

Submission to Regulatory proposal under the Regulated Health Professions Act, 1991 (RHPA)

Addressing registration barriers for regulated health professionals

Submitted by: World Education Services

June 2022

About WES

World Education Services (WES) is a non-profit social enterprise dedicated to helping international students, immigrants, and refugees achieve their educational and career goals in Canada and the United States. For more than 45 years, WES has set the standard of excellence in the field of international academic credential evaluation. Through WES Global Talent Bridge, the organization joins with institutional partners, community-based organizations, and policymakers to help immigrants and refugees who hold international credentials fully utilize their talents and education to achieve their academic and professional goals. Its philanthropic arm, the WES Mariam Assefa Fund, supports catalytic leaders and organizations working to build inclusive economies and to ensure that immigrants and refugees can achieve their aspirations and thrive.

Introduction:

WES welcomes the Ministry of Health's (MoH) goal of increasing health human resource capacity to help Ontario respond and recover from the pandemic. We have reviewed the Ministry's proposed regulations to enable Schedule 6 of the **Pandemic and Emergency Preparedness Act, 2022** and offer the following general and specific recommendations for consideration.

General Observations:

- The approach to implementation of this legislation should reflect the legislative duty described under **Schedule 2** of the RHPA to "ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals."
- In 2020/2021, nearly half of all immigrants arriving to Canada (**47.7%**) settled in Ontario. Given the federal immigration **targets** of more than 400,000 arrivals/year and the recent **changes** enabling the Minister of Immigration to designate certain occupations or skills as a high priority for new permanent residents and labour market integration, there will

- likely be an increase in internationally educated health professionals arriving in Ontario. Without comprehensively addressing the systemic barriers to professional licensure/registration, simply increasing the incoming supply of IEHPs will not necessarily bolster nor rebuild the healthcare workforce.
- Ensuring that the approach to implementation of Schedule 6 includes a thorough review of existing Ontario processes for the integration of internationally educated health professionals that includes a broader range of stakeholders and recognizes that these processes includes both provincial and federal regulatory bodies is crucial. Such a multi-stakeholder and inter-jurisdictional approach is both prudent and urgently needed going forward.

General recommendations:

1. The government should ensure this **intergovernmental issue is put on regular meeting agendas for the federal and provincial/territorial health ministers**. Intergovernmental engagement and collaboration are needed to align the requirements of federal and provincial level regulatory bodies in relation to internationally educated health professionals. This will help build a more resilient health care system through the recruitment and retention of more healthcare professionals, including those with international training and experience.
2. For the Ministry of Health's broader goals to be successful and beneficial for all stakeholders, there is a pressing need for a multi-stakeholder approach to rebuilding a resilient healthcare system. **There should be a regular, ongoing multi-stakeholder review process, accountable to the Office of the Fairness Commissioner of Ontario (OFC), that identifies and resolves licensure/registration issues for internationally educated health professionals (IEHPs)**. Such review committees should include occupational regulatory bodies, third-party assessors, internationally educated health professionals' networks/associations and allied organizations, as well as educational institutions and employers.
3. **Regulatory bodies that are interrelated and operate at different jurisdictional levels should be required to align their requirements and ensure that systemic barriers are not created or reinforced**. Many health regulatory bodies have requirements that must be met by both provincial and national-level regulators. For example, the College of Physicians and Surgeons of Ontario (CPSO) requires applicants obtain accreditation with the Royal College of Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC). Both these bodies have Canadian experience requirements.

Response to the Ministry of Health Regulatory Proposals

I. Exemptions to Canadian Experience

Schedule 6	Ministry of Health Regulatory Proposal
<ul style="list-style-type: none"> • Subsection 1(1) of RHPA 1991 amended by adding the following definition, “Canadian experience” has the meaning prescribed by the regulations; (“expérience canadienne”) • Subsection 43 (1) of the Act is amended by adding the following clause: (0.a) prescribing the meaning of “Canadian experience” for the purposes of this Act. 	<ul style="list-style-type: none"> • Canadian experience would be defined as: "Any period of work experience or experiential training in Canada". • Unless an exemption is obtained, any requirement for Canadian experience as a qualification for registration with a health regulatory College would become void after implementation. However, exemptions would be granted through a regulation made under the RHPA. • A health regulator may continue to accept Canadian experience in satisfaction of an experience-related qualification for registration if it also accepts international experience as a viable alternative to Canadian experience.

Observations:

- It is encouraging that the government is signaling an intent to end the exclusive reliance on Canadian experience requirements for professional registration. This policy direction is in keeping with human rights legislation and a number of Human Rights Tribunal **determinations**, including the 2013 Ontario Human Rights Tribunal “Policy on Removing the “Canadian Experience” barrier.”
- The MoH regulatory proposal that health regulatory colleges can accept Canadian experience or international experience as a viable alternative, signals that the regulator must work with certification and education bodies so that competencies gained from international experience/education/training can be objectively assessed in a timely and cost-effective manner.

- The registration processes for both nursing and medicine require either a time-limited recency of safe practice requirement in a Canadian setting, or a period of Canadian training or practice. This creates adverse discriminatory impacts for internationally educated health professionals. For example, as reported in the [media](#), many internationally educated nurses are unable to complete the registration process because their work or study permit status may tie them to a particular type of employment (e.g. caregiving) or limit the number of hours they can work. As a result, they are unable to meet recency of safe practice requirements (for example, the College of Nurses of Ontario requires a demonstration of recent practice within the last 3 years), or because the wait-times for obtaining permanent residency is so delayed they are unable to comply with time limited requirements.
- Internationally Trained Physicians (ITPs) are generally required to complete one year of postgraduate training, active medical practice, or a clerkship in Canada to meet requirements for professional licensure. There is a separate and much smaller pool of Canadian residency positions that are open to ITPs. This is a barrier. In 2020, only 418 ITPs out of 1,928 (22 percent) obtained a residency position, while 2,895 Canadian medical graduate applicants out of 3,101 (93 percent) obtained a position. The limited number of annually available residency positions for ITPs in Canada results in a systemic inequity and impedes the MoH goal of increasing its health human resource capacity. Policy coherence requires the regulatory proposal align the intent to reduce barriers with the fact that medical residencies in Canada are the main means by which ITPs can meet the current Canadian experience requirement.
- The proposed regulations do not set out a process for colleges to seek an exemption.

Recommendations:

Exemptions:

1. **Align exemption processes to those outlined under Bill 27:** The process to apply for an exemption as outlined in [Section 10.2 \(2\) of the Working for Workers Act](#) and the accompanying regulations establishes a sound standard. WES recommends that the same model which includes submitting documentation to the Office of the Fairness Commissioner should be used in the PEPA regulations.
2. **Clearly define requirements for exemptions:** Regulations must detail the process for colleges to apply for exemptions. The procedures outlined in [Schedule 3](#) of the Fair Access to

Regulated Professions and Compulsory Trades Act, 2006 provide a good example.

3. **Mandate rationale/justification for exemptions:** WES recommends any health regulatory college application for exemptions must provide a demonstrable and transparent rationale that is consistent with **Schedule 2** of the RHPA noted above, which calls for a balance between public interest and “ensuring access to adequate numbers of qualified, skilled and competent regulated health professionals”.
4. **Transparent, public-facing consultations around exemption requests:** WES supports a regulatory directive that calls for the Ontario Fairness Commissioner to review an application for an exemption, and to make a publicly transparent recommendation to the Minister as to the merits of the application. Requests for exemptions should involve a public-facing consultation process that includes stakeholder consultations as to the specifics of the exemption request.

Competency Based Alternatives to Time-Based Canadian Experience Requirements

5. **Require competency-based assessment models:** Regulations should require that regulators accept several alternatives for acquiring and demonstrating required competencies and knowledge. Alternatives must not create new or unintended barriers to licensure, such as limited availability of competency assessment processes, excessive costs, or unreasonable timelines.

Regulatory colleges should be supported to expand or develop alternative competency assessment measures including supervised practice models of assessment. Examples include:

- Alberta Clinical and Surgical Assistant Program (ACSAP), which enables ITPs to obtain a Limited Practice License and work as Clinical Assistants under supervision
- The Medical Council of Canada’s endorsed **Practice Ready Assessment Program**. This model, implemented at scale, would both provide a Canadian experience alternative and supports the MoH goal of increasing health human resource capacity to help Ontario respond and recover from the pandemic.

II. Timely Registration Decisions:

Schedule 6	Ministry of Health Regulatory Proposal
<ul style="list-style-type: none"> • Clause 43 (1) (h.0.1) of the Act is repealed and the following substituted: (h.0.1.) establishing and governing requirements with respect to the amount of time in which Colleges must make decisions under subsections 15(1) and (4), 18 (2) and (4) and 19 (6) and (8) of the Code: 	<ul style="list-style-type: none"> • The proposed regulation would prescribe the following time-limits to make and communicate registration decisions with respect to domestic labour mobility applicants. <ul style="list-style-type: none"> ○ Initial registration decisions of the Registrar be made within 30 business days of receiving a complete application. ○ Decisions by panels of the Registration Committee be made within 10 business days of the deadline for receiving an applicant's submission

Observations:

- A process for establishing timelines is required for IEHPs and not only for domestic applicants.
- In the case of the internationally educated, a single time frame that encompass all stages of the process and all professions is problematic given significant variations in requirements for professional regulation by occupation, as well as variation in requirements for domestic and international applicants.
- Timelines that are regulator specific and set for each stage of the process would better reflect the realities of the application and assessment processes and provide more effective accountability.
- A transparent and consultative process should be used to establish profession and stage specific timelines for each regulated health profession.

Recommendations:

1. **Require regulators to submit timelines:** Reforms are needed that require regulators to submit detailed processes with timelines for each stage of their registration process, and to justify that those stages are non-discriminatory and accessible for IEHPs. Timelines established for specific stages of the application process should be reviewed and approved by the OFC to ensure that they counter any discriminatory impact.
2. **Establish reasonable timelines for each stage of the application process:** In addition to consulting with the Registrar and Registration Committee panels to determine reasonable timelines for each distinct stage of the application process, the Ministry should consult with IEHP organizations and agencies supporting this community to fully understand contemporary challenges related to unreasonable timelines for making and communicating decisions regarding registration.
3. **Provide information to applicants regarding timelines:** Registrars must provide information to applicants that supports their decision, including clear and accessible information for how to proceed in the case of a negative decision, an incomplete application or specific requirements that have not been met.
4. **Identify and eliminate duplicative processes that extend timelines:** Regulators must identify and eliminate any duplicative processes (e.g., requiring the same documents more than once or requiring applicants to provide documentation to regulator and third-party assessment bodies separately) and create secure document sharing with assessment bodies.
5. **Ensure timelines protect applicants' recency of safe practice:** In cases where a regulator has a "recency of practice" or equivalent requirement, timelines must be established to ensure that an applicant who has met the recency requirement at the time of application does not end up becoming ineligible because of the time required to process the application.
6. **Publish data on the number and proportion of successful applicants:** Require regulatory bodies to annually publish data on average processing time of applicant files for both domestic and international applicants, in addition to data on applications received from both domestic and international applicants, and the number of applicant files that successfully obtain licensure/registration per year.
7. **Expedite near-complete applications:** Applications nearing the time limits must be identified and prioritized for expedited processing.

8. **Penalties for delays:** A regulator or assessment body that exceeds the time limits, without reasonable justification, must be required to refund the applicant’s service fee and/or face an administrative penalty.

9. **Establish dedicated funding to support regulator’s ability to meet timelines:** Some regulators may require additional resources to ensure that they have the capacity to achieve established time limits. Funding mechanisms should be established to ensure that all regulators have the resources required to meet their obligations.

III. Language proficiency

Schedule 6	Ministry of Health Regulatory Proposal
<ul style="list-style-type: none"> • Subsection 43(1) of the Act is amended by adding the following clauses: <ul style="list-style-type: none"> ○ (k.1) establishing and governing English or French language proficiency requirements with which Colleges are required to comply, including prescribing what constitutes an English or French language proficiency testing requirement for the purposes of these requirements; ○ (k.2) establishing and governing exemptions from the restriction on requiring Canadian experience in section 16.2 of the Code; ○ (k.3) establishing and governing requirements for emergency classes of registration that are required by section 16.3 of the Code; 	<ul style="list-style-type: none"> • Health regulatory Colleges would have to accept proof of completion of a language test accepted by Immigration, Refugees and Citizenship Canada (IRCC) for immigration purposes (with results satisfactory to the regulated profession) as proof of English or French language proficiency. • Regulated professions may also accept (but not require) other tests or demonstrations of proficiency of their choosing. • Language test results that are valid at the time an application is received will be deemed to remain valid for the duration of the time it takes an applicant to complete the registration process.

Observations:

- The recent modernization **of language proficiency requirements at the College of Nurses of Ontario (CNO)** provides a useful model that allows demonstration required proficiency through education, experience, or exams. The CNO/Ontario Health **Supervised Practice Experience Partnership**, provides a useful model that incorporates workplace-based opportunities to demonstrate evidence of recent practice and language proficiency. Other health regulators should be incentivized to apply this model for their applicants, as a demonstrative method to illustrate language proficiency.

Recommendations:

1. **Alignment between regulators and IRCC in relation to language exams:** Language tests utilized by IRCC should be structured to align with and support provincial regulators in their legislated duties to verify language proficiency (for example, if the legislation specifies all skill areas, or if the legislation specifies an occupation-specific proficiency, etc.).
 - a. Where specific language testing tools and procedures are in place in support of the communicative competence within certain professions, consideration should be given to supporting IRCC approval of these exams for use by IRCC in determining eligibility. In this way, a continuum of fit-for-purpose assessments for professionals is assured.
 - b. Successful exam results should not expire once submitted for consideration by IRCC and the applicant continues along their professional licensure pathway in Canada.
 - c. To ensure intergovernmental alignment and consistency, regulators should be required to update policies regarding required language tests whenever IRCC makes changes.
2. **Ensuring attainment of required scores by international applicants:** If an internationally trained applicant does not meet the score required by the regulator at the time of immigration, the cut scores determined by regulators through their standard setting policy process must be attained. This may mean applicants having to complete an exam again to meet the regulator determined score.
3. **Accessibility of test results:** Testing bodies must make language test results secure and enable digital sharing of results between candidates, IRCC and regulators, at no additional cost.

IV. Emergency Class of Certificates of Registration

Schedule 6	Ministry of Health Regulatory Proposal
<ul style="list-style-type: none"> • The Council shall make regulations under clause 95 (1) (b) establishing an emergency class of registration. • (2) The emergency class of registration required by subsection (1) must meet the requirements in any regulation made under clause 43 (1) (k.3) of the Regulated Health Professions Act, 1991 	<ul style="list-style-type: none"> • This regulation would prescribe the requirements that a regulation made by a College setting out an emergency class of registration must meet. • The proposed regulation would require that regulations made by the Colleges set out the: <ul style="list-style-type: none"> ○ circumstances in which an emergency class of registration would be used; ○ length of time an individual's registration in the emergency class would be valid; and ○ process for individuals registered in the emergency class to seek registration in the general class(es).

Observations:

- The pandemic has demonstrated that public health emergencies do not respect political defined jurisdictional boundaries and that certain communities are disproportionately impacted. Expanding the jurisdictional scope of impacted authorities to declare an emergency, requiring emergency class healthcare support would be prudent emergency preparedness.
- Emergency class registration processes should also be seen as a vehicle to successfully transition applicants to full licensure/registration status. In both the emergency and post emergency context, workplaces also require supports to ensure adequate orientation for those coming into the system.

Recommendations:

1. **Authorization to declare an emergency:** Regulations should specify that an emergency class of registration can be put into effect upon declaration of emergency by any the following level of sub-national government (municipal, provincial, and First Nations).
 - a. Regulatory bodies must also define who holds the authority to designate which specific professions are required to put emergency registration processes into effect in specific emergency situations.
2. **Establishment of processes and eligibility criteria:** Regulators must be required to develop policies outlining process steps and eligibility criteria for internationally educated applicants seeking to obtain emergency class registration. Such criteria must not create unreasonable barriers to emergency registration for eligible Canadian or internationally trained healthcare professionals.
3. **Enable pathways to full licensure from emergency class registration:** Regulators should also be encouraged to develop full licensure pathways for those who are granted emergency class registration.

Should you have any questions or require further clarification, kindly contact:

Karl Flecker
Associate Director, Policy Advocacy
kflecker@wes.org