



Advant**Age**
Ontario

Advancing Senior Care

Considerations and Recommendations for Bill 283

Submission to the Ministry of Health

May 2021

Summary of Recommendations

Recommendation 1: To reduce the burden on the sector and avoid exacerbating the PSW staffing crisis, the government should fund the start-up and subsidize as appropriate the ongoing operations of the Authority. This would allow the Authority time to determine the appropriate level of fees given the average salary of PSWs, which may include a sliding scale depending on whether PSWs are recent graduates or working either part-time or full-time.

Recommendation 2: To encourage uptake amongst PSWs to register with the Authority, the initial registration should be free, and the fee for new PSWs be appropriately subsidized to encourage growth of the PSW workforce in Ontario.

Recommendation 3: If registration is not free or appropriately subsidized for PSWs, the government should provide funding to LTC homes, congregate care settings and home and community care service providers, including assisted living in supportive housing for seniors, to pay for the membership of their employed PSWs who register with the Authority. Funding should also be available to offset potential PSW wage increases following the introduction of regulation.

Recommendation 4: Ministerial approval of the Authority's fee setting processes and criteria under section 50 should be broader. Because of the financial and socio-economic challenges in the PSW workforce and the sectors they work in, the Minister should retain regulatory control over fee setting to use as necessary, including the jurisdiction to prevent the Authority from setting fees at an inappropriate level. To ensure the Minister has the authority to make regulations with respect to the fees the Authority charges to PSWs, the Bill should include the following regulation making power in section 62:

- (r) respecting matters having to do with Authority's process and criteria for setting fees and the fees that the Authority sets for each class of registrant; or

Recommendation 5: To avoid a two-tiered PSW workforce and confusion to residents and clients, legislation/regulation and transfer payment agreements in LTC, other congregate care and home and community care settings, should require the use of PSWs registered with the Authority. There should be appropriate funding to retain financial stability in these settings (see Recommendation 3).

Recommendation 6: To ensure growth in the PSW sector, the regulations should provide for registration on the basis of educational qualifications "equivalent" to those set by the Authority. In addition, the Minister, either through policy direction or regulation, should ensure that the Authority has in place policy and processes to recognize international credentials and to grandparent current PSWs, including those transitioned into PSW roles and who were previously health care aides.

Recommendation 7: For newly graduated PSWs, registration to the Authority should be tied to their PSW certification process.

Recommendation 8: Add an exemption from mandatory reports for registered PSWs working in LTC homes and licensed retirements homes. Revise section 35 by adding a new subsection as follows:

35 (7) This section does not apply to registered PSWs providing health services or supportive care services in long-term care homes or retirement homes licensed under the Retirement Homes Act, 2010.

As part of the recommendation, the government should undertake further consultation to determine additional settings to be subject to this exemption, for example supportive housing and certain community care settings with appropriate sexual abuse reporting policies and requirements.

Recommendation 9: Remove the requirement for a registered PSW to obtain consent from the alleged victim of abuse in his or her report to the Authority. Revise paragraph 35 (5) 4 as follows:

4. Subject to subsection (6), the name of the person who was alleged to have been sexually abused, unless it is unreasonable or not feasible for the registrant to obtain the written consent of the person or if that person is incapable, the person's representative, to include the person's name in the report.

Recommendation 10: Add protections against retaliation against a PSW for making reports relating to sexual abuse. Revise section 35 by adding a new subsection as follows:

35 (9) No person shall retaliate or threaten to retaliate against a registrant, whether by action or omission, for making the report, unless that registrant acts maliciously or without reasonable grounds for the suspicion.

Recommendation 11: The Bill should require employers to report to the Authority if the employer has reasonable grounds to suspect that a PSW registrant has abused a resident or client. Add a new section 36 as follows:

Reporting by facilities and service providers

36 (1) A person who operates a facility or service where one or more registrants provide health services or health support services shall file a report in accordance with subsection 2 if the person has reasonable grounds to believe that a registrant at the facility has abused a resident or client of the facility.

Contents of report

(2) The report must contain,

- (a) the name of the person filing the report;
- (b) the name of the member who is the subject of the report;
- (c) an explanation of the alleged abuse, incompetence or incapacity;
- (d) if the grounds of the person filing the report are related to a particular patient of the member who is the subject of the report, the name of that patient, subject to subsection (3).

Patients not named without consent

(3) The name of a patient who may have been abused must not be included in a report unless the patient, or if the patient is incapable, the patient's representative, consents in writing to the inclusion of the patient's name.

Recommendation 12: Employers should be able to have access to the history of termination associated with PSWs from the Authority.

Recommendation 13: To enable accurate representation in the Authority, we recommend that employers, such as LTC homes, other congregate care settings as well as home and community care service providers, be added to the advisory committee.

Recommendation 14: To alleviate the potential staffing impacts of the Authority, wages must be increased for all employees in LTC, congregate care settings and home and community care.

Recommendation 15: The timing for the creation of the Authority should be shared with Associations and employers of PSWs.

Recommendation 16: There should be transparency around the transition period prior to the creation of the Authority and onboarding PSWs, with the minimum time span of a year.

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Introduction and Context

AdvantAge Ontario is the advocacy association for non-profit and municipal long-term care (LTC), housing, and services for seniors in Ontario. Our values are rooted in our community-based approach to care delivery that puts residents first, and reimagines seniors' care in Ontario.

Bill 283 contains important and timely considerations for our healthcare system, and while we have comment on several sections in this Bill, the focus of our submission will be on *Schedule 2- Health and Supportive Care Providers Oversight Authority Act*. We are supportive of section 3 which pertains to regulating physician assistants as new members of the College of Physicians and Surgeons of Ontario.

COVID-19 has exacerbated the significant challenges that exist for staffing in LTC, congregate care settings, and the home and community care sector. Government has responded with a number of recent initiatives to help address this issue. We know that part of the solution to address the staffing crisis is to strengthen oversight for personal support workers (PSW). We support the policy direction taken by the government to create this new regulatory Authority. We think this is a critical first step in establishing a level playing field for PSWs in our system and helps to elevate their standing in the sector. This would also help to protect the most vulnerable in our society.

While we support the concept of a regulatory authority for PSWs, there are several areas where we strongly recommend changes to ensure the implementation does not further jeopardize or create barriers to PSW recruitment and retention efforts. To ensure unforeseen risks are eliminated, we are pleased to offer a number of recommendations – and in some cases, amendments – for the Minister of Health to consider.

Considerations and Recommendations

1. Costs of New Regulatory Authority and Membership

As a brand new, stand-alone entity, the Health and Supportive Care Providers Oversight Authority (the Authority) will have significant start-up costs before it is up and running, and in the first few years until it reaches capacity.

The legislation facilitates the Authority to be self-funded through registrant fees. Given the staffing crisis in LTC, congregate care settings and home and community care, it is important to ensure that the costs associated with the Authority do not act as a barrier for PSWs to continue working in or joining these sectors. Based on data from 2018, PSWs in LTC typically earn between \$20.43 and \$27.23 per hour; with those in home and community care bringing in even

lower salaries of \$16.78 and \$17.82 per hour.ⁱ Given their modest salaries and the high percentage of part-time employees, it is not realistic to expect PSWs to be able to fund the start-up operations of the Authority.

We are also concerned that the non-profit and municipal health service operators that run LTC homes, and home and community care services including assisted living in supportive housing for seniors may have to directly and/or indirectly subsidize these costs. They do not have adequate resources to fund the memberships of the PSWs that they employ.

While we support a regulatory authority for PSWs, there should be mechanisms in place to mitigate the financial impact of occupational regulation. At this point it is unclear who will bear that cost, whether PSWs or employers. Because of the existing shortage of PSWs and their socio-economic status, in addition long-standing systemic underfunding in our sectors, we believe government should play a role in absorbing the costs of new regulation and ensuring the financial stability of the LTC, congregate care and home and community care sectors.

When new regulations are introduced in any sector, we know that this has placed an upward pressure on wages. While we support this Authority, there is a concern that the sector would not be able to afford these increases on its own.

Recommendation 1: To reduce the burden on the sector and avoid exacerbating the PSW staffing crisis, the government should fund the start-up and subsidize as appropriate the ongoing operations of the Authority. This would allow the Authority time to determine the appropriate level of fees given the average salary of PSWs, which may include a sliding scale depending on whether PSWs are recent graduates or working either part-time or full-time.

Recommendation 2: To encourage uptake amongst PSWs to register with the Authority, the initial registration should be free, and the fee for new PSWs be appropriately subsidized to encourage growth of the PSW workforce in Ontario.

Recommendation 3: If registration is not free or appropriately subsidized for PSWs, the government should provide funding to LTC homes, congregate care settings and home and community care service providers, including assisted living in supportive housing for seniors, to pay for the membership of their employed PSWs who register with the Authority. Funding should also be available to offset potential PSW wage increases following the introduction of regulation.

Recommendation 4: Ministerial approval of the Authority's fee setting processes and criteria under section 50 should be broader. Because of the financial and socio-economic challenges in the PSW workforce and the sectors they work in, the Minister should retain regulatory control over fee setting to use as necessary, including the jurisdiction to prevent the Authority from setting fees at an inappropriate level. To ensure the Minister has the authority to make regulations with respect to the fees the Authority charges to PSWs, the Bill should include the following regulation making power in section 62:

(r) respecting matters having to do with Authority's process and criteria for setting fees and the fees that the Authority sets for each class of registrant; or

2. Voluntary Registration

Under the proposed legislation, it is not mandatory for PSWs to register with the Authority. However, some LTC homes, other congregate care settings or home and community care providers may require registration with the Authority when hiring new PSWs. Additionally, the LTC regulations and/or MSAs for home and community care may require the hiring of PSWs registered with the Authority. We support this direction provided appropriate levels of funding are in place.

An added benefit of making registration mandatory with the Authority would be to provide greater encouragement to the federal government to expeditiously roll out the changes to the National Occupation Classification (NOC) codes that would allow more internationally trained PSWs to come into Canada.

It will also be important to consider that voluntary registration combined with the absence of standards, scope of practice or title protection for PSWs may result in a two-tiered PSW workforce; made up of unregulated PSWs as well as PSWs registered with the Authority, with each group referred to as “PSW”. This has the potential to undermine the perceived quality of a LTC home, other congregate care setting and/or home or community care providers. Further, if there are regulated and non-regulated PSWs working in the health care setting, the visual identifier could prove to be confusing for residents and their loved ones, given that there would be no difference in the care that each PSW group is providing.

We recognize that this legislation does not include requirements for a PSW scope of practice, and we appreciate the difficulties in developing and enforcing one. This includes the difficulty of designing appropriate exceptions to a protected scope of practice. We believe that making registration with the Authority mandatory for all PSWs will counteract the risks relating to voluntary registration and to the absence of both title protection and a defined scope of practice (i.e. prohibitions on an unregistered PSW performing the PSW scope of practice).

Another consideration for mandatory registration is that as more PSWs are registered, this would decrease the registration cost per PSW, and therefore make it more affordable to PSWs, as well as increase the predictability of the revenues for the Authority.

Recommendation 5: To avoid a two-tiered PSW workforce and confusion to residents and clients, legislation/regulation and transfer payment agreements in LTC, other congregate care and home and community care settings, should require the use of PSWs registered with the Authority. There should be appropriate funding to retain financial stability in these settings (see Recommendation 3).

3. Qualifications of PSWs

One of the requirements for registration to the PSW Authority includes educational qualifications, to be determined by the Authority. As PSWs make up a large part of the LTC staffing complement, it would be integral to ensure that there is consistency between the educational regulations found in section 47 of the *Long-Term Care Homes Act, 2007* (LTCHA) and those to be proposed by the Authority.

It is unclear how existing PSWs would be able to become members of the Authority if they have different certifications than what the Authority puts into place. Many staff in LTC homes were previously health care aides and were grandparented in to work as PSWs when the LTCHA was

introduced. It will be integral to ensure that these staff members, who are committed employees of the LTC sector, will be able to join the Authority without the need for extra credentials or education. This would ensure that homes do not lose critical staff members as a result of creating the Authority.

When creating credentials, the Authority could base them on past education or experience, including international experience, to allow for there to be the least impact felt on current staff in the LTC, other congregate care and home and community care sectors. Additionally, for new hires, enrolment into the Authority could become a part of the PSW certification process. This may also involve changes to the LTCHA.

As the time comes to crafting regulations, it would be integral to include important principles in new PSW education and qualifications. This would include person-centered care training such as the gentle persuasive approach or U-First!, infection prevention and control, and the review of the residents' bill of rights. This would facilitate for standardization of curriculums for PSWs across the province.

Recommendation 6: To ensure growth in the PSW sector, the regulations should provide for registration on the basis of educational qualifications "equivalent" to those set by the Authority. In addition, the Minister, either through policy direction or regulation, should ensure that the Authority has in place policy and processes to recognize international credentials and to grandparent current PSWs, including those transitioned into PSW roles and who were previously health care aides.

Recommendation 7: For newly graduated PSWs, registration to the Authority should be tied to their PSW certification process.

4. Sexual Abuse Reporting and Need for Whistleblower Protections for PSWs

Under Bill 283, a registrant must provide a written report to the Authority if they have reasonable grounds to believe that another registrant or a Regulated Health Professions Act (RHPA) health professional has sexually abused a person who receives health or supportive care services. They will also have to make their best efforts to advise the client/resident of the PSWs obligation to report to the Authority. In addition, the PSW must obtain and to seek consent from the resident to include their name in the written report to the Authority.

The sexual abuse requirements are identical to the obligations of self-regulating health professions under the RHPA. The requirement of disclosure and abuse require a high degree of knowledge, skills and judgement and fails to recognize the precariousness of PSW employment and the position of PSWs within a care team. The fact that it is an offence not to report under the Bill will put considerable pressure on PSWs and fails to recognize the vulnerability and lack of autonomy that PSWs face in certain care settings. The sexual abuse provisions place an inappropriate standard on PSWs and might be confusing and troubling to residents or clients who may have been victims of sexual abuse. In the LTC and retirement home setting, there are existing mandatory sexual abuse reporting provisions that are effective and require PSWs to report suspected sexual abuse. The addition of mandatory sexual abuse reporting under the Bill is problematic in these settings.

Another concern is the lack of protection against retaliation for making reports to the Authority. Both the LTCHA and the Retirement Homes Act provide protections for retaliation against health care practitioners making reports concerning abuse.

Recommendation 8: Add an exemption from mandatory reports of sexual abuse by registered PSWs working in LTC homes and licensed retirements homes. Revise section 35 by adding a new subsection as follows:

35 (7) This section does not apply to registered PSWs providing health services or supportive care services in long-term care homes or retirement homes licensed under the Retirement Homes Act, 2010.

As part of the recommendation, the government should undertake further consultation to determine additional settings to be subject to this exemption, for example supportive housing and certain community care settings with appropriate sexual abuse reporting policies and requirements.

Recommendation 9: Remove the requirement for a registered PSW to obtain consent from the alleged victim of abuse in his or her report to the Authority. Revise paragraph 35 (5) 4 as follows:

4. Subject to subsection (6), the name of the person who was alleged to have been sexually abused, unless it is unreasonable or not feasible for the registrant to obtain the written consent of the person or if that person is incapable, the person's representative, to include the person's name in the report.

Recommendation 10: Add protections against retaliation against a PSW for making reports relating to sexual abuse. Revise section 35 by adding a new subsection as follows:

35 (9) No person shall retaliate or threaten to retaliate against a registrant, whether by action or omission, for making the report, unless that registrant acts maliciously or without reasonable grounds for the suspicion.

5. Facility Reporting

One of the main principles for setting up this Authority should be to safeguard vulnerable residents and patients. However, the Bill does not have any provisions that require an employer to report if a PSW has been found to have abused a resident or patient.

Under the RHPA, LTC homes must report to the relevant college if there are reasonable grounds to believe a health professional “may be incompetent, incapacitated or have sexually abused a patient.” LTC homes do not have a similar reporting obligation under Bill 283. In this context, LTC homes may face challenges in deciding whether to report allegations of sexual abuse by PSWs to the Authority. There is also no indication that there would be an obligation for an employer to report to the Authority if a PSW was fired for an offense such as other forms of abuse.

Additionally, it is unclear whether employers of PSWs would be able to see the history of termination associated with PSWs to inform them in their hiring processes. This is a key safeguard for the Authority that must be put into place. This is also an important step in protecting the most vulnerable individuals in LTC, other congregate care settings and home and community care.

Recommendation 11: The Bill should require employers to report to the Authority if the employer has reasonable grounds to suspect that a PSW registrant has abused a resident or client in any way. Add a new section 36 as follows:

Reporting by facilities and service providers

36 (1) A person who operates a facility or service where one or more registrants provide health services or health support services shall file a report in accordance with subsection 2 if the person has reasonable grounds to believe that a registrant at the facility has abused a resident or client of the facility.

Contents of report

(2) The report must contain,

- (a) the name of the person filing the report;
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Recommendation 12: Employers should be able to have access to the history of termination associated with PSWs from the Authority.

6. Advisory Committee Amendment

The Authority will have an advisory committee to inform its operations. One of the integral members of this committee should be LTC homes, other congregate care settings and home and community care representatives. They would offer a critical lens to the committee as key employers of PSWs.

Recommendation 13: To enable accurate representation in the Authority, we recommend that employers, such as LTC homes, other congregate care settings as well as home and community care service providers, be added to the advisory committee.

7. Unintended Consequences

In relation to the Authority, there may be some unintended consequences that would arise. Over the COVID-19 pandemic, we have seen staffing shortages become exacerbated within the LTC, other congregate care settings, and home and community care sector. One of the issues that has come up is the lack of registered practical nurses (RPNs). With the temporary wage

enhancement for PSWs, their wages have now been comparable to some RPNs which has created an imbalance between the two roles. As RPNs often oversee PSWs, many have expressed frustration and some have left the sector or started working as PSWs instead. If the wages of PSWs are increased as a byproduct of forming the new Authority, it will be important to consider the impact that this may have on RPNs in LTC homes.

Recommendation 14: To alleviate the potential staffing impacts of the Authority, wages must be increased for all employees in LTC, congregate care settings and home and community care.

8. Timelines

Currently in the PSW Act, there are no timelines on the creation of the Authority. As this may have an unknown impact on staffing, we would also like to ensure there is transparency around the transition period before any changes occur to ensure the stability of staffing in the current precarious environment. This will include communication and consultation with sectors, and this notice would allow for employers to work with PSWs to ensure they are prepared for this change.

Recommendation 15: The timing for the creation of the Authority should be shared with Associations and employers of PSWs.

Recommendation 16: There should be transparency around the transition period prior to the creation of the Authority and onboarding PSWs, with the minimum time span of a year.

Conclusion

AdvantAge Ontario and our members are committed to providing seniors across the care continuum with the best care possible. At this point, the impacts of the proposed Bill 283 are not clear and we strongly urge the government to work with us to ensure we continue to make positive changes for the future. We believe the considerations and recommendations proposed are integral to the successful rollout of the government's oversight and planning legislation. This is our time to act on longstanding goals for our sector, and to strengthen the sector for the long term. We look forward to working with the government to improve the continuum of care for seniors' collaboratively for the future.

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References

^[1] Ministry of Long-Term Care. “Long-Term Care Staffing Study.” (July 2020).
<https://files.ontario.ca/mltc-long-term-care-staffing-study-en-2020-07-31.pdf>

ⁱ Ministry of Long-Term Care. “Long-Term Care Staffing Study.” (July 2020).
<https://files.ontario.ca/mltc-long-term-care-staffing-study-en-2020-07-31.pdf>