

COMPENDIUM

REGULATED HEALTH PROFESSIONS STATUTE LAW AMENDMENT ACT, 2009

This compendium summarizes the provisions of the *Regulated Health Professions Statute Law Amendment Act, 2009* which, if passed, would provide as follows:

General

The *Regulated Health Professions Statute Law Amendment Act, 2009* makes amendments to 25 Acts administered by the Ministry of Health and Long-Term Care and one Act administered by the Ministry of Community and Social Services.

These amendments support HealthForceOntario's health human resources strategy. The strategy's purposes include ensuring that Ontarians have access to the right numbers and mix of qualified regulated healthcare providers, for now and in the future.

The strategy also helps Ontario to identify its health human resources requirements and develop new health care provider roles to meet new, emerging health care needs. HealthForceOntario works closely with the educational system to develop health care providers with the right knowledge, skills and judgement. The strategy is designed to enhance Ontario's ability to compete effectively for health care professionals and enable them to work to their full scope of practice.

The Ministry of Health and Long-Term Care is proposing amendments to legislation and regulations that support the HealthForceOntario's health human resources strategy by:

1. Increasing patient access and improving chronic disease management by better utilizing regulated health care professionals and reducing barriers to their practice.
2. Supporting the public delivery of health care by responding to implications resulting from better utilization and reduction in barriers.
3. Improving patient safety by strengthening the health professional regulatory system.

In addition, the Act amends the *Drug and Pharmacies Regulation Act*, R.S.O. 1990,c. H.4 (the "DPRA") and the *Ontario Drug Benefit Act*, R.S.O., 1990, c.O.10 (the "ODBA") to provide the legislative platform for remote dispensing in Ontario.

Remote dispensing refers to the dispensing of prescription drug products under the supervision of a licensed pharmacist, but without the pharmacist being physically present at the dispensing location. Currently, the DPRA requires that all pharmacies be under the supervision of a pharmacist who is physically present on the premises. Pharmacies cannot legally provide remote dispensing services in Ontario without the DPRA amendments.

The Act amends the ODBA to require pharmacy operators and physicians who wish to receive payment from the Executive Officer to apply for ODB Program billing privileges, and confers discretion on the Executive Officer to determine which pharmacies, remote pharmacies or physicians should receive those billing privileges. Cabinet is given the authority to make regulations providing for the payment by the Executive Officer of differing mark-ups and dispensing fees to different classes of pharmacies based on the type of dispensing model in place.

The substantive content of the amendments made by the *Regulated Health Professions Statute Law Amendment Act, 2009* is described below.

Section 1: *Commitment to the Future of Medicare Act, 2004*

Section 8 of the *Commitment to the Future of Medicare Act, 2004* is amended to provide definitions for “College”, “designated service” and “Minister”.

“College” has the same meaning as in the *Regulated Health Professions Act, 1991* but does not include the College of Physicians and Surgeons of Ontario.

A “designated service” is defined as a service: that has been designated by the regulations as a designated service; that is not an insured service; that is rendered by a member of a prescribed College while the member is engaging in the practice of his or her health profession, or, if the regulations so provide in the case of a regulation making the dispensing of a drug a designated service, a member of the College of Physicians and Surgeons of Ontario; and that is provided under the circumstances, if any, or in the accordance with the limitations and conditions, if any, that are provided for in the regulations.

“Minister” refers to the Minister of Health and Long-Term Care.

The Act is amended by adding section 11.1. Subsection 11.1(1) prohibits any person or entity from charging or accepting payment or other benefit for providing a designated service to an insured person, except as permitted by and in accordance with the regulations. Subsection 11.1(2) permits a prescribed person to make a determination that a charge, payment or other benefit was made or accepted contrary to subsection (1).

Subsection 11.1(3) permits any person or entity to apply to the Board for a determination in respect of a matter under subsection (1), or for a review of a determination made under subsection (2).

Subsections 11.1(4) and (5) provide procedural rights with respect to subsection (3). Subsection (4) gives parties to the review a right to appeal to the Divisional Court in the circumstances provided for in the regulations. Subsection (5) renders section 23 of the *Health Insurance Act* applicable to the review with respect to evidence. Subsection (6) allows a copy of the Board’s decision to be filed with the Superior Court of Justice so that it can be enforceable as an order of that court.

Subsection 11.1(7) authorizes the Lieutenant Governor in Council to make regulations governing designated services, and subsection (8) requires these regulations to be made in accordance with the public consultation requirements under section 7 of the Act.

Subsection 16(1) is amended such that another person prescribed by the regulations may, in addition to the General Manager, require any person to submit information for the purposes of determining whether there has been a contravention of subsection 11.1(1). Subsections (2) to (4) and (6) are amended to reflect that requirements related to information to be given apply to prescribed persons, in addition to the General Manager under subsection (1).

Subsection 16(5) is amended to authorize the Minister, the General Manager or other prescribed persons to suspend payments under any Act, law or system of payments to a person or entity for failing to comply with subsection 16(1).

Subsection 16(7) is added to provide for regulation making power to define system of payments for the purposes of this section.

Subsection 20(3) is amended to clarify the Lieutenant Governor in Council's power to make regulations exempting any person or entity or class of persons or entities from the application of any provision of the Part, and to make such an exemption subject to any condition that may be provided for in the regulations.

Section 2: *Chiropody Act, 1991*

Subsections 5(1) and (2) of the *Chiropody Act, 1991* are amended to authorize chiropodists and podiatrists to perform the controlled act of administering, by inhalation, a substance designated in the regulations.

Subsection 5(3) is added to require members administering, by inhalation, a substance designated in the regulations to perform the procedure only in accordance with the regulations. Subsection 5(4) is added to provide that a contravention of subsection 5(3) is an act of professional misconduct.

Section 13 is repealed and replaced to expand the regulation making powers of the Council. Regulations made under the Act are subject to the approval of the Lieutenant Governor in Council and Ministerial review. New powers under subsection 13(1) include designating substances that may be administered by inhalation, and regulating and governing the administration of substances by injection or inhalation by members and ancillary matters, including:

- setting requirements respecting the administration of substances,
- governing the purposes for which, or the circumstances under which, substances may be administered,

- setting requirements for prescribing drugs and governing the purposes for which, or the circumstances under which, drugs may be prescribed, and
- setting prohibitions.

Subsection 13(2) of the Act permits a regulation designating prescribed drugs, or substances that may be administered by injection or inhalation, to be listed individually, or by category.

Subsection 13(3) allows such a regulation to incorporate one or more documents setting out a list of drugs or substances by reference.

Subsection 13(4) provides that if a regulation provided for in subsection (3) is made, a document adopted by reference must be a reference to it as amended from time to time after the making of the regulation. Subsection 13(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*.

Subsection 13(6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 3: *Chiropractic Act, 1991*

Clause 6(1)(b) of the *Chiropractic Act, 1991* is amended to change the composition of the Council of the College from seven persons appointed by the Lieutenant Governor in Council to at least six and no more than seven persons who are appointed by the Lieutenant Governor in Council.

Section 4: *Dental Hygiene Act, 1991*

Section 4 of the *Dental Hygiene Act, 1991* is amended to authorize dental hygienists to perform the controlled act of prescribing, dispensing, compounding or selling a drug designated in the regulations.

Subsection 5(2.1) is added to require College members to perform the new controlled acts relating to prescribing, dispensing, compounding or selling a drug only in accordance with the regulations. Subsection 5(3) of the Act is amended to provide that a contravention of subsection 5(2.1) is an act of professional misconduct.

Subsection 12(1) of the Act is amended to expand regulation making powers of the Council of the College. Under the Act, regulation making powers are subject to the approval of the Lieutenant Governor in Council and Ministerial review. New powers include designating drugs that a member may prescribe, dispense, compound or sell in the course of practicing dental hygiene and regulating and governing the prescribing, dispensing, compounding, using and selling of drugs by members and ancillary matters, including:

- setting requirements respecting the prescribing, dispensing, compounding, using and selling of drugs,
- governing the purposes for which, or the circumstances under which, drugs may be prescribed, dispensed, compounded, used or sold,
- governing and regulating the storage, handling, display, identification, labelling and disposal of drugs,
- setting prohibitions,
- requiring members to keep records respecting the prescribing, dispensing, compounding, using and selling of drugs and providing for the contents of those records,
- requiring members to provide the College or the Minister with reports respecting the prescribing, dispensing, compounding, using and selling of drugs and providing for the contents of those reports.

Subsection 12(2) is updated to reflect the new regulation making powers of the Council under subsection 12(1), and provides that regulations that contain lists of drugs may specify or designate individual drugs or categories of drugs.

Subsection 12(3) of the Act allows a regulation to incorporate one or more documents setting out a list of drugs or drug categories by reference. Subsection 12(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 12(5) provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*.

Subsection 12(6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 5: *Dental Technology Act, 1991*

Clause 5(1)(b) of the *Dental Technology Act, 1991* is amended to change the composition of the Council of the College from six persons appointed by the Lieutenant Governor in Council to at least five and no more than six persons who are appointed by the Lieutenant Governor in Council.

Section 6: *Dentistry Act, 1991*

Section 4 of the *Dentistry Act, 1991* is amended to authorize dentists to perform the controlled acts of compounding a drug and selling a drug in accordance with the regulations.

Section 12 of the Act is repealed and replaced to expand the regulation making powers of the Council of the College. All regulations made under the Act are subject to the approval of the Lieutenant Governor in Council and Ministerial review.

New regulation making powers under section 12 of the Act are as follows:

- regulating and governing the prescribing, dispensing, compounding and selling of drugs by members in the course of engaging in the practice of dentistry and ancillary matters, including establishing requirements and setting prohibitions,
- requiring members to keep records respecting the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those records, and
- requiring members to provide the College or the Minister with reports respecting the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those reports.

Section 7: *Dietetics Act, 1991*

Section 3.1 is added to the *Dietetics Act, 1991* to authorize dietitians, in the course of engaging in the practice of dietetics, and subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the controlled act of taking blood samples by skin pricking for the purpose of monitoring capillary blood readings.

Section 8: *Drug and Pharmacies Regulation Act*

The definition of ‘pharmacy’ under subsection 1(1) of the *Drug and Pharmacies Regulation Act* is amended to include a ‘remote dispensing location’.

Subsection 1(1) of the Act is further amended by adding a definition of ‘remote dispensing location’, which is to be defined by regulation.

Section 118(2) of the Act is amended to add the words “compound” and “sell” to the exception, which provides that nothing in the Act prevents any person from selling or dispensing a drug to a person authorized under a health profession Act to dispense, prescribe, administer, compound or sell drugs.

Section 118(3) is amended to increase the scope of the exception, so as to provide that nothing in the Act prevents any person from selling a drug to a person to use in the course of engaging in the practice of his or her profession, where he or she is authorized to use that drug under a health profession Act as defined in the *Regulated Health Professions Act, 1991*. Prior to the amendment, this exception only applied to the sale of a drug to a member of one of the colleges listed.

Section 118(4) is added to provide that the Act does not apply to the practice of a person authorized under a health profession Act to compound, dispense or sell a drug while engaging in the practice of his or her profession, except that the Act applies to that person's work when that work is performed in a pharmacy and sections 149, 150, 152 and 160 of the Act apply to the person.

Section 146 is amended to exempt remote dispensing locations from the requirement that a pharmacist be physically present in the remote dispensing location, provided that a certificate of accreditation has been issued by the College permitting the operation of the remote dispensing location, and the location is operated in accordance with the regulations.

Section 149 is amended to establish that the requirement that a pharmacist be physically present to supervise a pharmacy technician does not apply when the technician is working in a remote dispensing location, provided that such person is being actively supervised by a pharmacist, a certificate of accreditation has been issued by the College permitting the operation of the remote dispensing location, and the location is operated in accordance with the regulations.

Subsection 161(1) is amended to enable the Ontario College of Pharmacists to make regulations, subject to the approval of the Lieutenant Governor in Council, that will:

- define and govern the meaning of “remote dispensing location” ,
- prescribe standards for accreditation applicable to remote dispensing locations including their operation and the maintenance, space, equipment and facilities required to operate such locations, and
- establish requirements for and governing remote dispensing locations, their owners and operators and their operation, and clarifying the application of the DPRA with respect to remote dispensing locations, their owners and operators.

Section 9: *Healing Arts Radiation Protection Act*

Subsection 6(1) of the *Healing Arts Radiation Protection Act* is amended to permit nurses holding an extended certificate of registration under the *Nursing Act, 1991* to prescribe an X-ray. Prior to the amendment, nurses were only authorized to order X-rays for particular indications.

Subsection 6(2) is added to authorize a physiotherapist to prescribe an X-ray, in a manner permitted by regulation.

Section 10: *Health Care Consent Act, 1996*

The definition of “evaluator” under subsection 2(1) of the *Health Care Consent Act, 1996* is amended to include dietitians, which allows them to determine an individual's capacity for the purpose of admission to a “care facility”.

The definition of “health practitioner” under subsection 2(1) of the Act is amended to mean “a member of a College under the *Regulated Health Professions Act, 1991* or a member of a category of persons prescribed by the regulations as health practitioners.” Prior to the amendment, the definition listed all of the colleges included under the definition.

Clause 85(1)(b) is amended to update the regulation making powers regarding “evaluators” to reflect the amended definitions under subsection 2(1).

Section 11: *Health Insurance Act*

Section 1 of the *Health Insurance Act* is amended by adding a definition for “general requisition number”. “General requisition number” means the unique identifying number issued by the General Manager to a practitioner or health facility to identify that a service rendered by another practitioner or health facility or by a physician, hospital, or independent health facility was requested by the practitioner or health facility.

Subsection 1(1) is further amended by adding a definition for “independent health facility”. The term has the same meaning as found in the *Independent Health Facilities Act*.

Paragraph 6 of subsection 6(1) is added, which requires the Minister to appoint practitioner review committees as may be prescribed, comprised of such members or classes of members as may be prescribed.

Section 18.2.1 is added, which provides that where a service was requested by a practitioner or health facility, and where the General Manager is of the opinion that the service is not medically necessary, or is rendered in other prescribed circumstances, the practitioner or health facility is liable to the Plan in the amount paid by the Plan for the performance of the service. Also, the General Manager is given the authority to make a direction requiring the amount owing to be paid to the Plan, and is authorized to recover the amount through any method permitted under the Act.

Paragraph 5 of subsection 20(1) is added to permit a practitioner or health facility required to make a payment under section 18.2.1(b) to appeal the direction to the Appeal Board.

Subsection 37(1) of the Act is amended to include health facilities, hospitals, and independent health facilities as entities required to give the General Manager such information, including personal information, as may be prescribed for various purposes.

Subsection 37.1(3.01) is added, which requires every practitioner and health facility to maintain records to establish whether a service the practitioner or health facility requests is medically necessary or is rendered in the prescribed circumstances mentioned in section 18.2.1.

Subsection 37.1(5) is amended to include records described in subsection (3.01) as those which must be prepared promptly.

Subsection 37.1(6.01) is added, which requires practitioners, health facilities, physicians, hospitals, or independent health facilities to provide the General Manager with all relevant information within their control if there is a question about whether a service requested by a practitioner or health facility is medically necessary or is rendered in the prescribed circumstances mentioned in section 18.2.1.

Subsection 37.1(7.01) is added, which provides that in the absence of a record described in subsection (3.01), it is presumed that the service requested was not medically necessary or rendered in the prescribed circumstances mentioned in section 18.2.1.

Paragraph 4 of section 38.1 of the Act is amended to permit a copy of a direction to pay the Plan given by the General Manager under clause 18.2.1(b) to be filed with the Superior Court of Justice and to be enforceable as an order of that court.

Subsection 45(1) of the Act is amended to give the Lieutenant Governor in Council the power to make regulations governing the issuance and use of general requisition numbers, and to define “resident”, “dependant”, “spouse”, “member of the Canadian Forces” and “requested by a practitioner or health facility” for the purposes of this Act or any provision of the Act.

Subsection 45(3.1) of the Act is amended, which clarifies the Lieutenant Governor in Council’s power to make regulations exempting any person, facility or entity or class of persons, facilities or entities from the application of any provision of this Act, and may make such an exemption subject to conditions that may be provided for in the regulations.

Section 12: *Laboratory and Specimen Collection Centre Licensing Act*

The definition of “specimen collection centre” in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act*, and in section 5 of the Act as re-enacted by section 18 of Schedule P of chapter 10 of the Statutes of Ontario, 2007, is amended to exclude from the definition a place where a dietitian practises.

Section 13: *Massage Therapy Act, 1991*

Clauses 5(1)(a) and (b) of the *Massage Therapy Act, 1991* are amended to increase the composition of the Council of the College from the current six and no more than seven members who are elected in accordance with the College’s by-laws, to at least six and no more than nine elected members. The persons appointed by the Lieutenant Governor in Council increased from the current five persons to at least five and no more than eight persons.

Subsection 7(1) of the Act is amended to change the restricted title from “massage therapist” to “registered massage therapist”. Only a member of the College may use the new restricted title.

Subsection 7(2) of the Act is amended to reflect the amendment made to subsection 7(1). It prohibits individuals, other than College members, from holding themselves out as being qualified to practice in Ontario as a registered massage therapist or in a speciality of massage therapy.

Section 14: *Medical Radiation Technology Act, 1991*

Section 3 of the *Medical Radiation Technology Act, 1991* is amended to broaden the scope of practice of medical radiation technology, which is the use of ionizing radiation, electromagnetism and other prescribed forms of energy for the purposes of diagnostic and therapeutic procedures and the evaluation of images and data relating to the procedures.

Sections 4 and 5 of the Act are repealed and new provisions substituted. Section 4 changes the controlled acts which medical radiation technologists are authorized to perform.

A College member will be authorized, subject to the terms, conditions or limitations imposed on his or her certificate of registration to perform the following:

1. Administering substances by injection or inhalation.
2. Tracheal suctioning of a tracheostomy.
3. Administering contrast media, or putting an instrument, hand or finger,
 - i. beyond the opening of the urethra,
 - ii. beyond the labia majora,
 - iii. beyond the anal verge, or
 - iv. into an artificial opening of the body.
4. Performing a procedure on tissue below the dermis.
5. Applying a prescribed form of energy.

The new provisions in section 5 reflect the changes made to section 4. Subsection 5 (1) prohibits a member from performing a controlled act under paragraphs 1 to 4 of section 4, unless the procedure is ordered by a member of the College of Physicians and Surgeons of Ontario.

Subsection 5(2) of the Act prohibits a member from applying a prescribed form of energy under paragraph 5 of section 4 unless the procedure is ordered by a member of the College of Physicians and Surgeons of Ontario or a member of any other College who is authorized to order the procedure. Subsection 5 (3) of the Act establishes that a contravention of subsections (1) or (2) constitutes an act of professional misconduct.

Section 15: *Medicine Act, 1991*

Section 12 of the *Medicine Act, 1991* is repealed and new provisions substituted to expand the regulation making powers of the Council of the College. Council regulation making powers under the Act are subject to the approval of the Lieutenant Governor in Council and Ministerial review.

These regulation making powers under section 12 will now provide that the Council may make regulations:

- regulating and governing the prescribing, dispensing, compounding and selling of drugs by members in the course of engaging in the practice of medicine and ancillary matters, including establishing requirements and setting prohibitions,
- requiring members to keep records respecting the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those records,
- requiring members to provide the College or the Minister with reports respecting the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those reports.

Section 16: *Midwifery Act, 1991*

Section 4 of the *Midwifery Act, 1991* is repealed and new authorized acts provisions substituted. These new provisions authorize a midwife, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following;

1. communicating a diagnosis identifying, as the cause of woman or newborn's symptoms, a disease or disorder that may be identified from the results of a laboratory or other test or investigation that a member is authorized to order or perform on a woman or a newborn during normal pregnancy, labour and delivery and for up to six weeks post-partum.
2. managing labour and conducting spontaneous normal vaginal deliveries.
3. inserting urinary catheters into women.
4. performing episiotomies and amniotomies and repairing episiotomies and lacerations, not involving the anus, anal sphincter, rectum, urethra and periurethral area.
5. administering, by injection or inhalation, a substance designated in the regulations.
6. prescribing drugs designated in the regulations.
7. putting an instrument, hand or finger beyond the labia majora or anal verge during pregnancy, labour and the post-partum period.
8. administering suppository drugs designated in the regulations beyond the anal verge during pregnancy, labour and the post-partum period.

9. taking blood samples from newborns by skin pricking or from persons from veins or by skin pricking.
10. intubation beyond the larynx of a newborn.
11. administering a substance by injection or inhalation as provided for in subsection 4.1(2).

Section 4.1 is added as a new requirement for the performance of authorized acts. Subsection 4.1(1) requires a midwife who is intubating a newborn beyond the larynx to do so in accordance with the regulations.

Subsection 4.1(2) prohibits a midwife from administering a substance under paragraph 11 of section 4 without an order from a member of the College of Physicians and Surgeons of Ontario. Subsection 4.1(3) establishes that a contravention of subsection (1) or (2) constitutes an act of professional misconduct.

Subsection 11(1) is amended to expand the regulation making powers of the Council of the College. All regulation making-powers under the Act are subject to the approval of the Lieutenant Governor in Council and Ministerial review.

Clause 11 (1) (b) of the Act will allow the Council to make regulations designating drugs that may be prescribed or the suppository drugs that may be administered by members in the course of engaging in the practice of midwifery, governing the performance of the procedure for performing the act of intubation beyond the larynx of a newborn, and regulating and governing the prescribing, administering or using of drugs by members and ancillary matters, including,

- setting requirements respecting the prescribing, administering or using of drugs,
- governing the purposes for which, or the circumstances under which, drugs may be prescribed, administered, or used, and,
- setting prohibitions.

Subsection 11(2) of the Act is repealed and new provisions substituted. The provisions are updated to reflect the new regulation making powers of the Council under subsection 11(1) and provide that regulations that contain lists of drugs may specify or designate individual drugs or substances categories of substances or drugs.

Subsection 11(3) of the Act allows such a regulation to incorporate one or more documents setting out a list of drugs or substances or categories of drugs or substances by reference. Subsection 11(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 11(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*.

Subsection 11(6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 17: *Naturopathy Act, 2007*

The *Naturopathy Act, 2007* is amended to add subsection 13(4.1). This section provides that, after section 6 of the Act is proclaimed in force, if a complaint is filed with the Registrar, or an allegation is made against a member claiming he or she committed an act of professional misconduct, was incompetent or was involved with some other discipline type matter that occurred before section 6 of the Act came into force, then the procedure around investigations or proceedings respecting the member set out under the *Regulated Health Professions Act, 1991* applies.

However, in the recovery or enforcement of penalties or sanctions, *Drugless Practitioners Act* applies, despite its repeal.

Section 18: *Nursing Act, 1991*

The *Nursing Act, 1991* is amended to generally remove current limitations on controlled acts which registered nurses in the extended class (nurse practitioners) are authorized to perform.

Section 4 of the Act is amended to exclude nurse practitioners from being authorized to perform the acts listed under that section. Section 5.1 of the Act is repealed and the following provisions, relating to nurse practitioners, are substituted.

In the course of engaging in the practice of nursing, a member who is a nurse practitioner is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration to perform the following:

1. communicating to a patient or to his or her representative a diagnosis made by the member identifying, as the cause of the patient's symptoms, a disease or disorder.
2. performing a procedure below the dermis or a mucous membrane.
3. Putting an instrument, hand or finger,
 - i. beyond the external ear canal,
 - ii. beyond the point in the nasal passages where they normally narrow,
 - iii. beyond the larynx,
 - iv. beyond the opening of the urethra,
 - v. beyond the labia majora,
 - vi. beyond the anal verge, or

- vii. into an artificial opening of the body.
- 4. Applying or ordering the application of a prescribed form of energy.
- 5. Setting or casting a fracture of a bone or dislocation of a joint.
- 6. Administering, by injection or inhalation, a substance designated in the regulations.
- 7. Administering a substance by injection or inhalation as provided for in subsection (2).
- 8. Prescribing, dispensing, selling or compounding a drug designated in the regulations.

Subsection 5.1(2) prohibits a College member from performing the act of administering, by injection or inhalation, a substance under paragraph 7 unless it is ordered by a member of the College of Physicians and Surgeons of Ontario or a member of any other College who is authorized to perform the procedure.

Paragraph 9 is added to section 5.1, and authorizes nurse practitioners to perform the 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.

Clause 9(1)(b) is amended to change the composition of the Council from eighteen persons who are appointed by the Lieutenant Governor in Council to at least 14 and no more than 18 persons who are appointed by the Lieutenant Governor in Council.

Subsection 11(5) of the Act is amended to include the title, "nurse practitioner" in the prohibition against holding oneself out as qualified to practice in Ontario as a nurse, registered nurse, practical nurse, nurse practitioner or in a specialty of nursing.

Subsection 11(6) strikes out the title, "graduate nurse" as an exception to the holding out provision. Now, only "Christian Science nurse" is available as an exception to the holding out provision.

Section 14 of the Act is repealed and replaced to expand the College Council's regulation making authority, which is subject to the approval of the Lieutenant Governor in Council and Ministerial review under the Act.

Regulation making powers under section 14 of the Act will now include:

- (a) prescribing procedures for the purpose of paragraph 1 of section 4,
- (b) permitting a member to perform a procedure under clause 5 (1) (a) and governing the performance of the procedure and the class of member that can perform the procedure,

- (c) designating the substances that a member may administer by injection or inhalation for the purpose of paragraph 6 of subsection 5.1 (1),
- (d) designating the drugs that a member may prescribe, dispense, sell or compound for the purpose of paragraph 8 of subsection 5.1 (1),
- (e) regulating and governing the prescribing, dispensing, compounding and selling of drugs by members in the course of engaging in the practice of nursing and ancillary matters, including,
 - governing the purposes for which, or the circumstances under which, drugs may be prescribed, dispensed, compounded, used or sold,
 - setting requirements respecting the prescribing, dispensing, compounding, using and selling of drugs,
 - governing and regulating the storage, handling, display, identification, labelling and disposal of drugs,
 - setting prohibitions,
 - requiring members to keep records respecting the prescribing, dispensing, compounding, using and selling of drugs and providing for the contents of those records,
 - requiring members to provide the College or the Minister with reports respecting the prescribing, dispensing, compounding, using and selling of drugs and providing for the contents of those reports, and,
- (f) prescribing standards of practice respecting the circumstances in which registered nurses who hold an extended certificate of registration should consult with members of other health professions.

Subsection 14(2) of the Act is updated to reflect the new regulation making powers of the Council under subsection (1), and provides that regulations that contain lists of drugs may specify or designate individual drugs or substances categories of substances or drugs.

Subsection 14(3) of the Act allows such a regulation to incorporate one or more documents setting out a list of drugs or substances or categories of drugs or substances by reference. Subsection 14(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 14(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*. Subsection 14(6) of the Act requires any document adopted by reference

to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 19: *Ontario Drug Benefit Act*

Section 4.1 is added to the *Ontario Drug Benefit Act*. Subsection 4.1(1) requires pharmacy operators and dispensing physicians who wish to receive payment from the Executive Officer (the "EO") under the Ontario Drug Benefit Program ("ODB Program") to apply to the EO for ODB Program billing privileges.

Subsection 4.1(2) provides that the EO may grant ODB Program billing privileges to a pharmacy operator or dispensing physician who has applied for such privileges where the EO is of the opinion it is in the public interest to do so, after considering any matter that the EO considers to be appropriate.

Subsection 4.1(3) establishes that the EO may make it a condition of granting ODB Program billing privileges that the pharmacy operator or dispensing physician enter into an agreement containing any provisions that the EO considers necessary or desirable in the public interest in the particular case.

Subsection 4.1(4) clarifies that a pharmacy operator (who is not subject to a suspension order under section 11.1) or dispensing physician who was receiving payment from the EO under the ODB Program before the coming into force of this section is deemed to have been granted ODB Program billing privileges by the EO and is not required to re-apply. Nevertheless, the EO may require the operator or physician to enter into an agreement as a condition of continuing to receive payment from the EO under the ODB Program.

Subsections 5(1) and 5(3) are amended and provide that a pharmacy operator or a dispensing physician who has been granted billing privileges and who submits to the EO a claim for payment in respect of supplying a listed drug product for an eligible person pursuant to a prescription is entitled to be paid by the EO the amount provided for under the Act and regulations.

A technical amendment is made to paragraph 3 of subsection 6(1) to reflect that more than one mark-up or dispensing fee may be prescribed.

A technical amendment is made to subclause 6(2)(c)(i) to clarify that more than one mark-up or dispensing fee may be prescribed within the regulation, and that a pharmacy operator is entitled to be paid the mark-up or dispensing fee that applies in that particular case.

A technical amendment is made to section 11(1) to clarify that only a pharmacy operator who has previously been granted ODB Program billing privileges can opt out of receiving payment from the EO in accordance with the opt-out requirements set out in section 11 of this Act.

Section 11.3 is amended to clarify that, where an ODB-eligible person obtains a listed drug product from a pharmacy or a dispensing physician and, for any reason, the pharmacy operator or the physician does not have ODB Program billing privileges, the eligible person may submit his or her own claim to the EO. Provided that the eligible person submits his or her claim in accordance with the regulations, the eligible person is entitled to be paid by the EO the same amount the EO would have otherwise paid to an operator or physician who was entitled to receive payment under the ODB Program.

Section 18 is amended to authorize Cabinet to make regulations that provide for the payment by the EO of different drug mark-ups or dispensing fees with respect to different classes of pharmacies or operators of pharmacies.

Section 20: *Optometry Act, 1991*

Subsection 12(1) of the *Optometry Act, 1991* is amended to expand the College Council's regulation making authority, which is subject to the approval of the Lieutenant Governor in Council and Ministerial review. New regulation making powers include:

- regulating and governing the prescribing or using of drugs by members and ancillary matters,
- governing the purposes for which or the circumstances under which, drugs may be used or prescribed,
- setting requirements respecting prescribing or using of drugs and,
- setting prohibitions.

Subsection 12(2) is repealed and new provisions substituted. Subsection 12(2) of the Act is updated to reflect the new regulation making powers of the Council under subsection (1), and provides that regulations that contain lists of drugs may specify or designate individual drugs or categories of drugs.

Subsection 12(3) of the Act allows such a regulation to incorporate one or more documents setting out a list of drugs or categories of drugs by reference. Subsection 12(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 12(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*. Subsection 12 (6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 21: *Pharmacy Act, 1991*

Section 3 of the *Pharmacy Act, 1991* is repealed and new scope of practice provisions provided. Section 3 provides that the practice of pharmacy includes the custody, compounding, dispensing

and prescribing of drugs; the provision of health care aids and devices; the provision of information and education and the promotion of health, prevention and treatment of disease, disorders and dysfunctions through monitoring and management of medication therapy.

Section 4 of the Act is repealed and new provisions will authorize pharmacists to perform the controlled acts of:

1. dispensing, selling or compounding a drug or supervising the part of a pharmacy where drugs are kept;
2. administering, by injection or inhalation, a substance specified in the regulations;
3. prescribing a drug specified in the regulations;
4. prescribing a drug, other than a drug mentioned in paragraph 3, in accordance with the regulations; and
5. performing a procedure on tissue below the dermis.

Subsection 4(2) is added, which requires pharmacists performing the controlled acts listed in paragraphs 2 to 5 to do so in accordance with the regulations. Subsection 4(3) is added and establishes that failing to comply with subsection (2) constitutes an act of professional misconduct.

Paragraph 1.1 of section 6 is added to set out an additional object of the College, which is to exercise the powers and duties of the College under the *Drug Interchangeability and Dispensing Fees Act*.

Section 13 is added to the Act, and authorizes the Council to make regulations, which are subject to the approval of the Lieutenant Governor in Council and Ministerial review.

These regulation making powers include:

- specifying substances that may be administered by injection or inhalation in the course of engaging in the practice of pharmacy;
- specifying drugs that a member may prescribe in course of engaging in the practice of pharmacy, and
- regulating and governing the performance of any act set out in paragraph 2, 3, 4 or 5 of subsection 4(1) and ancillary matters, including,
 - establishing requirements for the performance of the act,
 - governing the purposes for which, and the circumstances under which, the act must be performed, and
 - setting prohibitions.

Subsections 13(2) to (6) are added. Subsection 13(2) of the Act provides that regulations that contain lists of drugs or substances may specify or designate individual drugs or substances or categories of drugs or substances.

Subsection 13(3) of the Act allows such a regulation to incorporate one or more documents setting out a list of drugs or substances categories of drugs or substances by reference.

Subsection 13(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 13(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*. Subsection 13 (6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 22: *Physiotherapy Act, 1991*

Section 3 of the *Physiotherapy Act, 1991* is repealed and new scope of practice provisions substituted. Section 3 provides that the scope of practice of physiotherapy is the assessment of neuromuscular, musculoskeletal and cardio respiratory systems, the diagnosis of diseases or disorders associated with physical dysfunction, injury or pain and the treatment, rehabilitation and prevention or relief of physical dysfunction, injury or pain to develop, maintain, rehabilitate or augment function and promote mobility.

Subsection 4 of the Act is repealed and new provisions substituted. Subsection 4 (1) of the Act provides that in the course of engaging in the practice of the profession, a member is authorized, subject to the terms, conditions and limitations on his or her certificate of registration, to perform the following:

1. communicating a diagnosis identifying a disease, a physical disorder or dysfunction as the cause of a person's symptoms.
2. moving the joints of the spine beyond a person's usual physiological range of motion using a fast, low amplitude thrust.
3. tracheal suctioning.
4. treating a wound below the dermis using any of the following procedures: cleansing, soaking, irrigating, probing, debriding, packing or dressing.
5. for the purpose of assessing or rehabilitating pelvic musculature relating to incontinence or pain disorders, putting an instrument, hand or finger beyond the labia majora or beyond the anal verge.
6. ordering the application of a prescribed form of energy.
7. administering a substance by inhalation.

Subsection 4(2) is added, which requires physiotherapists performing a controlled act listed in paragraphs 1 to 6 of subsection (1) to do so in accordance with any applicable regulations.

Subsection 4(3) is added, which prohibits a physiotherapists from administering a substance under paragraph 7 of subsection (1) unless the member has been ordered to do so by a member of the College of Physicians and Surgeons of Ontario or a member of any other College who is authorized to perform the procedure.

Subsection 4(4) provides that failing to comply with subsections (2) or (3) is an act of professional misconduct.

The Act is amended by adding new regulation making powers in section 11.1. These provisions authorize the Council of the College to make regulations, subject to the approval of the Lieutenant Governor in Council and Ministerial review, regulating and governing the performance of any controlled act that may be subject to regulations set out in paragraph 1 to 6 of subsection 4(1), including:

- establishing requirements for the performance of the act,
- governing the purposes for which, or the circumstances under which, it may be performed, and
- setting prohibitions.

Section 23: *Psychotherapy Act, 2007*

Subsections 8 (1) and (2) of the *Psychotherapy Act, 2007* are repealed and new provisions substituted. Subsection 8(1) is amended to provide that no person other than a member may use the restricted title, “registered psychotherapist”. The title under the existing provisions is “psychotherapist”.

Subsection 8(2) is amended to reflect the amendment made to subsection 8(1). It prohibits individuals, other than College members, from holding themselves out as being qualified to practice in Ontario as a registered psychotherapist or a registered mental health therapist.

Section 24: *Regulated Health Professions Act, 1991*

Clauses 5(1)(c) and (d) of the *Regulated Health Professions Act, 1991* (RHPA or the Act) are repealed and new provisions substituted. The new provisions mention the *Drug Interchangeability and Dispensing Fees Act* (DIDFA) and provide that the Minister may require a Council to make, amend or revoke a regulation respecting DIDFA under clause 5(1)(c). The Minister may require a Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of DIDFA under clause 5(1)(d).

Section 5.01 is added to the RHPA and creates a new statutory official under the Act, a College supervisor. Subsection 5.01(1) provides that the Lieutenant Governor in Council may appoint a College supervisor on the recommendation of the Minister. Subsection (2) provides that the Minister may consider any matter that he or she considers relevant in deciding whether to make a recommendation about the appointment of a College supervisor, including:

- the quality of the administration and management of the College;
- the administration of the RHPA or a health profession Act as they relate to the health profession governed by the College;
- the performance of the College respecting its statutory duties under the RHPA, the health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fees Act*.

Subsection (3) of the Act requires the Minister to give a College Council at least 14 days notice before recommending that a College supervisor be appointed. Subsection (4) sets out that the term of office of a College supervisor lasts until it is terminated by order of the Lieutenant Governor in Council.

Subsection (5) gives the College supervisor all the powers of a College Council and any other College official or employee and provides that the supervisor has the exclusive right to exercise those powers for the purposes of administering the RHPA, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fees Act*.

Subsection (6) authorizes the Lieutenant Governor in Council to specify powers and duties of a College supervisor and the terms and conditions governing those powers.

Subsection (7) provides that if the College Council continues to have the right to act respecting any matter under the order of the Lieutenant Governor in Council, any such act is valid only if approved in writing by the College supervisor.

Subsection (8) gives the College supervisor the same rights to access College documents, records and information as the College Council and Registrar. Subsection (9) requires the College supervisor to report to the Minister as the Minister so requires. Subsection (10) authorizes the Minister to provide directions or to amend earlier directions and issue them to a College supervisor, and subsection (11) requires the College supervisor to comply with such directions.

Section 6 of the RHPA is amended by adding subsections (7) to (9). Subsection (7) says that the Minister may require any aspect of the College's accounts or financial transactions to be audited at any time by an auditor appointed by the Minister. Subsection (8) provides that the College is subject to any other audits relating to its affairs, at any time. Subsection (9) requires the auditor to submit the results of the audit to the Minister.

Section 11 of the RHPA, providing for the duties of the Health Professions Regulatory Advisory Council, is repealed and new provisions substituted. Subsection 11 (1) says that the Advisory Council's duties are to advise the Minister and no other person on the matters set out in clauses (a) to (f) of subsection (2). The Advisory Council may only provide advice on an issue if the Minister decides to refer the issue to the Advisory Council, in writing.

Subsection 11(2) sets out the matters that may be referred to the Advisory Council. These are:

- (a) whether unregulated professions should be regulated;
- (b) whether regulated professions should no longer be regulated;
- (c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;
- (d) matters concerning the quality assurance programs undertaken by Colleges;
- (e) each College's patient relations program and its effectiveness; and
- (f) any matter the Minister considers desirable to refer to the Advisory Council relating to the regulation of the health professions.

Section 12 of the Act is repealed and replaced by subsection 12(1), which says that the Minister may refer any issue within the matters described above in clauses 11(2)(a) to (e) to the Advisory Council that a College Council or person asks the Minister to refer, and that the Minister may refer any other issue to the Advisory Council that the Minister determines is appropriate.

Subsections 12(2) and (3) are added, and provide that unless the Minister or the RHPA states otherwise, the advice given by the Advisory Council shall be provided to the Minister only and that the advice shall not concern any issue other than the issue referred. The advice must be provided in the form and manner specified by the Minister.

Subsection 33.1(1) is added to the RHPA and provides that despite the restricted title provisions under the *Psychotherapy Act, 2007*, which say that only College members may use the restricted title, “registered psychotherapist”, members of certain other Colleges may use the abbreviated title “psychotherapist” if they meet certain conditions.

Under subsection (1) a member who is authorized to perform the controlled act of psychotherapy may use the abbreviated title if he or she is a member of one of the following Colleges:

1. College of Nurses of Ontario.
2. College of Occupational Therapists of Ontario.
3. College of Physicians and Surgeons of Ontario.
4. College of Psychologists of Ontario.

The conditions that allow members from one of the above Colleges to use the abbreviated title, “psychotherapist” are set out in subsection (2) and (3). Under subsection (2), persons may not describe themselves orally using the abbreviated title unless they also mention the name of the College where they are a member. In the alternative, they may identify themselves using the title restricted to them under the health profession Act that governs their health profession.

Under subsection (3), members who are entitled to use the abbreviated title may not do so in writing, for example, on a business card, unless they first set out their full name, immediately followed by one of the following:

1. the name of the College where the person is a member.
2. the name of the health profession to which the person belongs.
3. the restricted title the member may use under the health profession Act governing his or her profession.

Subsection 36.1(2) is repealed and new provisions substituted. Subsection (2) says that the Minister or a person designated by the Minister shall assign a unique identifier for each member of the College from whom information is collected. Information collected under this section of the RHPA is for the purposes of health human resources planning.

The new subsection (2.1) says that the unique identifier must be in the form and manner specified by the Minister.

Section 38 is amended to include a College supervisor and his or her staff as persons who are included under the RHPA's statutory immunity provisions.

Section 43.2 is added to the RHPA. These are new regulation making powers respecting expert committees, and provide that the Lieutenant Governor in Council may make regulations,

- (a) establishing one or more expert committees for the purposes of the RHPA, the Health Professions Procedural Code and the health profession Acts;
- (b) specifying the functions, duties, powers and membership of a an expert committee;
- (c) requiring an expert committee to provide reports and information to the Minister and providing for the content of such reports and information;
- (d) requiring information to be provided by a College or College Council to an expert committee, and governing the content of the information and the form and manner and time within which the information is to be provided to the committee.

The definition of "incapacitated" in subsection 1(1) of Schedule 2 of the RHPA, which is the Health Professions Procedural Code, is updated by replacing the words, "member's practice" with "member's certificate of registration".

Section 3 of Schedule 2 is amended by adding an additional object of the College in paragraph 4.1, which is to develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance inter-professional collaboration, while respecting the unique character of individual health professions and their members.

Subsection 10(1.2) is added to Schedule 2, and provides that a reference made to the Complaints Committee in a regulation made under the RHPA or a health profession Act shall be deemed to be a reference to the Inquiries, Complaints and Reports Committee.

Section 13.1 is added to Schedule 2. Subsection 13.1(1) says that the College has a duty to provide for a professional liability insurance scheme for College members and requires that the College ensure that members have the required insurance. Subsection (2) says that members have a duty to ensure that they have the insurance required under the health profession Act governing the profession, the regulations or the by-laws. Subsection (3) says that a member's failure to comply with the duty to have professional liability insurance in accordance with the College's scheme is an act of professional misconduct.

Section 57 of Schedule 2 is amended by requiring the Registrar to make his or her report available to *the chair* of the Inquiries, Complaints and Reports Committee under this section, instead of to the Committee as a whole. A similar amendment is made to clause 58(1)(a).

A new subclause, (i.1), is added to clause 80.1(a) of Schedule 2. These provisions set out the minimum requirements for a College quality assurance program. The new requirement added under subclause (i.1) says that a College quality assurance program must promote interprofessional collaboration with other health profession Colleges.

Subsections 85.6.1(1) and 85.6.2(1) of Schedule 2 are amended to clarify that reports required to be filed under those sections must be filed with *the Registrar*. The reports required under these sections concern member reporting of offences, professional misconduct and malpractice.

Subsection 93(1) of Schedule 2, the offences provisions, is amended to correct an ambiguity in the provisions and add subsection 85.14 (2) to the list of offences. Subsection 85.14 (2) says that a health profession corporation shall not contravene any provision of the RHPA or the regulations or a health profession Act, the regulations or the by-laws made under that Act.

Section 25: *Respiratory Therapy Act, 1991*

Section 4 of the *Respiratory Therapy Act, 1991* is amended by adding a new controlled act, authorizing respiratory therapists to perform the controlled act of administering a prescribed substance by inhalation.

Subsection 12(1) of the Act is added, to authorize the College Council to make regulations subject to the approval of the Lieutenant Governor in Council and Ministerial review as follows:

- prescribing procedures for the purposes of performing the authorized act of performing a prescribed procedure below the dermis; and
- prescribing substances for the purpose of performing the authorized act of administering a prescribed substance by inhalation.

Subsection 12(2) provides that a regulation prescribing substances that members may administer by inhalation may designate individual substances or categories of substances.

Subsection 12(3) of the Act allows such a regulation to incorporate one or more documents setting out a list of substances or categories of substances that may be prescribed or administered by injection or inhalation by reference.

Subsection 12(4) provides that if such a regulation is made, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation.

Subsection 12(5) of the Act provides that a document adopted by reference may only be created or approved by an expert committee established under section 43.2 of the *Regulated Health Professions Act, 1991*. Subsection 12 (6) of the Act requires any document adopted by reference to be named in the regulation and available for public inspection during normal business hours in the office of the College and posted on the College's website or available through a hyperlink at the College's website.

Section 26: *Social Work and Social Service Work Act, 1998*

The *Social Work and Social Service Work Act, 1998* is amended by adding section 47.2, which says that despite the restricted title provisions under the *Psychotherapy Act, 2007*, a College member who is authorized to perform the controlled act of psychotherapy may use the title "psychotherapist" if he or she complies with certain conditions.

The conditions are as follows:

1. when identifying himself or herself as a “psychotherapist” orally, the member must also mention that he or she is a member of the Ontario College of Social Workers and Social Service Workers, or mention the title restricted to members under the *Social Work and Social Service Work Act, 1998*.
2. when identifying himself or herself as a “psychotherapist” in writing, for example on a business card, the member must set out his or her name, immediately followed by either the name of the College where the person is a member, or the title the member may use under the *Social Work and Social Service Work Act, 1998*.

Section 27: Commencement

With the exception of the provisions listed below, this Act comes into force on the day it receives Royal Assent.

The following provisions come into force on the later of June 4, 2009 and the day this Act receives Royal Assent: Subsections 24 (12), (14), (15), (17) and (18).

Section 13 of the Act comes into force on the first anniversary of the day on which this Act receives Royal Assent.

The following provisions come into force on a day to be named by proclamation of the Lieutenant Governor: Sections 1, 7, 8, 9, 11, 12, 14, 16, 17, 18, 19, 22 and 23, subsections 24 (6), (13) and (16) and section 26.

Section 28: Short Title

The short title of this Act is the *Regulated Health Professions Statute Law Amendment Act, 2009*.