Unifor submission to the Standing Committee on the Legislative Assembly on Bill 37, ***Providing More Care, Protecting Seniors, and Building More Beds Act, 2021***

Submission by Unifor

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UNIFOR IN THE HEALTH SECTOR

Unifor is Canada's largest private sector union with 315,000 members working in virtually all sectors of our economy. Over half of our members live and work in Ontario, making Unifor one of this province's largest and most important trade unions.

Despite our footprint in various private industries, Unifor represents a significant number of workers in public services, including the health care sector. We represent more than 26,000 health care workers in Ontario who work in hospitals, long-term care homes, retirement homes, ambulance services, home care and health clinics.

INTRODUCTION

This government has considered this bill an overhaul to the long-term care system. Yet, for such a significant piece of legislation, there was no proper public consultation prior to its introduction. Unifor has several concerns about the bill, which was hastily introduced and has provided very limited opportunity for public consultation and scrutiny.

A bill of this magnitude should require full public hearings across the province instead of this expedited process that leaves so many voices out. Given what this system has gone through in recent years, the government should take this opportunity to make meaningful changes to long-term care that are in the public interest and with comprehensive consultation.

BILL 37 DOES NOT ADDRESS THE STAFFING CRISIS

There is a serious recruitment and retention problem in long-term care, so this government must help create the conditions of work – including compensation – that will attract workers back to the sector. Unfortunately, Bill 37 does not address this staffing crisis.

The temporary wage enhancement for Personal Support Workers (PSWs) was welcome when it was introduced, but it continues to exclude so many frontline workers in long-term care and other health sub-sectors. The temporary enhancement should be expanded to all frontline workers in long-term care (along with other health care sub-sectors). Measures should be taken to permanently increase wages across the long-term care sector, including a wage floor of $35 for Registered Practical Nurses (RPNs).

Bill 124 – the wage restraint legislation – has also supressed wage increases for so many frontline health care workers, including those working in not-for-profit long-term care homes (those working in for-profit homes were excluded). Despite all the sacrifices they've made, these workers have been arbitrarily treated differently and after the three year moderation

period, workers doing the same jobs in not-for-profit homes will have fallen behind their for-profit counterparts. Bill 124 should be repealed.
The COVID-19 Long-Term Care Commission – along with several reports released during the pandemic – was clear in its final report that staffing is a critical problem that has not been appropriately addressed. The report's recommendation #49 prescribes one solution to directly address working conditions and compensation:

> **Improve working conditions and compensation**
>
> 49. The Ministry of Long-Term Care must insist that licensees make changes in working conditions that lead to less reliance on agency and part-time staffing, and provide funding
> adequate to support these changes, which must include:
>
> a. Creating more full time direct care positions. A target of 70 per cent full-time positions for nursing and personal support worker staff should be set for each long-term care home; and
> b. Reviewing agreements with direct care staff and making adjustments to better align their wages and benefits within the sector and with those provided in public
> hospitals. [page 238]

4-HOURS OF CARE MUST BE A MANDATORY REQUIREMENT

The inclusion of the average of four hours of direct care is an important inclusion in this legislation. However, sections 8 and 9 provide for a "direct hours of care target." The legislation needs to be unambiguous in ensuring that the four hours of care will be provided. In other words, the legislation must ensure that this care standard is a mandatory requirement, and not just a target.

In calculating the average hours of care, sections 8 and 9 determines that it should be done by taking the total number of hours of direct care actually worked divided by the total number of resident days in all long-term care homes. Using the total number of hours of direct care actually worked is the right measure to employ.

However, the care standard should not be measured as an overall provincial average. With this methodology, there is no accountability for each individual home, which reduces the degree to which this standard accomplishes its purpose. The required four hours of care must be applied to and achieved by each individual long-term care home.

Furthermore, the care standard must be vigorously measured through mandatory public reporting for every long-term care home. Mandatory staff reporting should also include details

related to worked overtime, staff agency use, and the proportion of full-time and part-time employees in each workplace.

In terms of the implementation of the four hour care standard, our seniors simply cannot wait until 2025 to get the care they desperately need. Our seniors and their families have suffered so much throughout the pandemic, and we are failing them if they are unable to live with comfort and dignity. Long-term care workers also cannot wait this long – for those who have not yet left, they are burned out and tired from being short-staffed and overworked. This government should be fast-tracking progress on this standard of care.

A STRONG COMPLIANCE, INSPECTION AND ENFORCEMENT SYSTEM

Establishing care standards and other requirements are ineffective without a strong compliance, inspection and enforcement system. These standards must be proactively measured and enforced, with real consequences for long-term care providers who are not in compliance.

While the government has publicly emphasized the new enforcement measures contained in this bill, the context for these changes is important. While doubling the amount of fines that can be levied on homes, for example, is welcome, they are not useful if violations are never enforced.

Over the last number of years, the government already had powers in the existing *Long-Term Care Homes Act* to hold homes accountable for negligence or non-compliance. This includes the ability to fine, have provincial offenses charged, suspend licenses, revoke licenses, appoint management to take over the homes and stop new admissions. This government simply chose not to act and enforce these measures.

In its final report, the COVID-19 Long-Term Care Commission stated:

> Prior to the pandemic, there was a lack of enforcement and lack of follow-up to verify compliance with orders issued by the Ministry.
> …
> The Ministry does have a more effective tool to ensure compliance, but it is, unfortunately, rarely used. Director Orders allow the Director of the Ministry of Long-Term Care Inspections Branch to issue escalating sanctions to a home for non-compliance. Director orders can range from a written notice to a cessation of admissions, the imposing of mandatory management orders and financial sanctions, and license revocation.
> …
> The evidence before the Commission is that fines or prosecution penalties for failure to comply with orders under the *Long-Term Care Homes Act, 2007*, are rarely applied as a

> form of corrective action, which may explain the lack of urgency demonstrated by long-term care operators to achieve compliance. [page 65]

Any new legislation must maintain all these levers in order to hold long-term care providers accountable. While the bill commits to regular inspections, there is no commitment to proactive, annual inspections. Under this government, Resident Quality Inspections (RQI) have been eliminated – RQIs were an important tool, since they were comprehensive and unannounced inspections that provided a review of the whole operation of a home. Annual and comprehensive surprise inspections must be a part of the inspection and enforcement system.

From the COVID-19 Long-Term Care Commission's final report:

> This almost total elimination of RQIs, which are intended to provide a holistic review of operations in the long-term care homes, left the Ministry of Long-Term Care with a very limited picture of the state of long-term care homes, and virtually no idea of a home's IPAC and emergency preparedness when the pandemic began. This was a mistake, as RQIs are the only resident-focused inspections that include a review of IPAC. [page 64]

The Commission's recommendation #76 includes ensuring that the inspection regime includes annual comprehensive RQIs conducted by the Ministry of Long-Term Care.

FOCUS ON NOT-FOR-PROFIT CARE

Unifor, along with health care workers and advocates, have been clear in asserting that government should focus long-term care expansion on not-for-profit long-term care. The proposed preamble in this legislation is extremely concerning – in particular, the second-last sentence:

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

The inclusion of "mission-driven organizations" is an undefined term in the Act that alludes to for-profit providers. This phrase should be removed from the preamble and the legislation should re-iterate the government's commitment to not-for-profit care.

During the pandemic, this government has rewarded for-profit long-term care chains by awarding them licenses for thousands of new beds – despite the devastating role they played both before and during COVID-19.

We must remove profit from the long-term care system instead of blindly subsidizing the expansion of beds to large corporations. By ensuring new bed licenses are given to public and

not-for-profit entities, we can provide more resources to deliver better care for our seniors and more effectively attract workers back to the sector by improving their working conditions and compensation.

WHISTLEBLOWER PROTECTION

The COVID-19 Long-Term Care Commission recommended strengthening whistleblowing protections for the sector. Currently, no changes to what is in the current legislation have been proposed in this regard. Strong protections should include protect whistleblowers where there is an immediate risk to the health and safety for residents and staff. These protections should not just be limited to information disclosed to inspectors, Director or Ministry personnel. They should also include instances where a whistleblower has disclosed information to Members of Provincial Parliament and independent parties like, unions, media or non-governmental organizations.

PSW REQUIREMENTS

Currently, Section 47 of the O. Reg 79/10 of the *Long-Term Care Homes Act* outlines the required qualifications of Personal Support Workers (PSWs). Any new legislation should include the provisions in this regulation to ensure that the standards outlined in Section 47 are maintained. Personal support work is performed by skilled workers, and the maintenance of these minimum requirements are important in ensuring quality care for long-term care residents.

CONCLUSION

This pandemic has taught us that the long-term care system needs a serious overhaul and that there are no shortcuts to achieve that goal. We remain concerned that this significant piece of legislation has been pushed through without meaningful public consultation and call on the government to ensure that all voices are heard on this issue. Unifor has identified several concerns with this legislation and welcomes any further opportunity for input in addressing these concerns.

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