Umbrella Legislation Discussion Paper

Proposed Umbrella Legislation for Health Professions
Seeking Regulation

Department of Health and Community Services
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Introduction

The Department of Health and Community Services is engaging in consultations concerning the implementation of umbrella legislation for health profession regulation. The umbrella legislation will not affect health professionals who are already governed by their own legislation. We are seeking commentary from the professions that may be affected by the proposals in this discussion paper. Written submissions are welcomed and can be forwarded to Ms. Megan Collins, Senior Legislative Research Analyst, by Thursday, December 31, 2009 at megancollins@gov.nl.ca.

Professions Seeking Regulation

The Department of Health and Community Services has received requests from various health professions for legislation governing their respective professions. Many of these professions are currently delivering healthcare services as unregulated practitioners.

The Government of Newfoundland and Labrador has recognized the potential need to regulate these health professions to ensure protection of the public. The professions are:

- Acupuncture
- Athletic Therapy
- Audiology
- Dental Hygiene
- Kinesiology
- Podiatry (Orthotics, Chiropody, Pedorthic)
- Medical Laboratory Technology
- Medical Radiation Technology
- Midwifery
- Phlebotomy
- Respiratory Therapy
- Speech-Language Pathology
- Traditional Chinese Medicine

Government Involvement and Regulation

Government has historically been involved in regulating health professionals and has assumed an increasing role in the regulation of health professions in recent years. It is not the intent of government to eliminate professional autonomy through regulation; rather, government aims to strike a balance between professional autonomy and governance in the public interest.

Professional Regulation

Regulation of professions has a long history in Canada. The number of regulated professions continues to grow as professional groups seek government regulation and as new health professions continue to emerge that require regulation.

Regulation of professions is needed when there is a substantial risk of harm to the public if services are improperly delivered by unqualified or incompetent professionals. The Supreme Court of Canada has stated that it is difficult to overstate the importance of the proper regulation of learned professions and has noted the crucial role played by regulatory bodies in protecting the public interest on many occasions.

The primary purpose of professional regulation is public protection. Public protection is achieved when only qualified and competent practitioners are permitted to
deliver healthcare services and members of the professions adhere to high standards of professional conduct.

**Umbrella Legislation Initiative**

Professional regulation has been the focus of review in many jurisdictions and there has been a subsequent influx of change to health regulatory structures. Many Canadian jurisdictions regulate their health professionals through umbrella legislation. Umbrella legislation is a common legislative framework that regulates numerous professions under one statute. Profession-specific issues are typically addressed in regulation.

The Department of Health and Community Services recently conducted a comprehensive review of health professional legislation in British Columbia, Alberta, Manitoba, Ontario and Quebec. This review found that:

- All jurisdictions have recently reviewed the regulation of health professions.
- Umbrella legislation governs health professionals in all jurisdictions with the exception of Manitoba. However, Manitoba recently tabled Bill 18, the Regulated Health Professions Act, in the legislature. Bill 18 is an umbrella act that will regulate health professionals; Manitoba has traditionally regulated health professions under stand-alone statutes.
- Public protection is the purpose of regulating health professions in all jurisdictions.
- There are many similarities in the models of umbrella legislation reviewed. For instance, many jurisdictions have non-exclusive scopes of practice combined with reserved acts, confer ministerial authority, permit practice visits, and require college and council members to take an oath.

This review of health professional legislation has provided the Department of Health and Community Services with the current context of health professional regulation in Canadian jurisdictions.

The Department of Health and Community Services has been exploring a mechanism to regulate professions that do not have sufficiently high numbers to maintain a regulatory structure, both in terms of the cost and providing the personnel necessary to serve on the disciplinary committees. An umbrella act would address the issue of small numbers of practitioners by linking various professionals together for the purposes of covering costs and providing enough people to maintain a licensing body and carry out disciplinary activities. This structure also eliminates the potential for the perceived or real bias that may be associated with professions that are small in numbers being solely responsible for disciplining their own members.

The Minister of Health and Community Services is considering an innovative legislative framework based on a hybrid of other Canadian models to regulate health professions currently seeking regulation. This legislative framework will also likely regulate health professions seeking regulation in the future.
Under an umbrella act, each profession would still be responsible for determining their own educational, licensing and practice criteria. Each group will function independently, just as if they were regulated under separate Acts. Umbrella legislation is intended to bring a number of professions together in a cooperative and supportive capacity for the purpose of regulating these professions.

Objectives of Umbrella Legislation

- To develop an alternative model for professions seeking regulation;
- To develop a model of regulation for professions whose numbers make self-regulation impractical;
- To grant professions the regulation they have requested under a single umbrella act;
- To foster greater confidence in the provincial health care system;
- To protect the public;
- To incorporate the White Paper criteria regarding regulation.

The proposed legislative framework includes:

- one umbrella statute with consistent provisions for governance, registration, complaints, discipline, appeals, public representation, and regulation and by-law making powers;
- an interdisciplinary council with representatives from each professional group;
- professional colleges;
- separate college regulations made with the approval of the Minister.

Overview of Possible Provisions

The following provides a summary of ideas the Department of Health and Community Services intends to include in the umbrella legislation. The construct of this model is open for discussion and the Department of Health and Community Services would greatly appreciate commentary regarding the content of the legislation.

- **Council**: it is envisioned that the role of this inter-disciplinary council will be to handle registration and licensure, form a Complaints Authorization Committee, handle all disciplinary matters, employ staff, set fees, and prepare an annual report. This council will be self-financed by the professions through fees. The composition of this council will include professional representatives elected by colleges and public representatives appointed by the Minister.

- **Colleges**: each professional group may establish a college to prescribe scopes of practice, entry-to-practice requirements, and standards of practice and codes of ethics. Professional groups may come together to establish a single...
college for various professions. The composition of colleges will include professionals members elected from the membership and public members chosen by college members. Colleges will not advocate for the profession; advocacy is the function of associations.

- **Oaths**: elected and appointed members of the council will be required to take an oath stating they will be guided by the public interest in the performance of their duties.

- **Websites**: each college and the council will be required to develop and maintain a website. The Act will prescribe the nature of information to be posted to the website for public information purposes.

- **Regulations**: specific regulations for each health profession, made by the colleges with Ministerial approval, to address profession-specific issues such as scope of practice, reserved titles, registration requirements and standards of practice.

- **Regulation requests**: the legislation will set out a process by which an unregulated health profession may become a regulated health profession and consistent criteria for evaluating professional regulation requests.

- **Ministerial authority**: it is envisioned that the Minister will have the authority to inquire into the functioning of a college or the council and to issue a directive to the college or council to address issues identified in the inquiry.

These provisions will enhance accountability between the professions, government and the public.

- **Reserved titles**: professional titles will be reserved for registered professionals.

- **Mandatory liability insurance**: registered professionals will be required to carry liability insurance.

- **Practice visits**: it is expected that practice visits would be allowed to ensure that continuing competence requirements are met. Colleges, or a person appointed by a college, will conduct practice visits.

- **Professional corporations**: it is intended that the Act will allow professional corporations. The structure and rules of professional corporations will be set out in regulation.

Questions for Comment
The construct of the umbrella model is open for discussion. The Department of Health and Community Services is seeking input. The issues for which commentary is sought include:

1. What other roles or functions do you envision the council will have?
2. What other roles or functions do you envision the college will have?
3. How do you envision the process of electing members to the council?
4. What are your thoughts concerning mandatory reporting to the council by professional members?
5. Should reporting of conduct deserving of sanction, incapacity, sexual abuse of patients, professional misconduct, and admittance for psychiatric care be mandatory?

6. Should mandatory reporting be reserved only for instances of conduct deserving of sanction, or should mandatory reporting be required of other examples provided?

7. What are your thoughts concerning mandatory continuing competence?

8. Do you feel that scopes of practice should be exclusive to a single profession, or should the legislation prescribe overlapping non-exclusive scopes of practice combined with reserved acts for each profession?

9. How do you propose scopes of practice should be defined?

10. If the scope of practice model is to include reserved acts, what acts should be reserved?

11. Do you believe the Minister should have the authority to inquire into any aspect of the functioning of a college or college and to issue a directive to address issues identified in the inquiry?

12. What are the advantages and disadvantages of ministerial authority to inquire into the functioning of a college?

13. Should colleges have the ability to engage in practice visits?

14. How much time do you think will be required for your professions to comply with the Act? For instance, how much time will you require to form a college and establish an election process?

15. When do you expect your first elections may take place?

Conclusion

The proposed model of umbrella legislation addresses the issue of small numbers of practitioners by linking various professionals together for the purposes of covering costs and providing enough people to maintain a licensing body and carry out disciplinary activities. This enables regulation of professions that do not have sufficiently high numbers to maintain a regulatory structure and eliminates the potential for the perceived or real bias that may be associated with professions that are small in numbers being solely responsible for disciplining their own members. Each group may function independently, just as if they were regulated under separate Acts. This model will provide professional groups with the regulation they have been seeking for some time.

This discussion document has provided you with some insight respecting the model of umbrella legislation the Department of Health and Community Services is considering for the regulation of new health professionals, and an opportunity to provide commentary. Please forward written submissions to Ms. Megan Collins, Senior Legislative Research Analyst, by Thursday, December 31, 2009 at megancollins@gov.nl.ca.
Annex 1

**Umbrella legislation**: a common legislative framework that regulates numerous professions under one statute with common sections that apply to all professions and profession-specific regulations.

**Scope of practice**: provides a general description of a profession’s duties and the services that particular regulated healthcare professionals may provide.

**Exclusive scope of practice**: prohibits others from performing an activity contained within a scope of practice for a particular profession if they are not part of a regulated member of that profession.

**Non-exclusive scope of practice**: individual professions do not have exclusive rights to provide any particular health service. Non-exclusive scopes of practice are typically combined with a list of reserved acts.

**Reserved acts**: reserved acts are services or procedures that are done in the course of providing healthcare and that present a significant risk of harm if they are not performed correctly and competently. They may only be performed by those with the expertise and training to perform them.

**Standards of practice**: a set of professional standards developed by colleges that regulate the quality of practice of health professionals.

**Council**: refers to the interdisciplinary council which is the governing body of the health professions. The Council will handle registration and licensure, form a Complaints Authorization Committee, handle all disciplinary matters, employ staff, set fees, and prepare an annual report. The council must carry out its mandate, duties and powers in a manner that serves and protects the public interest.

**College**: the duty of a college is to serve the public interest. Colleges prescribe regulations, scopes of practice, registration requirements, and standards of practice and codes of ethics. A college must carry out its mandate, duties and powers in a manner that serves and protects the public interest.

**Practice visits**: means entering and inspecting any premises or place where the member practices or has practiced a regulated health profession. Colleges, or a person appointed by a college, will conduct practice visits.

**Act:** this term is used interchangeably with the term ‘statute’ throughout this paper. An act is a law passed by the legislature, also known as the House of Assembly.

**Statute:** this term is used interchangeably with the term ‘act’ throughout the paper.

**Regulations:** regulations are made under the authority of acts. Regulations are approved by the Minister and/or Cabinet. They are a part of the written laws in the province.