

**ONTARIO NURSES' ASSOCIATION**

**SUBMISSION**

**To**

**Ministry of Health**

**On**

**The Modernizing the Legislative Framework for  
Home and Community Care Consultation**

**Toronto, Ontario**

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## **Introduction**

The Ontario Nurses' Association (ONA) represents 68,000 nurses and health-care professionals across Ontario and in every sector of health care. Our membership includes thousands of care coordinators and direct care staff working within the Local Health Integration Networks (LHINs) in every region. On behalf of our members, ONA presents the following submission to the consultation regarding the proposed new regulatory framework under Bill 175, *Connecting People to Home and Community Care Act, 2020*. This submission represents both the analysis and feedback of our membership and local leadership regarding the proposals. We urge the government to listen to this front-line advice.

## **The Future of Care Coordination**

Bill 175 and the proposed regulations set in motion the timeline for the winding down of LHINs in Ontario, with a transitional period in which the remaining home and community care functions in the LHINs will be rebranded. In the proposed regulations, care coordinator functions would be provided by Health Service Providers (HSPs), as defined in the *Connecting Care Act, 2019*. This definition includes the newly formed Ontario Health Teams (OHTs), public hospitals as well as the seven licensed private hospitals.

A number of the proposals are concerning to ONA members. In particular, how they will impact the future of care coordination. To begin, the general ambiguity of the proposed new regime for home and community care services leaves ONA's care coordinators with more questions than answers about what their working conditions will look like under the new system.

From an employment standpoint, members are still unclear about whether their employment will be automatically transferred from the LHINs to the new OHTs, or whether they will have to apply to new positions. The regulatory and legislative proposals also fail to precisely describe the nature of the roles of care coordinators within the new system. Some members comment that the regulations leave unclear whether care coordinators will only be required to perform assessments or whether there will be other duties assigned to them in the new system. Who will be determining the level of care required under the new system? The clients, the families, the physicians? While the rhetoric of the government's proposals suggest new duties for care coordinators within hospitals, care coordinators who already work within hospital settings are unclear what – if any – this change means.

ONA's care coordinators note that the proposed regulations refer to "care coordination" rather than "care coordinators."

Without clarity, members are concerned that this language could be a gateway to permitting home care contractors to manage their own care coordination after initial assessments are completed. This would be a conflict of interest in our view.

Finally, there is widespread concern that the new requirement for “home care assessments to be performed by a regulated health professional” may lead some current care coordinators – who are not part of the *Regulated Health Professions Act* – excluded from the new regime. We are asking for clarity in the regulations that all professions currently performing care coordination would be continued in this role. In particular, we are asking for assurances related to social workers. At a time of glaring shortages in health human resources, the Ontario health-care system cannot lose experienced, practicing care coordinators because of new bureaucratic requirements that may exclude social workers.

We urge the government to address these concerns and others in the regulations to provide clarity and consistency to care coordinator personnel and the clients that depend on them. Unnecessary uncertainty in these times of transition will only result in further confusion, hardship, staff shortages, and inefficiency.

### **Client Care**

From the client care perspective, there are some omissions in the proposed regulations that elicited the following questions from ONA members.

First, the proposed new regime purports to offer stable service provision to clients throughout the time they require home and community care. However, it is unclear how clients will stay with the same provider as their needs increase. Service providers specialize in specific kinds of care and are not always able to meet the evolving needs of clients.

Second, in the list of residential accommodation services, shelters and hostels as well as half-way houses are missing. Will these housing options be included in community and home care services?

Third, there is no mention of standardized assessments for all clients across Ontario. In their absence, service provision could become greatly varied across Ontario, leaving many clients receiving less than optimum care. Surely Ontarians should expect consistent standards of service quality and enforcement of that quality regardless of their region of residence.

ONA is also concerned by provisions in the legislation that suggest home and community service providers will be permitted to develop their own process for reviewing complaints.

This process of self-monitoring is concerning, especially since the legislation opens the door further to private for-profit service providers to expand their footprint. Self-monitoring by for-profit service providers is a recipe for the erosion of quality in client care.

### **Weakened Democratic and Public Accountability**

Bill 175 repeals significant sections of statutory law and promises to replace (most) of them with regulations and policies, which – although more flexible – are less accountable and less transparent to the public. For example, the entirety of the *Home Care and Community Services Act, 1994* is repealed – legislation that contains important components such as the patient’s Bill of Rights, the rules governing service providers, the definition of “home and community service providers” and the complaints and appeals processes. Important sections of other statutes are also repealed with the promise to move the important components to regulations.

ONA and its members are concerned by this move to leave so much of the law governing home and community care to regulations and policy. Legislation is passed only by laws of the legislature, whereas regulations can be amended by cabinet, in camera and without a public hearing process. 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 buy-in to the new home and community care regime. We are concerned that the balance has not been achieved.

For instance, the government’s decision to downgrade the Bill of Rights for patients in home and community care to the regulations seems shortsighted. The Bill of Rights is a vital tool for clients to protect their interests and ensure they receive the care they deserve. When law is enshrined in legislative statute, it is subject to public scrutiny and input through the legislative process. It is also insulated from the whims of cabinet operating behind closed doors. This downgrade effectively renders the provisions of the Bill of Rights malleable rather than steadfast. As well, the proposed regulations fail to even offer a draft proposal for the new Bill of Rights. This means that the Ontarian public and stakeholders are being asked to comment on and approve a reform package to home and community care without having access to the full picture of government proposals.

Furthermore, the regulations state that the “detailed expectations” regarding care coordination will be reserved for “policy” – burying deeper the parameters of care coordinator work under the new home care regime.

This raises serious questions about who will be able to change the legal “expectations” of care coordination, how easily and with what requirements for input and consultation with health-care professionals and patients.

There is further concern about the expansion of virtual care (in principle a good thing) in this legislation because of the simultaneous opening of the door more widely to private, for-profit service providers and the downgrading of the accountability mechanisms to the regulations. Provisions that protect patient care should have iron clad protection and virtual care should not be a cost-cutting substitute for in-person care when it’s needed.

### **Questions Relating to Proposed “Residential Congregate Care Settings”**

The government announced the creation of new “congregate care” residential settings, as a “location in which home and community services can be delivered... for patients who do not require the intensity of resources provided in a hospital or long-term care home, but whose needs are too high to be cared for at home.” However, the model does not appear in the legislation and the proposed regulation only briefly introduces the concept while promising that the “details of each residential congregate care model would be defined in regulation under the Act.”

ONA members are concerned by the lack of information regarding the “congregate care” settings in the reform package that promises to launch them. Members wonder what form it will take that is different from the residential settings already available. Will it simply be a retirement home with contracted meals on wheels programs and group exercises without oversight?

It is unclear why the government would launch and promote a new care model without enshrining its care standards and legal parameters in legislation and without including details in the proposed regulations that form part of the overall legislative package.

### **Integrity of public health care, expanding profit-making and the Canada Health Act**

In the reform package, the government introduces some understated but significant provisions that could risk increasing the private profit-making interests in home care delivery in Ontario – including through hospitals.

These measures risk introducing more profit-making into health care and undermining important tenets of the *Canada Health Act*. This would ultimately undermine care for clients.

ONA members are concerned by the regulatory changes stating that the HSPs “would have the flexibility to assign care coordination functions to contracted providers.” This measure opens the door to care coordination being contracted out to for-profit corporations already providing home care services. The possibility that HSPs could assign care coordination to for-profit contracted providers could also be contrary to the *Canada Health Act*. This is because of the established precedent that care coordination is part of the basket of medically necessary services.

ONA members are particularly concerned by language in the regulations suggesting that assessments could be performed by contracted out service providers. This dual role creates a serious conflict of interest, especially when profit-making is involved. If a service provider can order the services they provide and then charge the government or clients, there is great potential for self-interest to distort service delivery and unnecessarily drain resources.

Moreover, by expanding care coordination into myriad for-profit HSPs, the existing concerns about siloed care would likely be exacerbated rather than attenuated.

While the proposed regulations do not strictly provide for the expansion of user fees, it does preserve existing user fees for some home care services that do create financial barriers for Ontarians accessing the care they need.

### **Failure to Address the Funding Shortfall and Shortage of Human Resources**

Regrettably, this reform package does not address the chronic underfunding of home care provider services in Ontario. The cash-strapping of the sector – reflected in the low-wages and poor working conditions – continues to contribute to the retention and recruitment crisis. The promised elimination of service caps are not tied to funding improvements, rendering them virtually meaningless. ONA members note that under current funding pressures, service maximums are in place simply to ensure the fiscal sustainability of the system. Moreover, the de facto service maximum is more often mediated by shortages in the supply of health-care workers, not legal requirements.

In order to resolve quality of care issues for home care, the government ought to amend the legislative package to create a positive right to home care, matched with at least inflation-adjusted increases to homecare funding and guaranteed decent working conditions and pay. This would do much more to improve service quality for clients than the arbitrary removal of service caps.

## **Conclusion**

ONA members and local leadership are committed to working hand-in-hand with the Ontario government to improve home and community care for clients and workers alike.

As our population ages, it is vital that our system respond nimbly to the needs of Ontarians to ensure dignified living. This includes reducing the length of unnecessary hospital stays to save the overall health system, reduce overcrowding and facilitate appropriate care. It is crucial that the Ontario government get this reform package right to build a stronger health-care system for tomorrow. We urge the government to listen closely to the expertise and wisdom of our front-line members and their local leadership as they contemplate the changes proposed.