2007

CHAPTER 36

An Act to amend *The Regional Health Services Act*

(Assented to May 17, 2007)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Regional Health Services Amendment Act, 2007*.

S.S. 2002, c.R-8.2 amended

2 *The Regional Health Services Act* is amended in the manner set forth in this Act.

New Division heading

3 The following heading is added before section 27:

"DIVISION 1
General Matters respecting Responsibilities and Powers".

Section 29 amended

4 Subclause 29(2)(c)(i) is amended by striking out "section 34**" and substituting "**section 33.1 or 34.1**".**

New section 33.1

5 The following section is added after section 33:

"Written agreements with non-designated health care organizations

33.1(1) A regional health authority may enter into a written agreement respecting the provision of health services with a health care organization that is not a designated health care organization, as defined in section 34.

(2) No regional health authority shall make any payments or provide any funding to a health care organization mentioned in subsection (1) for health services provided by that health care organization unless the regional health authority has a written agreement with the health care organization**".**

New sections 34 to 37

6 Sections 34 to 37 are repealed and the following substituted:

"DIVISION 2

Written Agreements with Designated Health Care Organizations

"Interpretation and application of Division

34(1) In this Division and in section 64:

(a) **'designated health care organization'** means:

(i) an affiliate; or

(ii) any other prescribed health care organization that operates a special care home designated pursuant to *The Facility Designation Regulations*;

(b) **'written agreement'** means an agreement mentioned in subsection (2).

(2) This Division and the regulations made for the purposes of this Division apply to every agreement:

(a) that is entered into pursuant to this Division on or after the coming into force of this Division; or

(b) that:

(i) was entered into before the coming into force of this Division pursuant to section 34 of *The Regional Health Services Act*, as that section existed on the day before the coming into force of this Division, between a regional health authority and a designated health care organization; and

(ii) exists on the day that this Division comes into force.

(3) This Division and the regulations made for the purposes of this Division override the provisions of written agreements.

(4) This Division and the regulations made for the purposes of this Division prevail if there is any conflict between this Division and those regulations and:

(a) any written agreement;

(b) any other provision of this Act;

(c) any former provision of this Act;

(d) any other Act or any former provision of another Act;

(e) any regulations made pursuant to an Act; or

(f) any other law.

"Written agreements respecting provision of health services

34.1(1) Subject to subsections (2) to (10), a regional health authority may enter into a written agreement respecting the provision of health services with a designated health care organization.

(2) No regional health authority shall make any payments or provide any funding to a health care organization mentioned in subsection (1) for health services provided by that health care organization unless the regional health authority has a written agreement with the designated health care organization.

(3) A written agreement entered into, or renewed, on or after the coming into force of this Division must contain the following provisions:

(a) subject to subsection (4), provisions respecting the term of the written agreement;

(b) provisions respecting the health services to be provided by the designated health care organization;

(c) provisions respecting the funding to be provided by the regional health authority for the health services provided by the designated health care organization;

(d) provisions respecting any performance measures and targets to be achieved by the designated health care organization in relation to the provision of health services by the designated health care organization;

(e) provisions respecting the reports the designated health care organization is required to make to the regional health authority, including the records, reports, returns and financial information the designated health care organization must provide;

(f) provisions giving either party to the agreement the right to terminate the written agreement for any reason before the expiry of the term of the agreement on giving the other party at least 365 days' written notice of the intention to terminate;

(g) provisions requiring either party to the agreement to provide the other party with at least 365 days' written notice before the expiry of the agreement that:

(i) if the agreement does not contain provisions respecting renewal of the agreement, the party does not intend to enter into a new agreement with the other party; or

(ii) if the agreement does contain provisions respecting renewal of the agreement, the party does not intend to renew the agreement;

(h) provisions giving either party the right to terminate the written agreement in the event of a breach of the written agreement by the other party and provisions respecting the rights of the parties on termination resulting from a breach of the written agreement;

(i) any additional prescribed provisions.

(4) The minimum term of a written agreement is:

(a) five years; or

(b) any other period that the parties may agree to in the written agreement.

(5) A written agreement must not be inconsistent with this Act or the regulations.

(6) It is an implied provision of every written agreement that the parties must comply with:

(a) this Act and the regulations;

(b) any other applicable Act and any regulations made pursuant to that Act;

(c) any applicable Act of the Parliament of Canada and any regulations made pursuant to that Act; and

(d) any applicable municipal bylaws.

(7) Within 30 days after the date on which the regional health authority and the designated health care organization have entered into or renewed a written agreement for the purposes of this section, the regional health authority shall provide a copy of the written agreement to the minister.

(8) Subsections (3) to (7) apply, with any necessary modification, to an amendment to a written agreement.

(9) A regional health authority may provide funding respecting the provision of health services to a designated health care organization without a written agreement that complies with this section if:

(a) the regional health authority and the designated health care organization are in the process of negotiating a written agreement for the purposes of this section; and

(b) either:

(i) the period of funding does not exceed 120 days; or

(ii) the funding occurs while matters respecting the conclusion of a written agreement between the regional health authority and the designated health care organization are being mediated pursuant to subsection (10).

(10) If a regional health authority and a designated health care organization are unable to conclude a written agreement:

(a) either the regional health authority or the health care organization may refer the matter to mediation; and

(b) section 35 applies, with any necessary modification, to the mediation mentioned in clause (a).

(11) If the written agreement between a regional health authority and the designated health care organization mentioned in clause 34(2)(b) contains provisions that are inconsistent with this Act or the regulations:

(a) those provisions are void to the extent that they are inconsistent with this Act and the regulations; and

(b) within one year after the coming into force of this section, the written agreement is to be amended to make its provisions consistent with this Act and the regulations.

"Mediation of written agreement

35(1) In this section, **'manager of mediation services'** means the manager of mediation services appointed pursuant to section 14.1 of *The Department of Justice Act*.

(2) Every regional health authority and every designated health care organization that has entered into a written agreement is deemed to have agreed to submit to mediation and arbitration in accordance with this section and section 36 all matters involving:

(a) the meaning or application of the written agreement;

(b) the rights or obligations under the written agreement; or

(c) an alleged breach of the written agreement.

(3) Either the regional health authority or the designated health care organization, or both of them, may request the manager of mediation services to appoint a mediator to assist them in resolving any matter mentioned in subsection (2).

(4) A request pursuant to this section must:

(a) be in writing;

(b) state the matter that is to be referred to mediation; and

(c) if the request is made by one party to the written agreement, be provided to the other party before, or as soon as is reasonably possible after, it is provided to the manager of mediation services.

(5) On receiving a request pursuant to subsection (2), the manager of mediation services may appoint a person as a mediator to assist the parties in reaching an agreement on the matter referred to the mediator.

(6) If the manager of mediation services appoints a mediator pursuant to this section, the manager of mediation services shall provide the parties with a written notice containing both of the following:

(a) the name of the mediator appointed;

(b) the mediator's fees and expenses that the parties must pay.

(7) On receipt of a written notice pursuant to subsection (6), each of the parties shall provide the mediator with a written statement respecting the matter that has been referred to mediation.

(8) Any mediation pursuant to this section is to be conducted within 120 days after the date the manager of mediation services has provided the parties with a written notice pursuant to subsection (6).

(9) The parties to the written agreement shall pay an equal share of the mediator's fees and expenses set out pursuant to subsection (6).

(10) If the period within which mediation is to be conducted has expired and the parties have not reached an agreement on any matter referred to the mediator, the mediator shall provide a written report, with any recommendations on those matters that the mediator considers advisable, to:

(a) the parties to the written agreement; and

(b) the minister.

(11) In a report made pursuant to subsection (10), the mediator may note the following:

(a) that the mediator has been unable to resolve any matter referred to the mediator;

(b) that either or both parties have refused to participate in the mediation or to resolve the dispute.

"Arbitration of written agreements

36(1) Every regional health authority and every designated health care organization that has entered into a written agreement is deemed to have entered into an arbitration agreement as defined in *The Arbitration Act, 1992* to refer to arbitration pursuant to this section and *The Arbitration Act, 1992* all matters involving:

(a) the meaning or application of the written agreement;

(b) the rights or obligations under the written agreement; or

(c) an alleged breach of a written agreement.

(2) Either party to a written agreement may notify the other party that it wishes to submit to arbitration any matter mentioned in subsection (1), or both parties to a written agreement may agree to submit to arbitration any matter mentioned in subsection (1).

(3) A request pursuant to subsection (2) may be made only if:

(a) the matter has been submitted to mediation pursuant to section 35; and

(b) the period within which mediation is to be conducted has expired and a written report has been provided pursuant to subsection 35(10).

(4) The party or parties that wish to submit a matter to arbitration shall provide written notice of the submission to:

(a) the minister; and

(b) in the case of a written notice provided by only one party, the other party to the written agreement.

(5) The provision of a written notice pursuant to subsection (4) is deemed to commence the arbitration.

(6) An arbitration pursuant to this section is to be conducted in accordance with *The Arbitration Act, 1992* and this Act.

"Compensation for termination or non-renewal of written agreement

36.1(1) In this section:

(a) **'assets and ongoing business operations'** means the assets and ongoing business operations of the designated health care organization, including any consideration for intangible assets, that are directly associated with providing health services under a written agreement but, subject to the regulations, not including any assets that were acquired in whole or in part with public funding;

(b) **'fair market value'** means, subject to this section and the regulations, the amount that, on the date a written agreement is terminated or expires, represents the fair market value of the assets and ongoing business operations of the designated health care organization that might be expected to be realized if the assets and ongoing business operations were sold in an open and unrestricted market by a willing seller to a knowledgeable and willing purchaser and expressed in terms of cash;

(c) **'public funding'** means public funding as defined in the regulations.

(2) This section applies only if the regional health authority that is a party to the written agreement gives the designated health care organization a written notice that the regional health authority intends:

(a) to terminate the written agreement before the expiry of the term of the written agreement for a reason other than a substantial breach of the written agreement by the designated health care organization; or

(b) not to renew the written agreement or not to enter into a new written agreement with the designated health care organization.

(3) If a regional health authority gives a written notice mentioned in subsection (2), it must do so in accordance with the requirements of clause 34.1(3)(f) or (g), as the case may be.

(4) If the regional health authority gives a written notice mentioned in subsection (2), the designated health care organization may require the regional health authority to acquire its assets and ongoing business operations at fair market value.

(5) Every regional health authority and every designated health care organization that has entered into a written agreement is deemed to have agreed to submit to mediation and arbitration all disputes involving the fair market value of the assets and ongoing business operations of the designated health care organization.

(6) Sections 35 and 36 apply, with any necessary modification, to the mediation and arbitration mentioned in subsection (5).

"Ceasing to make payments

37(1) A regional health authority may act pursuant to this section if the regional health authority is satisfied that any of the following circumstances exist:

(a) the safety of persons receiving health services from a designated health care organization is being jeopardized;

(b) a designated health care organization has ceased to provide health services that comply with reasonable standards of care;

(c) a designated health care organization has ceased to function or is otherwise not capable of carrying out its responsibilities.

(2) Before acting pursuant to subsection (4), the regional health authority must provide a written notice to the designated health care organization:

(a) setting out the circumstances that the regional health authority is satisfied exist in relation to subsection (1) and the facts surrounding those circumstances; and

(b) informing the designated health care organization of its right to make written representation to the regional health authority within 14 days after receiving the written notice.

(3) A designated health care organization may make written representations to the regional health authority within 14 days after the date the designated health care organization receives a written notice pursuant to subsection (2) respecting:

(a) the facts and circumstances set out in the written notice and any other information that the designated health care organization considers relevant, including facts to establish that the circumstances mentioned in the written notice have been rectified or no longer exist; and

(b) whether or not the regional health authority should act pursuant to subsection (4).

(4) Notwithstanding any written agreement between a regional health authority and a designated health care organization, the regional health authority may reduce or cease making payments under the written agreement to the designated health care organization if the designated health care organization does not satisfy the regional health authority within the 14-day period mentioned in subsection (3), or any longer period that the regional health authority may agree to, that:

(a) the circumstances mentioned in the written notice provided pursuant to subsection (2) no longer exist or have been rectified; or

(b) the regional health authority should not act pursuant to this subsection.

(5) The regional health authority shall send a written notice of its decision to act pursuant to subsection (4) to the designated health care organization as soon as possible after taking that action**".**

Section 38 amended

7 Clause 38(1)(c) is amended by striking out "section 34**" and substituting "**section 33.1 or 34.1**".**

Section 55 amended

8 Clause 55(2)(a) is amended by striking out "section 34**" and substituting "**section 33.1 or 34.1**".**

Section 64 amended

9 Clause 64(n) is repealed and the following substituted:

"(n) for the purposes of clause 34(1)(a), prescribing health care organizations as designated health care organizations;

"(n.1) for the purposes of clause 34.1(3)(h), prescribing provisions to be included in agreements between regional health authorities and designated health care organizations;

"(n.2) for the purposes of section 36.1, respecting how assets acquired in whole or in part with public funding are to be included or excluded in determining assets and ongoing business operations or otherwise dealt with in determining fair market value**".**

Transitional - limitation of actions

10(1) In this section:

(a) **"claim for loss or damage"** includes any claim in damages or debt for unjust dismissal, breach of a written agreement, inducing breach of a written agreement, interference with a written agreement, mental distress, loss of reputation, defamation or any other cause of action in contract, tort or equity arising from or incidental to the creation, termination or expiration of a written agreement or the refusal to renew a written agreement;

(b) **"written agreement"** means a written agreement as defined in clause 34(1)(b).

(2) No action or proceeding lies or shall be instituted against the Crown, the minister, the department, a regional health authority, any member or former member of a regional health authority or any officer, director, employee or agent or former officer, director, employee or agent of the Crown, the minister, the department or a regional health authority based on any claim for loss or damage resulting from the enactment or application of this Act.

(3) Every claim for loss or damage resulting from the enactment or application of this Act is extinguished.

Coming into force

11 This Act comes into force on proclamation.

REGINA, SASKATCHEWAN
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THE QUEEN'S PRINTER