

ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

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

Standing Committee on the Legislative Assembly

November 23, 2021



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INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing 68,000 registered nurses and health-care professionals across Ontario and in every sector of health care. Our membership includes thousands of front-line nurses and health-care professionals in the long-term care sector.

We welcome this opportunity to provide feedback on Bill 37, Providing More Care, Protecting Seniors, and Building More Beds Act, 2021. For decades, ONA has been an outspoken advocate for improvements in the long-term care sector. This submission is informed by the knowledge and clinical experiences of our members.

Bill 37 seeks to repeal the current Long-Term Care Homes Act, 2007 (LTCHA) and enact in its place the Fixing Long-Term Care Act, 2021 (FLTCA). Notwithstanding the new title, the FLTCA is not a new Act. It is almost clause by clause the existing Act with a number of amendments – some minor and some consequential.

This submission lays out ONA's concerns, with a focus on staffing and the threat of growing privatization in the sector. In our view, Bill 37 does not go far enough. The commitment to four hours of direct care by nurses and PSWs must be a minimum care standard set within each Long-Term Care Home not as a provincial or Ministry target. The skill mix must be legislated provincially, not left to the whim of each Home to determine. There must be commitments to full-time jobs and wage parity with the hospital sector to recruit and retain nurses and address the ongoing staffing crisis.

We strongly oppose measures in Bill 37 that may lead to further privatization in the sector. The pandemic experience has proven that profit-driven companies are not up to the vital task of providing health care to residents and that they do not provide a safe, quality environment. Ontario must work to phase-out for-profit Homes. New bed licenses should not be awarded to for-profit Homes. There must be justice for the thousands of residents and staff who lost their lives. Government must put care over profit.

We urge you to listen to nurses and health-care professionals and implement the recommendations in this submission. Please note that ONA was a major participant in the COVID-19 Long-Term Care Commission, and provided an [extensive submission and recommendations](#), many of which are echoed here.

ONA members were on the front lines of the humanitarian crisis that unfolded in the sector – they know what needs to be done to fix long-term care.

Phasing Out For-Profit Long-Term Care

Bill 37 removes the requirement that the provincial government promote the delivery of long-term care by non-profit organizations. Specifically, it makes a change to the preamble of the LTCHA, which states a clear commitment “to the promotion of the delivery of Long-Term Care Home services by not-for-profit organizations”, by inserting the words “and mission driven”. “Mission driven” is not defined and could mean anything. There is no detail in the proposed legislation as to what must be contained in that mission focus. ONA's recommendation is that the previous language should remain outlining a clear commitment to not-for-profit long-term care.

Ultimately, ONA's position is that for-profit Homes must be eliminated in the long-term care sector. In Saskatchewan, the provincial Conservative government is ending its contract with the for-profit chain Extencicare, which saw the province's deadliest COVID-19 outbreak in one of its Homes. Unfortunately, Ontario is moving in the opposite direction. According to [media reports](#), of 220 planned long-term care development projects in the province, 111 will be for-profit.

It is alarming that the provincial government is continuing to provide new bed licenses to the for-profit sector. For years, [research suggested](#) that not all Long-Term Care Homes were created equal, that for-profit Homes tended "to deliver inferior care across a variety of outcome and process measures." Due to their very nature, which requires an accountability to shareholders, for-profit Homes do not use all public funds to support resident care, but instead take funds from the "other accommodation" envelope as profit.

ONA is not aware of any research that concludes there is any particular benefit for residents to live in a for-profit Home. Recent studies paint a damning portrait of the performance of for-profit Homes during the pandemic. Dr. Nathan Stall [published a paper](#) in July 2020 studying outbreaks during the First Wave. He concluded that while the risk of having an outbreak in a Long-Term Care Home was not directly related to the Home's for-profit status, there was evidence "that for-profit Long-Term Care Homes have larger COVID-19 outbreaks and more deaths of residents from COVID-19 than nonprofit and municipal Homes."

In addition, a [January 2021 report](#) from the government's own Science Advisory Table concluded that for-profit Homes had outbreaks with "nearly twice as many residents infected" and "78% more resident deaths" compared to non-profit Homes.

ONA is urging the provincial government to change course immediately and begin phasing-out for-profit Homes. Starting now, new bed licenses should not be awarded to for-profit Homes.

Addressing the Staffing Crisis

Hours of Care

Bill 37 includes a provincial "Direct Hours of Care Target" for personal support workers and nurses. This is a Ministry target for an average of four hours of 'direct care' to be provided per resident per day, and it is not a target for each licensee. Bill 37 states that the target must be achieved no later than March 31, 2025. Notably, there is no definition of 'direct care', but it does indicate that 'direct care' includes staff 'who are hired by or otherwise work for the licensee', which implies that nurses or PSWs who work for agencies would be included.

ONA's recommendation is that an average of four hours of direct care must be legislated as the minimum standard for direct care to be met within each Home. Every licensee of a Long-Term Care Home must ensure that the minimum daily average of combined hours of nursing services and personal support services offered at the Home each day is at least four hours per resident, or if a higher minimum average is prescribed, the prescribed amount. This staffing standard for long-term care must be increased as quickly as possible. The target date in the current legislation of March 31, 2025 is far too long.

Skill Mix

Bill 37 states that the four hours of direct care must be provided by RNs, RPNs and PSWs. However, the legislation lacks details about how the four hours will be delegated among these staff roles. As a result, it would leave long-term care residents at the whim of the licensees. ONA's recommendation is that the staffing model for the four hours must be a legislated, enforceable minimum to ensure a skill mix that is appropriate: 20 per cent of the direct care provided by RNs, 25 per cent by RPNs and 55 per cent by PSWs and one Nurse Practitioner for every 120 residents. This is critical to address the care needs and acuity of residents.

In their [final report](#), the COVID-19 Long-Term Care Commission echoed ONA's skill mix recommendations in their recommendations #44 and 46. The Commission stated that ONA's skill mix recommendation is a reasonable mix considering the acuity level of long-term care residents, particularly the continuing decline of mental cognition. The Commission emphasized that more registered nursing staff are required in the long-term care sector. In particular, they highlighted that NPs have not been embraced in the sector to the degree that they should be and urged greater recognition of their contribution and impact on quality of care.

Bill 37 has kept the requirement to meet the legislated standard of having at least one registered nurse in the building 24 hours per day, 7 days per week. ONA's recommendation is that this requirement should depend on the size of the Home. Especially in larger Homes, only one RN in the building means that our members have no one to collaborate with or to share the load when needed. This was echoed by the Staffing Study released in July 2020. The ability for RNs to provide quality resident care is affected by the number of residents in the Home.

ONA welcomes the government's recent commitment in the [2021 Ontario Economic Outlook and Fiscal Review](#) to invest \$57.6 million, beginning in 2022–23, to hire 225 NPs in the long-term care sector. As mentioned previously, ONA recommends that Bill 37 include a legislated requirement for one NP for every 120 residents in Long-Term Care Homes. Research has demonstrated that the presence of a NP in a Home increases the quality of care provided to residents. The Long-Term Care Staffing Study recommended that Homes expand the use of NPs to support clinical leadership in the Home, particularly since Medical Directors are not present on a daily basis. It is also essential that the announced NPs are employees of the Home, not independent contractors, to ensure retention and recruitment that contributes to quality care and permanent staffing.

Staff Recruitment and Retention

There is a staffing crisis in the long-term care sector that predates the COVID-19 pandemic. Regrettably, there is nothing in the Bill 37 that makes improvements in overall full-time staffing or that addresses the current disparity in compensation for nurses in the long-term care sector compared to the hospital sector. This is an important equity issue as a [January 2021 survey](#) of ONA members in the long-term care sector revealed that nurses and health-care professionals who identified as racialized are more likely to work in the for-profit sector, and more likely to work multiple jobs. They were also over-represented in the Homes that experienced outbreaks, and they were more likely to contract COVID-19 themselves.

During the pandemic, the lack of wage parity was undoubtedly a factor contributing to the extra challenges with staffing experienced by for-profit Homes. The COVID-19 Long-Term Care Commission heard from staff that the decision as to which Home to work at during the pandemic was influenced by salary. Urgent action by government is needed to significantly reduce the number of staff who are forced to work part-time instead of full-time, thus forcing them to ~~must~~ work at multiple Homes to ensure they can afford benefits and have a predictable, livable wage.

To support recruitment and retention of long-term care staff, ONA recommends that the government ensure parity with hospitals and municipal Homes in salary, benefits, pension, and working conditions. ONA also recommends that the government provide a temporary wage increase for registered nurses and registered practical nurses in this sector so that they are receiving the same pay as nurses in the hospital and municipal sector. This temporary wage increase is to last until the pandemic is over. This would be followed by a permanent wage increase at the same time that this is launched for Personal Support Workers.

Measuring Progress

ONA recommends that Bill 37 specify that the calculation to reach the minimum daily average of four hours of direct care must be worked hours that involve direct patient care by permanent staff. The calculation should not include hours paid in respect to vacation, statutory holidays, leaves of absence, sick time or training time. Hours worked by agency staff should not be included in the calculation to incentivize licensees to hire permanent staff and to create full-time positions.

We further recommend that all licensees be required to report on a quarterly basis to the Ministry the direct hours of care provided by PSWs and nurses. These reports should publicly be available on the Ministry of Long-Term Care website. The staffing levels should also be audited by Ministry of Long-Term Care inspectors. If a licensee fails to meet the minimum daily average, the Minister must identify the licensee as well as the reasons for the failure and present a plan to bring the licensee back into compliance..

Regulations

Bill 37 states that the Lieutenant Governor in Council may make regulations governing a number of provisions that pertain to staffing. For example, it includes:

- (g) governing the meaning of “number of hours of direct care actually worked” and “resident days” for the purposes of sections 8 and 9;
- (i) defining “regular nursing staff” for the purposes of subsection 11 (3);
- (j) requiring certain classes of long-term care homes to have more registered nurses on duty than are required by subsection 11 (3) and providing for rules governing such a requirement;

These provisions are concerning as regulations can be amended by cabinet, in camera and without a public hearing process whereas legislation is passed only by rules of the legislature. Simply put, legislation undergoes a more thorough vetting by the public, the media and opposition politicians than do regulations. It is important for the government to strike the right balance here

to ensure public input and transparency for any reform of the long-term care regime, particularly as it pertains to staffing. We do not believe that balance has been achieved.

Improving Operation of Homes

Bill 37 makes few changes with respect to operation of Homes as it relates to Directors, Officers and other staff. Among these changes is the introduction of new provisions related to additional training – leadership and further training needs for leadership that are not specified and to be prescribed in regulation.

The COVID-19 Long-Term Care Commission recognized that effective leadership makes a significant difference in how long-term care facilities performed during the pandemic. Specific to leadership training, ONA recommends that all managers in Long-Term Care Homes receive leadership training (such as LEADs in a Caring Environment Capability Framework). This training must include courses, onboarding, opportunities for leadership skill practice, individual development planning, mentoring/coaching and a formal and objective annual performance review process.

ONA made extensive recommendations to the COVID-19 Long-Term Care Commission related to Home management including the following:

- All Homes should have both a Director of Nursing and an Administrator who works regularly in those positions on-site at the Home, 35 hours a week, regardless of the size of the Home.
- The qualifications for the Director of Nursing should be enhanced to include a requirement for more clinical experience as a RN in a long-term care setting.
- There should be no exclusions to the requirement to have a Director of Nursing onsite in the Home during a pandemic.
- Enhanced qualifications for the Administrator to require that the Administrator be a regulated health professional and that the supervisory/managerial experience must be in a healthcare setting.
- The MLTC should develop, in consultation with key stakeholders, a list of accountabilities for the Director of Nursing and Administrator roles. Compliance with these accountabilities should be subject to inspection by the MLTC.
- During any outbreak, the Director of Nursing and Administrator must alternate the times of day they are in the Long-Term Care Home to provide leadership and direction at times other than Monday to Friday during the daytime.

With respect to agency staff, Bill 37 maintains the clause in the existing LTCHA that pertains to limiting the use of temporary, casual or agency staff in Homes. ONA's recommendation is that agency use should be eliminated but until that is possible, there must be oversight over agencies and the staff who are sent to work with residents. It is crucial that agency staff (in addition to regular staff) receive substantive IPAC training and orientation to the Home.

Strengthening Infection Prevention and Control (IPAC)

Bill 37 sets out a requirement for the licensee to have a IPAC program in the Home. The program should include – evidence-based policies, education for residents, staff, volunteers and

caregivers, daily monitoring to detect the presence of infection, measures to prevent transmission, hand hygiene, and the requirement for licensees to designate someone to be IPAC lead with IPAC as their primary role within the Home. Further details are to be provided for in regulation.

ONA's recommendation is that Bill 37 must require a PPE stockpile that is sufficient to provide protection for all staff for a minimum of three months. This is in accordance with the precautionary principle. The stockpiles and maintenance policies of individual Homes should be audited as part of annual inspections by the MLTC. One significant learning from the COVID-19 pandemic is that having a stockpile of PPE is an essential component of preparing for a pandemic. Homes must have adequate stockpiles of infection control supplies to support enhanced cleaning and staffing during any outbreak.

ONA is supportive of the creation of an IPAC lead in Homes. The earlier waves of COVID-19 demonstrated the critical need for Homes to have IPAC expertise. Many Homes did not have a dedicated infection control RN to proactively implement policies and procedures to protect residents and staff. We recommend that the IPAC lead be an RN who is an Infection Control Practitioner who is trained and certified in IPAC Canada-endorsed courses, including IPAC Canada's: Novice Infection Prevention and Control course; and Basic Infection Prevention and Control Program at Centennial College in Toronto or Queen's University in Kingston. Ideally, the IPAC lead will be or will agree to be, certified in Infection Control (CIC). Further, we recommend that the IPAC lead have the reprisal-free authority to make effective decisions about infection prevention and control in the workplace.

In addition, we are concerned that Bill 37 removes Regulation 229 in the existing Act. This regulation clearly lays out details related to an IPAC program within a Home. This includes requirements for an interdisciplinary team approach, the local Medical Officer of Health is invited to meetings, evaluation and updates at least annually, and written records of evaluations. A staff member is assigned to co-ordinate the program – this staff member would have the education and experience in IPAC to perform the role. The regulation includes the requirements to monitor symptoms and actions taken. The licensee is accountable to have an outbreak management system in place. Immunization and screening programs are to be in place with respect to infectious diseases. The details in this regulation should remain in Bill 37.

Enhancing Whistleblowing Protection, Inspections and Fines

Whistleblowing protections

Bill 37 leaves the sections of the LTCHA that pertain to whistleblowing protections largely unchanged. It prohibits retaliation against any person because of information disclosed to an inspector or the Director – and Bill 37 adds “personnel of the Ministry, or individual/entity provided for in regulation” – because evidence has been given in a proceeding, or in an inquest.

ONA's recommendation is that whistleblowing protections need to be stronger and expanded. Strong whistleblowing protections are essential so that risks to staff and residents are reported and acted upon. Particularly for nurses, it is important that government act to broaden the scope of protected activities and to ensure that nurses are also protected from potential regulatory consequences from the College of Nurses of Ontario.

Specifically, our recommendation is that whistleblower protection must be strengthened under any amendments to the Long-Term Care Homes Act, including adding language:

- a. to protect workers' identity so that they can make a confidential complaint regarding their employer's health and safety practices;
- b. to broaden the scope of protected activities to include acting in compliance with the Act or seeking enforcement of the Act and reporting health and safety concerns internally to their Employer.
- c. to minimize risk to residents from disease and/or staffing shortages.

Inspections

Bill 37 sets out inspection requirements. Yearly inspections are required and can be conducted without notice. Enforcement can be written notification, orders, administrative penalties, and referral to the Director for further action. There are no details of what the annual inspection should look like. There are pages of what sanctions can be imposed, but no details as to how the inspections are conducted and what they must view.

ONA's recommendation is that the Act must be enforced. It is also important that inspectors have not only the qualifications to enforce the Act, but also have the training and background in long-term care to recognize when care is substandard. This also means reinstating the without notice, in-depth annual inspections of all Long-Term Care Homes (called RQI inspections). Reflecting back to the beginning of the pandemic, it is impossible to know whether Homes were in compliance with the IPAC requirements of section 229 because of a policy change at the MLTC in 2018, which largely discontinued comprehensive Resident Quality Inspections ("RQI"). Under the new policy, complaint or critical incident inspections were considered sufficient to meet the requirement that every Home be inspected annually. Only approximately half of all Homes received an RQI in 2018, and only nine in 2019.

ONA made extensive recommendations to the COVID-19 Long-Term Care Commission related to inspections by the MLTC including the following:

- The MLTC inspection focus should not be on strict regulatory compliance but must look more broadly at whether the Home promotes resident dignity, security, safety and comfort and ensures that residents' physical, psychological, social, spiritual and cultural needs are adequately met.
- The Ministry of Long-Term Care must reinstate without notice annual inspections ("RQIs"). If a full "intensive risk focused" RQI cannot be completed every year, then the shorter "risk focused" inspection must be done, with a full intensive risk focused inspection every two years. RQI inspections must include interviews with union representatives.
- The inspection process must include a focus on infection prevention and control practices, pandemic planning and health and safety. The sufficiency of the IPAC program must look not only at whether there is an IPAC program and training but should inspect to assess the sufficiency of the program and training, which must include in person donning and doffing training, the location and quantity of PPE and whether fit-testing for N95 respirators has been performed.

- The MLTC inspectors should attend the Long-Term Care Homes on evening and night shifts, in addition to day shifts.
- In targeted inspections (inspections in response to critical incidents and complaints), Inspectors should ensure that staff are provided the opportunity to review relevant documentation (charts, care plans, or other) prior to being interviewed.
- Inspectors shall provide a copy of the inspection report to the trade unions representing employees in the Home.
- MLTC inspectors should receive both infection prevention and control training and health and safety training.
- MLTC inspections must be conducted without warning to the Home, in-person and on-site. Inspectors can attend on-site with appropriate PPE.

Fines

Bill 37 proposes doubling the maximum fines for offences under the act so that individuals can now be liable for up to \$200,000 for a first offence and up to \$400,000 for a second offence. Corporations can be fined up to \$500,000 for a first offence and up to \$1 million for a second offence. ONA's recommendation is that the fines are not enough of a deterrent for large corporate chains. Under the LTCHA, 2007 the government already has had the ability to fine up to \$100K and has not done so. In addition, these fines will not be applied retroactively for violations earlier in the pandemic. There is no justice for the families who are trying to hold for-profit Homes accountable for the harm resulting from exposure to and infection with COVID-19.

ONA's recommendation is that fines should be used for a first offence only. Recognizing that monetary fines are not enough of a deterrent for for-profit corporations, we recommend that a second offence should require a 30 per cent reduction in the compensation of the Chief Executive Officer. A third offence should require mandatory takeover of supervision of the Home by the Minister or designate appointed as supervisor (similar language to public hospitals).

Quality Improvement

Bill 37 contains provisions that require every licensee to implement a continuous quality improvement initiative. In addition, it authorizes the Minister of Long-Term Care to establish a Long-Term Care Quality Centre to focus on supporting "mission-driven" organizations (again, mission driven is not defined) as well as to advance and share research and best practices and any other functions of purposes provided for in the regulations.

ONA has previously made recommendations that government proactively track key quality improvement including Infection Control practices, resident and family/caregiver satisfaction, staff turnover and satisfaction, along with resident focused (e.g. not forcing residents to get up early and to eat at fixed times) and common indicators of resident care such as falls, skin integrity and number of medications. The government should track structural compliance, including maintenance and supply management. Finally, compliance with staffing mix measures and the ability to monitor nursing hours per day to ensure and track that the best possible care is available from the appropriate health-care professional. Funding must be available to allow for the appropriate skill mix

ONA is supportive of the proposal for a Long-Term Care Quality Centre. We echo our previous concern that “mission driven” is not defined and could mean anything. We recommend that this Centre support not-for-profit organizations and that it be defined as being part of a public university.

Conclusion

Nurses and health-care professionals in long-term care are passionate about their residents and the care they provide. We all know that residents deserve no less than excellent quality of life and care, dignity and respect.

For decades, ONA has invested our time and expertise to advocate for improvements in long-term care. Every few years, like clockwork, a new report was released, echoing the recommendations of the past. Each report was ignored. Like canaries in a coal mine, these previous tragedies were harbingers of what was to come.

Following the humanitarian crisis that unfolded in the long-term care crisis in the wake of COVID-19 pandemic, Bill 37 represents an opportunity for change. It is an opportunity for the challenges in long-term care to finally be addressed and to make meaningful changes in the public interest.

Nurses and health-care professionals are urging the provincial government to listen to our recommendations that — we hope and trust — will lead to positive concrete changes that long-term care so desperately needs for the health and safety of our members and their residents.