
Advocates for Long-Term Reform in Ontario

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Standing Committee

Legislative Assembly
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Dear Committee,

I am writing on behalf of the Advocates for Long-Term Care Reform in Ontario. We are a group of approximately 4,800 LTC residents, families and frontline staff. We are seriously concerned with the proposed Bill 37. This Bill is supposed to protect our most vulnerable citizens, yet it's being pushed through at record speed without public consultation or any input from those most affected by this Bill. This is not a process we should be rushing, but rather a process that should take time and consideration in order to ensure the very best protections for our LTC residents and for the staff that look after them. This is especially troublesome because we already have a decent LTC Act in place. Yes, it could use a few amendments, however overall it's solid. The LTC Act itself did not fail the residents and staff of LTC; it's the lack of government enforcement of this Act (both past and present) that has failed those in LTC, and that brings us to the crisis we are currently in. Creating a new Act will not fix the problems, especially the Act proposed in Bill 37. It offers us no improvement over the current Act, and in fact much of the ambiguous wording could possibly lead us to be worse off than we are currently. We have many issues with the proposed Act, the most major being as follows:

1. The preamble: In the current LTC Act, the preamble states that 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". This is what we all want. We want not-for-profit-organizations to be the ones delivering care to our vulnerable residents. We want our tax dollars used for care, not to pay out profits to shareholders. Yet even with this preamble in place, we STILL find ourselves in a position where close to 60% of the homes in Ontario are for-profits. This number will become even higher if Bill 37 is passed where the new preamble states that we "are committed to the promotion of the delivery of long-term care home services by not-for-profit and mission-driven organizations". "Mission-driven" opens the door even wider to for-profit operators since virtually all LTC homes have mission statements. This is not acceptable as part of the preamble. Whenever humanly possible, we should be prioritizing not-for-profit operators over for-profits. Especially given the performance of for-profits during the pandemic, and in general. The vast majority of Covid deaths in LTC occurred in for-profit homes. We all read the horrific report issued by the Canadian Armed Forces. Four of the five homes the Armed Forces were in were run by for-profits, and the conditions they listed were nothing short of a nightmare. And finally, we all see the lack of everything in LTC: staffing, equipment, supplies, care, etc. How can we in good conscience promote

that taxpayer dollars be spent on profits when we can't even meet basic resident needs? For these reasons, we are completely opposed to the changes in the preamble and thus Bill 37 in its entirety. As a society, we should be moving towards issuing all new licences to not-for-profit operators to ensure the best possible care for our citizens. Many current licences will be expiring in the next few years. The homes with expiring licences are old, and many need to be rebuilt altogether. This is a prime opportunity for us as a province to move toward more not-for-profit-care. We fund the building of these homes, and well as the operational costs, so there is no reason we need the for-profit operators. They offer nothing to us as taxpayers, and only take: they take care dollars away from our loved ones as well as capital dollars away from the taxpayers who fund the construction of these homes. These assets should remain publicly owned since we are funding them.

2. Inspections and their Consequences: our Ministry of LTC currently has an inspection system in place. Up until recently, all homes received at least one comprehensive annual inspection which was unannounced to homes (RQI), as well as continual complaint-driven inspections (LQIP). The RQI's were dropped by the current government for almost all homes, leaving only a system of complaint driven inspections. The major failure of our inspection process is the complete lack of consequences to operators of homes; especially those who are repeat offenders. Bill 37 proposes to grant the following powers on inspectors:

Actions by inspector if non-compliance found

154 (1) If an inspector finds that a licensee has not complied with a requirement under this Act, the inspector shall do at least one of the following as the inspector considers appropriate:

1. Issue a written notification to the licensee.
2. Make an order under section 155.
3. Issue a notice of administrative penalty under section 158.
4. Issue a written notification to the licensee and refer the matter to the Director for further action by the Director.

Along with this, the Minister of LTC Announced that fines for violations would be doubled. This all sounds great in theory, however our problem with this part of Bill 37 is that this already exists in the current LTC Act and is not being used. The current LTC Act states:

Compliance orders

153 (1) An inspector or the Director may order a licensee to,

- (a) do anything, or refrain from doing anything, to achieve compliance with a requirement under this Act; or

(b) prepare, submit and implement a written plan for achieving compliance with a requirement under this Act. 2007, c. 8, s. 153 (1); 2017, c. 25, Sched. 5, s. 34.

Notice of administrative penalty

156.1 (1) An inspector or the Director may issue a notice in writing requiring a licensee to pay an administrative penalty in the amount set out in the notice if the inspector or Director is of the opinion that the licensee has not complied with a requirement under this Act. 2017, c. 25, Sched. 5, s. 37.

Purpose of administrative penalty

(2) A notice of administrative penalty may be issued under this section for the purpose of,

(a) encouraging compliance with a requirement under this Act; or

(b) preventing a licensee from deriving, directly or indirectly, any economic benefit as a result of not complying with a requirement under this Act. 2017, c. 25, Sched. 5, s. 37.

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) shall not exceed \$100,000;

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

(c) shall reflect the purpose referred to in subsection (2). 2017, c. 25, Sched. 5, s. 37.

There is zero substantive improvement between the current LTC Act and the one proposed by Bill 37. These examples show that the same powers currently exist and are not being used. Proposing to double the fines is meaningless since a fine has never been issued. Two times zero still equals zero. We want any new Act to outline exactly when fines will be levied, timing for collections, and what will happen for failures to remit. We want strict guidelines for licensees that include license suspensions for repeat offenders, and the option to remove Administrators, DOC's who repeatedly and flagrantly violate the Act. We want the return of annual unannounced inspections that look at the entirety of a home, not just when complaints are called in. In essence we want an Inspection process that is more than just a book report of the problems in a home. We want to see consequences that will deter operators from violating the LTC Act in the first place. Having consequences for poor inspections would lead to meaningful improvements and it's a step that would be easy to implement immediately since the inspection process is already in place.

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3. Care and Services: where our current LTC Act fails us the most is that there is no minimum staffing standard. We need an Act that will have measurable and enforceable staffing standards in place. Under Bill 37, the proposal around staffing is as follows:

Direct hours of care target — personal support workers, nurses

8 (1) This section establishes a target for the average number of hours of direct care to residents to be provided by individuals who are hired by or otherwise work for licensees in a long-term care home as personal support workers, registered nurses, or registered practical nurses.

Target (2) The target is for an average of four hours of direct care to be provided per resident per day.

Target date (3) The target set in subsection (2) must be achieved no later than March 31, 2025, and once achieved, shall continue at that level, subject to subsection (5).

Periodic increase towards target (4) The following periodic increases towards the target must also be achieved:

1. An average of three hours of direct care to be provided per resident per day no later than March 31, 2022.

2. An average of three hours and 15 minutes of direct care to be provided per resident per day no later than March 31, 2023.

3. An average of three hours and 42 minutes of direct care to be provided per resident per day no later than March 31, 2024.

Additional targets (5) To further the purposes of this section, additional targets that are higher than those set out in subsections (2) and (4) may be established by regulation, and such a regulation, if made, may also set dates by which the higher targets must be achieved.

Required to comply (6) Despite subsection (5), the regulation may not remove or amend the requirement to comply with the targets and achievement dates established under subsections (2), (3) and (4).

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.

Bill 37 does nothing to solidify minimum staffing standards. This new language is unenforceable. A proposal is being made for a “target” of four hours of direct care per resident to be added incrementally up to the end of March 2025. This target is moveable and is not concrete, and one cannot enforce a “target”. We demand strong language in any new Act that would stipulate exactly how many hours must be provided, and consequences for failing to provide said hours. Further, we are in a crisis now. We want to see actions taken to improve staffing standards immediately. Current residents cannot wait four years to see these improvements. The average lifespan of an Ontario LTC resident is only about 18 months. We cannot allow two more cycles of residents to pass away without having the care they need at such a vital time; the final days of their lives.

Our other major opposition to this section of Bill 37 is around how the average care hours are calculated. They will be calculated based on the direct care hours worked by all RN's, RPN's and PSW's in ALL LTC homes, divided by the total number of resident days in ALL LTC homes. This is a huge red flag that we strongly believe will once again allow for-profit operators to offer substandard services. It is widely known that residents in not-for-profit homes currently receive more care than residents in for-profit homes. This is because NFP's have a much higher staffing budget due to the fact that they don't take profits. So the surplus of care that they provide to residents will cancel out any deficiencies in for-profit homes. This is not an acceptable calculation. Any calculation must be done at EACH HOME, so that we can be ensured residents are getting the same hours of care regardless of where they live.

4. Protection of staff through improved working conditions and whistleblower protections:

As previously mentioned a huge part of the problem is lack of staff. Some of this is caused by the lack of staffing standards discussed above, but so much is also caused by the poor conditions of work. LTC staff are typically poorly paid (especially in for-profit homes), and often cannot get full-time hours because homes want to avoid paying benefits. So they offer staff only casual or part-time hours. As such staff are forced to piece together multiple jobs in order to get the full-time hours they need. This is beneficial for no one; not the staff, nor the residents. Many homes also rely on agencies to cover their huge staffing gaps. Agency staff are poorly trained, unfamiliar with the residents and their care plans/needs, and agencies are just another vehicle to take more profits out of the LTC system. They charge exorbitant fees for poor service, and homes would be well served to spend this money on permanent staff instead. We want a LTC Act that enforces a liveable and decent wage for all LTC employees. In addition we want all employees to have the right to permanent full-time positions, with benefits, should they wish. No one should have to piece together a number of jobs to survive; especially not when they are taking care of our most vulnerable citizens. LTC residents also deserve an Act that eliminates the use of agency staff in homes on a regular basis. No one wants a revolving door of faces in a home, especially in LTC where so many residents are afflicted with dementia and where consistency is important. Residents should be getting care from those who they are familiar with and know. They need to have consistent staff who know what their needs are and who they can form trusting relationships with.

Finally, our frontline staff see firsthand many of the problems in LTC before any of the rest of us do. I have heard from hundreds of PSW's and nurses over the years in my role

with Advocates for LTC Reform. The one thing they all consistently say is that they are afraid to speak out at work either due to fear of reprisals or job loss. Further when they call into the MOLTC action line their complaints are rarely followed up on or taken seriously. We need to ensure any and all complaints filed by staff are thoroughly investigated, and that they are protected whether they call in a complaint to the MOLTC or whether they voice it directly to the management of the home. No one should ever be put in a precarious position because they want to tell the truth. It's a shame that LTC has a culture where so many staff are afraid to speak out. Any new Act needs to address this and ensure staff are fully protected.

For all the reasons listed above, as well as numerous others (too many to mention), we the members of Advocates of Long-Term Care Reform in Ontario are opposed to this fast-tracking of Bill 37. It does absolutely nothing to improve on the current Act, or to solve the current LTC crisis. It is full of language that is vague and open to interpretation which we fear will open the door even wider to for-profit operators. LTC residents deserve to live in a safe, happy place during the last years of their lives. We owe it to them that any future Acts are well thought out and take all their needs into consideration. What residents don't need is a new Act sped through in less than a month, with zero consultations with them, or with those that provide their care. We kindly request that this process be stopped. The current Act is adequate to work with. Let's start by enforcing it immediately, and then taking the time necessary to make quality, measurable, improvements/amendments that will ensure that safety and quality of life are returned to residents and staff of LTC homes province-wide.

Sincerely,

S. Caleta

Sandra Caleta