



**Report on RNAO Recommendations to
amend *Bill 87 – Protecting Patients Act***

May 31, 2017



Introduction

The following is a summary of RNAO recommendations put forth to the Standing Committee on the Legislative Assembly for amendments to *Bill 87 – Protecting Patients Act* and the resulting outcomes (also summarized in table format in Appendix A).

Summary of RNAO recommendations – Schedule 3: Ontario Drug Benefit Act (ODBA)

Recommendation #1. Proceed with the inclusion of nurse practitioners (NP) “registered nurse in the extended class” in the ODBA (Sections 1, 3 and 4 of Schedule 3 of Bill 87) and ensure NPs are included under all relevant sections to maximize access to all medications within their scope of practice.

Recommendation #2. Amend the ODBA (Sections 1 and 3 of Schedule 3 in Bill 87) to include registered nurses (RN) in anticipation of their expanded scope of practice.

Nurse Practitioners

The inclusion of nurse practitioners (NP) under the provisions of the *Ontario Drug Benefit Act* (ODBA) is critical to facilitate the changes to *Nursing Act* regulations announced on April 19, 2017 that permit NPs to prescribe controlled drugs and substances in Ontario. As stated by the Ministry of Health, authorizing NPs to prescribe opioids, benzodiazepines and other drugs listed on the federal *Controlled Drugs and Substances Act* will provide faster access to care for Ontarians dealing with pain, anxiety, those needing palliative care, as well as people living in remote and rural areas. While RNAO welcomes this long awaited change to the scope of NP practice, some medications are still restricted for NPs working in palliative care and other areas and will remain so unless legislative and policy changes to the Exceptional Access Program are implemented. Currently, requests for coverage of drug products not listed in the Ontario Drug Benefit Formulary (under section 8 of the Ontario Drug Benefit Act) are restricted to physicians through the Exceptional Access Program.

Registered Nurses

On February 23, 2017 at RNAO’s 17th annual Queen’s Park Day, the Minister of Health and Long-Term Care, Eric Hoskins announced that he is bringing forward amendments to the Nursing Act this spring to give RNs the authority to prescribe medications independently and communicate a diagnosis.ⁱ ⁱⁱ On May 17, 2017, *Bill 127 – Stronger, Healthier Ontario Act (Budget Measures), 2017* received Royal Assent putting RNs one step closer to expanding their scope of practice. This will improve access to quality health services across the system and enhance patient outcomes. As the province moves forward with this scope expansion, RNAO anticipated that the ODBA would require amendments to include registered nurses (RN) once the province authorized independent RN prescribing and communication of diagnoses.ⁱⁱⁱ

Legislative Changes

On May 17, 2017, during clause-by-clause consideration of the bill, the government introduced amendments to the Ontario Drug Benefit Act (schedule 3 or Bill 87) as follows:

“1. Subsection 1(1) of the *Ontario Drug Benefit Act* is amended by adding the following definitions:

““authorized prescriber” means a physician, registered nurse in the extended class, a prescribed person or a member of a prescribed class;...”

According to John Fraser, Parliamentary Assistant to the Minister of Health, “the proposed motion would add the definition of “authorized prescriber” to the *Ontario Drug Benefit Act*. “Authorized prescriber” would be identified as a physician, registered nurse in the extended class...and, in future, any other person or member of a class of persons prescribed by regulation”.

This motion was carried and thus RNs are included in the *Ontario Drug Benefit Act* as “authorized prescriber”, as advocated by RNAO.

Additional amendments were made to schedule 3 of Bill 87 in favor of registered nurses and nurse practitioners. The government moved for section 3 of schedule 3 of the bill to be replaced with “authorized prescriber” authorizing the Ministry of Health and Long-Term Care to fund non-drug therapeutic substances listed in the formulary—things like blood glucose test strips and nutritional products—when they are prescribed by non-physician prescribers such as nurse practitioners and other prescribers who may be specified in regulation in the future.

While amendments to Bill 87 are proceeding to include NPs under the provisions of the *Ontario Drug Benefit Act*, further advocacy is needed to ensure related policies are revised so they have access to all medications within their scope of practice, including those previously restricted under the Exceptional Access Program.

Summary of RNAO recommendations – Schedule 4: *Regulated Health Professionals Act, 1991 (RHPA)*

Recommendation #3. Amend Bill 87 to mandate the creation of a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister’s oversight to sustain accountability, as outlined in the minister’s task force report.

Recommendation #4. Proceed with RHPA amendments proposed in Schedule 4 of Bill 87, to give regulatory colleges more power to protect the public by issuing interim suspensions to members accused of sexual misconduct (Clause 15 - i.e. RHPA Schedule 2, 25.4(1)) and mandatory revocation of a member’s license (Clause 19(2) - i.e. subsection 51(5) of RHPA Schedule 2)) if found guilty.

Consistent with RNAO’s best practice guidelines^{iv v vi} and ongoing advocacy against sexual violence,^{vii viii ix} RNAO supports the strictest sanctions possible in the movement towards zero tolerance of sexual abuse by a health-care provider. There appears to be serious and persistent problems among some regulated colleges with weak enforcement and penalties, in relation to allegations of sexual misconduct by their members. The minister’s task force recommended that the RHPA’s delegation of authority to the regulatory colleges in the handling of complaints of sexual abuse of patients be amended to remove their jurisdiction over all responses of sexual abuse of patients by their members and instead transition to a new, centralized regulatory body and an independent tribunal.^x

Legislative Changes

RNAO fully supported this recommendation in our presentation before the Standing Committee of the Legislative Assembly. However, this amendment was not proposed during clause-by-clause consideration of the bill and thus not adopted.

Recommendation #5. In Schedule 4 of Bill 87, amend clause 4(1) (i.e. subsection 36.1 (1) of the RHPA) to ensure information provided to the minister for HHR planning and research be devoid of personal information

Recommendation #6. Remove from Schedule 4 of the RHPA, clause 12(3) (i.e. subsection 23(5) of RHPA schedule 2.) which gives public access to member’s personal information.

Security and confidentiality are of paramount importance whenever personal health information (PHI) is collected, stored, and accessed. Robust security mechanisms must be in place to prevent intentional and accidental breaches in confidentiality. While privacy and security are essential, these issues can be resolved and they cannot hinder efforts to protect the public against allegations of sexual abuse by members of a professional college. Nevertheless, safeguards are needed to ensure the PHI of college members is protected and used in an appropriate manner. However, in the case of health human resource planning and research, collection of members’ personal information should not be necessary to fulfill these efforts. In addition, RNAO questions the intent behind disclosing personal information of the accused member to the public. If a member is charged with the sexual abuse of a client and their license has consequently been suspended or revoked, a statement posted to the appropriate regulatory college website stating such a fact should suffice.

Legislative Changes

Despite concerns brought forth by RNAO and proposed amendments by the NDP and the official oppositions that would remove the disclosure of personal information and personal health information to the minister for health human resource planning and research, these were lost upon voting during clause-by-clause consideration of the bill.

Recommendation #7. Amend the definition of “patient” in Bill 87 Schedule 4, Clause 7 (i.e. subsection 1(6) of RHPA Schedule 2) to remove time restriction of one year, keeping in line with the minister’s task force recommendations outlined in the report.

One of the most common human responses to sexual abuse is denial, at both individual and societal levels. This contributes to a long history of negligence in the pursuit and punishment of perpetrators of patient abuse. This is made more challenging because sexual abuse by health professionals almost never seems to result from physical force.^{xi} As a result, disclosure of the abuse is often hidden and it can take victims years to report the offense. Accordingly, the definition of “patient” needs to be standardized across the professions and not be limited to the start and end of the formal treatment period. This definition ignores the authority, respect, and trust that society has in our health-care professionals and the health system as a whole. Therefore, RNAO put forth a recommendation to use the language and definition of a patient outlined in the minister’s task force report as follows:

“‘patient’ means an individual who at any time has received, or is receiving, health care from a member, or has been assessed by the member, or is otherwise under, or assigned to, the care of the member, including psychotherapy delivered through a therapeutic relationship or counseling for emotional, social, educational or spiritual matters delivered through a confidential treatment context”^{xii}

Legislative Changes

Although the definition of “patient” was amended, it did not broaden to the extent of RNAO’s recommendation. The definition of patient now stands as:

“an individual who was the member’s patient within the last year or within such longer period of time as may be prescribed from the date on which they ceased to be a patient, and an individual who is determined to be a patient in accordance with the criteria set out in regulations.

Conclusion

In summary, RNAO’s recommendations under Schedule 3 – *Ontario Drug Benefit Act (ODBA)* were successfully adopted into *Bill 87*. This includes having RNs adopted in the language of the bill to ensure they are included under the ODBA as “authorized prescribers” in anticipation of their expanded scope of practice to prescribe medications. Amendments also include the provisions of NPs into the ODBA, ensuring they can work to their full scope of practise by allowing access to the Exceptional Access Program and by giving the Ministry of Health and Long-Term Care authority to fund non-drug therapeutic substances such as blood glucose test strips and nutritional products when prescribed by and NP or RN in the future.

Unfortunately, RNAO recommendations under Schedule 4 – *Regulated Health Professional Act*, were not adopted into the bill with the exception of the amendments for which we supported. Of particular importance was RNAO’s recommendation to create a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister’s oversight to sustain accountability, as outlined in the minister’s task force report which was not supported or adapted in the bill.

Bill 87 received Royal Assent on May 30, 2017.

Appendix A: Summary of RNAO proposed recommendations for Bill 87 and outcomes

Recommendation	Included	Excluded	Comments
Schedule 3: Ontario Drug Benefit Act (ODBA)			
<p>#1) Proceed with the inclusion of nurse practitioners (NP) “registered nurse in the extended class” in the ODBA (Sections 1, 3 and 4 of Schedule 3 of Bill 87) and ensure NPs are included under all relevant sections to maximize access to all medications within their scope of practice.</p>	✓		<p>√ RNAO supported this proposed amendment.</p> <ul style="list-style-type: none"> - Grants NPs access to the Exceptional Access Program (EAP) - MOHLTC to fund non-drug therapeutic substances listed in the formulary (i.e. blood glucose test strips and nutritional products) when prescribed by NPs (and RNs in the future).
<p>#2) Amend the ODBA (Sections 1 and 3 of Schedule 3 in Bill 87) to include registered nurses (RN) in anticipation of their expanded scope of practice.</p>	<p>✓ RNs included in the language of the Bill as “authorized prescribers”</p>		
Schedule 4: Regulated Health Professionals Act, 1991 (RHPA)			
<p>#3) Amend Bill 87 to mandate the creation of a new centralized regulatory body and independent tribunal to oversee all cases of alleged sexual abuse of patients by members of a professional college, with the minister’s oversight to sustain accountability, as outlined in the minister’s task force report.</p>		✓	
<p>#4) Proceed with RHPA amendments proposed in Schedule 4 of Bill 87, to give regulatory colleges more power to protect the public by issuing interim suspensions to members accused of sexual misconduct (Clause 15 - i.e. RHPA Schedule 2, 25.4(1)) and mandatory revocation of a member’s license (Clause 19(2) - i.e. subsection 51(5) of RHPA Schedule 2)) if found guilty.</p>	✓		<p>RNAO supported the proposed amendments</p> <p>Legislative Amendment:</p> <p>A member’s certificate of registration can be revoked or suspended if the sexual abuse consisted of, or included, any of the</p>

Recommendation	Included	Excluded	Comments
			<p>following:</p> <ul style="list-style-type: none"> i. Sexual intercourse. ii. Genital to genital, genital to anal, oral to genital or oral to anal contact. iii. Masturbation of the member by, or in the presence of, the patient. iv. Masturbation of the patient by the member. v. Encouraging the patient to masturbate in the presence of the member. vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks. vii. Other conduct of a sexual nature prescribed in regulations <p>“sexual nature” does not include touching or conduct of a clinical nature appropriate to the service provided.</p>
<p>#5) In Schedule 4 of Bill 87, amend clause 4(1) (i.e. subsection 36.1 (1) of the RHPA) to ensure information provided to the minister for HHR planning and research be devoid of personal information</p>		✓	<p>Clause 2, Section 5 of Schedule 4 was struck out removing the clause in which the Minister could require the council of a health professional college to include in its reports to the Minister personal information and personal health information about any member of the college to the extent necessary in order to allow the Minister to determine if the college is fulfilling its duties</p>
<p>#6) Remove from Schedule 4 of the RHPA, clause 12(3) (i.e. subsection 23(5) of RHPA schedule 2.) which gives public access to member's personal information.</p>		✓	

Recommendation	Included	Excluded	Comments
<p>#7) Amend the definition of “patient” in Bill 87 Schedule 4, Clause 7 (i.e. subsection 1(6) of RHPA Schedule 2) to remove time restriction of one year, keeping in line with the minister’s task force recommendations outlined in the report.</p>		<p style="text-align: center;">✓</p>	<p>“an individual who was the member’s patient within the last year or within such longer period of time as may be prescribed from the date on which they ceased to be a patient, and an individual who is determined to be a patient in accordance with the criteria set out in regulations”</p>

References

- ⁱ Punch, D. (2017). *Nurses look forward to expanded scope after announcements at Queen's Park*. Registered Nurses' Association of Ontario. February 24. <http://rnao.ca/news/media-releases/2017/02/24/nurses-look-forward-expanded-scope-after-announcements-queen%E2%80%99s-park>.
- ⁱⁱ Ibid.
- ⁱⁱⁱ College of Nurses of Ontario (2017). Health Minister announces plans to change laws to allow RN prescribing. Toronto <http://www.cno.org/en/news/2017/february-2017/minister-announces-plans-to-change-laws-to-allow-rn-prescribing/>
- ^{iv} Registered Nurses' Association of Ontario (2012). BPG: Woman Abuse: Screening, Identification and Initial Response. http://rnao.ca/sites/rnao-ca/files/BPG_Woman_Abuse_Screening_Identification_and_Initial_Response.pdf
- ^v Registered Nurses' Association of Ontario (2015). iaBPG: Person-and Family-Centred Care. http://rnao.ca/sites/rnao-ca/files/FINAL_Web_Version_0.pdf
- ^{vi} Registered Nurses' Association of Ontario (2006). BPG: Establishing therapeutic relationships. http://rnao.ca/sites/rnao-ca/files/Establishing_Therapeutic_Relationships.pdf
- ^{vii} Registered Nurses' Association of Ontario (2015). Ending Sexual Violence and Harassment for a Healthier Ontario. Submission to the Select Committee on Sexual Violence and Harassment http://rnao.ca/sites/rnao-ca/files/RNAO_Written_Submission_sexual_violence_April_29_2015_final.pdf
- ^{viii} Registered Nurses' Association of Ontario (2008). Position Statement: Violence Against Nurses – 'zero' Tolerance for Violence Against Nurses and Nursing Students. <http://rnao.ca/policy/position-statements/violence-against-nurses>
- ^{ix} Registered Nurses' Association of Ontario (2007). Position Statement: Respecting Sexual Orientation and Gender Identity. <http://rnao.ca/policy/position-statements/sexual-orientation-gender-identity>
- ^x Ibid.
- ^{xi} Ibid.
- ^{xii} Ibid.