



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 24

(2009, chapter 45)

An Act to amend various legislative provisions concerning health

Introduced 12 March 2009
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EXPLANATORY NOTES

This Act proposes various amendments to health legislation.

It introduces a plan to compensate victims of products distributed by Héma-Québec, regardless of liability.

The Act provides for the establishment of a public health ethics committee by the Institut national de santé publique du Québec. It broadens the government plan to protect the public against disease to cover all vector-borne diseases, including the West Nile virus. The Act also makes certain clarifications regarding the transmission of information pertaining to public health threats.

Lastly, amendments are made to the Health Insurance Act, the Youth Protection Act, the Act respecting prehospital emergency services and the Act respecting health services and social services. With respect to the latter Act, certain provisions are clarified relating in particular to the use of information for the purpose of soliciting gifts, the complaints examination procedure, in-patients' committees and users' committees.

LEGISLATION AMENDED BY THIS ACT:

- Health Insurance Act (R.S.Q., chapter A-29);
- Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1);
- Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2);
- Youth Protection Act (R.S.Q., chapter P-34.1);

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- Public Health Act (R.S.Q., chapter S-2.2);
 - Act respecting health services and social services (R.S.Q., chapter S-4.2);
 - Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5);
 - Act respecting prehospital emergency services (R.S.Q., chapter S-6.2);
 - Act to amend the Act respecting health services and social services and other legislative provisions (2005, chapter 32).

Bill 24

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING HEALTH

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

HEALTH INSURANCE ACT

1. Section 3 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by replacing the first sentence in the last paragraph by the following sentence: “A service provided by a physician who is in a period of training in family medicine or to obtain a specialist’s certificate for the first time is not an insured service unless it is provided in a facility maintained by an institution other than the facility where the physician undergoes the training or for the Corporation d’urgences-santé.”

2. Section 65 of the Act is amended by replacing the tenth paragraph by the following paragraph:

“The Board may also transmit to the Ministère de la Sécurité publique and the Commission québécoise des libérations conditionnelles, on request, the address, telephone number, language code and, if applicable, the date of death of a person entered in its register of beneficiaries to allow the information described in section 175 of the Act respecting the Québec correctional system (chapter S-40.1) to be released.”

3. Section 67 of the Act is amended by inserting the following paragraph after the ninth paragraph:

“It does not prohibit the communication to the Minister of Health and Social Services, in accordance with the conditions and formalities prescribed by the Act respecting Access to documents held by public bodies and the Protection of personal information, of information required to assess and evaluate health and social services under subparagraph 13 of the second paragraph of section 431 of the Act respecting health services and social services (chapter S-4.2).”

ACT RESPECTING HÉMA-QUÉBEC AND THE HAEMOVIGILANCE COMMITTEE

4. The Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1) is amended by inserting the following chapter after section 54:

“CHAPTER II.1**“COMPENSATION FOR VICTIMS OF A HÉMA-QUÉBEC PRODUCT**

“54.1. In this chapter, unless the context indicates otherwise,

“bodily injury” means any physical or mental injury suffered by a victim, including death but excepting any adverse effects determined by regulation;

“Héma-Québec product” means any product distributed by Héma-Québec, except products used for research or clinical trials, unless the Minister decides otherwise;

“victim” means a person who received a Héma-Québec product through a transfusion or graft, a person who contracted a disease from a person who received a Héma-Québec product, or a child conceived and born alive and viable of either of such persons or, if death occurs, the person who is entitled to a death benefit.

“54.2. The Minister must compensate, regardless of liability, a victim of bodily injury caused by a defect in or contamination, by known or unknown pathogens, of a Héma-Québec product.

The medical act leading to the injury must have taken place in Québec.

“54.3. Compensation under this chapter is the same as that provided for by the Automobile Insurance Act (chapter A-25) and its regulations, with the necessary modifications.

“54.4. Entitlement to compensation is prescribed three years after the date on which the bodily injury becomes apparent.

However, if an injury becomes apparent gradually, the time limit runs from the day the injury first becomes apparent.

“54.5. Compensation under this chapter stands in lieu of all rights and remedies against Héma-Québec, the members of its governing board and its employees by reason of bodily injury.

However, in cases where it is not otherwise prohibited by law, the victim may institute civil proceedings against any other person liable for the bodily injury.

“54.6. The Minister is subrogated by operation of law to the rights and actions of the victim against the person liable for the bodily injury up to the amount of the compensation paid by the Minister or of the capital representing the pension to be paid by the Minister.

The subrogation is prescribed three years after the date of the Minister's decision to compensate the victim.

“54.7. A claimant who believes he or she has been wronged by a decision of the Minister under section 54.2 or 54.3 may, within 60 days of the date of notification of the decision, contest the decision before the Administrative Tribunal of Québec.

“54.8. A proceeding before the Administrative Tribunal of Québec does not suspend the payment of compensation.

“54.9. The sums necessary for the purposes of this chapter are taken out of the consolidated revenue fund.

“54.10. The Minister may, by agreement, entrust to a public body the management of all or part of a compensation plan for victims of a Héma-Québec product.

“54.11. The Government must, by regulation,

(1) determine the conditions that must be met by a person claiming compensation under this chapter; and

(2) determine which adverse effects are not bodily injuries.

“54.12. This chapter applies to victims of Héma-Québec products administered after 27 September 1998. However, a victim whose right of recourse is prescribed when this section comes into force is not entitled to the compensation provided for in section 54.2.”

ACT RESPECTING INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC

5. The Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1) is amended by inserting the following sections after section 19:

“19.1. The institute is to establish a public health ethics committee.

“19.2. The main function of the ethics committee is to give its opinion on the ethics of the proposed surveillance plans and surveys on health and social issues drawn up under the Public Health Act (chapter S-2.2) and submitted to it by the Minister and public health directors.

The committee may, in particular, give its opinion on

(1) the purpose of ongoing surveillance and the indicators or health determinants selected for a surveillance plan or a survey; and

(2) the type of information it will be necessary to collect, the sources of information to be used and the analytic study envisaged.

“**19.3.** The ethics committee may also give its opinion on any ethical question that may arise in the application of the Public Health Act, in particular, on the activities or actions provided for in the national public health program or in regional or local public health action plans.

“**19.4.** The composition and the operating procedures of the ethics committee are determined by the institute.

The committee, however, must include

- (1) an ethicist;
- (2) three representatives of the general public who have no professional ties to the health and social services system;
- (3) a public health director; and
- (4) two public health professionals, including one who practises in a health and social services institution; and
- (5) a lawyer.

“**19.5.** The opinions of the ethics committee are public, subject to the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

ACT RESPECTING ADMINISTRATIVE JUSTICE

6. Section 5 of Schedule 1 to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting the following paragraph after paragraph 5:

“(5.1) proceedings against decisions pertaining to compensation for victims, brought under section 54.7 of the Act respecting Héma-Québec and the haemovigilance committee (chapter H-1.1);”.

ACT RESPECTING MEDICAL LABORATORIES, ORGAN, TISSUE, GAMETE AND EMBRYO CONSERVATION, AND THE DISPOSAL OF HUMAN BODIES

7. Division IV.1 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2), comprising sections 24.1 to 24.6, is repealed.

YOUTH PROTECTION ACT

8. Section 32 of the Youth Protection Act (R.S.Q., chapter P-34.1) is amended by inserting the following paragraphs after the first paragraph:

“Despite the first paragraph, the director may, if the director considers that the situation warrants it, authorize, in writing and to the extent the director specifies, a person who is not a member of the director’s staff to assess a child’s situation and living conditions as provided for in subparagraph *b* of the first paragraph if the person is

(a) a member of the personnel of an institution operating a child and youth protection centre;

(b) a member of the personnel of an institution operating a rehabilitation centre for young persons with adjustment problems; or

(c) a member of a Native community designated by the director within the scope of an agreement between an institution operating a child and youth protection centre and the Native community.

Authorization granted to a person who is not a member of the director’s staff is valid only for the purposes of the assessment and not for the purpose of deciding whether the child’s security or development is in danger. The director may withdraw the authorization at any time.”

9. Section 81 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The child, the child’s parents and the director are parties to the hearing.

The Commission may, *ex officio*, intervene at the proof and hearing as if it were a party to it. The same applies to the Public Curator if a tutorship is concerned.”

10. Section 85 of the Act is amended by replacing “and 321 to 331” by “, 321 to 331, 863.3 and 886”.

11. Section 96 of the Act is amended by inserting the following subparagraphs at the end of the first paragraph:

“(j) the tutor appointed under section 70.1 or replaced under section 70.4, with regard to the record of the tribunal kept under sections 70.1 to 70.6;

“(k) the Public Curator, with regard to the record of the tribunal kept under sections 70.1 to 70.6.”

PUBLIC HEALTH ACT

12. Chapter III of the Public Health Act (R.S.Q., chapter S-2.2), comprising sections 19 to 32, is repealed.

13. Section 36 of the Act is amended by replacing “ethics committee” in the first and second paragraphs by “ethics committee of the Institut national de santé publique du Québec”.

14. Section 43 of the Act is amended by replacing “ethics committee” in the first paragraph by “ethics committee of the Institut national de santé publique du Québec”.

15. The Act is amended by inserting the following section after section 51:

“51.1. The Minister may, in order to identify real or apprehended health threats for the population of two or more regions, make regulations to determine the information that public health directors must send the Minister and the conditions on which they are to do so.

The information sent must be provided in a form that ensures anonymity.”

16. Section 52 of the Act is amended by inserting “the information,” after “assume the management of” and by striking out “of the systems and registries”.

17. Section 95 of the Act is amended

(1) by striking out “a physician,” in the second paragraph;

(2) by inserting “, other than a physician,” after “health professional” in the second paragraph.

18. The Act is amended by inserting the following division after section 130:

“DIVISION IV**“GOVERNMENT PLAN OF ACTION TO PROTECT THE PUBLIC FROM VECTOR-BORNE DISEASES, INCLUDING THE WEST NILE VIRUS**

“130.1. If the health of the public is threatened by vectors capable of transmitting a disease such as that caused by the West Nile virus, the Government may establish and implement a plan of action to control the vectors, on a joint proposal of the Minister of Health and Social Services, the Minister of Sustainable Development, Environment and Parks and the Minister of Agriculture, Fisheries and Food, after consultation with the Minister of Municipal Affairs, Regions and Land Occupancy.

“130.2. The measures provided for in the government plan of action may call for the use of chemical pesticides only if the other measures available are considered to be insufficient.

Measures that call for the use of pesticides are exempt from the application of any general or special legislative or regulatory provision, including a municipal by-law, that prevents or delays their implementation. However, Division IV.1 of the Environment Quality Act (chapter Q-2), which deals with the environmental impact assessment and review of certain projects, continues to apply to the measures provided for in the government plan of action, as does the Regulation respecting environmental impact assessment and review (R.R.Q., 1981, chapter Q-2, r. 9).

Furthermore, when the measures provided for in the government plan of action call for a pesticide treatment from the air or in an aquatic environment with a surface outlet flowing towards a drainage basin, the Minister of Health and Social Services must notify the Minister of Natural Resources and Wildlife, the Minister of Sustainable Development, Environment and Parks and the Minister of Agriculture, Fisheries and Food one week before application is to begin.

“130.3. Using the means considered to be the most efficient, the Minister of Health and Social Services must give the municipalities and the public concerned prior notification of the planned application of pesticides and information on the measures affording the best protection against the harmful effects of the pesticides.

“130.4. No person may hinder the implementation of the measures provided for in the government plan of action. The owner, lessee or occupant of a parcel of land is required to give free access to the land at all times so that the measures, in particular the use of pesticides, may be implemented.

“130.5. The government plan of action must be updated annually, if necessary, and made public.

As soon as the plan of action is made public, the competent committee of the National Assembly must allow any interested person, group or organization to submit a brief or written comments on the plan, and may hold hearings.

“130.6. A report on the measures implemented to protect the public from the threat posed by disease-bearing vectors must be filed, within three months after the measures have been taken, with the Minister of Health and Social Services, who must immediately send a copy of the report to the other ministers concerned. The Minister must make the report public within 30 days after it is received.”

19. Section 137 of the Act is amended by striking out paragraph 3.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

20. Section 19 of the Act respecting health services and social services (R.S.Q., chapter S-4.2), amended by section 19 of chapter 30 of the statutes of 2007, is again amended

(1) by replacing “third paragraph of section 185.1” in paragraph 7 by “second paragraph of section 185.1”;

(2) by adding the following paragraph at the end:

“(11) to a person or body if the information is held by an institution operating a child and youth protection centre or a rehabilitation centre and is required for the purposes of the Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1), for the rehabilitation or social reintegration of the user or for the protection of the public.”

21. Section 27.3 of the Act is amended by adding the following paragraph at the end:

“If the user is under 14 years of age, the institution may use the name and address of the user’s father or mother for the same purpose. The other provisions of this section then apply in respect of that person as though the person were a user.”

22. Section 42 of the Act is amended by adding the following paragraph at the end:

“The medical examiner is answerable to the board of directors for the application of the complaint examination procedure in cases involving a physician, dentist or pharmacist, or a resident.”

23. Section 82 of the Act is amended by replacing “Act respecting young offenders (Revised Statutes of Canada, 1985, chapter Y-1)” in the first paragraph by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”.

24. Section 87 of the Act is amended by adding the following paragraph after paragraph 3:

“(4) rehabilitation centres for persons with language impairment.”

25. Section 91 of the Act is amended by striking out “subparagraph 1 of” in the first paragraph.

26. Section 108 of the Act is amended by replacing “second” in the fifth paragraph by “fourth”.

27. Section 129 of the Act is amended by replacing “users’ committee of the institution” in paragraph 2 by “institution’s users’ committee or committees”.

28. Section 182 of the Act is amended

- (1) by striking out “38,” in the first paragraph;
- (2) by inserting “42, 43,” after “39,” in the first paragraph.

29. Section 209 of the Act is amended by inserting the following paragraph after the first paragraph:

“However, an institution operating a residential and long-term care centre that has facilities in more than one region of Québec may choose to set up one users’ committee for each region or a single users’ committee for two or more regions, the committee members being elected by the users of the region or regions concerned.”

30. The Act is amended by inserting the following section after section 209:

“209.0.1. Despite the third paragraph of section 209, an institution may choose not to set up an in-patients’ committee for a facility that provides lodging to fewer than 10 users or that expects to provide lodging to most of its users for a period of less than six months.

In such a case, after consulting its users’ committee, the institution must either entrust the exercise of the functions set out in section 212.1 to the users’ committee, or group the facility together with one or more other facilities maintained by the institution in order to establish a single in-patients’ committee for all those facilities.

Sections 209 to 212.1 then apply, with the necessary modifications.

Each year, the institution must assess the effectiveness of the measure chosen under the second paragraph and, if need be, modify it in accordance with this section.”

31. Section 212 of the Act is amended by inserting the following subparagraph after subparagraph 5 of the first paragraph:

“(6) to assess the effectiveness of any measure implemented under section 209.0.1.”

32. Section 343 of the Act is amended by inserting “and in-patients committees” after “committees” in the first paragraph.

33. Section 370.1 of the Act is amended by replacing subparagraph 6 of the second paragraph by the following subparagraph:

“(6) one nurse designated by the members referred to in subparagraphs 1 to 5, recognized for leading-edge expertise in clinical nursing practice.”

34. Section 372 of the Act is amended by adding “who shall also act as the head of any clinical department of public health” at the end of the first paragraph.

35. Section 392 of the Act is amended by replacing “Parliamentary Committee on Social Affairs” in the second paragraph by “competent parliamentary committee of the Assembly”.

36. Section 518 of the Act is amended by replacing “Act respecting young offenders (Revised Statutes of Canada, 1985, chapter Y-1)” by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”.

37. Section 530.80 of the Act is amended by replacing “Parliamentary Committee on Social Affairs” in the third paragraph by “competent parliamentary committee of the Assembly”.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES FOR CREE NATIVE PERSONS

38. Section 152 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) is amended

(1) by replacing “Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1)” in the first paragraph by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”;

(2) by replacing “Young Offenders Act” in the second paragraph by “Youth Criminal Justice Act”.

ACT RESPECTING PREHOSPITAL EMERGENCY SERVICES

39. Section 3 of the Act respecting prehospital emergency services (R.S.Q., chapter S-6.2) is amended by adding the following paragraph at the end:

“The Minister may, by agreement, mandate health and social services agencies to collect, record or update specified data, on behalf of the Minister, for the establishment or maintenance of the registry referred to in subparagraph 10 of the second paragraph.”

40. The Act is amended by inserting the following section after section 25:

“25.1. Every health communication centre must enter into a management agreement containing at least the following elements with the agencies whose area of jurisdiction it serves:

(1) the centre’s operational objectives, the measures to be taken to achieve them, policy directions for consolidation and technological development, the staffing plan, the financial resources and the main indicators to be used in measuring results; and

(2) the manner in which periodic reports are to be produced.

In addition, the agency designated by and from among the agencies that sign the agreement must ensure compliance with the agreement and the achievement of the centre's objectives. The agreement is a public document that the designated agency must send to the Minister."

41. Section 30 of the Act is replaced by the following section:

"30. In order to enable an agency whose area of jurisdiction it serves to conduct the verifications necessary for the exercise of its functions and to ensure the availability of resources and the accessibility of services, the health communication centre shall, on request, collect and provide the agency with any information or reports relating to the pre-hospital operations carried out in that area of jurisdiction, including those carried out by the ambulance and first responder services."

42. The Act is amended by inserting the following section after section 64:

"64.1. An ambulance technician's name, the technician's practice status, the continuing education activities in which the technician has taken part and the date of the technician's first and subsequent registrations in the national workforce registry are entered in the national workforce registry and are public information.

In addition, the Government may, by regulation, determine which of the other information in the registry is public information."

43. The Act is amended by inserting the following section after section 171:

"171.1. Any person who, on (*insert the date of coming into force of this section*), does not hold a valid ambulance technician qualification card issued by an agency or the Corporation d'urgences-santé de la région de Montréal métropolitain but held such a card in the three years preceding the coming into force of the regulation respecting the conditions to be met by an ambulance technician for registration in the national workforce registry made by the Government under section 64, and who trains ambulance technicians or works in quality assurance or pre-hospital service management, may be registered in the national workforce registry."

ACT TO AMEND THE ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES AND OTHER LEGISLATIVE PROVISIONS

44. Section 339 of the Act to amend the Act respecting health services and social services and other legislative provisions (2005, chapter 32) is amended by replacing "hours" by "months".

OTHER PROVISIONS

45. The members of the public health ethics committee, established under the Public Health Act (R.S.Q., chapter S-2.2), who are in office on 19 November 2009 are deemed to have been designated by the Institut national de santé publique du Québec as members of the ethics committee established under the Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1). The members remain in office until replaced or reappointed.

46. A permanent public servant designated by the national public health director under section 27 of the Public Health Act to attend the meetings of the ethics committee and act as secretary becomes an employee of the Institut national de santé publique du Québec, subject to the provisions of the collective agreement applicable to that public servant.

The employee occupies the position and exercises the functions assigned by the institute, subject to the applicable provisions of the collective agreement.

47. An employee referred to in section 46 of this Act may also apply for a transfer to a position in the public service or enter a competition for promotion in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

Section 35 of that Act applies if the employee enters such a competition for promotion.

48. An employee referred to in section 46 of this Act who applies for a transfer or enters a competition for promotion may apply to the chair of the Conseil du trésor for an assessment of the classification that would be assigned to the employee in the public service. The assessment must take account of the classification that the employee had in the public service on the date on which the employee left the public service, as well as the years of experience and the level of schooling attained while in the employ of the Institut national de santé publique du Québec.

If the employee is transferred following an application under the first paragraph, the deputy minister of the department or chief executive officer of the body must assign to the employee a classification compatible with the assessment provided for in the first paragraph.

If promoted, the employee must be given a classification on the basis of the criteria set out in the first paragraph.

49. Where some or all of the operations of the Institut national de santé publique du Québec are discontinued or if there is a shortage of work, the employee referred to in section 46 of this Act is entitled to be placed on reserve in the public service with the same classification the employee had on the date on which the employee left the public service.

In such a case, the chair of the Conseil du trésor must establish the employee's classification, where applicable, on the basis of the criteria set out in the first paragraph of section 48 of this Act.

50. An employee placed on reserve under section 49 of this Act remains in the employ of the Institut national de santé publique du Québec until the chair of the Conseil du trésor is able to assign the employee a position.

51. Subject to any remedy available under a collective agreement, an employee referred to in section 46 of this Act who is dismissed may bring an appeal under section 33 of the Public Service Act.

52. The records and documents of the public health ethics committee established under the Public Health Act become the records and documents of the ethics committee established under the Act respecting Institut national de santé publique du Québec.

53. The provisions of this Act come into force on 19 November 2009, except sections 4, 6, 39 and 43, which come into force on the date or dates to be set by the Government.