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**November 28, 2019**

**Office of the Deputy Premier and Minister of Health**

**777 Bay Street, 5th Floor**

**Toronto ON**

**M7A 1N3**

**Dear Deputy Premier and Minister of Health Elliot:**

**Concerns regarding Bill 138 relating to the IHF Sector**

We are writing on behalf of the independent health facilities of Ontario (‘IHFs’), which consist of community-based healthcare clinics. This communication concerns the legislation that has been introduced into the provincial legislature as Bill 138, *Plan to Build Ontario Together Act, 2019.* In our view, the new legislation raises serious concerns for the IHF sector.

Bill 138 seeks to significantly strengthen the Ministry of Health’s audit and payment accountability powers. Our concern relates to the potential abuse of the powers being given to the Ministry under this legislation.

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 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 overpayment. To make matters worse, Bill 138 would allow the Ministry an unlimited right to go back in time to find alleged overpayments. The legislation would also permit the Ministry to use statistical inference to extrapolate the amount owing by an IHF without having to prove actual overbilling by the IHF. Taken together, the Ministry would theoretically be able 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 *Health Insurance Act* (‘HIA’), which governs physician billings. We understand that the Ontario Medical Association (‘OMA’) has strongly and vocally opposed these amendments to the HIA. We further understand that Ministry staff is in discussions with the OMA 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 in favour of physicians also be extended to IHFs under the *Independent Health Facilities Act, 1990* (‘IHFA’). We maintain that unless the same protections that are afforded physicians under the HIA exist for IHFs under the IFHA, the IHF community will be exposed to unilateral inequitable actions.

The IDCA is very concerned about how the new audit and payment recovery powers granted to the Ministry may be operationalized.

As always, the IDCA is available to continue to work with the Ministry of Health to carefully review the implications of Bill 138 as it relates to community-based healthcare services and its application to the IHF sector, which provides more than 50 per cent of diagnostic imaging services in Ontario.

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

Sincerely,

**The Board of Directors of the Independent Diagnostic Clinics Association**