BRIEFS

Bill 15 and legislative guarantees of health and social services in English

May 15, 2023 CHSSN

1. Introduction

This brief presents a review of the impact of Bill 15 on certain key provisions of the legislative guarantees of health and social services in English. Bill 15 proposes to renew the framework for the health and social services system. A central feature is the establishment of Santé Québec that will amalgamate and control the public network. The Minister will retain functions with regard to priorities, objectives and orientations, as well as exercise certain powers to supervise the system. Taking into account changes to network operations and governance, the brief will review the Bill's impact on two key elements of the application of the entitlement to services in English. Specifically, amendments are proposed to secure the development of access programs at the institutional level; to add access mechanisms to access programs; and to anchor regional access committees to the institutions required to implement access programs.

2. The Community Health and Social Services Network (CHSSN)

The Community Health and Social Services Network (CHSSN) was founded in 2000 by a group of community leaders who recognized the importance of mobilizing English-speaking communities to ensure better access to English-language health and social services. Since its inception, the CHSSN has built the capacity of organizations across the province to become experts on the needs and realities of English-speaking communities and give them the tools to become active participants in the improvement of access to services in English. Today the CHSSN is a network of over 70 community resources, associations, foundations and other stakeholders dedicated to the development, through partnership, of health and social services for English-speaking communities in Quebec.

The CHSSN and its associated community health networks subscribe to an evidence-based development model that has successfully mobilized English-speaking communities and created partnerships with Quebec's health and social services system. The 22 community networks supported by a CHSSN program coordinate multiple partnerships at the local level. A significant number of these partnerships are directly with health and social services institutions, supporting projects and initiatives engaging the community sector. Other partnerships are with community organizations working to strengthen community resources and collaboration between different sectors, such as education, health and justice.

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3. Language and access: the importance of communication

The Ministère de la santé et des services sociaux (MSSS) has affirmed the importance of language in the delivery of quality health and social services. In its guide for the development of government-approved access programs, effective communication is deemed necessary to ensure that English-speaking persons are able to understand the services offered. Clear communication is considered vital in order to ensure the safety and quality of the services provided. Supporting effective communication with English-speaking persons "ensures the information exchanged is accurate, that informed consent is obtained and that confidentiality is maintained at all times". The following is an extract from the MSSS guide that underscores this principle:

> "In the health and social services field, it is recognized that the user's language is an essential tool in ensuring the success of clinical interventions. To receive adequate services, an English speaker, like any other person, needs to be listened to, needs to communicate. When a person's health or well-being is at stake, being able to speak in English may become a need, even a necessity. Recognizing this need and responding to it in an appropriate and personalized way are key to a successful clinical intervention. To improve communication and the response to the user's needs during a clinical intervention, the care provider who is responsible for responding to and guiding the user must be familiar with the content of the access program and the information must be easy to use. The care provider must be able to inform the user of where and how he can obtain English-language services. To this end, access mechanisms for services must be made public and readily accessible to care providers and anyone who wants to consult them."

The guide cites scientific literature containing examples of how language barriers compromise the accessibility and quality of services. These include medication errors, misdiagnosis, less frequent and longer clinic visits, among others. In addition to the safety factors associated with poor communication, language barriers engender difficulties for English-speakers navigating the health and social services network. For service providers, issues with communication may mean that services are not provided to the same standard as those applied to others; or that informed consent to treatment is not adequately ensured.

4. The right to services in English and access programs

The CHSSN is pleased that Bill 15 includes the entitlement of health and social services in English. The statement of entitlement is the foundational article underpinning other provisions governing specific aspects of implementation of the right to services in English. The Bill 15 formulation does not deviate from the provision in section 15 of the Act respecting health services and social services (S-4.2). The entitlement statement has been in force since the adoption of Bill 142 in 1986.

> "16. English-speaking persons are entitled to receive health services and social services in the English language, in keeping with the organizational structure and human, material and financial resources of the institutions

providing such services and to the extent provided by the access program referred to in section 348."

Bill 15

However, Bill 15 proposes a major change to the development of access programs, mandating Santé Québec to develop an access program for the English-speaking population:

"348. Santé Québec develops a program of access to English-language health services and social services for the English-speaking population it serves. The program must identify the services offered by institutions that are accessible in the English language for those persons. Santé Québec may, with the consent of a private institution, specify in the access program the services that may be provided in the English language to its users by the institution under an agreement. The program must be approved by the Government and revised at least once every five years."

Bill 15

The article amends previous formulations that have guided the development of access programs since 1989. In early 2015, Bill 10: An Act to modify the organization and governance of the health and social services network (O-7.2) was adopted and introduced important changes to the development of access programs. The key gain was the transfer of access program development from the former agences to the institutions themselves. This was considered a positive step, as the institutions providing their services in English also had to prepare the plans to ensure their access in English.

Bill 15 moves the legal requirement to develop an access program from the institutional level to the central body, Santé Québec. The effect may be access programs that are less connected to the institutional realities and the specific needs of the English-speaking population.

4.1 Institutions and access programs

What are the features of an access program that favour its development and implementation at the institutional level?

The following are relevant extracts from the MSSS guide for the development of access programs.

"An access program identifies the manner, the service and the facility for which there is an obligation to make health and social services accessible in English to the English-speaking population, taking into account the institution's human, physical and financial resources."

"The pursuit of the objectives of accessibility, continuity and quality of health and social services is guided by the principles of population-based responsibility and the hierarchical organization of services. These principles must be reflected in the access programs for English-language health and social services of all service programs."

"For the access program to achieve its potential for success, the participation and accountability of all directors and management staff is essential. Clinical directors, human resources directors and quality, assessment, performance and ethics directors all have major roles to play

to ensure the development, implementation and continuous improvement of an effective access program that meets the English-speaking population's needs."

"Clinical directors, cognizant of the particular characteristics of their territory's population with respect to health and wellness, help establish a portrait of needs and issues associated with the provision of services to the English- speaking population on this territory. Once a portrait of their population has been established, institutions analyze gaps to be addressed between the offer of services and needs. They then determine which priority clinical and organizational targets will be included in the access program, with the objective of aligning the needs identified with access to English-language services."

"Beyond the commitment of the institution's management staff, the board of directors and the president and chief executive officer of the integrated centre must promote the development of an organizational climate that recognizes the importance of language access as a determinant of service quality and safety."

"In the health and social services field, people's participation in treatment plans and service plans and in decisions that affect their health and well-being is necessary to ensure successful outcomes. On a collective level, the participation of the members of English-speaking communities is essential to the development of an effective access program. In each region or territory, the procedure used to develop the access program must engage people from these communities and allow them to voice their needs with respect to the provision of English-language services. It is the institution's responsibility to take the necessary steps to ensure these needs are taken into account in the organization and provision of services."

4.1.1. Amendment to article 348

In order to ensure that access programs continue to be developed at the institutional level, the CHSSN proposes that Bill 15 explicitly assign the mandate to the institutions, in collaboration with Santé Québec. The CHSSN has identified a provision in Bill 15 that can serve as the principle for an amendment to the current formulation of article 348.

"29. Santé Québec must follow sound management practices showing due regard for the principle of subsidiarity.

...

For the purposes of the first paragraph, "principle of subsidiarity" means the principle whereby powers and responsibilities must be delegated to the appropriate level of authority so that decision-making centres are adequately distributed and brought as close as possible to the users."

Bill 15

The *Act to modify the organization and governance of the health and social services network (O-7.2*) contained language detailing certain steps in preparing an access program (section 76). For example, the institution must develop a program jointly with other public institutions, must identify the English-language services

that are available in the specified facilities, and must set out the language requirements for the recruitment or assignment of the personnel needed to provide such services. These provisions are not included in Bill 15.

To ensure greater certainty in the development of access programs, and in recognition of the principle of subsidiarity in article 29, the following amendment is proposed:

> “Each institution, in collaboration with Santé Québec, must, in the centres it specifies, develop a program of access to English-language health services and social services for the English-speaking population it serves or, if applicable, develop such a program jointly with other public institutions in the centres it specifies that are operated by those institutions. The program must identify the English-language services that are available in the specified facilities. It must also set out the language requirements for the recruitment or assignment of the personnel needed to provide such services. An institution may, with the consent of a private institution, specify in the access program the services that may be provided in the English language to its users by the institution under an agreement. The program must be approved by the Government and revised at least once every five years.”

4.1.2. Amendment to article 62

Bill 15 has identified access mechanisms as an auxiliary function of Santé Québec in its provision of health and social services. Article 62 requires that access mechanisms take into account the sociocultural and linguistic characteristics of the user. Consequently, access mechanisms could be an added feature of an access program.

The CHSSN proposes that the phrase “and the access program” be inserted into article 62.

> “62. Where Santé Québec implements a mechanism for access to services in the field of health and social services, it determines, in particular, the terms governing the priority of access to all or part of those services. It may also put in place systems for the distribution and referral of users among health professionals or social services professionals.
>
> Santé Québec must ensure that its mechanism for access to services takes into account users’ sociocultural and linguistic characteristics **and the access program**, and that it makes it possible to coordinate the activities of public institutions and private providers of services in the field of health and social services.”
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5. Regional access committees

Community organizations in English-speaking communities actively build the capacity of community members to represent their community effectively in the governance and advisory structures of the health and social services network. One

such structure is the regional access committee which, as a result of the reform in 2015, advises an institution on the development and implementation of its access program. This is a key relationship that ensures the program responds to the needs of local English-speaking communities. Another important feature of the reform was the requirement that committee members be representative of the region's English-speaking population; and that organizations promoting the interests of English-speakers be involved in proposing candidates. Bill 15 provides that regional access committees advise Santé Québec on access programs, not institutions. Furthermore, Santé Québec will determine the regulations governing regional access committees, which puts into question the current provisions ensuring the participation of English-speaking representatives on committees, and their organizations in the nomination process.

> "350. Regional committees, whose formation is provided for by regulation of Santé Québec, are established within Santé Québec and responsible for
>
> (1) giving their opinion to Santé Québec concerning the access program developed by Santé Québec in accordance with section 348; and
>
> (2) evaluating the access program and suggesting modifications to it where expedient.
>
> Santé Québec determines, by regulation, the composition of the regional committees, their process for an invitation for applications, their rules of operation and internal management, the rules governing the administration of their affairs and their functions, duties and powers."

Bill 15

It is useful to refer to the articles in previous legislation that have detailed the formation of the regional access committee.

> "510. The Government shall, by regulation, provide for the formation of regional committees entrusted with
>
> (1) advising the agency concerning the access programs developed by that agency in accordance with section 348;
>
> (2) evaluating the access programs and suggesting modifications to them where expedient.
>
> The agency concerned shall determine by by-law the composition of its regional committee, its rules of operation and internal management, the manner in which its affairs are to be conducted and its functions, duties and powers.

S-4.2

This section in the *Act respecting health services and social services* was amended in 2015 by section 108 of the *Act to modify the organization and governance of the health and social services network* (O-7.2).

> "108. For the purposes of section 510 of the Act, the references to an agency... are references to a public institution...

The by-law referred to in the second paragraph of section 510 of the Act must prescribe that a regional committee is to be composed of not fewer than seven nor more than eleven members who are representative of the region's English-speaking population. It must also prescribe that the members of the committee are to be appointed by the board of directors of the integrated centre from a list of names provided by organizations that promote the interests of English speakers and are identified by the provincial committee set up in accordance with section 509 of the Act.

In the Montréal region, the lists of names are provided by organizations that promote the interests of English speakers and are identified by the integrated centres recognized under section 29.1 of the *Charter of the French language*.

In regions having more than one public institution, the by-law mentioned in the second paragraph is adopted after consultation with those institutions."

O-7.2

In light of previous legislation, the provision in Bill 15 raises a question about the efficacy of attaching the regional access committee to Santé Québec; and concern about the lack of detail with respect to a regional committee's formation and representativity of English-speaking communities. The CHSSN proposes an amendment to address these issues.

Certain provisions in Bill 15 open up a possibility for an amendment that would reconstitute the regional access committee at the institutional level. Section 106 states that an institution council is established in each Santé Québec institution. When appointing a member to the institution council, Santé Québec's board of directors must take into account the sociocultural, ethnocultural, linguistic or demographic composition of the user population the institution serves (108).

Among other functions, the institution council gives its opinion to the president and executive director on the social and health needs and the distinctive characteristics of the communities forming the population served by the institution (117). This opens the possibility that the institution council can also give its opinion on an access program. Section 118 states:

> "118. The institution council maintains relations with the communities forming the population served by the institution. As needed, it holds consultations, asks for opinions and receives and hears the requests and suggestions from persons, bodies or associations. It may also create subcommittees."

5.1 Amendment to article 128

The CHSSN proposes an amendment to article 128 to add a regional access committee to the two other committees of the institution council named in the Act:

> "128. In addition to the watchdog committee, the advisory committee and **the regional access committee**, the institution council may establish any other committee to advise it in the exercise of its functions. It determines

> the composition, functions, duties and powers of the committee, and the rules governing the administration of its affairs and its internal management."

If this were to be retained as an amendment, provisions would have to be added to the section: Committees formed by the institution council to spell out the regional access committee's composition, functions, duties, powers and rules for administration and internal management. To maintain the integrity of regional access committees as they currently exist, the CHSSN recommends integrating the substance of article 108 of the *Act to modify the organization and governance of the health and social services network* (O-7.2).

6. Institutional governance

Bill 15 is consequential with respect to its removal of the current institutional governance structure to be replaced by the amalgamation of the institutions into Santé Québec and administered by the Santé Québec board of directors (1087). Among the many implications is the loss of representation of English-speaking communities from institutional governance of non-designated institutions.[1] For example, the *Act to modify the organization and governance of the health and social services network* (O-7.2) prescribed that the Minister must establish profiles before appointing independent directors:

> "15. Before appointing the independent directors, the Minister must establish competency, expertise or experience profiles....In the case of the board of directors of an integrated health and social services centre, one of the independent directors corresponding to a profile listed in any of subparagraphs 1 to 4 of the first paragraph must be appointed from a list of names provided by the regional committee formed in accordance with section 510 of the Act respecting health services and social services."
>
> **O-7.2**

Furthermore, it is not clear that in the naming of the board of directors of Santé Québec, representation of the English-speaking community and its institutions would be assured. Other than a reference to a board member being selected after consultation with users' committees, there is no other reference to requirements that would ensure a board member is selected after consultation with English-speaking communities (30-36).

The CHSSN recommends that the Government consult the designated institutions named in Schedule II as well as representative organizations of English-speaking communities on an amendment to ensure one director be appointed from a list of names provided by Schedule II institutions and representative organizations of English-speaking communities.

7. Conclusion

The collaboration between the CHSSN, its associated community networks and Quebec's health and social services system reflects the shared goal of improving access to health and social services in English for English-speaking communities. This partnership approach has built a solid foundation of measures that are firmly anchored in the legislative guarantees of services in English. These measures are contributing to the strengthening of communities, the adaptation of the health and

social services system to better respond to needs, and the creation of the knowledge base supporting the range of actions aiming to improve access to services in English. The CHSSN believes the amendments proposed to the Commission de la santé et des services sociaux will contribute to greater certainty in the application of the legislative guarantees, and will affirm English-speaking communities as full partners in the Quebec's health and social services system.

Thank you.

Reference(s)

MSSS. Guide pour l'élaboration de programmes d'accès aux services de santé et aux services sociaux en langue anglaise, cadre de référence. April 2018.

The CHSSN notes that Bill 15 has a number of provisions specifically related to the status of designated institutions within Santé Québec (Schedule II of the Act). These provisions (282-293) touch principally on the following: organizational structure and management of the grouped institution; the grouped institution's members' rights and obligations; formation of a board of governors or board of delegates; consent of members regarding services of a cultural or linguistic nature; disposition of immovables.

The CHSSN also notes Bill 15 contains three articles describing Saint Brigid's-Jeffery Hale Hospital's advisory status with the Santé Québec board of directors. These provisions (1171-1173) cover the following: administration of services of the grouped institution; appointment of the director; liaison with the Santé Québec board of directors including making recommendations on a range of administrative and community subjects.

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