

November 26, 2019

**Dear fellow IHF operators,**

### **Concerns regarding Bill 138**

We are writing to inform you about a very serious matter affecting our sector. It relates to legislation that has been introduced into the provincial legislature as Bill 138, *Plan to Build Ontario Together Act, 2019*. It contains changes to the *Independent Health Facilities Act* ("IHFA"), as well as other statutes. The Government's intention is to have the new legislation passed in early December. (For more information, please see the following link; <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-138>. Two sections of Bill 138 relate to the IHF community: Schedule 15 which includes proposed amendments to the *Health Insurance Act* ("HIA") and Schedule 19 which includes proposed amendments to the *IHFA*. The current legislation, the *Independent Health Facilities Act, 1990*, may be found at <https://www.ontario.ca/laws/statute/90i03>).

Bill 138 seeks to significantly strengthen the Ministry of Health's audit and payment accountability powers. In our view, the new legislation raises serious concerns for the IHF sector.

Bill 138 would give the Ministry the right to 'set-off' any monies it claims are owing against future OHIP technical fees billed by a licensee, without first proving that there has been an overpayment to the IHF. In such audit or payment recovery actions, the Ministry could recover payment and the burden of proof would then be on the IHF to prove that the Ministry was wrong in its allegations of overbilling. To make matters worse, Bill 138 would allow the Ministry an unlimited right to go back years, find one or more examples of what it interprets to be a billing error and then extrapolate (i.e. estimate), and force a repayment without further proof.

We believe that such actions are unfair and capable of potential misuse. They deprive health care providers of procedural fairness and natural justice. We do not believe that such powers are appropriate or necessary to ensure accountability in our sector.

Bill 138 also introduces some of the same audit and payment accountability provisions into the HIA, which governs physician billings. The Ontario Medical Association has strongly and vocally opposed these proposed amendments to the HIA. We understand that the OMA is attempting to negotiate adjustments to the proposed powers set out in the bill. The IDCA has reached out to the OMA with a request that they ensure that any modifications to Bill 138 that they are able to secure for physicians also be extended to apply to the IHFA. We have explained to the OMA that, without ensuring that corresponding protections exist in the IHFA, the Ministry could attack physicians indirectly, by attempting recovery of technical fees through an onerous and unfair process.

The IDCA is very concerned about potential unfairness in how these new Ministry powers may be operationalized.

We would ask each IHF operator to contact your local MPP and let them know that you are concerned about the potential misuse of the powers being granted to the Ministry under Bill 138. Also, please speak to your physicians and ask them to communicate with their OMA section and with the OMA president directly. It is imperative that when the OMA speaks to the Ministry that they understand that it is essential that the audit and payment recovery provisions in the HIA and the IHFA be the same.

At the same time, the IDCA is submitting a letter to the Minister of Health, the Honourable Christine Elliott, regarding the need for careful review of Bill 138 and its application to the IHF sector. Below we suggest wording for you to email to the Minister and your local MPP in communities where you have facilities. We encourage all IHF owners to take action immediately.

Feel free to contact our Executive Director, Stephanie Bolton ([sbolton@idca.ca](mailto:sbolton@idca.ca)), for more information.

We will be in touch.

Sincerely,

The Board of Directors of the Independent Diagnostic Clinics Association