AdvantAge Ontario

Advancing Senior Care

Proposed Amendments to the *Fixing Long-Term Care Act, 2021*

Submission to the Ministry of Long-Term Care

November 2021

Proposed Amendments to the *Fixing Long-Term Care Homes Act, 2021*

November 2021

Introduction

AdvantAge Ontario is the provincial association representing community-based not-for-profit providers of long-term care (LTC), community services and housing for seniors. Our members include not-for-profit LTC homes (municipal, charitable, and non-profit homes), seniors' housing, supportive housing, and community service agencies serving seniors. Member organizations serve over 36,000 LTC residents annually and operate over 8,000 seniors' housing units across the province.

We appreciate the opportunity to provide input on the proposed *Fixing Long-Term Care Act, 2021* (the "Act" or "proposed Act"). As stated in our proactive submission in August 2021 on Proposed Amendments to the *Long-term Care Homes Act, 2007*, we strongly believe that changes to the Act and its regulations are not only warranted but also imperative to achieve transformational change in LTC and to sustain its leadership and front-line staff, which are on the brink of collapse.

We acknowledge the government's efforts to improve the legislation governing LTC homes. Proposed improvements include targets for direct care hours, recognition of the importance of residents' emotional well-being, a Long-Term Care Quality Centre, and some relief from a disproportionate focus on enforcement through the ability to remedy non-compliance during an inspection. We also recognize that the government retained the support for not-for-profit and municipal delivery of LTC in the Preamble and in the penalties and licensing provisions.

While the elements of the Act outlined above are well-received, and we acknowledge that a significant amount of change can occur through the regulatory process, we recommend the following critical amendments be made to the legislation prior to it being passed. The government has taken the important step of tabling a whole new Act, and these changes are integral to ensuring it is as bold as it should be, for the benefit of Ontario's seniors.

Our recommendations strengthen the proposed Act by doing the following:

1. Clarifying what it means to be a mission-driven organization.

2. Promoting Emotion-Focused Models of Care, including:

    a. Expanding the fundamental principle of the Act to include meeting the emotional needs of residents.

b. Encouraging the development and implementation of emotion-focused models of care.
c. Giving the Long-Term Care Quality Centre a crucial role in supporting compliance and improving resident outcomes.

3. Transforming compliance and enforcement, including:
    a. Removing the obligation of inspectors to document a non-compliance if the home remedies it during an inspection or has implemented a plan to resolve the issue by a date specified by the inspector.
    b. Reducing monetary penalties for not-for-profit and municipal homes.
    c. Strengthening regulatory integrity by eliminating conflicts of interest during the inspection process and requiring inspectors to wear identification.

4. Increasing the target for direct care by allied health care professionals.

5. Ensuring that the approval of management contracts is subject to the eligibility requirements for a license.

6. Improving safety by allowing homes to deny admission to an applicant if there is a significant risk of serious harm to other residents or staff of the home.

Please note that our proposed additions and amendments are in red, underlined text for ease of reference.

Proposed Amendments

1. Define 'Mission-Driven Organizations'

The Preamble to the proposed Act states a commitment to all LTC homes operating as mission-driven organizations. The core value of mission-driven homes is to improve resident care, which can only be true of homes that do not hold profit and that have returning value to shareholders as a main operating principle. The final report of the LTC COVID-19 Commission supports our view: LTC homes that have profit and dividends as their primary purpose are not mission-driven homes. We believe that without a definition of 'mission-driven', this can open interpretation of this key principle to mean any home operating in Ontario, regardless of its focus. We do not believe this was the intent of the Commissioner's report, and it should be clarified in this Act.

AdvantAge Ontario provided a proposed definition of the meaning of 'mission-driven organizations' in our July 2021 submission to government entitled *Response to the Ontario's LTC COVID-19 Commission Final Report*, and we have included an amended version of this definition below as an amendment to the Act.

Recommendation

Amend the final two paragraphs of the Preamble as follows:

Are committed to the promotion of the delivery of long-term care home services by not-for-profit and mission-driven organizations responsible to the communities in which they operate or serve, and guided solely by the primary, non-commercial goal of delivering resident-directed, safe, and quality care for seniors~~; 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.~~"

Alternatively, add a new subsection 2 (3) as follows:

Meaning of "mission-driven"
2 (3) A mission-driven long-term care home is responsible to the community in which it operates or serves and is guided solely by the primary, non-commercial goal of delivering resident-directed, safe, and quality care for seniors.

2. Emotion-Focused Models of Care

The Preamble to the proposed Act refers to residents' emotional well-being, as does the Residents' Bill of Rights. A resident's emotional needs are as important as their physical, social, and other needs. We recommend adding emotional needs to the list of needs in the Fundamental Principle, such that emotional needs would be considered while interpreting the proposed Act.

There is growing awareness of and clinical support for emotion-focused models of care as way to improve and sustain resident health and wellbeing. The purpose of the proposed Act is to achieve the best possible care for residents. In this context, the Act must provide enough flexibility to enable the provision of emotion-focused models of care; and much of this flexibility will depend on regulations. At minimum, the Act must not impede the delivery of innovative models of emotion-focused care. We recommend adding a statement to the Act to promote these models of care.

Finally, the Long-Term Care Quality Centre has a vital role to play in supporting the development and sharing of best practices relating to models of emotion-focused care and our recommendation is to add this to its functions set out in the Act.

Recommendation

A. Amend section 1 by adding the word "emotional" as follows:

1 The fundamental principle to be applied in the interpretation of this Act and anything required or permitted under this Act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual, emotional, and cultural needs adequately met.

B. Amend section 1 by adding a new subsection 1 (2) as follows:

1 (2) Without restricting the generality of the fundamental principle, this Act shall be applied and construed such as not to unnecessarily impede the delivery of resident-centred and emotion-focused models of care.

C. Amend clause 44 (2) (b) as follows:

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

We believe the amendments outlined above are crucial to enabling the widespread adoption of emotion-focused models of care by homes. By embedding them in the Quality Centre, their benefits can be further quantified and refined over time.

3. Compliance and Enforcement

Modern regulators recognize that support for achieving compliance leads to improved regulatory outcomes. A focus on technical compliance and punitive enforcement, without resources and guidance about how to effectively achieve compliance, is not in the best interests of resident safety and wellbeing. Because the Ministry both regulates and funds LTC homes, it has an interest in ensuring that homes have effective compliance programs in place; this will result in more funding going to resident care and homes having more time to spend on improving resident care.

We recommend that the new Long-Term Care Quality Centre play a role in providing compliance resources to the sector. Having the Centre fulfill this role will provide separation from the Ministry's inspection and enforcement function. It is also consistent with recommendations from the LTC COVID-19 Commission and the Long-Term Care Homes Public Inquiry, as we noted in our previous submission.

The LTC home sector is struggling under the burden of prescriptive, inflexible regulation. Focusing on compliance requirements that relate to resident safety and well-being would improve the effectiveness of regulation and lessen the burden on homes. Under the *Long-Term Care Homes Act, 2007* (the "LTCHA") and the proposed Act, inspectors must document all non-compliance, even in the absence of harm to a resident.

We are recommending that inspectors have the flexibility to forego documenting non-compliance if there is no harm or risk of harm to a resident, and if, (a) the home remedied the non-compliance during the inspection, or (b) the home has a plan in place to remedy the non-compliance. This would support the move away from unnecessarily prescriptive regulation toward a focus on resident outcomes. It would also make inspection reports a more meaningful public record of the conditions in a home with respect to resident safety and wellbeing.

The proposed Act adds administrative penalties as an enforcement measure. The logic of financially penalizing a funded sector is unclear, particularly in the context of municipal, First Nation, hospital and not-for-profit homes. Other jurisdictions have experimented with pay for

performance or financial penalties in health care regulation. The result is money moving away from resident or patient care; in other words, it exacerbates the problem it is trying to solve.

Not-for-profit and municipal homes use funding to provide care and deliver LTC home services. Fining these homes will remove much-needed funding from resident care and programs.

We recommend that the Act significantly cap the amount of penalties for not-for-profit and municipal homes to recognize the short-comings and potential unintended consequences of financial penalties in a government funded LTC sector.

Finally, a requirement for inspectors to identify themselves upon entering a LTC home and to wear identification would contribute to resident safety. Homes have strict protocols with respect to entry to and exit from homes and with respect to verifying the identify of services providers and other visitors to the home. Identification requirements will also support a more transparent relationship and communication between inspectors and staff of the home (and residents).

We are also aware of inspectors who are former employees of homes that they inspect, which is a conflict of interest. This cannot be tolerated as it undermines the objectivity of the inspection function.

Recommendation

A. Amend subsection 44 (2) by adding a new clause (c) as follows:

> (c) to support compliance and improve performance in long-term care homes through the development of compliance training tools and guidance, and the collection and dissemination of best practices for achieving and maintaining compliance, and for improving resident outcomes.

B. Amend subsections 152 (1) and 154 (2) as follows:

152 ...

(3) Subject to subsection 154 (2), if the inspector finds that the licensee has not complied with a requirement under this Act, the inspector shall document the non-compliance in the inspection report.

154 ...

(2) Despite subsection (1), where, during an inspection, an inspector finds that the licensee has not complied with a requirement under this Act but remedied the non-compliance prior to the conclusion of the inspection, or the inspector is satisfied that the licensee has implemented a plan to achieve compliance by a date specified by the inspector, and the inspector is satisfied that the non-compliance caused no harm and created no risk or minimal risk of harm to a resident, the inspector is not required to take an action under

subsection (1). ~~, however the inspector shall document the findings in accordance with subsection 152 (3), as well as the remedy.~~

C. Amend subsection 158 (3) by adding a new clause (a) as follows:

Amount of administrative penalty
(3) Subject to subsections (4) and (5), the amount of an administrative penalty in respect of a failure to comply,

(a) in the case of a non-profit long-term care home or a long-term care home approved under Part IX, shall not exceed $5,000;

(b) if (a) does not apply, shall not exceed $250,000;

(c) shall be determined by the inspector or Director in accordance with the regulations; and

(d) shall reflect the purpose referred to in subsection (2).

D. Amend Part X by adding a new section 145 as follows:

Inspectors, conflicts of interest
145 The Director shall make a policy and process for avoiding and resolving conflicts of interest in the performance of inspections and no inspector shall inspect a home if he or she has a conflict of interest as defined in the regulations.

E. Amend section 144 by adding a new subsection as follows:

Certificate of appointment
(3) The Minister shall issue to every inspector a certificate of appointment which the inspector shall produce upon request, when acting in the performance of his or her duties.
(4) An inspector shall wear identification prescribed in the regulation, when acting in the performance of his or her duties.

The amendments to the legislation above would go a long way to transforming the way enforcement happens in LTC and would give homes the opportunity to learn from their mistakes and achieve compliance in the future through a coaching model.

4. Direct Hours of Care Target — Allied Health Care Professionals

We recognize and applaud the inclusion of the direct hours of care targets in the Act with respect to allied health care professionals. Allied staff are critical to the resident care in LTC. They are particularly vital to the successful implementation of emotion-focused models of care. Recreation staff, as an example, connect residents to loved ones via technology, and provide social activities that are crucial for psychological and emotional well-being.

Our recommendation is to increase the target from 36 to 60 minutes, so that residents are guaranteed sufficient support from this group of staff. The hours of care for personal support workers and nurses increased by 60% - so should the hours of care for allied health.

Recommendation

Amend subsections 9 (2) and (4) to reflect a target of 60 minutes as follows:

Target

(2) The target is for an average of ~~36~~ 60 minutes of direct care to be provided per resident per day.

When to be achieved

(3) The target set in subsection (2) must be achieved no later than March 31, 2023, and, once achieved, shall continue at that level, subject to subsection (5).

Increase towards target

(4) An increase towards a target of an average of ~~33~~ 60 minutes of direct care to be provided per resident per day must also be achieved no later than March 31, 2022.

5. Management Contracts – Limitations on Eligibility

Paragraph 2 of subsection 110 (4) of the LTCHA makes the approval of management contracts subject to sections 97 (public interest- who can be issued a license) and 98 (limitations on eligibility for a license), "as if the person who would manage the LTC home were to be the licensee."

Paragraph 2 of subsection 113 (4) of the proposed Act makes the approval subject to section 100 (public interest- who can be issued a license) but omits any reference to section 101, which coincides with LTCHA section 98 (limitations on eligibility for a license). The effect of this is that the assessment of past conduct and competency and other factors would not apply to the Director's approval of a management contract, as they do currently.

There is no justification for management companies facing a lower bar with respect to past conduct, competency to operate the home, legislative compliance, and other eligibility criteria. Our recommendation ensures that management companies are subject to the same eligibility criteria as license applicants. This is an essential protection for the health, safety, and welfare of residents.

Recommendation

Amend subsection 113 (4) by adding the following wording to paragraph 2:

Approval by Director

(4) The following apply with respect to the approval by the Director of a contract described in subsection (1):

1. Before approving the contract, the Director must be satisfied that the contract complies with any requirements established by the regulations.

2. The approval by the Director is subject to any restrictions by the Minister under section 100 and subject to section 101 as if the person who would manage the long-term care home were to be the licensee.

6. Risk-Based Admissions

Homes must provide a safe and secure home for all residents, but they have very limited ability to refuse a high-risk admission, even if admitting the applicant will create a grave risk of harm to other residents and/or staff. Under the LTCHA, a home can only withhold approval of applications if it lacks the physical facilities or nursing expertise. We recommend that the Act permit homes to withhold approval if in the specific context of the home admitting the resident will pose a significant risk of serious harm to staff and/or residents. This will contribute to safer home environments and reduce resident-upon-resident and resident-upon-staff violence. It will also support high-risk applicants getting to the most appropriate care setting.

Recommendation

Amend subsection 51 (7) by adding a new clause (c) as follows:

Licensee consideration and approval

(7) The appropriate placement co-ordinator shall give the licensee of each selected home copies of the assessments and information that were required to have been taken into account, under subsection 50 (6), and the licensee shall review the assessments and information and shall approve the applicant's admission to the home unless,

(a) the home lacks the physical facilities necessary to meet the applicant's care requirements;

(b) the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements;

(c) the home has reasonable grounds to believe that admitting the applicant poses a significant risk of serious harm to other residents and/or staff of the home; and

(d) circumstances exist which are provided for in the regulations as being a ground for withholding approval.

Conclusion

We believe the time for transformation in LTC is now. We commend the government for tabling new legislation and want to ensure we are taking full advantage of this unique opportunity by being as bold and forward-thinking as possible.

AdvantAge Ontario continues to be a committed partner in creating the best possible environment in LTC for residents and staff to thrive. The amendments proposed in this submission are crucial to charting this path forward, and we hope that the Legislative Committee on General Government will consider our requests.

Information Contact

Lisa Levin
Chief Executive Officer
905.851.8821 x 230
llevin@advantageontario.ca