



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 114
(2002, chapter 39)

An Act to ensure the continued provision of emergency medical services

Introduced 25 July 2002
Passage in principle 25 July 2002
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Assented to 25 July 2002

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EXPLANATORY NOTES

This bill provides that at the request of the Minister of Health and Social Services, the president and executive director of a regional board must, where an institution's emergency services are interrupted or their maintenance is threatened and the Minister is of the opinion that the situation is or is likely to be prejudicial to the medical services to which every person is entitled, confer on the head of the regional department of general medicine of the regional board the responsibility of establishing in particular a list of on-duty physicians who are to provide medical services in the emergency services facility of the institution.

The bill orders the physicians designated on an on-duty list to report to the emergency services facilities of the institutions to which they are assigned and to participate in the periods of on-duty specified on the list. The bill also orders physicians to refrain, while providing services, from reducing, slowing down or modifying their professional activities in a manner that would interrupt or limit the medical services.

The bill contains certain prohibitions. A physician may not participate in concerted action that would result in the physician reducing, slowing down or modifying his or her professional activity or in becoming a professional who has withdrawn or a non-participating professional within the meaning of the Health Insurance Act. Similarly, the Association des spécialistes en médecine d'urgence du Québec, the Fédération des médecins omnipraticiens du Québec and the Fédération des médecins spécialistes du Québec may not undertake or continue concerted action that involves a contravention on the part of physicians of certain obligations or prohibitions imposed by the Act.

The bill empowers the Conseil des services essentiels to inquire into concerted action, apprehended or in progress, that affects the provision of medical services.

The bill also enacts various measures of an administrative, civil and penal nature for the purposes of the application of the Act.

Bill 114

AN ACT TO ENSURE THE CONTINUED PROVISION OF EMERGENCY MEDICAL SERVICES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

DIVISION I

INTERPRETATION

1. In this Act, unless the context indicates otherwise,

“Association” means the Association des spécialistes en médecine d’urgence du Québec constituted under the Professional Syndicates Act (R.S.Q., chapter S-40);

“Board” means the Régie de l’assurance maladie du Québec;

“Federations” means the Fédération des médecins omnipraticiens du Québec and the Fédération des médecins spécialistes du Québec, both Federations constituted under the Professional Syndicates Act;

“institution” means an institution to which the Act respecting health services and social services (R.S.Q., chapter S-4.2) applies that, on 1 June 2002, was dispensing emergency services;

“physician” means a general practitioner who is a member of a regional board’s regional department of general medicine or a physician who holds an emergency medicine specialist’s certificate.

DIVISION II

MAINTENANCE OF EMERGENCY MEDICAL SERVICES

2. At the request of the Minister of Health and Social Services, the president and executive director of a regional board must, where an institution’s emergency services are interrupted or their maintenance is threatened and the Minister is of the opinion that the situation is or is likely to be prejudicial to the medical services to which every person is entitled, confer the following responsibilities on the head of the regional board’s regional department of general medicine :

(1) establishing, with priority consideration given to the physicians in the territory of the regional board concerned, a list of on-duty physicians who are to provide medical services in the emergency services facility of the institution until the Minister has indicated to the president and executive director of the regional board that such a list is no longer necessary ;

(2) informing each of the physicians whose names appear on the on-duty list established pursuant to subparagraph 1 of the time and place at which the physician is to provide medical services, enabling the physician to present observations in that respect and, if he or she considers it necessary, modifying the list accordingly ; and

(3) seeing to it that the on-duty list established pursuant to subparagraph 1 is complied with and overseeing the participation of the physicians on the list.

In establishing the on-duty list referred to in subparagraph 1 of the first paragraph, the head of the regional department of general medicine of the regional board concerned, or the person responsible pursuant to section 3, must take into account the abilities necessary for the provision by a physician of emergency medical services. In addition, he or she must have particular regard to the location of the physician in relation to the institution in which the physician will be required to provide medical services, the frequency at which the physician will be required to provide the services and the provision of the medical services otherwise provided by the physician, particularly in the emergency services facility of an institution in the region.

3. If the head of the regional department of general medicine is unable or fails to establish the on-duty list referred to in subparagraph 1 of the first paragraph of section 2, the president and executive director of the regional board must confer the responsibilities referred to in that section on one of the members of the supervisory committee of the regional department of general medicine or, where that is not possible, the president and executive director must assume those responsibilities.

4. Except in the presence of exceptional circumstances the existence of which must be demonstrated to the satisfaction of the head of the regional department of general medicine of the regional board concerned or, as the case may be, the person responsible pursuant to section 3, every physician whose name appears on the on-duty list established pursuant to subparagraph 1 of the first paragraph of section 2 is required to report to the emergency services facility of the institution to which he or she is assigned and to participate in the periods of duty as provided on the list. No physician shall, in providing services, reduce, slow down or modify his or her professional activity in a manner that would interrupt or limit the medical services.

Such a physician is deemed to have sufficient status and the privileges necessary for the provision of medical services in the emergency services facility of the institution to which he or she is assigned.

5. No physician practising in the territory of the regional board concerned shall participate in concerted action that would result in the physician reducing, slowing down or modifying his or her professional activity or in becoming a professional who has withdrawn or a non-participating professional within the meaning of the Health Insurance Act (R.S.Q., chapter A-29).

Every notice of withdrawal or non-participation concerning such a physician that is transmitted to the Board between 1 July 2002 and 25 July 2002 is null unless the physician establishes that the notice was not transmitted as part of concerted action.

6. The Association and the Federations are prohibited from undertaking or continuing concerted action that involves a contravention of section 4 or 5 by physicians, whether or not the physicians are members of the Association or one of the Federations.

7. The Association and the Federations must take the appropriate means to induce their members to comply with sections 4 and 5.

8. No person may, by omission or otherwise, prevent or impede the provision of medical services, in particular medical services dispensed in an institution's emergency services facility.

9. No person may help or, by encouragement, advice, consent, authorization or order, induce a physician, the Association, either of the Federations or any other person to contravene any provision of this division.

10. The Conseil des services essentiels may, on its own initiative or at the request of an institution within the meaning of the Act respecting health services and social services, a regional board or the Minister of Health and Social Services, inquire into concerted action, apprehended or in progress, involving the Association, either of the Federations, or physicians practising in the territory of a regional board and that affects the provision of medical services.

11. The Conseil des services essentiels may, if it considers that the concerted action is or is likely to be prejudicial to the medical services to which every person is entitled, exercise the powers set out in sections 111.17 to 111.20 of the Labour Code (R.S.Q., chapter C-27).

DIVISION III

ADMINISTRATIVE AND CIVIL MEASURES

§1. — *Deductions*

12. From the time the Minister of Health and Social Services informs the Board in writing that the Minister has ascertained that the Association or either of the Federations has engaged in an act referred to in section 6 or has

failed to take the means referred to in section 7, the Board shall cease to deduct, for a period of one year, every union assessment, special assessment or other amount in lieu thereof required to be withheld by the Board pursuant to an agreement that binds the Board under section 19 of the Health Insurance Act and to which that of the Federations concerned is a party.

§2. — *Reduction of remuneration*

13. Notwithstanding any inconsistent provision of an Act, regulation or agreement, where the head of the regional department of general medicine or, as the case may be, the person responsible pursuant to section 3, informs the Board that a physician has contravened the first paragraph of section 4, no remuneration may be paid by the Board to the physician for medical services provided elsewhere than in the emergency services facility of the institution on the day on which the contravention took place.

If a payment has been made despite the provisions of the first paragraph, the Board shall recover the amount of the payment by set-off or otherwise.

In addition, after a period of contravention, the remuneration of a physician bound by an agreement under section 19 of the Health Insurance Act normally payable for medical services provided by the physician shall be reduced, for each day or part of a day during which the physician contravened the first paragraph of section 4, by an amount equal to twice the average remuneration paid to a physician by the Board for a day on which a physician completes an on-duty period in the institution's emergency services facility.

14. To establish the average remuneration referred to in the third paragraph of section 13, the Board shall consider the billing particulars of the medical practice of the physicians who completed an on-duty period in the emergency services facility of the institution concerned in the three months preceding the month in which the contravention took place.

15. The Board shall withhold the amounts recovered pursuant to the second and third paragraphs of section 13 and inform each physician concerned of the amounts withheld. Amounts are withheld up to 20% of the remuneration payable to the physician per billing period.

16. The Board shall remit the sums referred to in the third paragraph of section 13 to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3) designated by order of the Government.

17. Any disagreement as to the application of section 13 must be referred to arbitration as if it were a dispute resulting from the application of an agreement within the meaning of section 54 of the Health Insurance Act.

In the case of a disagreement as to the application of the first paragraph of section 13, a physician bound by an agreement under section 19 of the Health Insurance Act is entitled to the reimbursement of the amount withheld only if

the physician establishes that he or she complied with the first paragraph of section 4 or was prevented from complying therewith despite having taken all reasonable means to do so and that the non-compliance with that paragraph was not part of concerted action.

§3. — *Civil liability*

18. The Association and the Federations are liable for any damage caused during a contravention of section 4 or 5 by their members, unless they prove that the damage is not a result of the contravention, that the contravention is not part of concerted action or that the appropriate means to prevent the contravention were taken by the Association or by that of the Federations concerned.

19. Any person who suffers damage by reason of an act performed in contravention of section 4 or 5 may apply to the competent court to obtain compensation.

Notwithstanding article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), where a person referred to in the first paragraph brings a class action under Book IX of that Code by way of a motion in accordance with the second paragraph of article 1002 of that Code, the court shall authorize the bringing of the class action if it is of the opinion that the person to whom the court intends to ascribe the status of representative is in a position to adequately represent the members of the group described in the motion.

DIVISION IV

PENAL MEASURES

20. Every person who contravenes the first paragraph of section 4, the first paragraph of section 5 or a provision of sections 6 to 9 is guilty of an offence and is liable, for each day or part of a day during which the offence continues, to a fine of

(1) \$100 to \$500 in the case of a person other than a person referred to in paragraphs 2 to 4;

(2) \$1,000 to \$5,000 in the case of a physician;

(3) \$7,000 to \$35,000 in the case of an executive, employee or representative of the Association or one of the Federations;

(4) \$25,000 to \$125,000 in the case of the Association or one of the Federations.

21. In penal proceedings under this Act, the status of member of the Ordre des médecins du Québec may be proved by the deposit of a copy of the roll of the Order or of an extract therefrom, certified true by the secretary of the

Order or by any other person it designates for that purpose. In addition, the status of a physician receiving remuneration from the Board under an agreement under section 19 of the Health Insurance Act may be proved by the deposit of the physician's registration card kept by the Board and certified true by the secretary of the Board or by any other person designated for that purpose by the president of the Board.

22. The Board may disclose to the Attorney General any information obtained for the enforcement of the Health Insurance Act or the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5) if such information is required for the purposes of penal proceedings under this Act.

DIVISION V

FINAL PROVISIONS

23. In order to enable the head of the regional department of general medicine or the person responsible pursuant to section 3 to establish the list referred to in subparagraph 1 of the first paragraph of section 2, the Board shall, on request, communicate to the head or the person responsible the names and professional addresses of the physicians who, in the four years preceding the coming into force of this Act, submitted a claim for payment for medical services provided in an institution's emergency services facility.

For the purposes of this section, "institution" means an institution within the meaning of the Act respecting health services and social services.

24. This Act prevails over any inconsistent provision of the Act respecting health services and social services and the Health Insurance Act as well as over the regulations thereunder.

25. Where the president and executive director of a regional board, appointed by the Government, takes office on a date that is later than the date of coming into force of this Act, the responsibilities provided for in sections 2 to 4 shall be exercised by the executive director of the regional board until the time at which the president and executive director takes office.

26. Division II and section 23 of this Act cease to have effect on 31 December 2002 or on any later date to be determined by the Government.

27. The Minister of Health and Social Services is responsible for the administration of this Act.

28. This Act comes into force on 25 July 2002.