November 25, 2021

To Members of the Standing Committee on the Legislative Assembly

RE: *Bill 37 Providing More Care, Protecting Seniors, and Building More Beds Act, 2021*

The Council on Aging of Ottawa (COA) aims to advance the wellbeing of Ottawa's older adults. As a bilingual and inclusive Council, the COA brings together representatives of older adult groups, community partners, government organizations, the business community, and individuals whose diverse backgrounds, extensive experience and expertise enable the COA to undertake quality strategic thinking on older adult issues.

Building on the diverse experience, expertise, and perspective of our network, the COA is pleased to provide the attached comments on Bill 37, an Act to enact *Providing More Care, Protecting Seniors, and Building More Beds Act, 202*1 that proposed revisions to two separate acts, the *Fixing Long-Term Care Act, 2021*, and *Strengthening the Retirement Homes Act (RHA), 2010*.

In our view the Government has missed an opportunity to present a new vision for long-term care in Ontario and support real transformation in this sector. The proposed Act does not address the important issues of ownership, funding, and conditions of work, among others. The sections on care and services must be strengthened to ensure that the 4 hours of direct care are a **minimum care standard** for each and every home rather than a target. The Council also strongly urges the Government to implement this care standard as soon as possible and not wait 4 more years.

The Strengthening the Retirement Homes Act has not had the attention needed to address changes in this sector. Due to the lack of sufficient time to examine the specific articles in the Act and to consult with other seniors and legislative experts, the COA strongly recommends that Ontarians be given more time to consult with the community and the government on the Strengthening the Retirement Homes Act, 2010. In particular the Council is concerned with the changing care needs of residents living in retirement homes and ensuring that quality care standards are developed and implemented commensurate with protection provided in other care facilities.

This omnibus bill combines two different pieces of legislation that fall under two different Ministries. Bill 37 provides an opportunity to address and ensure coherence in addressing the similarities of the two Acts, in particular for care provided by both long-term care homes and retirement homes. Beyond the similarities, the legal parameters defining a relationship between a tenant and landlord (as in the case of retirement homes) are very different than that of a resident and a care home (as in the case of

long-term care (LTC)), and Bill 37 represents an opportunity to clarify those for Ontarians.

Finally, the COA recommends this provincial government show leadership in Ontario by developing a comprehensive Older Adult Strategy that includes an independent advocate similar to other jurisdictions, such as British Columbia to ensure a strong and independent voice for older adults.

Sincerely,

Alex Roussakis
President
Board of Directors

Cc: Hon. Rob Phillips, Minister of Long-Term Care
Hon. Raymond Cho, Minister for Seniors & Accessibility
Hon. Christine Elliott, Minister of Health
Stephen Blais, MPP Orleans
Lucille Collard, MPP Ottawa-Vanier
John Fraser, MPP Ottawa South
Merrilee Fullerton, MPP Kanata-Carleton
Goldie Ghamari, MPP Carleton
Joel Harden, MPP Ottawa Centre
Lisa MacLeod, MPP Nepean
Jeremy Roberts, MPP Ottawa West-Nepean

Comments on An Act to Enact the Fixing Long-Term Care (LTC) Act 2021

Summary of Concerns

- The proposed Act has very aspirational language in its preamble and proposes some key needed improvements such as care standards, pandemic response plans, improved infection prevention and control provisions, and better inspections with increased fines. However, many sections do not differ substantially from the current provisions in the Long-Term Care Homes (LTCH) Act 2007.
- Bill 37 is a step in the right direction, and we hope the Provincial government will use this opportunity as a first step towards a new vision for long-term care in Ontario; a vision that strongly supports transformation and innovation in LTC and to move away from the current institutional models of care and underlying structural deficiencies of the existing Act.
- The proposed Act does not address the important issues of ownership and improving the conditions of work in LTCHs. It does not tackle many issues of funding to nurture the development of good care for all LTCHs such as changes in capital funding and in accommodation fees. It does little to ensure that LTC will meet the needs of a changing and growing older Ontario population and encourage more municipal development of LTCHs.
- The proposed Act will be implemented through not-yet-developed regulations and administrative policies as well as in the enforcement and interpretation of this Act. The bottom line for families who rely on LTC is to ensure quality care, adequate funding and accountability in monitoring and responding to what matters most to residents to ensure that better care is available right now.

Specific Concerns

Preamble

- The preamble is a strong element of this proposed Act. It emphasizes person-centred care and recognizes the increasing diversity of needs of residents and its workforce. In particular, it commits to respecting the requirements of the French Language Services Act in the planning, design, delivery, and evaluation of long-term care services for Ontario's French-speaking communities.
- The principles are solid, and if they are fully integrated into the Act and Regulations, they could lead to real improvement in LTC in Ontario and, in particular, to more and better French language services in LTC.
- The preamble retains the commitment to "not-for-profit delivery" but dilutes this priority with adding the undefined term "mission-driven" organization. The term "mission-driven" organization is not defined in the Act and opens the door to a very wide interpretation going forward, including the further erosion of the not-for-profit sector in Ontario LTC. All the evidence from the pandemic has

demonstrated the strengths of the not-for-profit sector and this sector should be given priority in this new Act and in the development of new homes.

Part II Residents: Rights, Care and Services

Section 3 Residents' Bill of Rights

- The Resident Bill of Rights is strong. Adding the rights to ongoing and safe support from caregivers and to care and services based on a palliative care philosophy are important new additions. Defining good quality palliative care and appropriate trained staff will be important to ensure that this care is delivered.
- The Resident Bill of Rights would be strengthened by including the right to technology required to permit residents to communicate in confidence, receive visitors of his or her choice and consult in private with any person without interference and to access to Wi-Fi and information technology aids in line with Ontario's Long-Term Care COVID-19 Commission Recommendations 34 and 35.

Section 8 – Care and Services – Direct hours of care target – personal support workers, nurses

- Improving direct care is among the most important elements of this new Act. Using the term "target" rather than "**minimum care standard"** of 4 hours of direct care to residents weakens the intent of this important change. This legislation delays the implementation of this standard until 2025, even though experts have recommended that it is needed now.
- There should be a minimum percentage by category of worker (RN, RPN and PSW) in the legislation so that the RN/RPN contributions are an important part of the 4 hours of care. The LTC COVID-19 Commission recommended 20% RN, 25% RPN and 55% PSW.
- PSW needs to be defined in this Act to ensure that there is no reduction in skills training for the important work provided by PSWs in LTCHs.
- Section 8 (5) Additional Targets - The provisions in this sub-section allow the standard (target) to increase. This is a good provision and regulations should ensure that there are regular reviews of the adequacy of this standard to meet the increasing complexity of residents' needs.
- Section 8 (7) – How Average Calculated – How the average hours of direct care is calculated needs to be clearer to ensure that each home delivers care to this standard. It cannot be an average for all homes as proposed in this section. The applicable calculation period defined in regulations should also be a short period.

Section 9 – Direct Hours of Care Target – Allied Health Professionals

- The COA is pleased to see a care standard for allied health care professionals also included in this Act. Having a definition of allied health professionals in the Act would make the intention of this level of care clearer. The initial target of 36 minutes rather than the 60 minutes recommended by the Commission is

concerning. Like section 8, the language and calculation of this care standard need to be more clearly defined in this Act.

Section 10 – Measuring Progress

- Section 10 (1-3) It is important that progress by individual LTC home be reported publicly and more frequently than annually.
- Section 10 (4) Failure to achieve a target – This section seems quite weak with the onus on Minister and the home finding a plan to achieve these targets identified in sections 8 and 9. If the legislation was clear that these were minimum care standards, then the consequences of not delivering these standards should be very severe and outlined in detail.

Section 11 – Nursing and Personal Support Services

- 11 (3) 24-hour Nursing Care –The legislation should specify the specific ratio of residents per registered nurse. Regardless of size of homes, it is inadequate that only one nurse is required to be on duty.
- The Act should strengthen requirements for medical directors, if not physicians, to be on the premise.
- The legislation should also add nurse practitioners to the list of required health practitioners in LTC as recommended by Ontario's Long-Term Care COVID-19 Commission. The Commission recommended a ratio of one nurse practitioner for every 120 residents.

Section 12 – Palliative Care

- This section is too vaguely written and requires more detail. It would benefit from advice from experts in this field.

Section 23 – Infection Prevention and Control (IPAC) Program

- The COA is pleased to see the IPAC provisions strengthened. The legislation should add that the precautionary principle should guide each LTCH's IPAC program, outbreak management system and written plan for responding to infectious disease outbreaks as recommended by Ontario LTC COVID-19 Commission's recommendation 2.

Section 24 – Prevention of Abuse and Neglect

- The definition of neglect needs to be clearly defined to include situations observed during the pandemic such as poor hydration, nutrition, and personal care. There should be very serious consequences for situations of abuse and neglect.

Other considerations for Part II

- There are no specific provisions for delivering mental health care which are essential services within LTC and deserve a specific section within the Act.
- The legislation should require that all homes be accredited and meet specific physical design standards. Homes can no longer be allowed to ignore substandard situations for years.

Part III Quality

Section 43 – Resident and Family/Caregiver Experience Survey

- The legislation needs to ensure that core metrics to be surveyed are common to all homes and not allow each home to survey its residents in its own way. The legislation should identify an external body to be responsible for the annual survey. All results by individual home should be available publicly and in a timely manner.

Section 44 - Long-Term Quality Centre

- The establishment of this Centre seems like an excellent idea but there are no details in the proposed legislation.

Part VI Operations of Homes

Section 80(1) Continuity of Care -Limit on Temporary, Casual or Agency staff

- Any limitations of temporary, casual or agency staff will be contained in regulations. The Act would benefit from a stronger intent such as "a significant portion of staff caring for residents must be permanent employees receiving adequate worker benefits." The Ontario LTC COVID-19 Commission recommended a target of 70% full-time positions for nursing and personal support worker staff for each LTCH.

Section 82 – Training

- While the Act mentions resident and family centred care/person-centred care, it does not seem to require specific training on these areas.

Section 90 – Emergency Plans

- The Act requires emergency plans to be prepared to respond to epidemics and pandemics and to regularly test, evaluate, update, and review them with staff of the LCTH. This is a critical requirement and one that has long been needed. All emergency plans should be guided by the proper appreciation and application of the precautionary principle which needs to be included in this legislation.

Part VII Funding

Section 93 – Funding

- "The Minister may provide funding for a long-term care home." The language of this section should be stronger to require that the Minister supply sufficient funding to deliver all components of this legislation to an acceptable quality in all homes.

Section 94 - Resident Charges

- The Act uses the terms "basic" and "preferred" accommodation. It needs to specifically prohibit rooms with more than two beds. Ideally the standard should only be single rooms.
- The Act/Regulations need to set minimum and maximum rates for accommodations not tied to the delivery of "preferred" accommodation. Ontario already subsidizes low-income LTC residents so perhaps this is the time to revisit how residents pay for LTC.

Other Considerations for Part VII

- Homes that demonstrate improvements in the wellness and quality of life of their residents should be eligible for financial rewards.
- There should be funding available for homes transitioning to recognized alternate, person-centred models of care.
- Capital funding needs a review to ensure that non-profit and municipal homes have easier access to funds.

Part VIII Licensing

Section 100 - Public Interest

- This is an important section for the future development of LTC and has huge latitude in interpretation. This section must support and encourage growth in the non-profit / public sector.
- This section could also guide the expansion of homes serving specific cultural and linguistic needs including provisions for increased number of LTC homes providing French language services.

Section 101 – Limitations on Eligibility for Licence

- This section could be strengthened by ensuring that all licensees have met or will meet current standards before granting or extending a licence. Any home that does not meet current standards within a reasonable timeframe should have its licence revoked. Restrictions could be applied to corporate chains to ensure that all their homes are compliant.

Part IX Municipal Homes and First Nations Homes

Sections 122-124 Southern Homes

- This legislation has the opportunity to mandate more municipal homes on a different basis than one home/municipality.
- The legislated authority should be based on minimum number of municipal beds/ population or possibly based on a rate per population over age 75. Homes can be any size. Cities should be planning for LTC homes as part of their overall community planning and the aging of their population.

Section 125 -Northern Homes

- It is not clear why northern municipalities should be exempt from operating even one LTC home.

Part X Compliance and Enforcement

Sections 144-183

- This Part has been strengthened from the current provisions and it will be important that these provisions are used in practice. The public should be kept informed of all the results from inspections including any deficiencies found and when and how these deficiencies are corrected. This is particularly important for the new minimum care standards.

Other Comments

- An independent advocate in Ontario would be an asset in long-term care and should be established to ensure a strong and independent voice for improving long-term care.

Strengthening the Retirement Homes Act, 2010

Summary of Concerns

The trends are clear, aging residents of retirement homes require a higher level of care than in the past. To protect vulnerable residents and to ensure quality care standards, this reality must be recognized in the legislation. Amendments are needed to address the evolving nature of health care service delivery in retirement homes.

The statistics already speak volumes: an older adult is five times more likely to have multiple emergency visits if they live in a retirement home when compared to a resident living in a long-term care facility. Effective prevention and protection measures for seniors living in retirement homes must clearly be put in place.

Getting this legislation right is critically important. As of March 31, 2020, there were 770 licensed retirement homes in Ontario with the potential capacity to provide care and accommodation for about 80,000 Ontarians. Between 2018-2046, the population of Ontarians aged 75-plus is expected to double to 2.8 million people. Most will live into very old age and at some point, require assisted living support beyond what can be provided in the community. These people are more than the baby boomer bulge. They are us – our grandparents, parents, partners, and adult children. All older Ontarians deserve (as the Act says) to live in a place of "security, safety and comfort, with dignity, respect, privacy and autonomy, where they can make informed choices about their care options."

The government has an opportunity to deal with key concerns in retirement homes including governance issues; the lack of sector oversight, compliance penalties and transparency; problems related to complaints, dispute resolution and evictions; the affordability gap for housing and care options. One can only say that much more needs to be done to "Strengthen" this Act.

The COA respectfully submits the following preliminary statement of concerns and recommendations regarding revisions to the *Retirement Homes Act 2010*. The COA will continue to monitor and report on the state of the concerns expressed here.

Strengthening the Retirement Homes Act 2010 (Act): Statements of Concerns

1. Recognize changing levels of care needs, to protect vulnerable residents, and to ensure quality care standards

It is estimated that over 50% of older adults living in retirement homes are classified as having chronic conditions and over 25% have complex needs, including mental health issues.

The COA recommends:

1.1. The Act should ensure that retirement homes are held to the same legislative standards as LTC homes for those specific areas where care needs and care services are similar. Furthermore, the Minister of Health and Long-Term Care should also have authority in enforcing the Retirement Home Act.

1.2. The Retirement Act should clarify the levels of care retirement homes can/do provide, including definitions of memory care, assisted living and end-of-life (palliative) care, the required services for these types of needs, and the commensurate minimum level of care services that are required. Defining the type and level of care requirements should include minimum staffing levels; staffing mix; and minimum qualifications required for the delivery of specialized services such as the development of care plans. The current legislation is silent on these important requirements.

1.3. There should be parallel requirements and language to the LTC Act for those areas that intersect. For example, there should be no differences in legislative

Changing Health Care Needs in Retirement Homes

- As of March 31, 2020, 26% of the 38,000 people waiting to be placed in long-term care homes, were waiting in licensed retirement homes (about 10,000 people). (Ontario Ministry of Health)
- Over 4,000 people living in retirement homes were discharged hospital patients designated as alternate level of care (ALC), i.e., they no longer require acute care but are in a condition where it may be suitable for them to be in a long-term-care home. (Ontario Ministry of Health)
- According to the Retirement Homes Regulatory Authority, 101 or 13% of the licensed retirement homes in Ontario share a location with long-term-care homes.

requirements between the two Acts for areas such as Infection Prevention and Control, Prevention of Abuse and Neglect, Restraints, Confinement, etc.

2. Address the governance issues including the composition of the Retirement Homes Regulatory Authority (RHRA) Board of Directors

The COA recommends:

2.1. That the RHRA be reengineered with a particular focus on governance so that it can fulfill its purpose to ensure residents have a place to live of "security, safety and comfort, with dignity, respect, privacy and autonomy, where they can make informed choices about their care options."
2.2. When residents required long-term care services, all aspects of operation and care should fall under the Fixing Long-Term Care Act, 2021.
2.3. To be truly reflective of diverse interests, the board should be appointed by the government with proportional representation from tenants, family members, and the retirement home industry. It should also include a representative of the public health/medical community.

3. Focus on sector oversight, compliance penalties and transparency

Based on the recommendations from the *Auditor General's 2020 Value for Money Audit* of the RHRA, **the COA recommends:**

3.1. Strengthen the systems and procedures of the RHRA and the Ministry in carrying out complaint responses, inspections, enforcement, and public education in a timely and effective manner (beyond the proposed amendments in this Act).
3.2. Change the amendment related to price lists to read "Require that price lists for accommodation and services *be publicly available and distributed* in paper and/or electronic form by a licensee so that consumers can make informed decisions about housing and care options. These prices should be regularly updated and communicated to residents and prospective residents.

4. Address issues related to complaints, dispute resolution, and evictions

In March 2021, the legislature voted unanimously in favour of *Voula's Law* to prevent families being kept out of retirement homes and forbid the use of the Trespass to

Property Act to ban family members and others who are advocating for better care and conditions. However, the RHRA needs to clarify this with retirement homes and to act against operators who use this practice to evict or transfer residents out of the retirement home.

In addition, the pandemic, which has kept families and loved ones in residents apart for months at a time, has underscored how crucial family caregivers are to the health and well-being of older persons living in congregate settings.

The COA recommends:

4.1. Make the complaints process more transparent and better communicated. Ensure that complaints are dealt with in a timely manner.
4.2. Make it clear in the Act and its regulations and communications with retirement homes that:
  4.2.1. Residents are entitled to visitors without interference by the operator, except for very limited circumstances where there are public health orders issued to all congregate living situations (e.g. during the first and second waves of COVID-19) or life-threatening issues are involved.
  4.2.2. The Trespass to Property Act cannot be used to ban family members from visiting.
  4.2.3. A retirement home should only be permitted to "transition" a resident when an acceptable alternative becomes available, such as a placement in LTC.

5. Reinvest into affordability housing and care options

With an increasing aging population, there is an urgent need for a reinvestment for affordable housing and care options whether older adults live, from independent in the community to retirement homes, or long-term care. Retirement home residents pay rent and fees to the operators to receive accommodation and a choice of care options, and they live in these homes as tenants. According to CMHC, in retirement homes in Ontario, the median monthly rent for standard care is $3,921 (less than 1.5 hours of care per day); the median rent for heavy care is $6,092 (more than 1.5 hours of care per day). This is unaffordable for most older adults.

Therefore, the COA recommends:

5.1. Invest in affordable community-based retirement homes owned and managed by not-for-profit organizations.

5.2. Invest in programs and innovative housing options that allows older people to age and live in the community as long as possible, e.g., for home and community care supports such as Naturally Occurring Retirement Communities (NORCs-SSPs), and assisted living homes owned and managed by not-for-profits. This does not supersede the need for high quality LTC spaces when care at home/in the community is no longer possible.

Profile of Retirement Homes in Ottawa

Numbers: 78 retirement residences, 8,704 spaces, 6,912 residents

Vacancy rate: 25.6%, the highest in the province

Monthly median rents: range from $3,486 (bachelor/studio) to $5,866 (two bedroom), 2nd highest in the province. Costs quickly elevate when care services are added.

Median income for Ottawa residents over 65: $39,500, higher when compared to Canada at $28,910 (Statistics Canada). Yet, as of 2016, 10% of older adults live in the low-income category, and in some neighborhoods over one-quarter of seniors live with low-income.

Food and Shelter Cots on Old Age Security (OAS) and Guaranteed Income Supplement (GIS): $1,663 per month to cover both shelter and food costs.

Affordable Housing Costs (30% of income): Older adults at the high end with moderate incomes ($40,000 to $75,000) would spend approximately 56% of their income on rent in a studio apartment, well beyond affordable.