



November 25, 2021

## **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.