless the review panel finds that:

- the physician knew or ought to have known he/she submitted claims to the Plan or to insured persons for services that were false
- the physician demonstrated a history of submitting claims to the Plan or to insured persons that were not in accordance with the Act. whether or not they were subject to a previous order by the Board, the MRC, or the Appeal Board

Effect of Suspension

Where the Review Panel/Board has suspended or removed the physician's right to submit fee claims to OHIP, any insured service rendered by the physician during the period of suspension etc is deemed to be an insured service payable at nil.

Interest payable by physician

If the Board orders a physician to reimburse OHIP, interest will accrue on the amount found to be improperly paid to the physician from date that the General Manager's notice to the physician under the Act was effective.

Interest payable by General Manager
Interest is payable by the General Manager to a physician if the General Manager sent a notice of an opinion to the physician in accordance with the proposed legislation and the physician submitted claims in accordance with the opinion but requested a hearing and the review board concludes that the General Manager's opinion was not correct and directs that the General Manager pay the claims as they would have been submitted if it were not for the opinion. Interest accrues from the date the claims were submitted in accordance with the General Manager's opinion.

Report to the College
Where, based on a hearing, the Review Board is of the opinion that the physician may have committed an act of professional misconduct, or may be incompetent or incapacitated; it shall file a report with the Registrar of the College of Physicians and Surgeons of Ontario.

Section 11
Appeal
A party to a hearing before the Review Board may appeal an order of the Review Board to Divisional Court, but personal health information contained in any document or evidence filed or adduced with respect to the appeal or in any court order shall not be made accessible to the public. The Divisional Court may edit any documents it releases to the public to remove any personal health information.

Notice of Appeal
The appeal must be filed within 15 business days after receiving notice of the order of the Review Board.

Record to be filed in Court
When a party appeals, the Review Board must file in the Divisional Court the record of the hearing in which the order was made, which together with the transcript of evidence if it is not part of the Review Board's record, constitutes the record in the appeal.

Powers of Court on Appeal
An appeal may be made on questions of law or fact or both and the court may:
- affirm or rescind the order of the Review Board;
- exercise all powers of the Review Board to direct the General Manager to take any action which the Review Board can direct the General Manager to take; or,
- substitute its opinion for that of the Review Board.

Where no stay
Despite the *Statutory Powers Procedure Act* or any other Act, an appeal from an order by the Review Board that the physician's entitlement to submit claims for insured services to the plan cease, or be suspended for a period of time, is not stayed pending an appeal to Divisional Court.

Request for stay

Despite the previous paragraph, within 15 days of filing an appeal to Divisional Court, the physician may give notice to the Review Board requesting it to stay an order to suspend the physician's entitlement to submit claims and the Review Board may stay the order.

Section 34
Medicine Act
Section 8 of the *Medicine Act* that refers to the MRC is repealed.

Section 35
Commencement
The bill comes into force on a day to be named by proclamation.

SCHEDULE H: PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004

Amendments are made to the *Personal Health Information Protection Act, 2004* (*PHIPA*) to clarify the intent of several provisions and to ensure consistency within *PHIPA* and with the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. Many of these amendments simplify and move into *PHIPA* matters that are now addressed in the Regulation under *PHIPA*, in order to make *PHIPA* easier to understand and use.

SCHEDULE I: PUBLIC HOSPITALS ACT

The amendment to subsection 9.1(2) of the *Public Hospitals Act* (*PHA*) extends protection from liability for the Crown and the Minister to include directions issued by the Minister to hospital supervisors.

Subsection 10(1) of the *PHA* currently provides protection from personal liability for acts done in good faith by hospital investigators, supervisors and assignees of the Minister's power to issue directions. The amendment extends this protection to staff of investigators, supervisors and Minister's assignees.

The amendment to subsection 10(2) of the *PHA* complements the proposed amendment to subsection 10(1). Where the Crown would otherwise be liable for torts committed by staff of investigators, supervisors and Minister's assignees, the Crown's vicarious liability is preserved.

The proposed amendment to subsection 32.1(3) of the *PHA* changes the reference to "Ministry of Health" to read "Ministry", to align with the definition of Ministry found in Bill 190 (the *Good Government Act*, 2005). Bill 190 updates the definition of "Ministry" to mean "the Ministry of Health and Long-Term Care".

SCHEDULE J: REPEAL OF SPENT PROVISIONS OR OBSOLETE LEGISLATION, REVOCATION OF SPENT REGULATIONS, AND MAKING MISCELLANEOUS CORRECTIONS AND AMENDMENTS

Schedule J contains various technical amendments. Three of these are specifically described below.

The *Sunnybrook and Women's College Health Sciences Centre Act, 1998* is repealed because it has become unnecessary and obsolete and no longer reflects the organizations to which it relates.

Subsection 15(3) of the *Community Care Access Corporations Act, 2001* (*CCAC Act*) gives the Minister the authority to order the transfer of assets, liabilities, rights and obligations from one CCAC to another CCAC or person or entity. The amendment to the *CCAC Act* gives the Lieutenant Governor in Council a regulation-making authority about matters that relate to or arise as a result of a transfer of property under a Minister's order. This includes matters that relate to present and future assets, liabilities, rights and obligations.

Section 38 of the *Local Health System Integration Act, 2006* (*LHSIA*) deals with the obligation on the Lieutenant Governor in Council and the Minister to consult with the public on any regulations made under *LHSIA*. This amendment corrects the French version of section 38(1) of *LHSIA* to make it consistent with the English version and make it clear that the Minister would be required to conduct public consultations on Minister's regulations.

SCHEDULE K: ONTARIO AGENCY FOR HEALTH PROTECTION AND PROMOTION ACT, 2006

PART I: – INTERPRETATION

Section 1

Purpose
The legislation states that the purpose of the Act is to enhance the protection and promotion of the health of Ontarians through the establishment of an agency to provide scientific and technical advice and support to those working to protect and promote the health of Ontarians and carry out and support activities such as public health research, surveillance, epidemiology, planning, and evaluation.

Section 2

Definitions
This section defines a number of terms used in the Act, i.e. board of directors, Chief Medical Officer of Health, Corporation, fiscal year, Minister, Ministry, personal health information, personal information, prescribed and revenue.

PART II: CORPORATION

Section 3

Corporation established
The Agency would be established as a statutory corporation without share capital.

Section 4

Crown agency and status
The Agency would be a Crown agent.

Section 5

Corporations Act*, *Corporations Information Act
The *Corporations Act* and the *Corporations Information Act* would not apply to the Agency unless set out in a regulation under the statute.

Section 6

Objects
The objects of the Agency would be set out in the statute and would include:

- To provide scientific and technical advice and support to the health care system and the Government of Ontario in order to protect and promote the health of Ontarians;
- To develop, disseminate and advance public health knowledge and best practices and research in the areas of infectious diseases, health promotion, chronic diseases, injury prevention, and environmental health;
- To inform and contribute to policy development processes of the health care system and the Government of Ontario through the provision of advice and impact analysis of public health issues;
- To develop, collect, use, analyse and disclose data, including surveillance and epidemiological data across sectors, including human health, environmental, animal and agricultural sectors, in a manner that informs and enhances public health planning, evaluation and action;
- To undertake, promote and coordinate public health research in co-operation with academic and research experts;
- To provide professional development for public health professionals, scientists and researchers;
- To establish, operate and maintain laboratory centres and to provide laboratory services;
- As directed by the Chief Medical Officer of Health, to provide scientific and technical advice and operational support to any person or entity in an emergency or outbreak situation that has health implications; and
- Any additional objects the Lieutenant Governor in Council may prescribe.

Section 7

Powers
Under the proposed legislation, the Agency would have the capacity, rights and powers of a person.

Use of revenue
The Agency would not be able to operate for the purpose of gain for its members and would only be allowed to use its profits for furthering its objects.

Revenues and investments
The Agency would be allowed to keep its revenue and income separate from the government Consolidated Revenue Fund.

Lieutenant Governor in Council approval
Unless approved by the Lieutenant Governor in Council, the Agency would not be able to acquire, transfer, dispose of, or put an encumbrance (e.g. a mortgage or a lease) on real property, other than leasing office and laboratory space that it reasonably needs to carry out its objects. The Agency would not be allowed to do such things as borrow, lend, or invest money, pledge, charge or encumber its personal property, or create a subsidiary without the approval of the Lieutenant Governor in Council.

Section 8

Additional limitations
The Lieutenant Governor in Council would be allowed to put additional limitations on the Agency's powers.

Section 9

Board of directors
The Agency would have a maximum of thirteen members appointed by the Lieutenant Governor in Council, who would form the board of directors.

Areas of expertise
The intent is for the Lieutenant Governor in Council, when appointing board members, to consider having board members with skills and expertise related to the Agency's objects, including financial expertise, and a lay person.

Term of office
Members would hold office for a term determined by the Lieutenant Governor in Council.

Termination
A member would cease to be a member of the board of directors if, before his or her term expires, the Lieutenant Governor in Council revokes the member's appointment, or the member dies, resigns, or becomes bankrupt.

Successor's term
If a person stops being a member before the completion of his or her term, the person's successor would serve for the period that remains of the person's term.

Remuneration and expenses of directors
The Lieutenant Governor in Council would determine the remuneration and reimbursement for reasonable expenses for the members of the board of directors.

Duty of care and indemnification
As per subsection 134(1) of the *Business Corporations Act*, the directors of the Agency would have to act honestly and in good faith with a view to the best interests of the Agency. The Agency would be able to give an indemnity under section 136 of the same Act.

First chair, vice-chairs
The Minister would be responsible for designating the first chair and first vice-chair(s) from among the members. A first chair or first vice-chair(s) would hold his or her designation for the duration of his or her initial term as directors.

Subsequent chairs and vice-chairs
When the term of the first chair and first vice-chair(s) ends, the board of directors would designate the subsequent chairs and vice-chairs.

Chair's role
The role of the chair would be to preside over the meetings of the board.

Acting chair
In the chair's absence, the vice-chairs that are present at a meeting would designate, from among themselves, an acting chair to preside over the meeting.

Same
In the chair and vice-chair(s) absence, the directors that are present at a meeting would be able to designate, from among themselves, an acting chair to preside over the meeting.

Section 12

Powers and duties of the board
The board of directors of the Agency would be responsible for managing and controlling the Agency's affairs.

Section 13

By-laws, resolutions re proceedings
The board of directors may pass by-laws and resolutions for managing and controlling the Agency's affairs.

Section 14

Standing committees
The board of directors would be required to establish three standing committees, i.e. governance, strategic planning and audit standing committees.

Additional standing committees
The board of directors would be allowed to establish, by by-law, standing committees, other than the ones set out above.

Composition, functions, etc
Unless otherwise set out in a minister's regulation and subject to certain matters already determined and set out in the legislation, in establishing standing committees, the board of directors would set out, in a by-law, how these committees would function and operate, and who could be a member. Non-board members would be allowed to serve on standing committees.

Strategic planning standing committee
The Chief Medical Officer of Health by virtue of his or her position would be a member of the strategic planning committee, and she or he, or someone else on his or her behalf, would be allowed to attend and participate in meetings of that committee.

Governance standing committee
Only board members of the board of directors would be allowed on the governance standing committee.

Audit standing committee
Only board members and people who do not have ties to the Agency would be allowed on the audit standing committee and, at least one of the board members on that standing committee, would have to possess expertise in public accounting or related financial experience.

Section 15

Delegation of powers of the board
The board of directors would be allowed, by by-law, to delegate any of its powers to a standing committee.

Delegation subject to conditions and restrictions
The board of directors would be allowed to place conditions or restrictions, by by-law, on the powers delegated to a standing committee.

Section 16

Validity of acts of directors and officers
Acts done or decisions made by directors or an officer would not be invalid, for the sole reason that it is discovered that there is a defect in the director's or officer's appointment, election or qualification.

Section 17

Conflict of interest
The board of directors, in consultation with the Minister, would be required to develop conflict of interest policies for the directors, officers and employees of the Agency.

Section 18

Meetings of board
The board of directors of the Agency would have to hold at least four meetings in every calendar year.

Quorum
A majority (at least 7 members of the 13) would constitute a quorum for the purpose of a meeting of the board of directors.

CMOH to be informed
The Chief Medical Officer of Health would have to be given notice of board meetings and be supplied with agendas and any other materials in advance of the meetings.

CMOH may attend
Specifies that the Chief Medical Officer of Health, or someone else on his or her behalf, could attend any board meeting as an observer. Although the Chief Medical Officer of Health, or his or her designate, would be allowed to attend board meetings, they would only be allowed to participate in the meetings as the board may allow.

Participation may not be unreasonably limited
The board of directors would not be allowed to unreasonably limit the attendance or the participation of the CMOH or her or his designate in meetings.

Section 19

Chief executive officer
The Agency would be required to hire a chief executive officer, who would be an employee of the Agency and not a member of the board of directors.

Role
The chief executive officer would be accountable to the board of directors, and responsible for the management and administration of the affairs of the Agency.

Section 20

Audit
Every year, the board of directors would have to appoint an auditor that is licensed to audit the accounts and financial transactions of the Agency.

Other audits
The Auditor General could audit any aspect of the operations of the Agency, at any time. In addition, the Minister could, at any time, direct that the accounts and financial transactions of the Agency be audited.

Section 21

Annual business plan
The Agency would be required to adopt a business plan every year.

Strategic objectives and rolling budget
The business plan would have to include a three-year rolling budget, the strategic objectives for the Agency, and the performance measures the Agency has to meet.

Submission to the Minister
The Agency would be required to submit its business plan to the Minister.

Section 22

Annual report
The Agency would be required to submit an annual report to the Minister.

Contents
The annual report would include audited financial statements, how performance measures have been met, a description of any directives that the Minister and the CMOH, respectively, issued to the Agency, a description of any directives that the CMOH issued to the Agency and, subject to some limitations, any other information that the Minister could require to be included in the annual report.

Form
The annual report would be signed by the chair and one other member of the board of directors and would be in a form required by the Minister.

Tabling
The Minister would have to provide a copy of the annual report to the Lieutenant Governor in Council and table it in the Legislature.

Section 23

Additional reports to Minister
The Agency would have to submit other reports that the Minister could request, including performance plans, financial statements and any other information (except personal health information).

PART III: DIRECTIVES

Section 24

Ministerial directives
Subject to certain limitations, the Minister would be allowed to issue written directives to the Agency for matters relating to the Agency's rights, and powers, the carrying out of its objects, and the performance of its duties.

Limitation re personal information
The Minister would not be allowed to issue directives that disclose personal information or personal health information.

Consultation
The Minister would have to consult with the Chief Medical Officer of Health regarding any directives that the Minister would issue.

CMOH directives
The Chief Medical Officer of Health would be allowed to issue written directives to the Agency requiring the Agency to provide scientific and technical advice and operational support to any person or entity in an emergency or outbreak situation that has health implications.

Implementation

The board of directors would have to implement the directives from the Minister and the Chief Medical Officer of Health.

PART IV: TRANSFER

Section 25

Transfers
Subject to limitations imposed under the *Financial Administration Act* or by regulations, and the approval of the Lieutenant Governor in Council, the government could transfer to the Agency any rights, obligations, assets, and liabilities or any interest in the same to the Agency. This could include the public health laboratory centers currently owned by the Crown. This transfer could occur with or without requiring the Agency to pay for the transfer. The terms and conditions for the transfers would have to be agreed upon between the government and the Agency.

Non-cash expenses
A non-cash transfer would be considered an authorized non-cash expense under the *Financial Administration Act*.

Agreement assignable
Where an agreement entered into between the Crown and a third party, and that agreement is assigned to the Agency, the consent of the third party would not be required for the assignment to take place.

Other agreements, etc.
The Minister would be allowed to do what is required to do a transfer.

Immunity re transfer
No proceedings could be brought against the Agency, a director or officer of the Agency, a member of a standing committee, or any person employed by the Agency in respect of a claim related to anything transferred to the Agency, and for which the claim arose only in connection with events that took place prior to the effective date of the transfer.

PART V: IMMUNITY FOR UNPAID JUDGMENTS

Section 26

No actions or proceedings against Crown
No proceedings could be brought against the Crown, the Minister or any person employed by the Crown with respect to any act done or omitted to be done or any decision of the Agency, a director or officer of the Agency, a member of a standing committee or a person employed by the Agency.

Section 27

Immunity from civil action
No proceedings could be brought against the Minister, the Minister of Finance, a director or officer of the Agency, a member of a standing committee, or any person employed by the Crown or the Agency, for any act done or omitted to be done or any decision made

under the legislation provided that they performed such in good faith and within the scope of their powers and duties.

Corporation remains liable
The Agency would remain liable for any liability in respect of a tort committed by a director, officer or person employed by the Agency.

Crown remains liable in certain cases
The Crown would remain liable for any liability in respect of a tort committed by the Minister, the Minister of Finance or any person employed by the Crown.

Section 28

Unpaid judgments against the Corporation
The Agency would have to make reasonable efforts to pay the amount of any judgment against it. If, after making such efforts, as determined by the Lieutenant Governor in Council, the Agency were to not be able to pay for the amount owned, the Minister of Finance would pay for such amounts out of the Consolidated Revenue Fund.

PART VI: DISSOLUTION

Section 29

Dissolution
The Minister could dissolve the Agency.

Publication in Ontario Gazette
The date of the dissolution would have to be published in the Ontario Gazette.

PART VII: REGULATIONS

Section 30

Regulations
The Minister would have the authority to make regulations under the legislation. These regulations would involve the designation of sections of the *Business Corporations Act*, *Corporations Act* and the *Corporations Information Act* that would apply to the Agency, and the establishment of standing committees.

Same, LG in C
The Lieutenant Governor in Council would have the authority to make regulations under the legislation. These regulations would be with regard to additional objects of the Agency, additional limitations to the Agency's powers, transfers to the Agency, sections of the *Laboratory and Specimen Collection Centre Licensing Act* that would not apply or would apply subject to certain modifications to a laboratory center established by the Agency, and any other matter the Lieutenant Governor in Council would consider necessary to carry out the intent and purpose of the legislation.

PART VIII: COMPLEMENTARY AMENDMENTS

Section 31

Hospital Labour Disputes Arbitration Act
The Hospital Labour Disputes Arbitration Act would be amended to deem the Agency a hospital for the purposes of that Act. As a result, if the Agency and a union representing its employees are unable to agree on the terms of a collective agreement the dispute would be settled by an arbitrator as is the case for hospitals.

Section 32

Personal Health Information Protection Act, 2004
The *Personal Health Information Protection Act, 2004* would be amended to allow a health information custodian to disclose personal health information about an individual to the Agency if the disclosure is made for a purpose of the legislation.

PART IX: COMMENCEMENT AND SHORT TITLE

Section 33

Commencement
This Act would come into force when the *Health System Improvements Act, 2006* receives Royal Assent.

Section 34

Short title
The short title of the Act would be the *Ontario Agency for Health Protection and Promotion Act, 2006*.

SCHEDULE L: DRUG AND PHARMACIES REGULATION ACT

The proposed amendments to the *Drug and Pharmacies Regulation Act* [DPRA] would strengthen and improve the regulatory framework for pharmacies and drug distribution in Ontario.

Section 117 of the DPRA is merged into section 1 and a number of terms are either defined or updated, including: "designated manager" which means the pharmacist designated by the owner of the pharmacy, in information provided to the Ontario College of Pharmacists [College], as the pharmacist responsible for managing the pharmacy; "pharmacy technician" which means a person registered as a pharmacy technician under the *Pharmacy Act, 1991*; "prescriber" which means a person who is authorized under the laws of a province or territory of Canada to give a prescription within the scope of his or her practice of a health discipline; and "proprietary misconduct" which means proprietary misconduct as defined in the regulations.

The definition of "drug" is updated to enable, for example, a clearer reference to the drug schedules published by the National Association of Pharmacy Regulatory Authorities [NAPRA] and to include that natural health products as defined under the Natural Health Products Regulations of the federal *Food and Drugs Act* are not drugs for the purposes of the DPRA.

The powers of the Accreditation Committee of the College in subsection 140(1) are amended to enable the Committee to refer a person who has been issued a certificate of accreditation, a designated manager of the person who has been issued a certificate of accreditation, or the board of directors of a corporation that has been issued a certificate of accreditation, to the Discipline Committee of the College where the Accreditation Committee has reason to believe that a breach of the DPRA or an act of proprietary misconduct has been committed. A new subsection 140(2.1) makes clear that the interim suspension provisions of the Health Professions Procedural Code under the *Regulated Health Professions Act, 1991* [Code] apply to persons mentioned in subsection 140(1). In addition to the existing powers that the Discipline Committee has under the DPRA, the Discipline Committee can direct the Registrar to impose specified terms, conditions and limitations on the certificate. The Discipline Committee may also make an order against a designated manager in respect of that member's certificate of registration as set out in s.51(2) of the Code. Under section 140.1, the College shall publish decisions of a panel of the Discipline Committee in respect of a person who has been issued a certificate of accreditation, designated manager, or director who was the subject of the proceeding, including names, in certain instances.

A new subsection 146(1.1) requires every owner of a pharmacy to designate a designated manager and to inform the College of the designation. Subsection 146(3) is amended to require that the designated manager display his or her name, certificate of registration, or both clearly and publicly in the pharmacy.

The inspection provisions in section 148 are updated to replace the term "record" with the term "document", which is defined as a record of information in any form and includes any part of it. New sections 148.1 to 148.3 are modeled on the investigation provisions set out in the Code. An inspector is authorized to obtain a search warrant to enter a premise. An inspector under the authority of a warrant may obtain the assistance of other persons and may enter a place by force. An inspector may also make a copy of the document or object and may remove such document or object if it is not practicable to copy it in the place where it is examined. No person shall obstruct an inspector acting in the course of his or her duties.

Section 149 is revised to provide that only an intern, a registered pharmacy student or a pharmacy technician, all acting under the supervision of a pharmacist who must be present on the premises, and a pharmacist are entitled to compound, dispense, or sell any drug in a pharmacy. The requirement does not apply to the sale of drugs listed in Schedule III in a pharmacy where a pharmacist or an intern is present and available to provide consultation to the purchaser.

Section 150 is revised to prohibit any person from selling any drug where the person knows or should have known that it is not that drug or does not contain any substance that the drug is meant to contain.

Section 152 is revised to require that any prescription that has been mailed or couriered must be traceable.

Section 153 is revised to require that the designated manager must keep a record of every purchase and sale of a drug referred to in the Schedules to the *Controlled Drugs*

and Substances Act (Canada) or the Schedule to the *Narcotic Control Regulations* (Canada) in a form or manner as the regulations specify.

Section 158 is revised to permit a pharmacist to dispense a drug pursuant to a prescription authorized by a prescriber licensed to practice in a province or territory of Canada other than Ontario if in the professional judgment of the pharmacist the patient requires the drug.

Under new subsection 160(4), no member and no pharmacy may receive any drug from a wholesaler other than at the location of a pharmacy which ordered the drugs unless it is in the best interest of the patient to have the product delivered to another source.

Some regulation-making authorities and the incorporation by reference provisions are updated. A new regulation-making authority is added to define proprietary misconduct and govern what constitutes an act of proprietary misconduct.

A new section 162.1 would allow the College apply to court to revoke or suspend a certificate of accreditation if there are concerns about a pharmacy's operations and where public safety may be at issue. A person may make an appeal of the order to the Ontario Divisional Court.

The penalty provisions in section 165 are updated to increase the penalty in the case of an individual to $50,000 for a second or subsequent offence, and in the case of a corporation to $200,000 for a second or subsequent offence.

Additionally, a number of technical changes are proposed to the DPRA, such as updating certain references to the Code, and replacing the term "Part" with "Act", "licence" with "certificate of registration", and "manager" with "designated manager" wherever those terms appear. References to various drug schedules throughout the DPRA are updated and provisions referring to obsolete schedules are repealed.

Most of the proposed amendments come into force on Royal Assent, but some, including the new definition of "drug" and the revisions to the DPRA that accompany the new definition of drug, come into force on the earlier of the first anniversary of Royal Assent or a date set by proclamation.

Consequential amendments are made to other Acts to correct cross-references.

SCHEDULE M: REGULATED HEALTH PROFESSIONS ACT, 1991

The *Regulated Health Professions Act, 1991* ("*RHPA*") is amended by adding a definition of "personal information." The term will have the same meaning as found in the *Freedom of Information and Protection of Privacy Act* ("*FIPPA*").

Subsection 6 (4) is added to the *RHPA* to give the Minister of Health and Long-Term Care (the "Minister") the power to specify the content and form of the annual reports submitted by the College and the Health Professions Regulatory Advisory Council and to require the annual reports to comply with any such content and form specifications.

Subsections 6 (5) and (6) are added to allow the Minister to publish any information, except personal information, from the annual reports.

Section 26 of the *RHPA* is repealed, although modified versions of these provisions have been added to Schedule 2 to the *RHPA* (the *Health Professions Procedural Code* [the "*Code*"]).

Subsection 30 (1) of the *RHPA* is amended so that no person, other than a member treating or advising within the scope of practice of his or her profession, is able to treat or advise a person with respect to that person's health in circumstances where it is reasonably foreseeable that "serious bodily harm", as opposed to the current standard of "serious physical harm", may result from the treatment or advice or from the omission of treatment or advice.

The *RHPA* is amended by creating and updating exemptions to the requirement that all of the information gathered by persons in the course of administration of the *RHPA*, the *Code*, a health profession act, or the *Drug and Pharmacies Regulation Act* ("*DPRA*") be kept confidential. The exception in clause 36 (1) (c) is amended to reflect that information can be disclosed to a body that governs any profession inside or outside of Ontario. Clause 36 (1) (d) will be expanded to add the *Coroners Act* to the list of statutes where disclosure of protected information is permitted if required for the administration of the statute. A new clause 36 (1) (g) and subsection 36 (1.5) are added to allow a College to confirm whether or not a member is under investigation, if there is a compelling public interest in disclosure of that information. A new clause 36 (1) (h) is added to allow disclosure of information where permitted or required by law.

Section 36.1 (1) is added to the *RHPA* to allow for the collection of information, at the request of the Minister, from the members of the College as is reasonably necessary for the purpose of Ministry health human resources planning. Subsection 36.1 (2) requires Colleges to assign unique identifiers for each member of the College, at the request of the Minister. Subsection 36.1 (3) requires a member of a College who receives a request for health human resources information to provide the information to the College within the time and in the form and manner specified by the College. Subsection 36.1 (4) states that information collected by the College and provided to the Minister must be in the form and manner specified by the Minister. Subsection 36.1 (5) places a limitation so that the Minister may only use and disclose the information for the purpose of health human resource planning and shall not use or collect personal information if other information will serve the purpose or use or collect more personal information than is necessary for the purpose. Subsection 36.1 (6) allows the Minister to publish reports and other documents using health human resources information, but states that these publications shall not include any personal information about College members. Subsection 36.1 (7) states that if the Minister requires the collection of personal information as part of health human resources information, notice required by *FIPPA* is given by public notice posted on the Ministry's website or any other prescribed method. Subsection 36.1 (8) states that within 20 days of a College receiving advice that the Minister has given public notice of the collection of personal information, the College must publish a notice about the collection on the College's website. Subsection 36.1 (9) includes definitions stating that "health human resources planning" means ensuring the sufficiency and appropriate distribution of health providers; "information" includes personal information" and "Ministry" means the Ministry of Health and Long-Term Care.

The *RHPA* is amended by adding subsection 37 (3), which states that a person holding a certificate of registration or authorization is deemed, in the absence of evidence to the contrary, not to have been issued such a certificate if its existence would be a defence to an order under section 87 of the Code.

Section 38 of the *RHPA* is amended to extend immunity protection to the Crown, the Minister and an employee of the Crown, in addition to the current protected persons, for any act done in good faith in the performance, exercise, or intended performance or exercise, of a duty or power under the *RHPA*, the *Code*, the *DPRA*, or a regulation or by-law under any of those acts.

Section 39 of the *RHPA* is amended to allow a notice or a decision required to be given under the *RHPA*, the *DPRA*, or a health profession Act, to be given by mail or by fax, and to specify the time in which notice is deemed to be received.

Offence provisions in section 40 of the *RHPA* are amended to update fine levels, and to provide for different levels of liability for first offences and second or subsequent offences, as well as different levels of liability for individuals and corporations.

Offence provisions in sections 41 and 42 of the *RHPA* are amended to create different levels of liability for first offences and second or subsequent offences.

The *RHPA* is amended by adding section 42.1, which states that section 76 of the *Provincial Offences Act* does not apply to a prosecution under the *RHPA*, the *DPRA*, or a health profession Act.

Clause 43 (1) (h) is added to the *RHPA* to give the Minister the power to make regulations prescribing methods of giving notice for the purpose of collection of personal information in health human resources planning. Clause 43 (1) (i) is added to give the Minister the power to make regulations prescribing information that a College must post on its website.

Various amendments are also made to the *RHPA* which remove outdated provisions, and which update cross-references, current names of legislation and current names of legislative bodies.

Various amendments are made to the *Code* to clarify language and update cross-references. Various amendments are also made to change references to committees or procedures, to reflect that the new Inquiries, Complaints and Reports Committee ("ICR Committee") has replaced the former Complaints Committee, and also takes over some functions which formerly belonged to the Executive Committee.

Subsection 1 (1) of the *Code* is amended to define "alternative dispute resolution process" as meaning mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute. The definitions of "health profession corporation" and "incapacitated" are amended for clarity. The definition of "quality assurance program" is amended by adding the program elements of continuing evaluation and improvement of members.

Paragraph 4 of the College objects in subsection 3 (1) of the *Code* is amended to add that continuing evaluation and improvement of members should be promoted through College standards and programs. A new College object is added which requires Colleges to promote and enhance relations between the College and its members, other health profession colleges, key stakeholders and the public. Another new object is created which requires a College to promote inter-professional collaboration with other health profession colleges. A final new object is created to require a College to develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

The *Code* is amended by adding subsection 3.1 (1) which requires every College to have a website, and to include on that website information which may be prescribed by the Minister. Subsection 3.1 (2) states that the information on the website must be available to the public upon request, and upon payment of a reasonable fee if required by the College, in paper or electronic form.

Subsection 5 (2) of the *Code* is amended so that a person may be a member of the Council of a College ("Council") for a total of no more than nine years, in contrast to the current provision which states that a person may be a member for no more than nine consecutive years.

Subsection 7 (1) of the *Code* is amended to require that notice of Council meetings be given to the Minister, in addition to the current requirement that notice be given to College members and the public.

Paragraph 3 of subsection 10 (1) of the *Code* is amended to reflect that the Complaints Committee is replaced by the new ICR Committee. A transitional provision is added in subsection 10 (1.1) which provides clarity that any matter which is before the Health Professions Appeal and Review Board ("HPARB") regarding something done by the former Complaints Committee shall proceed as if the Board had the authority to do anything it could have done before the coming into force of the amendments.

The *Code* is amended by creating additional requirements in subsection 11 (1) that all College committees monitor and evaluate their processes and outcomes, and that the annual report of each committee be in a form acceptable to the Council.

The *Code* is amended by broadening subsection 14 (1), allowing a person whose certificate of registration has been revoked or who has resigned to continue to be subject to the jurisdiction of the College for misconduct or incompetence, and to be investigated under section 75 of the *Code*. Subsection 14 (2) is amended to allow a person whose certificate of registration is suspended to be subject to the jurisdiction of the College for incapacity, professional misconduct, or incompetence, and to be investigated under section 75.

Subsection 17 (2) of the *Code* is clarified to allow more than one member of a Registration Committee panel to be a person appointed to the Council by the Lieutenant Governor in Council.

Subsection 19 (7) of the *Code* is amended so that once a member applies to the Registration Committee to modify or vary any term, condition or limitation on the member's certificate of registration, and that application has been disposed of, the member may not make a new application for variation within six months of the date of disposition without leave of the Registrar. Subsection 19 (8) is added to state that the Registrar may only give leave for such an application if the Registrar is satisfied that there has been a material change in circumstances that justifies the giving of the leave.

The *Code* is amended by expanding the contents of the notice required under subsection 20 (2), by adding that the applicant must also be informed of the provisions of section 19.

Paragraph 4 of subsection 22 (6) of the *Code* is expanded, requiring HPARB to give both reasons and recommendations it considers appropriate to the Registration Committee if referring a matter back to that Committee for further consideration.

The numbering and contents of subsection 23 (2) of the *Code* are amended to clarify old provisions and add new provisions relating to the contents of the College register. There is a new requirement that a notation of every unresolved matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 must be on the register, however, this notation shall be removed when the matter has been resolved. The current paragraph requiring that the result of every disciplinary and incapacity proceeding be on the register is amended so that the result includes a synopsis of the decision, and that the decision is not on the register if the committee made no finding in the proceeding. A requirement is added that a notation of every reprimand that has been issued to a member be on the register. A requirement is added so that if a member has resigned and agreed never to practise again in Ontario during or as a result of a proceeding under section 25, a notation of the resignation and agreement is added to the register.

Provisions in section 23 of the *Code* are amended to reflect changes to the contents of the public portion of the College register. The new subsection 23 (4) states that all information in subsection 23 (2), and all information designated as public in the by-laws shall be made available to any person during normal business hours and shall be posted on the College's website in a manner that is accessible to the public, or any other manner and form specified by the Minister. Subsection 23 (5) states that the Registrar may refuse to disclose an address or telephone number to a member of the public, or to post such information of the College website, if the Registrar has reasonable grounds to believe that the disclosure of that information may jeopardize the safety of an individual. Subsection 23 (6) states that the Registrar shall not disclose certain specified information to a member of the public, or post the information on the College website, if more than six years have passed since the information was prepared or last updated; the member has made an application for the removal of the information from public access and the Registrar has been directed by the relevant committee to that effect; and the information does not relate to disciplinary proceedings concerning sexual abuse. Subsection 23 (8) is added to the *Code* to create a positive obligation which ensures that when a member of the public inquires about a member, the Registrar is required to make reasonable efforts to ensure that the person is given a list of the information on the register that is available to the public.

The *Code* is amended by lowering the time in which a member's certificate may be suspended for non-payment of fees in section 24, from two months after notice is given to 30 days after notice is given.

Sections 25, 26, and 27 of the *Code* are significantly modified to reflect the new streamlined process for dealing with complaints and reports made against members.

Subsection 25 (1) is amended so that a panel of the ICR Committee is selected by the chair to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). Subsection 25 (4) is amended to clarify that a complaint must be in writing or recorded on a tape, film, disk or other medium. A new subsection 25 (5) is created to require that the Registrar give a complainant notice of receipt of his or her complaint, a general explanation of the processes of the College, including the role of the ICR Committee, and a copy of the provisions of sections 28 to 29. Subsection 25 (6) modifies the former requirement of the Registrar to give notice to the member, with the member now receiving notice of the complaint or receipt of the report, a copy of the provisions of section 25.2 and sections 28 to 29, details of the complaint, and copies of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5).

The *Code* is amended by adding section 25.1, which allows for the use of alternative dispute resolution processes with respect to a complaint. Subsection 25.1 (1) gives the Registrar the ability to refer a matter, with the consent of both the complainant and the member, to an alternative dispute resolution process if the matter has not yet been referred to the Discipline Committee and the matter does not involve an allegation of sexual abuse. Subsection 25.1 (2) states that all communications at an alternative dispute resolution process and all facilitator's notes and records shall be confidential and be deemed to have been made without prejudice to the parties in any proceeding concerning the same matter. Subsection 25.1 (3) prohibits the facilitator from participating in any proceeding concerning the same matter. Subsection 25.1 (4) states that if a complaint is resolved through alternative dispute resolution, the complainant and member shall advise the ICR Committee of the resolution, and the ICR Committee may then either cease its investigation of the complaint and adopt the resolution, or continue with its investigation of the complaint.

Subsection 25.2 (1) amends the right of a member to make submissions, now stating that a member who is the subject of a complaint or a report may make submissions to the ICR Committee within 30 days after receiving notice of the complaint or report. Subsection 25.2 (2) states that where the ICR Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, the ICR Committee may specify a period of less than 30 days in which the member may make submissions, and inform the member to that effect.

Subsection 26 (1) of the *Code* is amended to contain the list of what a panel of the ICR Committee may do after investigating a complaint or considering a report. The list of existing powers are updated to reflect the new streamlined complaints and reports process. Paragraph 1 of subsection 26 (1) is amended to state that the ICR Committee may refer a specified allegation of a member's professional misconduct or incompetence to the Discipline Committee. Subsection 26 (2) is added to require that a panel of the

ICR Committee consider all available prior decisions involving the member when investigating a complaint or a considering report currently before it, unless the decision was to take no further action. Subsection 26 (3) prohibits the panel of the ICR Committee from referring a matter to the Quality Assurance Committee, although the panel may exercise the powers of the Quality Assurance Committee with necessary modifications.

Section 27 of the *Code* is updated to reflect the new streamlined complaint and reports process. Subsection 27 (b) is amended so that the panel of the ICR Committee will give a copy of its reasons to the complainant and/or the member only where it took action under paragraph 3 or 4 of subsection 26 (1).

The *Code* is amended by increasing the time limit in subsection 28 (1) for a panel of the ICR Committee to dispose of a complaint, from 120 days to 150 days after the complaint was filed. Subsection 28 (2) states that a referral to an alternative dispute resolution process does not affect the time requirements on the disposition of the complaint. Subsection 28 (3) states that if a panel of the ICR Committee has not disposed of a complaint within the 150 days, the Registrar shall provide the complainant and the member with written notice of that fact, and an expected date of disposition which shall not be more than 60 days from the date of the notice. Subsection 28 (4) states that if the panel has not disposed of the complaint by the revised expected date of disposition, the Registrar shall provide the member and complainant with written notice of that fact, along with reasons for the delay, and a new expected date of disposition which shall not be more than 30 days from the date of the revised notice or from the former revised expected date of disposition. At that time, the Registrar shall also provide HPARB with written notice of and reasons for the delay. Subsection 28 (5) states that upon application by the member or the complainant, HPARB shall consider the written reasons for the delay, and may: direct the ICR Committee to continue the investigation; make recommendations it considers appropriate to the ICR Committee; or investigate the complaint and make an order within 120 days of the decision to investigate the complaint. Subsection 28 (6) states that if HPARB makes a decision to investigate the complaint itself, it has all of the powers of a panel of the ICR Committee and of the Registrar with respect to the investigation. Subsections 28 (7) and 28 (8) give the ICR Committee continuing jurisdiction to take action under section 28 on a matter at any time before HPARB completes its investigation, and clarifies that if the ICR Committee takes such action, HPARB no longer has jurisdiction to take action under section 28.

Section 28.1 and subsection 29 (4) are added to the *Code* as an updated version of the power of HPARB to extend time limits. These powers were formerly found in the *RHPA*.

Subsection 32 (1) of the *Code* is amended so that the Registrar must provide HPARB with a record of investigation and all relevant documents and things within 15 days after receiving a request from HPARB.

Subsection 37 (6) is added to the *Code* to permit the ICR Committee to make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration without notice to the member, subject to the right of the member to make submissions while the suspension or the terms, conditions or limitations are in place if the Committee is of the opinion, on reasonable and probable

grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.

Subsection 38 (1.1) is added to the *Code* to allow the chair of the Discipline Committee to select a separate panel from among the members of the Committee to consider any pre-hearing matters that may be considered under section 5.3 of the *SPPA*. Subsection 38 (5) is clarified to make quorum requirements apply to all cases where a panel has been selected, even if the hearing has not yet commenced.

Subsection 41.1 (1) of the *Code* is amended to require that a non-party who wishes to participate in a hearing make an application before a panel may allow the person to participate in the hearing.

Section 46 of the *Code* is amended so that when a panel of the Discipline Committee makes an order to close a hearing to the public wholly or partly in relation to a person, the panel may allow the person and his or her personal representative to attend the hearing, and may also allow another person to attend if to do so does not undermine the reasons for the making the order and does not cause undue prejudice to a party.

The *Code* is amended by adding clause 51 (1) (b.0.1) which states that if a member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee, a panel of the Discipline Committee shall find that the member has committed an act of professional misconduct.

Subsection 52 (1) of the *Code* is amended so that only when a member's professional care of a patient displays a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted, shall a panel find a member to be incompetent.

Sections 58, 59, 60, 61, 62 and 63 of the *Code* are amended to reflect that the duties of the former board of inquiry are to be exercised by a panel of the ICR Committee. Subsection 58 (2) is clarified so that the ICR Committee is required to give a member notice that it intends to inquire into whether the member is incapacitated. A new transitional provision is added in subsection 58 (3) to allow a board of inquiry that was constituted under the section as it existed before the coming into force of this Act, to do anything it could have done before, and to allow the Executive Committee to act with respect to a matter, with the authority to do anything it could have done before, when the board of inquiry was to give a copy of a report to that Committee.

Section 61 of the *Code* is amended so that the panel of the ICR Committee may refer a matter to the Fitness to Practise Committee after giving a copy of its report and a copy of any report on an examination required under subsection 59 (2) to the member.

Subsection 63 (2) is added to the *Code* to permit the panel of the ICR Committee to make an order under subsection 59 (2) directing the Registrar to suspend the member's certificate of registration until he or she submits to a physical or mental examination, without notice to the member, subject to the right of the member to make submissions while the suspension is in place if the Committee is of the opinion, on reasonable and probable grounds, that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.

Subsection 64 (2) of the *Code* is clarified to allow more than one member of a Fitness to Practise Committee panel to be a person appointed to the Council by the Lieutenant Governor in Council.

Subsection 69 (3) is added to the *Code* to allow a member to apply to the Fitness to Practise Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration under paragraph 3 of subsection (1) and to allow the chair to select a panel to deal with the application. Subsections 69 (4) and 69 (5) are added as limitations, making the right to apply under 69 (3) subject to any limitation in the order or to which the member consented, and also to any limitation made by a panel, who has the ability to fix a time of not more than six months during which an applicant who has already made an application cannot reapply.

Section 71.2 is added to the *Code* to permit a College to apply to a judge of the Superior Court to have an order made by a panel of the Discipline Committee on the grounds of professional misconduct directing the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate to take effect immediately despite any appeal if the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed.

Subsection 72 (4) is added to the *Code* to require that the Registrar give the complainant notice of an application by a member under subsection 72 (1) to have a new certificate issued or suspension removed. Subsection 72 (5) is added to require a member making an application under subsection 72 (1) to provide reasons why the certificate should be issued or the suspension be removed.

Clause 75 (1) (b) of the *Code* is amended to reflect that the Registrar may appoint an investigator to determine whether a member has committed an act of professional misconduct or is incompetent if the Registrar receives a report from the Quality Assurance Committee with respect to a member and the ICR Committee approves of the appointment. Subsection 75 (2) is added to the *Code* to allow the Registrar to appoint an investigator if there is not time to seek approval from the ICR Committee and the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately. Subsection 75 (3) is added to require the Registrar to report any appointment made under subsection 75 (2) to the ICR Committee within five days.

Subsection 77 (1) of the Code is amended to update the language regarding warrants issued by a justice of the peace authorizing an investigator to enter and search a place, including changes which specify that the application made by the investigator for the warrant is made without notice, the place cannot be a dwelling or part of a dwelling that is not the place of practise of the member, and the reasons for issuing the warrant must be based on reasonable and probable grounds established upon oath.

Subsection 77 (2) of the *Code* is amended to specify that a warrant under subsection 77 (1) may be executed only between 8 a.m. and 8 p.m. unless the warrant specifies otherwise.

Section 80.1 is added to the *Code* to create mandatory minimum requirements for quality assurance programs. The requirements include: continuing education or professional development designed to promote the continuing competence and continuing quality improvement among members, address changes in practice environments, incorporate standards of practice, advances in technology, changes made to entry to practice competencies, and other relevant issues at the discretion of the College; self, peer and practice assessments; and a mechanism for the college to monitor members' participation in, and compliance with, the quality assurance program.

Subsection 80.2 (1) is added to the *Code* to create an exhaustive list of powers of the Quality Assurance Committee. These powers largely mirror those previously found in the regulation making powers of the Council, and include: requiring members whose knowledge, skill, and judgment have been assessed and found to be unsatisfactory to participate in specified continuing education or remediation programs; directing the Registrar to impose terms, conditions or limitations for a specified period on the certificate of registration of a member whose knowledge, skill and judgment have been assessed or reassessed and have been found to be unsatisfactory, or who has been directed to participate in specified continuing education or remediation programs by the Committee and has not completed the programs successfully; directing the Registrar to remove terms, conditions or limitations before the end of a specified period if the Committee is satisfied that the knowledge, skill and judgment are now satisfactory; disclosing the name of the member and allegations against the member to the ICR Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated; referring the member to the ICR Committee for a failure to co-operate with the Quality Assurance Committee or any assessor appointed by it or to participate in the quality assurance program or a specified program or assessment. Subsection 80.2 (2) is added so that if a Quality Assurance Committee exercises its power to direct the Registrar to impose terms, conditions or limitations for a specified period, the member must be given notice of the intention to give such direction, and must be given at least 14 days to make submissions to the Committee.

Subsection 83 (1) of the *Code* is amended to allow the Quality Assurance Committee and any assessor it appoints to disclose information detailed in that subsection if required while exercising its powers under subsection 80.2. Subsection 83 (2) is amended so that information described in subsection (1) may be disclosed to a committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor, where relevant to a proceeding before that committee.

Subsection 85.2 (1) of the *Code* is amended to require mandatory reporting by a person who operates a facility where one or more members practise if the person has reasonable grounds to believe that a member who practises at the facility is incompetent or incapacitated, in addition to the current requirement that a mandatory report be made for suspected sexual abuse of a patient. Subsection 85.3 (2) is updated so that in cases where there are reasonable grounds to believe that the incompetence or incapacity of the member is likely to expose a patient to harm or injury and there is urgent need for intervention, mandatory reports must be filed forthwith, as is currently the case for all mandatory reports where it is believed that the member will continue to sexually abuse the patient or will sexually abuse other patients.

Subsection 85.7 (10) of the *Code* is amended to allow a person who has become eligible for funding to pay for therapy or counselling to use that funding to pay for therapy received before the person became eligible, but after a complaint was filed with the Registrar or an appointment was made under clause 75 (1) (a) or (b) or subsection 75 (2).

The *Code* is amended by adding subsection 86 (1.1) which requires the College to identify and record the language preference of each College member and to identify the language preference of each member of the public who has dealing with the College.

Section 92 and subsection 93 (1) of the *Code* are amended to update and consolidate offences and fine levels. The provisions are also updated to provide for different levels of liability for first offences and second or subsequent offences, as well as different levels of liability for individuals and corporations. Subsection 93 (2) of the *Code* is amended to create different levels of liability for first offences and second or subsequent offences.

Subsection 94 (3) of the *Code* is amended so that a copy of the by-laws and standards of practice made by the council, and any documents that are referred to in the by-laws and regulations made by the Council, shall be given to the Minister and to each member and shall be available to the public during normal business hours in the office of the College. Subsection 94 (3.1) is added to state that any person is entitled to a copy of any by-law, standard of practice or other document mentioned above on the payment of a reasonable fee, if required, to the Registrar.

Subsection 95 (1.2) of the *Code* is amended to allow rolling incorporation for scientific, administrative or technical documents, instead of the current “codes, standards or guidelines”. Subsection 95 (1.2.1) clarifies that a scientific, administrative or technical document adopted by rolling incorporation must be a document created by a recognized body and must not be a document created by the College. Subsection 95 (1.2.2) allows the incorporation by reference of a document created by the College that was made before the coming into force of the amended provisions to remain valid until it is revoked. Subsection 95 (1.3) is amended to require that a copy of a code, standard or guideline adopted by reference under subsection (1.1) be posted on the College website, or be made available through a hyperlink at the College website, in addition with the current requirement that the copies be made available fro public inspection during normal business hours in the office of the College. Subsection 95 (1.7) is added to clarify that subsections (1.4) and (1.6) apply, with necessary modifications, to an amendment to a scientific, administrative or technical document adopted by reference.

SCHEDULE N: CHASE MCEACHERN ACT (HEART DEFIBRILLATOR CIVIL LIABILITY), 2006

The proposed legislation would, in certain circumstances, establish protections from civil liability for users of portable defibrillators, and for the owners and occupiers of premises in which portable defibrillators are made available for use.

SCHEDULE O: KINESIOLOGY ACT, 2006

The *Kinesiology Act, 2006*, promotes the principles of public protection and patient safety, informed choice relating to health care practitioners, quality health care services and accountability for practitioners within the profession of kinesiology

Kinesiology is currently an unregulated profession in Ontario; no restrictions exist about who may call themselves a kinesiologist or who may practice the profession. Ontarians receiving kinesiology services at present have no reliable way of knowing which practitioners possess the appropriate competencies and training required for safe practice.

The *Kinesiology Act, 2006*, creates a new regulated health profession, the profession of Kinesiology, and a new self-financing, non-profit regulatory body, the College of Kinesiologists of Ontario, with the statutory authority to govern members of the profession. Regulatory Colleges such as this one serve the public interest by:

- Regulating the practice of the profession and governing their members in accordance with the legislation;
- Setting registration requirements for entry to practice into the profession;
- Developing and maintaining quality assurance programs that promote the continuing competence of members;
- Developing standards of practice that establish how members do their jobs in an effective, safe and ethical manner;
- Assisting individuals to exercise their rights under the *Regulated Health Professions Act, 1991* (RHPA);
- Implementing complaints and discipline processes; and
- Fulfilling any other objects relating to human health care that the College council considers desirable.

The new Act is established under the RHPA whose primary objectives include the protection of the public from incompetent and unqualified individuals and the promotion of informed consumer choice through a system of scope of practice statements, controlled acts, protected titles, standards of practice and complaints and discipline processes.

This new Act, like the existing health profession-specific Acts, establishes the College with a governing Council comprising a majority of elected professional members and a minority of publicly appointed individuals. Like the others, the new Act deems the Health Professions Procedural Code, which is Schedule 2 to the RHPA, to be part of the Act.

Under the new Act, the scope of practice of kinesiology is the assessment of human movement and performance and its rehabilitation and management using kinesiology techniques.

The new Act restricts the use of the title “kinesiologist” to members of the College. No person other than a member may hold themselves out as qualified to practice in Ontario as a kinesiologist. Anyone who contravenes these requirements is guilty of an offence and on conviction is liable to a maximum fine of $25,000 for a first offence and a maximum of $50,000 for a subsequent offence.

Transitional provisions in the new Act provide for the appointment of the College Registrar and Council by the Lieutenant Governor in Council. The transitional Council

and the Registrar may do anything that is necessary or advisable for the implementation of the Act and anything that they could do once the Act is in force. During the transition period, the Minister may review the transitional Council's activities, require it to make, amend or revoke a regulation and do anything that is necessary or advisable to carry out the intent of the new Act and the RHPA.

After the transition period, the transitional Council shall be the College Council if it is constituted in accordance with the Act, or if it is not, it shall be deemed to be the Council until a new Council is constituted in accordance with the provisions of the Act.

The Ontario legislative framework for regulated health professions is not intended to judge or compare the value of one health care profession over another or test the theory of certain health care practices over others. Through the legislative scheme, the public is protected and informed consumer choice facilitated by assuring the public that regulated health care practitioners are qualified to practice in their particular profession and, in the event of complaints, abuse or harm, recourse is available through the College's complaints and discipline system.

SCHEDULE P: NATUROPATHY AND HOMEOPATHY ACT, 2006

The *Naturopathy and Homeopathy Act, 2006*, promotes the principles of public protection and patient safety, informed choice relating to health care practitioners, quality health care services and accountability for practitioners within the professions of Naturopathy and Homeopathy.

Naturopathy is currently regulated under the *Drugless Practitioners Act* which was enacted in 1925 and which had public protection as its objective but which does not contain as robust a set of public protection mechanisms as those found under the *Regulated Health Professions Act, 1991* under which the new *Naturopathy and Homeopathy Act, 2006* will be established. The creation of this new Act will mean that the *Drugless Practitioners Act* will be repealed. Regulations created under that Act will be revoked.

Homeopathy is currently an unregulated profession in Ontario; no restrictions exist about who may call themselves a Homeopath or who may practice the profession. Ontarians receiving homeopathic services at present have no reliable way of knowing which practitioners possess the appropriate competencies and training required for safe practice.

The *Naturopathy and Homeopathy Act, 2006*, creates two new regulated health professions, the profession of Naturopathy and the profession of Homeopathy and a new self-financing, non-profit regulatory body to govern both professions, the College of Naturopaths and Homeopaths of Ontario, with the statutory authority to govern members of the profession. Regulatory Colleges such as this one serve the public interest by:

- Regulating the practice of the profession and governing their members in accordance with the legislation;
- Setting registration requirements for entry to practice into the profession;
- Developing and maintaining quality assurance programs that promote the continuing competence of members;

- Developing standards of practice that establish how members do their jobs in an effective, safe and ethical manner;
- Assisting individuals to exercise their rights under the *Regulated Health Professions Act, 1991* (RHPA);
- Implementing complaints and discipline processes; and
- Fulfilling any other objects relating to human health care that the College council considers desirable.

The new Act is established under the RHPA whose primary objectives include the protection of the public from incompetent and unqualified individuals and the promotion of informed consumer choice through a system of scope of practice statements, controlled acts, protected titles, standards of practice and complaints and discipline processes.

This new Act, like the existing health profession-specific Acts, establishes the College with a governing Council comprising a majority of elected professional members and a minority of publicly appointed individuals. Like the others, the new Act deems the Health Professions Procedural Code, which is Schedule 2 to the RHPA, to be part of the Act.

Under the new Act, the scope of practice of Naturopathy is the assessment of disorders and dysfunctions and treatment using naturopathic techniques to promote, maintain or restore health.

Also under the new Act, the scope of practice for Homeopathy is the assessment of body system disorders and treatment using homeopathic techniques to promote, maintain or restore health.

The new Act restricts the use of the titles, “naturopath”, “drugless therapist” and “homeopath” to members of the College. No person other than a member may hold themselves out as qualified to practice in Ontario as a naturopath, drugless therapist or homeopath. Anyone who contravenes these requirements is guilty of an offence and on conviction is liable to a maximum fine of $25,000 for a first offence and a maximum of $50,000 for a subsequent offence.

The new Act also authorizes naturopaths to perform the following controlled acts (activities that when performed by unqualified practitioners may put the public at substantial risk and are therefore “controlled” for use by legislation)

1. Putting an instrument, hand or finger beyond the labia majora but not beyond the cervix.
2. Putting an instrument, hand or finger beyond the anal verge but not beyond the rectal-sigmoidal junction.
3. Administering, by injection or inhalation, a prescribed substance.
4. Performing prescribed movements of the joints of the spine beyond the individual’s usual physiological range of motion using a fast, low amplitude thrust.
5. Communicating a naturopathic diagnosis that may be identified through an assessment using naturopathic techniques, including assessing the individual’s lifestyle, environmental and nutritional history.
6. Taking blood samples from veins or by skin pricking for prescribed naturopathic examinations.

Naturopaths may only perform these acts in accordance with the regulations. The College Council, with Ministerial review and the approval of the Lieutenant Governor in Council, may make regulations under the new Act:

(a) prescribing standards of practice respecting the circumstances in which naturopaths must make referrals to members of other regulated health professions;
(b) prescribing therapies involving the practice of naturopathy, governing the use of prescribed therapies and prohibiting the use of therapies other than the prescribed therapies in the course of the practice of naturopathy;
(c) prescribing standards of practice respecting the circumstances in which homeopaths must make referrals to members of other regulated health professions;
(d) prescribing therapies involving the practice of homeopathy, governing the use of prescribed therapies and prohibiting the use of therapies other than the prescribed therapies in the course of practice of homeopathy;
(e) governing the performance of controlled acts and prescribing the purposes for which, or the circumstances in which, the procedure may be performed or where appropriate, prohibiting the performance of procedures other than those prescribed;
(f) prescribing naturopathic examinations and the purposes for which or the circumstances in which the prescribed examinations may be performed and prohibiting examinations other than those that are prescribed.

Transitional provisions in the new Act provide for the appointment of the College Registrar and Council by the Lieutenant Governor in Council. The transitional Council and the Registrar may do anything that is necessary or advisable for the implementation of the Act and anything that they could do once the Act is in force. During the transition period, the Minister may review the transitional Council's activities, require it to make, amend or revoke a regulation and do anything that is necessary or advisable to carry out the intent of the new Act and the RHPA.

After the transition period, the transitional Council shall be the College Council if it is constituted in accordance with the Act, or if it is not, it shall be deemed to be the Council until a new Council is constituted in accordance with the provisions of the Act.

The Bill amends other Acts, including the following:

(a) the *Regulated Health Professions Act, 1991* to allow certain members of the College to use the title, "doctor";
(b) the *Health Care Consent Act, 1996* to include Naturopath within its definition of a "Health Practitioner" for the administration of that Act
(c) the *Health Insurance Act* to remove a reference to the *Drugless Practitioners Act*
(d) the *Health Protection and Promotion Act* to include Naturopath within its definition of a "Health Practitioner" for certain disease reporting;
(e) the *Laboratory and Specimen Collection Centre Licensing Act* to add "medical" to the term, "medical diagnosis, prophylaxis and treatment" within the definitions of "laboratory" and "specimen collection centre";
(f) the *Personal Health Information Protection Act, 2004* to include Naturopath within its definition of a "Health Care Practitioner" for the administration of that Act.

The Ontario legislative framework for regulated health professions is not intended to judge or compare the value of one health care profession over another or test the theory

of certain health care practices over others. Through the legislative scheme, the public is protected and informed consumer choice facilitated by assuring the public that regulated health care practitioners are qualified to practice in their particular profession and, in the event of complaints, abuse or harm, recourse is available through the College's complaints and discipline system.

SCHEDULE Q: PSYCHOTHERAPY ACT, 2006

The *Psychotherapy Act, 2006*, promotes the principles of public protection and patient safety, informed choice relating to health care practitioners, quality health care services and accountability for practitioners within the profession of psychotherapy

Psychotherapy is currently an unregulated profession in Ontario; no restrictions exist about who may call themselves a psychotherapist or who may practice the profession. Ontarians receiving psychotherapy services at present have no reliable way of knowing which practitioners possess the appropriate competencies and training required for safe practice.

The *Psychotherapy Act, 2006*, creates a new regulated health profession, the profession of psychotherapy, and a new self-financing, non-profit regulatory body, the College of Psychotherapists of Ontario, with the statutory authority to govern members of the profession. Regulatory Colleges such as this one serve the public interest by:

- Regulating the practice of the profession and governing their members in accordance with the legislation;
- Setting registration requirements for entry to practice into the profession;
- Developing and maintaining quality assurance programs that promote the continuing competence of members;
- Developing standards of practice that establish how members do their jobs in an effective, safe and ethical manner;
- Assisting individuals to exercise their rights under the *Regulated Health Professions Act, 1991* (RHPA);
- Implementing complaints and discipline processes; and
- Fulfilling any other objects relating to human health care that the College council considers desirable.

The new Act is established under the RHPA whose primary objectives include the protection of the public from incompetent and unqualified individuals and the promotion of informed consumer choice through a system of scope of practice statements, controlled acts, protected titles, standards of practice and complaints and discipline processes.

This new Act, like the existing health profession-specific Acts, establishes the College with a governing Council comprising a majority of elected professional members and a minority of publicly appointed individuals. Like the others, the new Act deems the Health Professions Procedural Code, which is Schedule 2 to the RHPA, to be part of the Act.

Under the new Act, the scope of practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication. The new Act restricts the use of the titles, "psychotherapist" and

"Registered Mental Health Therapist" to members of the College. No person other than a member may hold themselves out as qualified to practice in Ontario as a psychotherapist or registered mental health therapist. Anyone who contravenes these requirements is guilty of an offence and on conviction is liable to a maximum fine of $25,000 for a first offence and a maximum of $50,000 for a subsequent offence.

The new Act also authorizes members of the College to perform a new controlled act (an activity that when performed by an unqualified practitioner may put the public at substantial risk and are therefore "controlled" for use by legislation) of treatment "by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning. The Bill amends subsection 27(2) of the *Regulated Health Professions Act, 1991* to include the new controlled act.

The College Council, with Ministerial review and the approval of the Lieutenant Governor in Council, may make regulations under the new Act:
(a) prescribing the therapies involving the practice of the new profession;
(b) governing the use of prescribed therapies
(c) prohibiting the use of prescribed therapies in the course of practicing the new profession.

Transitional provisions in the new Act provide for the appointment of the College Registrar and Council by the Lieutenant Governor in Council. The transitional Council and the Registrar may do anything that is necessary or advisable for the implementation of the Act and anything that they could do once the Act is in force. During the transition period, the Minister may review the transitional Council's activities, require it to make, amend or revoke a regulation and do anything that is necessary or advisable to carry out the intent of the new Act and the RHPA.

After the transition period, the transitional Council shall be the College Council if it is constituted in accordance with the Act, or if it is not, it shall be deemed to be the Council until a new Council is constituted in accordance with the provisions of the Act.

The Bill also amends other Acts, including the following:

(a) the *Medicine Act, 1991* to authorize members of the College of Physicians and Surgeons of Ontario to perform the new controlled act of "Treating, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning."

(b) the *Psychology Act, 1991* to authorize members of the College of Psychologists of Ontario to perform the new controlled act of Treating, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

(c) the *Nursing Act, 1991* to authorize members of the College of Psychologists of Ontario to perform the new controlled act of Treating, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

(d) the *Occupational Therapy Act, 1991* to authorize members of the College of Psychologists of Ontario to perform the new controlled act of Treating, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

(e) the *Health Care Consent Act, 1996* to include "psychotherapist" within its definition of a "Health Practitioner" for the administration of that Act.

The Ontario legislative framework for regulated health professions is not intended to judge or compare the value of one health care profession over another or test the theory of certain health care practices over others. Through the legislative scheme, the public is protected and informed consumer choice facilitated by assuring the public that regulated health care practitioners are qualified to practice in their particular profession and, in the event of complaints, abuse or harm, recourse is available through the College's complaints and discipline system.