

Written submission on Bill 37, *An Act to enact the Fixing Long-Term Care Act, 2021 and amend or repeal various acts*



**Prepared by the USW Canadian National Office
Research Public Policy & Bargaining Support**

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The United Steelworkers union (USW) is the largest private-sector union in North America with more than 225,000 members in Canada and more than 75,000 members in Ontario. The USW is Ontario's most diverse union, representing men and women working in every sector of the economy. We work in mines and manufacturing plants, offices and airports, universities, hospitals and long-term-care homes (LTC).

In the press release announcing Bill 37, Minister Rod Phillips is quoted as saying, "Ontario has listened to the advice of the Long-Term Care COVID-19 Commission and the Auditor General — as well as residents, their families, the public and those working in the sector."¹

To the contrary, the proposed legislation misses the urgency and magnitude of the changes called for by these reports. In particular, many of the LTC [Commission's](#) recommendations are absent from the proposed legislation. Bill 37 also fails to recognize staffing as the most important challenge facing long-term care in Ontario.

The USW submits that in order to be effective, Bill 37 needs to incorporate the following changes:

- Remove reference to "Mission Driven Organizations"
- Hasten the implementation of four hours of direct care
- Calculate averages of daily care on a facility-by-facility basis and report publicly
- Impose proportional and escalating consequences for failing to meet care targets
- Reinstate annual surprise home inspections
- Address the staffing crisis by promoting full-time work, achieving wage parity with public hospitals and repealing Bill 124.

¹ ["Ontario Introducing New Legislation to Fix Long-Term Care"](#), Ontario Newsroom, Oct. 28, 2021.

Remove reference to Mission Driven Organizations

References to “Mission Driven Organizations” must be removed from the proposed legislation. Introducing this undefined term – particularly when it opens up the very “mission” of these organizations to broad (mis)interpretation – into the Fixing Long-Term Care Act erodes the government’s commitment to non-profit delivery of long-term-care services. The existing Long-term Care Act establishes this commitment in the preamble.

The people of Ontario and their Government;

Are committed to the promotion of the delivery of long-term care home services by not-for-profit organizations.

The to-be-enacted Fixing Long-Term Care Act, adds the following:

The people of Ontario and their Government;

*Are committed to the promotion of the delivery of long-term care home services by not-for-profit **and mission-driven organizations; and***

Are committed to all long-term care homes operating as mission-driven organizations that have resident-directed, safe, quality care as the primary goal.

A commitment to all long-term care homes operating as mission-driven organizations is a stark departure from a commitment to non-profit delivery of care. It is even more concerning that the term “mission-driven organization” is not defined in the bill. The only other reference is in section 44(2) which sets out the role of the proposed Long-Term Care Quality Centres.

Long-Term Care Quality Centre

44 (1) The Minister may establish a Long-Term Care Quality Centre.

Functions, purposes

(2) The functions and purposes of the Long-Term Care Quality Centre are,

(a) to support mission-driven organizations;

(b) to advance and share research on innovative and evidence-informed person-centred models of care; and

(c) any other functions or purposes provided for in the regulations.

The USW urges the government to remove all reference to “Mission-Driven Organizations.”

The problem with averages

The central piece of the Fixing Long-Term Care Act, is the four-hour standard of direct care. In principle, legislating this standard is a good idea and long overdue. Discouragingly, the proposed legislation is lacking on three counts: the implementation schedule is much too slow; the method for calculating average hours-of-care makes effective monitoring impossible; and there is a total lack of consequence for failing to meet care targets.

The implementation schedule is the same as proposed in the 2020 provincial budget; only reaching four-hours of direct care (RN, RPN and PSW) by 2025. The LTC Commission specifically called to accelerate implementation (recommendation #40). The commission grimly noted the four-hour target is based on current needs and “the staged approach likely means that the vast majority of current residents will have passed before the four-hours of daily care is fully implemented.”²

The LTC Commission also warned of the danger of reporting hours-of-care as an average. Section 8(7) of the proposed Fixing Long-Term Care Act, provides the method for calculating the average hour-of-care:

How average calculated

(7) The average is to be determined by taking the total number of hours of direct care actually worked by registered nurses, registered practical nurses and personal support workers in all long-term care homes, and dividing that number by the total number of resident days in all long-term care homes for the applicable calculation period provided for in the regulations.

² [Ontario's Long-Term Care COVID-19 Commission: Final Report](#), Ontario's Long-Term Care COVID-19 Commission, April 30, 2021, p.64.

In short, it looks at all hours worked, in all long-term care homes, divided by all resident days, in the whole province. In this provincial average, it is impossible to identify an individual home.

The LTC Commission report specifically warned against this approach. The report quotes Dr. Arthur Sweetman, an economist who worked on the ministry's 2020 Long-Term-Care Staffing Study.

[W]hen you start talking about what's happening in the average home, you miss the real challenge, which is identifying ... the poor performing homes and then helping those poor performing homes. ³

We know there is disparity in the quality of care offered in LTC homes. The proposed method of measuring care hours shields under-performing homes from scrutiny and leaves the people in care in those homes unprotected.

The USW urges the government to amend section 8(7) and the similar language for allied health care-hours at section 9(7), to determine the average hours-of-care on a facility-by-facility basis.

The enforcement of the standard-of-care target is also ineffective. Section 10(4) sets out the consequences for failing to meet the target.

Failure to achieve a target

(4) If a target set out in this Part or under the regulations is not achieved, the Minister shall,

(a) identify the reasons for the failure to achieve the targets, including any barriers and risks; and

(b) develop and include a plan that specifies the measures that were implemented to achieve the target and the reasons for the failure to do so, and that contains proposed strategies to assist in achieving the target, or proposed steps to be taken to assist in achieving the target.

So, if the target is not met, the minister must identify the reasons for failure and develop a plan to achieve the target. Rather than outlining a plan to have a plan, this legislation should be the government's plan for fixing long-term care. Impose proportional and escalating consequences for homes that fail to meet care targets

³ [*Ontario's Long-Term Care COVID-19 Commission: Final Report*](#), Ontario's Long-Term Care COVID-19 Commission, April 30, 2021, p. 57.

Instead of this toothless enforcement mechanism, the government must implement recommendation #42 of the LTC Commission report. This recommendation compels licensees to provide regular reports on hours-of-care and staffing and instructs the ministry to audit these reports and make them public. Failure to comply should result in proportional and escalating consequences including fines, suspension of licensees, take-over of management and stopping new admissions.

Annual surprise inspections also need to be included in the bill. The LTC Commission specifically recommended that inspections be unannounced, (recommendation #76). This government has talked about “proactive” investigations but there is still no commitment to annual surprise inspections for every long-term-care home.

The real problem is staffing

Finally, the proposed Fixing Long-term Care Act fails to recognize that staffing is the most pressing challenge facing the industry. The LTC Commission reports “there is a broad consensus across the long-term-care community that staffing is a critical – if not the most critical – challenge facing the sector.”⁴

In recommendation #49 the LTC Commission calls for creating more full-time direct care positions, with a target of 70% full-time and 30% part-time. The current practice of favouring precarious jobs in order to maximize staffing flexibility and reduce payroll costs is harming the workers and the residents of LTC homes. Indeed, the practice of health-care workers holding multiple part-time or casual jobs across different facilities was identified as a vector of community spread by the 2004 *Final report of the Ontario Expert Panel on SARS and Infection Disease Control*. Despite this warning in 2004, this is sadly what also occurred in 2020.

Recommendation #49 of the LTC Commission further calls to better align the wages of direct care staff with the wages and benefits provided in public hospitals. The LTC Commission notes the lack of full-time opportunities and inferior compensation in LTC facilities worsens the staffing crisis.

*Care of the elderly in Ontario must include home care, acute care and long-term care. Each requires PSWs and nurses. Financial disparity between sectors of the health care system leads to the needless movement of staff who understandably are looking for greater and more stable income. This cannibalization of one sector’s workforce for another’s does nothing to improve the lives of those needing care.*⁵

Despite recognizing the need to subsidize PSW wages through the pandemic pay program, this legislation provides no plan to deal with the inadequate working conditions and compensation for LTC workers. To the contrary, wages in the industry remain depressed by this government. Arbitrators continue to hold wage increases at 1.5% per year in private LTC homes, while

⁴ [Ontario’s Long-Term Care COVID-19 Commission: Final Report](#), Ontario’s Long-Term Care COVID-19 Commission, April 30, 2021, p. 243.

⁵ [Ontario’s Long-Term Care COVID-19 Commission: Final Report](#), Ontario’s Long-Term Care COVID-19 Commission, April 30, 2021, p. 55.

employees in non-profit homes are subject to Bill 124's 1% compensation cap. **As a first step towards ensuring that wages in the broader health-care sector are sufficient to support the required staff, the government must repeal Bill 124.**

Seniors deserve better

To truly deliver the care our seniors deserve, the USW urges the government to integrate the above changes into the proposed legislation. Legislating the four-hour standard of care is long overdue. Unfortunately, Bill 37 as it is currently written, makes effective monitoring and enforcement of that standard impossible.

The pandemic made the deficiencies in our long-term-care homes front-page news. But the core problems facing the industry have long been recognised by workers, advocates, residents and their families. We cannot let this tragedy pass without making meaningful change.

We thank the government and the ministry for the opportunity to participate in this consultation and look forward to being part of future consultations.