



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 70

(2008, chapter 8)

**An Act to amend the Act respecting
health services and social services,
the Health Insurance Act and the Act
respecting the Régie de l'assurance
maladie du Québec**

**Introduced 18 December 2007
Passed in principle 3 April 2008
Passed 27 May 2008
Assented to 28 May 2008**

EXPLANATORY NOTES

This Act introduces, for the purposes of the provisions of the Act respecting health services and social services that deal with regional storage services for certain information required in order to provide health services, the principle of implicit consent, by all persons who receive such services in Québec, to the storage of that information by an agency or institution the Minister authorizes to set up regional storage services or by the Régie de l'assurance maladie du Québec in the cases provided for by law. Accordingly, it sets out the operating rules that come into play when a person opts out of personal information storage.

This Act also provides that the information stored includes a copy of the historical data that relate to certain information.

It proposes amendments to the Health Insurance Act in order to clarify certain rules relating to the unique identification numbers that the Régie de l'assurance maladie du Québec assigns to persons who receive health services in Québec.

Lastly, this Act makes a number of consequential amendments to the Act respecting the Régie de l'assurance maladie du Québec.

LEGISLATION AMENDED BY THIS ACT:

- Health Insurance Act (R.S.Q., chapter A-29);
- Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5);
- Act respecting health services and social services (R.S.Q., chapter S-4.2).

Bill 70

AN ACT TO AMEND THE ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES, THE HEALTH INSURANCE ACT AND THE ACT RESPECTING THE RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

1. Section 19.0.2 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended

(1) by inserting “expiration date of the health insurance card,” after “insurance number,” in the seventh and eighth lines of the first paragraph;

(2) by replacing everything after “for the purpose of” in the last sentence of the first paragraph by “verifying the validity or facilitating the transfer of the other information”;

(3) by replacing “register of insured persons” at the end of the second paragraph by “register of users, after recording in the register the information referred to in the twelfth paragraph of section 65 of the Health Insurance Act (chapter A-29)”.

2. Section 505 of the Act, amended by section 184 of chapter 32 of the statutes of 2005 and by section 31 of chapter 43 of the statutes of 2006, is again amended

(1) by replacing paragraph 24.1 by the following paragraph:

“(24.1) prescribe the manner in which and the terms under which a person may opt out of having the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an agency or institution referred to in section 520.7 or to the Régie de l'assurance maladie du Québec, or the manner in which and the terms under which a person may opt back in to having personal information sent, following an earlier opting out;”;

(2) by replacing paragraph 24.4 by the following paragraph:

“(24.4) in the cases and circumstances and under the conditions specified, exempt a health and social service provider giving health services to a person who has not opted out or to whom the provider dispenses drugs or samples,

from the obligation to send a copy of the information referred to in section 520.9 in accordance with section 520.17 or 520.18;”.

3. Section 520.6 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by striking out paragraph 3;

(2) by replacing paragraph 4 by the following paragraph:

“(4) voluntary participation and non-discrimination, in that each person must remain entirely free to opt out at any time of having the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an authorized agency or institution or to the Régie de l’assurance maladie du Québec, and that the opting out must in no way imperil the person’s right to have access to and receive the health services required by the person’s state of health;”.

4. Section 520.7 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005 and amended by section 34 of chapter 43 of the statutes of 2006, is again amended

(1) by replacing the part before subparagraph 1 of the first paragraph by the following:

“**520.7.** The Minister shall authorize an agency or an institution situated in the agency’s area of jurisdiction to establish regional storage services for copies of the information referred to in section 520.9, including copies of the historical data that relate to information on the results of laboratory tests or analyses, including the results of laboratory function tests, the results of medical imaging examinations and immunization data, in respect of persons who receive health services in Québec, except a person who opts out of having personal information sent, in accordance with section 520.17 or 520.18, to such an agency or institution or to the Régie de l’assurance maladie du Québec to be stored.

The historical data for the information referred to in the first paragraph may not predate 1 January 2007, except if it concerns immunization data, in which case it may include all vaccines received.

The information that may be so stored is”;

(2) by replacing the second paragraph by the following paragraphs:

“Such an agency or institution and the Régie de l’assurance maladie du Québec must make sure, before receiving the information referred to in section 520.9, that the person concerned has not opted out of having personal information sent to the agency or institution.

For the purposes of the fourth paragraph, the date of confirmation that the person has not opted out is the date of

- (1) the taking of samples, with respect to laboratory tests and analyses;
- (2) the test, with respect to laboratory function tests;
- (3) the medical imaging examination, with respect to such examinations;
- (4) the filling of a prescription by a pharmacist, with respect to medication;
- (5) the administration of a vaccine, with respect to immunization data; and
- (6) the sending of information, with respect to information referred to in subparagraphs 1, 2, 3 and 8 of the first paragraph of section 520.9.

The agency or institution must make sure, before communicating information referred to in section 520.9, that the person concerned has not opted out of having personal information sent to the agency or institution.

For the purposes of the sixth paragraph, the date of confirmation that the person has not opted out is the date of the request for information by an authorized health and social service provider, subject to the eighth paragraph.

Despite a person's having opted out, the agency or institution may communicate the information concerning the person referred to in section 520.9 to an authorized health and social service provider if the provider previously accessed the information and establishes the need to do so again. In such a case, the provider's name and unique identification number must be sent to the agency or institution together with the reasons justifying access."

5. Section 520.8 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by replacing "who may give consent to the storage of personal information in accordance with Chapter IV of this Title" in the sixth and seventh lines of subparagraph 3 of the first paragraph by "in respect of whom an authorized agency or institution stores information";

(2) by replacing "An authorized agency or an institution" at the beginning of the second paragraph by "An authorized agency or institution".

6. Section 520.9 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005 and amended by section 35 of chapter 43 of the statutes of 2006 and by section 6 of chapter 31 of the statutes of 2007, is again amended

(1) by replacing the part before subparagraph 1 of the first paragraph by the following:

“520.9. The classes of information that an authorized agency or institution may store with the Minister’s authorization and the information that those classes may include, in addition to the historical data that relate to the information referred to in subparagraphs 4, 5 and 7 of this paragraph, are as follows:”;

(2) by inserting “and analyses” after “tests” in subparagraph 4 of the first paragraph;

(3) by replacing “immunological” in the first line of subparagraph 7 of the first paragraph by “immunization”.

7. Section 520.11 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended by replacing “register of insured persons” at the end of the second paragraph by “register of users”.

8. Sections 520.14 to 520.16 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, are replaced by the following sections:

“520.14. Persons who receive health services in Québec may at any time contact a local authority, the Régie de l’assurance maladie du Québec or any other person prescribed by regulation of the Government, in the manner and under the terms specified in the regulation, to opt out of having the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an authorized agency or institution or to the Régie.

The right to opt out may be exercised by a person 14 years of age or over, by the holder of parental authority or the tutor of a person under 14 years of age, by the tutor or curator of a person of full age incapable of exercising that right or by the mandatary of a person when the mandate, given in anticipation of the person’s inability, has been homologated.

The local authority or the person prescribed by regulation to receive opt-out registrations shall inform the Régie de l’assurance maladie du Québec of a registration as soon as it is received, by means of a signed document stating the name, sex and unique identification number of the person concerned and the date and place of receipt of the registration.

In the case of persons represented by the Public Curator, the latter may opt out on their behalf before the Régie de l’assurance maladie du Québec, in the manner and under the terms the Board determines.

“520.15. In addition, persons who have opted out may at any time contact a local authority, the Régie de l’assurance maladie du Québec or any other person prescribed by regulation of the Government, in the manner and under the terms specified in the regulation, to opt back in to having the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an authorized agency or institution or to the Régie.

The local authority or the person prescribed by regulation to receive opt-in registrations under the first paragraph shall inform the Régie de l'assurance maladie du Québec of a registration as soon as it is received, by means of a signed document stating the name, sex and unique identification number of the person concerned and the date and place of receipt of the registration.

“520.16. Information on the purpose and objectives pursued in establishing regional storage services, the terms under which a person may opt out or opt back in following an earlier opting out, and the procedures for accessing, using, communicating, storing and destroying information stored under this Title must be published, in particular, on the website of the Ministère de la Santé et des Services sociaux. The information must specify that authorized health and social service providers are authorized, when providing services,

(1) to send, in keeping with their access profile and provided the person concerned has not opted out of having the personal information referred to in section 520.9 sent,

(a) a copy of the information referred to in subparagraphs 1 to 3 and 5 to 8 of the first paragraph of section 520.9 to the authorized agency or institution in the area of jurisdiction of an agency where health services are provided or, exceptionally, in the area of jurisdiction of the agencies the Minister specifies;

(b) a copy of the information on the results of a laboratory test or analysis to the authorized agency or institution in the area of jurisdiction of the agency that sent a request for the laboratory test or analysis, including laboratory function tests, or, exceptionally, to the authorized agency or institution in the area of jurisdiction of the agencies the Minister specifies; and

(c) a copy of the information concerning medication referred to in subparagraph 6 of the first paragraph of section 520.9 to the Régie de l'assurance maladie du Québec if the services are provided by a pharmacist practising in a community pharmacy; and

(2) to receive, in keeping with their access profile and, subject to the eighth paragraph of section 520.7, provided the person concerned has not opted out, a copy of the information referred to in section 520.9 and stored by the authorized agency or institution and by the Régie de l'assurance maladie du Québec.”

9. Section 520.17 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by replacing “who consented to” in the fifth line of the first paragraph by “who has not opted out of”;

(2) by replacing “who consented to” in the third line of the second paragraph by “who has not opted out of”;

(3) by replacing “a confirmation of the existence and validity of the consent obtained from the register of consent given and consent revoked kept by the Régie in accordance with subparagraph *h.5* of the second paragraph of section 2 of the Act respecting the Régie de l’assurance maladie du Québec” in the third, fourth, fifth, sixth and seventh lines of the third paragraph by “confirmation from the opting out register kept by the Régie in accordance with subparagraph *h.5* of the second paragraph of section 2 of the Act respecting the Régie de l’assurance maladie du Québec that the person has not opted out of personal information storage”.

10. Section 520.18 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended by replacing paragraph 2 by the following paragraph:

“(2) confirmation that the person concerned has not opted out of having personal information sent to an authorized agency or institution or to the Régie de l’assurance maladie du Québec; and”.

11. Section 520.19 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by adding “, as well as confirmation, if applicable, that the Régie holds or stores information referred to in subparagraph 6 of the first paragraph of section 520.9” at the end of the first paragraph;

(2) by replacing “of the existence and validity of that person’s consent” in the last two lines of the second paragraph by “from the opting out register kept by the Régie in accordance with subparagraph *h.5* of the second paragraph of section 2 of the Act respecting the Régie de l’assurance maladie du Québec that the person has not opted out of personal information storage”.

12. Section 520.22 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by replacing paragraph 1 by the following paragraph:

“(1) functions relating to the registration of a person’s opting out of having the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an authorized agency or institution or to the Régie de l’assurance maladie du Québec or of a person’s opting back in to having personal information sent, following an earlier opting out;”;

(2) by replacing paragraph 3 by the following paragraph:

“(3) functions relating to the management of the opting out register, set out in subparagraph *h.5* of the second paragraph of section 2 of the Act respecting the Régie de l’assurance maladie du Québec;”.

13. Section 520.23 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by replacing the first paragraph by the following paragraph:

“520.23. Subject to the eighth paragraph of section 520.7, opting out renders any information previously stored on a person inactive. That information may not be destroyed until five years after the period of use prescribed under section 520.10.”;

(2) by replacing “again expresses a wish to have the information referred to in section 520.9 stored in accordance with this Title” in the first and second lines of the second paragraph by “opts back in to having the information referred to in section 520.9 stored in accordance with this Title, following an earlier opting out”;

(3) by striking out everything after “used” in the second paragraph;

(4) by replacing “agency or institution authorized to store it” in the third line of the third paragraph by “authorized agency or institution or to the Régie de l’assurance maladie du Québec”.

14. Section 520.24 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is replaced by the following section:

“520.24. When a person dies, the Régie de l’assurance maladie du Québec, when informed of the death, registers the person as having opted out.

Information on the person is destroyed five years after such registration.”

15. Section 520.25 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended by replacing the first paragraph by the following paragraph:

“520.25. An agency or institution may, during the period of use referred to in section 520.23 and subject to the eighth paragraph of section 520.7, communicate to an authorized health and social service provider, according to the access profile assigned to the provider, the information it stores or that the Régie de l’assurance maladie du Québec stores or holds in respect of a person who has not opted out under section 520.14, whatever the area of jurisdiction or territory in which that health and social service provider provides services to the person.”

16. Section 520.26 of the Act, enacted by section 189 of chapter 32 of the statutes of 2005, is amended

(1) by replacing “of the existence and validity of consent, in the cases provided for in this Title” in subparagraph 4 of the second paragraph by “, in the cases provided for in this Title, that a person has not opted out of having

the personal information referred to in section 520.9 sent, in accordance with section 520.17 or 520.18, to an authorized agency or institution or to the Régie de l'assurance maladie du Québec”;

(2) by replacing “referred to in section 520.9 concerning a person who consented to the storage” in the second line of subparagraph 5 of the second paragraph by “concerning a person referred to in section 520.9”;

(3) by replacing “or” at the beginning of the third line of subparagraph 5 of the second paragraph by “and, if applicable,”;

(4) by striking out everything after “that section” in subparagraph 5 of the second paragraph.

HEALTH INSURANCE ACT

17. Sections 9.0.1.1 and 9.0.1.2 of the Health Insurance Act (R.S.Q., chapter A-29) are replaced by the following sections:

“9.0.1.1. The unique identification number assigned in accordance with the third paragraph of section 9 or section 9.0.1 or the eleventh paragraph of section 65 must be constituted so as not to disclose, of itself, information concerning the person to whom it is assigned.

The unique identification number may not be printed on a health insurance card or eligibility card or any other card or medium to be carried by its holder. The number may, however, be entered on such a card or medium by a technological means that ensures its confidentiality.

“9.0.1.2. The unique identification number assigned to a person by the Board may not be used, requested, required or noted by another person except for purposes relating to the organizing, planning, or dispensing of services or the provision of goods or resources in the field of health or social services, or for the purposes of the storage services provided for in Title II of Part III.1 of the Act respecting health services and social services (chapter S-4.2), in order to allow the person to be unequivocally identified.

However, the Board and agencies or institutions authorized under section 520.7 of the Act respecting health services and social services may use the number for statistical purposes, provided the statistics cannot be associated with a specific person and the unique identification number is not disclosed.

In addition, a unique identification number may be used only in a manner that ensures its confidentiality. The Minister may make a regulation prescribing security standards to ensure the confidentiality of unique identification numbers.

“9.0.1.3. A natural person is guilty of an offence and is liable to a fine of \$6,000 to \$30,000 and a legal person is guilty of an offence and is liable to a fine of \$12,000 to \$60,000 if that person contravenes section 9.0.1.1 or 9.0.1.2.”

18. Section 63 of the Act, amended by section 239 of chapter 32 of the statutes of 2005 and by section 3 of chapter 31 of the statutes of 2007, is again amended by inserting “, except the information referred to in subparagraphs 2 and 10 of the first paragraph of section 2.0.0.2 of the Act respecting the Régie de l’assurance maladie du Québec” at the end of the first sentence of the third paragraph.

19. Section 65 of the Act, amended by section 27 of chapter 21 of the statutes of 2007, is again amended

(1) by inserting “the following information” after “forward” in the third line of the fifth paragraph, by replacing “or, where applicable, to” in the sixth line of that paragraph by “, in order to unequivocally identify a person who receives health services or social services or, where applicable, in order to”, and by striking out “, the following information” in the ninth and tenth lines of that paragraph;

(2) by replacing everything after “qu’aux seules fins” in the last sentence of the fifth paragraph in the French text by “de vérifier la validité des autres renseignements ou d’en faciliter le transfert”;

(3) by replacing “register of insured persons” in the eleventh paragraph by “register of users”;

(4) by striking out the last sentence of the eleventh paragraph;

(5) by adding the following paragraphs at the end:

“The Board shall store, in respect of a person referred to in the eleventh paragraph, the following information that it receives from an institution or a health professional: the person’s name, date of birth, sex, address, language code and telephone number, as well as the names of the person’s parents or legal representative, the person’s social insurance number or the number and title of an official document issued by a state authority establishing the person’s identity and, if applicable, the date of the person’s death. The Board shall also store the unique identification number it assigned to the person in accordance with the eleventh paragraph.

The Board may forward the information referred to in the twelfth paragraph to an institution or a health professional, in order that the information contained in the institution’s or health professional’s local files or index be up-to-date, accurate and complete, or in order to unequivocally identify a person who receives health services or social services. The social insurance number may only be forwarded to verify the validity or facilitate the transfer of the other information.

Despite any inconsistent provision of a general law or special Act, an institution or a health professional may, in order that the information contained in the institution's or health professional's local files or index be up-to-date, accurate and complete, or in order to unequivocally identify a person who receives health services or social services, forward the information referred to in the fifth or twelfth paragraph to the Board."

ACT RESPECTING THE RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

20. Section 2 of the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5), amended by section 287 of chapter 32 of the statutes of 2005 and by section 1 of chapter 31 of the statutes of 2007, is again amended

(1) by replacing subparagraph *h.5* of the second paragraph by the following subparagraph:

"(*h.5*) establish and keep up to date a register of persons who opt out of having the personal information referred to in section 520.9 of the Act respecting health services and social services (chapter S-4.2) sent, in accordance with section 520.17 or 520.18 of that Act, to an authorized agency or institution or to the Régie de l'assurance maladie du Québec to be stored;"

(2) by replacing subparagraph *h.6* of the second paragraph by the following subparagraph:

"(*h.6*) provide a service enabling an authorized health and social service provider within the meaning of section 520.20 of the Act respecting health services and social services to locate, from among the agencies and institutions referred to in section 520.7 of that Act, those that store the information concerning a person referred to in section 520.9 of that Act, and to know if the Board stores or holds information concerning that person referred to in subparagraph 6 of the first paragraph of that section, and, on the request of such a health and social service provider, forward to that provider the list of those agencies or institutions along with the unique identification number of the person concerned and, if applicable, confirmation that the Board holds or stores such information;"

21. Section 2.0.2 of the Act, enacted by section 288 of chapter 32 of the statutes of 2005, is amended by replacing "consented to its doing so and that the consent remains valid and was not revoked" in the fourth and fifth lines by "has not opted out of having the personal information referred to in section 520.9 of the Act respecting health services and social services sent, in accordance with section 520.17 or 520.18 of that Act, to an authorized agency or institution or to the Board".

22. Section 2.0.3 of the Act, enacted by section 288 of chapter 32 of the statutes of 2005 and amended by section 38 of chapter 40 of the statutes of 2005, is again amended by inserting “, in non-nominative form,” after “communicate” in the first line of the second paragraph and by replacing “, in non-nominative form, concerning a person who has consented to the storage of personal information and” in the third, fourth and fifth lines of that paragraph by “concerning a person”.

23. Section 2.0.4 of the Act, enacted by section 288 of chapter 32 of the statutes of 2005, is replaced by the following section:

“2.0.4. To keep the opting out register referred to in subparagraph *h.5* of the second paragraph of section 2 up to date, the Board, when informed of a death, shall register the deceased person as having opted out.”

24. Section 2.0.5 of the Act, enacted by section 288 of chapter 32 of the statutes of 2005, is amended

(1) by replacing “an insured person” in the second and third lines of the second paragraph by “a person”;

(2) by replacing “, in respect of a person having consented to it, the information” in the third and fourth lines of the third paragraph by “the information concerning a person”.

25. No information referred to in section 520.9 of the Act respecting health services and social services may be sent to an authorized agency or institution or to the Régie de l’assurance maladie du Québec to be stored until 45 days after the date on which sections 520.5 to 520.32 of that Act take effect, under an order in council made by the Minister under section 322 of that Act, in the area of jurisdiction of an agency in which the person concerned resides.

26. Within 15 days after receiving it and not later than 15 June 2009, the Minister tables in the National Assembly the assessment report on the experimental Québec health record project implemented in the area of jurisdiction of the Agence de la santé et des services sociaux de la Capitale-Nationale.

The report is sent to the competent parliamentary committee for examination within 60 days after its tabling.

27. The provisions of this Act come into force on the date or dates to be set by the Government.