

Nursing Home Series

By Paul McKay, Ottawa Citizen

The following series by Paul McKay appeared in the **Ottawa Citizen** from April 26 to May 1, 2003:

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The Ottawa Citizen (April 26, 2003)

Ontario's Nursing Home Crisis — Part 1

By Paul McKay

Cut-rate care:

How much does Ontario pay to feed and shelter our oldest, most frail citizens? About half what it pays for jail inmates. Paul McKay kicks off a six-part probe of nursing homes in Ontario.

\$4.49 a day. That's barely enough to buy one breakfast special. Or a soup-and-sandwich combo for lunch. Or a single glass of restaurant wine.

Yet that must buy three daily meals for each of the 63,000 seniors who live in Ontario's long-term care facilities, which include nursing homes and chronic-care institutions for those who need extensive medical help.

The provincial food allowance of \$4.49 a day per resident, allotted to each of Ontario's 530 long-term care facilities, has increased by only 23 cents during the past decade.

To cover all other expenses -- lodging, food preparation and delivery, nursing care and physical therapy, laundry services, building maintenance, utilities and administration costs -- the province pays an additional \$65 a day per resident, for a total of \$70.

Even inmates don't have it so bad. Ontario pays twice as much per day -- about \$140 -- to feed, house and protect those in jails, detention centres and drunk tanks.

Ontario's funding formula is low even when measured against that of some American states with comparable long-term care populations: In Florida, the government allots \$137 U.S. per resident per day for 53,000 seniors in nursing homes there -- double the level in Ontario.

The vast majority of seniors in long-term care facilities are in nursing homes, where they, or their families, have to supplement the provincial allotment, paying a set maximum of \$41 per day for an ordinary ward placement, \$49 for a semi-private room, or \$59 or more for a private room (there is no provincial cap on private room rates).

Advocates for seniors, municipal governments, charities and private owners of Ontario's nursing homes are unanimous: Provincial funding for facility residents is scandalously -- even dangerously -- low.

The figures are especially alarming since such residents represent the most frail of the province's elderly, and have significant care needs.

Of the 63,000 people in Ontario's long-term facilities, 53 per cent suffer from dementia or Alzheimer's, 48 per cent need help with basic activities such as walking or dressing, 22 per cent have had strokes, 30 per cent have arthritis, 19 per cent, diabetes, and 11 per cent suffer chronic heart failure.

Last summer, the province announced that long-term care fees paid by all but the most indigent residents will rise by 15 per cent over the next three years. Those increases will take a bigger bite out of the fixed-pension payments most seniors depend on.

Pleas for an extra 50 cents daily to buy food -- 17 cents per meal — were greeted with silence from Queen's Park until a pre-election budget promise was made weeks ago. It would increase annual spending on long-term care by \$100 million, bringing annual provincial spending to \$1.8 billion. That increase of \$4.35 daily per resident is expected to cover higher costs not only for food, but for care and programs as well.

In the meanwhile, facility operators are struggling to make ends meet. "This is unconscionable. No one can buy the food for three decent meals a day on \$4.49," says Donna Rubin, executive director of Ontario's oldest seniors' advocacy association, the Ontario Association of Non-Profit Homes and

Services. The organization represents municipal, charity or faith-based operators of long term-care facilities, which house 25,000 people.

"Society wants us to properly feed, house and care for these people. We want to. We are ready to. But we can't on the (provincial) operating funds we have."

Karen Sullivan, Ms. Rubin's counterpart at the Ontario Long-Term Care Association, which represents privately owned nursing and long-term care homes, is equally adamant.

"Our residents often have special diet needs -- for diabetes, heart disease, weight gain or weight loss. Most of their food has to be pureed, ground or mashed. We have to offer them choices, and rightly so. But that can't properly be done on \$5 per day for one meal, let alone three. Not even with bulk food purchases among our members.

"We've been pleading with the current government for another 50 cents a day (for food), but there's no sign of that happening any time soon."

Ms. Rubin and Ms. Sullivan cite damning evidence that many of the province's long-term care residents are getting cut-rate care -- evidence from a 2001 consultants' study paid for by the Ontario government.

Prepared by PricewaterhouseCoopers, it concluded that, in professional nursing care and therapy levels, Ontario long-term facilities ranked at the bottom among 11 comparable Canadian provinces, American states and European countries.

The study stressed that most residents are not getting as much care and therapy as they need to cope with age-related ailments such as Alzheimer's, dementia, stroke, multiple chronic illnesses and depression. It also left no doubt that lack of care makes the symptoms of these diseases worse.

On average, Ontario seniors at nursing homes see an on-site registered nurse -- who typically supervises 60 residents on a day shift and 100 residents on a night shift -- barely 15 minutes a day. That ranked last on the study's list, which included Maine, Mississippi, Saskatchewan, Michigan and Manitoba.

For the combined time residents get per day with registered nurses and health-care aides, Ontario again ranked last. Seniors in Maine and Mississippi received an average of four hours a day of quality care. Long-term care residents in Saskatchewan, South Dakota, Michigan and the Netherlands all got more than three hours per day. Ontario's average was two hours per day, mostly with attendants who had fewer qualifications and were paid less.

The report also found that:

- 68 per cent of long-term care residents in Ontario did not receive any nursing rehabilitation to increase muscle strength and flexibility, while 24 per cent received only one session per week.

- 67 per cent had "adequate range of motion potential" -- they could walk and do other activities independently -- yet only half of those seniors received exercise assistance so they could maintain that independence.

- Ontario long-term care residents had the highest levels of mental health problems (especially depression) of all jurisdictions studied, yet fewer than six per cent received counselling. Instead, one-third were given anti-psychotic drugs or restraints.

In 1998 the provincial government jettisoned a mandatory minimum of 2.25 hours of nursing care a day per resident; there is now no minimum at all. It also dropped a requirement that long-term facilities have at least one nurse on staff at all hours.

Last July, Premier Ernie Eves promised \$100 million in new funds annually to improve nursing staff levels at long-term care homes. The increase was to fund 2,400 additional nurses and personal aides.

But the Ontario Nurses Association says some of the initial funds in 16 facilities surveyed have been used instead to reduce the debts of private facilities, replace lost municipal funding, pay administrators, or purchase supplies for incontinent patients.

"It's very frustrating for our nurses," says association president Barb Wahl. "There are far too few in the long-term care sector. One nurse is responsible, in some cases, for more than 100 residents at night." About 8,000 of the province's 44,000 nurses work in long-term care facilities.

"We are pressuring the government to make sure the money flows to where it was promised -- not to an elevator operator or paying down a private operator's deficit. We need more money for bedside nursing, as promised," says Ms. Wahl.

She says the government must reinstate the minimum level of nursing-care hours per resident, as well as the rule that at least one nurse be on duty at all times in long-term care homes.

"That is critical. You don't just have problems during the day. Any number of problems can arise at night. There should be a registered nurse there on the premises, not on call, 24 hours a day. But even that's not enough for hundreds of patients. There are some nurses working alone on three wings, on three different levels. That's a nightmare. It isn't even possible for her to look at every patient, let alone give them care."

In December, provincial auditor-general Erik Peters criticized the Ministry of Health for its handling of long-term care facilities -- and its failure to fix problems identified in 1995. "The ministry had still not developed either standards to measure the efficiency of facilities in providing quality care, or models for staff mixes for providing nursing and personal care, and therefore did not have a sufficient basis for determining appropriate levels of funding," he wrote.

"In addition, the ministry had not addressed the results of the 2001 (PricewaterhouseCoopers) report that noted that residents of Ontario's long-term care facilities 'receive less nursing and therapy services than (those in) similar jurisdictions with similar populations.' "

"The people of Ontario can't let this go, says Ms. Wahl. "They need to push their MPPs to make sure that staffing is increased. A ranking of last place is totally unacceptable," she adds, referring to the consultants' report.

Budget cuts to hospitals have made the need for quality care at nursing homes even more compelling, she says. "We're very concerned because the patients in nursing homes now ... are often just discharged from hospitals. They require much more care than the average patient from the past."

The PricewaterhouseCoopers report warned that failure to properly fund Ontario's long-term care system -- which accounts for about eight per cent of the Health Ministry budget -- will wreak greater human and fiscal damage in the long term.

"Improvements in the functional and self-care abilities of long-term care patients can enhance quality of resident life. Furthermore, costly complications can be prevented that can also reduce the overall costs to the health system, and the strain on caregivers and families. Central to this is to have a suitable quantity of nursing and therapy care available based on the needs of the resident population."

Everyone in the long-term care sector agrees the critical remedy is more nursing care. Everyone agrees that will cost much more than the combined \$1.7 billion the Ontario government and the \$800 million nursing-home residents now pay in fees each year. Everyone also agrees the crisis will be far more acute in 20 years, when an additional one million Ontarians will reach age 65, and the number of those over 85 will increase four-fold.

Yet no one is volunteering now to pay the full freight for seniors on fixed incomes.

Donna Rubin told a legislature committee in January it would cost an additional \$430 million in annual operating funds to achieve the minimum standards benchmarked in the 2001 consultants' report. That does not include capital funds for new facilities to meet the expected increase in demand for spaces.

Even with the \$100 million commitment last year, Ms. Rubin says, Ontario's funding shortfall is still \$18 a day per resident. If the recent promise of another \$100 million is ratified before an expected election call, the shortfall would still amount to \$13 a day per resident.

"We are putting every penny we get into care. We don't take out a slice of profit, and we take in most of the poorest seniors. So many of our homes depend on charities, municipalities, foundations and religious orders to kick in sometimes \$400,000 or \$500,000 a year," says Ms. Rubin.

"But many are now at the giving limit. So we're forced to feed people on pocket change, as we have for years. If we pay more for food, it comes out of nursing, or personal care, or programming. This is deplorable — a crisis."

Private facilities, which two decades ago accounted for only a third of those in Ontario, were recently awarded two-thirds of the 20,000 new beds approved by the province. They receive the same core operating subsidy of \$70 per day as non-profit homes.

Karen Sullivan contends her members make no profit on the provincial subsidies. Instead, she says, they earn their profits by charging higher fees to wealthier residents who can afford private rooms, and by buying food and other supplies in bulk and setting lower wage scales for staff.

Her association wants the Eves government to increase the long-term care operating budget by \$261 million annually.

"We are falling behind -- to the point where we are now at the bottom. We have members who own facilities in other provinces and the U.S.

"Ontario seniors get an hour less nursing each day than in Saskatchewan. They get two hours less than in Mississippi. There they get more (government) funding for care on the floor, and programming."

Pointing to the 2001 consultants' report, she says "we know that means better nutrition, nursing care, and mental health.

"The results (of the study) were dramatic. They shocked even us. But no one has questioned the methodology, or the data.

"It was done by an independent consultant, paid for by the (Ontario) government. It compared apples to apples. No one at the Ministry of Health has challenged any of it."

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Ontario's Nursing Home Crisis — Part 2

By Paul McKay

The missing millions of a nursing home empire:

The family behind two decades of retirement home bankruptcies in Ontario, Florida, Kansas and Nevada always goes for broke -- literally. Paul McKay reports.

On the same December day Ontario's auditor general rebuked the government in his 2002 report for failing to adequately monitor nursing homes, the Royal Crest Lifecare chain of 17 nursing and retirement homes irrevocably sank into bankruptcy.

There was barely a ripple of media coverage, yet the Hamilton-based company owed \$179 million when its sole owners, Aldo and John Martino, quietly filed affidavits declaring personal assets of only \$10,000 each.

The 5,329 Royal Crest creditors still don't know where all the money went. They include major banks, insurance companies, and mortgage lenders owed \$156 million for dozens of defaulted loans on 17 southern Ontario properties. The facilities have a book value of only \$53 million.

Taxpayers also took a big hit. Ontario's finance and health ministries are owed \$15.5 million and the province's worker's safety insurance agency \$3.2 million. Canada Customs and Revenue is owed \$7.4 million for taxes Royal Crest deducted from employees, but never paid to the federal government.

The Martino chain also owes \$1.5 million in pension funds deducted from thousands of employee paycheques, yet never forwarded to their union. Millions more are owed to water and power utilities, food and laundry suppliers, law firms, accountants, even landscaping crews.

If not for a generous offer by the major creditors, some fixed-income seniors residing in the Royal Crest facilities -- including the estates of deceased residents -- would have lost money from personal accounts meant for future room fees, toiletries, hairdressing or social events.

That money was missing when the biggest nursing home bankruptcy in Ontario history occurred late last year.

The second biggest occurred a decade earlier, when sister Annette Martino walked away from her own chain of Ontario nursing and retirement homes -- and \$43 million in debts owed to banks, suppliers, government agencies and union pension funds. Also missing were monies taken without authority from accounts of seniors in some of her Ultra-Care homes.

That bankruptcy followed a decade of run-ins with health officials from Sarnia to Marmora in Eastern Ontario over chronic understaffing and sometimes sordid conditions. In one case, a senior was found with feces and live maggots in her shoes.

When safety code and sanitary renovations were ordered, the bills often went unpaid. When creditors closed in, Ms. Martino tied the claims up in courts while buying new nursing homes with highly leveraged loans.

Yet her personal tastes were decidedly regal. At the height of her nursing home reign, Annette Martino lived in a hilltop rural mansion near Lindsay with a pool and tennis court. She wore furs and emeralds to art galleries and social events, driving a Jaguar convertible for pleasure, and a stately Bentley to beguile prospective bankers.

Never lacking panache, Annette Martino almost persuaded her creditors to accept an eleventh-hour deal to avert bankruptcy in 1991. A numbered company offered to pay a few cents on each dollar of the millions owed, pay \$3 million for a 49 per cent interest, and leave Annette Martino the majority owner of her faltering Ultra-Care chain in Ontario. The deal was rejected when the court-appointed receiver discovered the owners of the "white knight" company were her brothers, Aldo and John.

The failed bid would have made Aldo, John and Annette Martino's proposed merger the largest nursing home conglomerate in the province. Yet even then Royal Crest's finances were precarious. By 1996, court records show, the company was selling "distress shares" to avoid sinking into insolvency. Several deficit-ridden years later, the Royal Crest chain came to its own ruinous end.

Aside from \$179 million in debts, Royal Crest lost its main food supplier last September after months of unpaid invoices. Then a provincial labour arbitrator ruled the Ontario health ministry should take over paying wages, union dues, vacation pay and taxes to employees in 11 Royal Crest homes. There were millions in missing deductions. The arbitrator concluded the Martinos could not totally disregard the union security clause in the collective agreement, and that it appeared something more sinister may be motivating the employer's actions.

Then the Ontario Ministry of Health moved to revoke the licence of the Martinos' Oakville nursing home for repeated failures to comply with safety and care regulations. Just prior to the crash, new admissions to two other Royal Crest nursing homes in suburban Toronto were suspended.

Meanwhile, apparently insolvent but unchastened, Annette Martino headed south to Florida and began assembling a new empire of homes for the aged and the mentally ill. By 1999, she had a flashy red Jaguar, a 42-foot yacht, and lived in the 9,800-square-foot historic Rutland mansion, formerly St. Petersburg's premier Prohibition-era nightclub.

But soon another army of creditors, collectively owed \$32 million U.S., was howling. When the dust settled, 15 more health care facilities were bankrupt.

Court records in Florida, and an expose by St. Petersburg Times reporter Kris Hundley, showed Martino's operations had garnered some \$24 million U.S. in federal Medicare funds.

According to affidavits from several former employees, many payments were billed for phantom patients and programs, using bogus U.S. social insurance numbers. Annette Martino obtained huge mortgages to buy her \$1.4 million U.S. mansion, and even acquire new Florida nursing homes while others were in already in receivership.

Now fighting rear-guard court actions against her many Florida creditors, Martino has disappeared. Her waterfront mansion has been stripped of furniture. The Olympic-sized pool is drained and stained a dirty brown. Guest and bath houses are boarded up, and wind-damaged tree limbs litter the property. With Spanish moss hanging from nearby trees, and an ornate iron entrance gate now rusting on the unkempt lawn, the Rutland estate has an air of ante bellum failure -- and Annette Martino is once again gone with the wind.

Ontario court records show the Martino brothers also owe the U.S. Internal Revenue Service \$2.6 million for unpaid taxes. They are also facing U.S. creditors for reported bankruptcies of homes for the aged in Kansas and Nevada. A Royal Crest company was registered in Florida, but remains dormant. The Martino brothers did not respond to interview requests by the Citizen.

The Martino bankruptcy debacles throw into sharp relief the increasingly acute problem of protecting vulnerable seniors from under-funded, predatory or incompetent owners.

In Ontario, the demographics -- and costs of care -- are already daunting. There are 63,000 residents in 530 long-term care facilities. Last year, the province paid \$1.7 billion in subsidies; residents paid almost \$800 million more in accommodation charges.

Those resident numbers are expected to double in the next two decades, as the crest of the baby boom generation reaches post-retirement age.

The Ontario population aged 65 or older will soar to 2.7 million, up from 1.4 million in 1996. About 75 per cent of nursing home residents are female. Their average age is 86, and many suffer from chronic medical conditions, Alzheimer's and dementia.

Waiting lists for nursing home beds typically exceed two years. Recent provincial tenders to add 20,000 new long-term care beds, and refurbish existing facilities to add another 16,000, are expected barely to meet demand by 2006.

Despite all this, virtually no one in the provincial government has been paying much attention to the problems in the nursing home industry, according to Ontario auditor-general Erik Peters. In a report delivered late last year, he found:

- * No Ontario nursing home had a valid operating licence at the time of his 2002 audit. Several licences had expired years earlier. One had expired in 1994;
- * Financial information submitted by facilities was not sufficient to confirm government subsidies were properly allocated;
- * A Ministry of Health enforcement unit for addressing nursing home complaints was disbanded in 1999;
- * There was no process for targeting inspections for facilities with a history of failing to meet standards;
- * Between 1997 and 1999, fewer than half of Ontario's long-term care facilities were inspected annually. All were inspected in 2001, but the results were not properly reviewed to ensure compliance with safety and care standards;
- * The Health Ministry had not addressed the results of a 2001 consulting report that found residents of Ontario's long-term care facilities receive less nursing and therapy services than several comparable provinces, U.S. states and European countries like Sweden;
- * And the Health Ministry was not adequately tracking outbreaks of contagious diseases.

The 17 Royal Crest operations have 2,400 beds; 1,748 qualified for guaranteed provincial nursing home subsidies for more than a decade. The homes are now in the hands of a court-appointed trustee, which has retained the Extendicare Inc. nursing home chain to operate them until they are sold.

"We will soon be going to the market to divest them," says Kevin Brennan, a vice-president with Ernst and Young. "They will be marketed aggressively, and we expect to get bids from companies all across the continent."

His report to the Royal Crest creditors leaves little doubt that even the biggest, most powerful creditors (including the provincial and federal governments) will likely recoup only a small fraction of the debts owed. Aside from the nursing home properties, appraisers calculated the chain had only \$2.7 million in inventory and equipment, and \$280,000 in viable accounts receivable. There likely won't even be pennies for unsecured creditors.

The nursing home crunch is occurring all across the continent -- producing desperate entrants, some predator companies eyeing guaranteed government payments per bed, and appalling examples of financial fraud and neglect for many frail, vulnerable residents.

The largest private nursing home chain in the United States, Beverley Enterprises, recently pleaded guilty to criminal charges for defrauding the federal Medicare fund. The company had been charged with filing phony cost reports totaling \$460 million U.S.

It paid a \$5 million U.S. fine on the criminal charges, and \$170 million U.S. as a civil penalty. It was also ordered to sell 10 of its nursing homes in five states.

In 2001, an Arkansas jury awarded \$78 million U.S. to the children of a 93-year old patient who died of dehydration in a nursing home operated by Diversicare Management, a subsidiary of the third largest U.S. nursing home chain. Last year, the company was sued for Medicaid fraud and neglecting patients by that state. Diversicare was owned by Advocat Inc., which sold its nursing homes in four Canadian provinces to another U.S. conglomerate soon after the judgement.

In 1999, a Florida jury found Extendicare Inc. guilty of negligence in the death of a patient who died of malnutrition, and falsifying related care records. It awarded \$20 million U.S. against Extendicare -- the highest such judgement in Florida history.

Citing high litigation risks and insurance premiums, Extendicare soon after sold all its nursing homes in Florida and Texas. It is Ontario's second largest nursing home chain, and is now interim operator of the former Martino chain.

Citing tribunal hearings into prior complaints of sub-standard care at the Martino nursing home in Oakville, health ministry spokesman John Letherby declined to comment on the Royal Crest bankruptcy. He did say that recently the "quality of care in those nursing homes has improved immensely, dramatically."

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The Ottawa Citizen (April 28, 2003)

Ontario's Nursing Home Crisis — Part 3

By Paul McKay

Mining Florida's seniors for gold:

Negligence, fraud, serial bankruptcies, billion-dollar criminal and civil fines. It's the seamy side of nursing home care in the U.S. And, as Paul McKay discovers, it has disturbing links to Ontario.

When Annette Martino vanished from Ontario a decade ago, she left behind a bankrupt nursing home empire, \$43 million in defaulted debts, seniors suffering from substandard care and an opulent rural hideaway sold to stave off creditors.

Her Jaguar disappeared down Interstate 75. Within five years, the scene was replayed in coastal Florida counties surrounding St. Petersburg and Tampa. More than a dozen health care operations were bankrupt, creditors were crowding courthouse steps, and another of her grand mansions was facing foreclosure.

She had lots of company. In the 1990s, Florida nursing homes were among the worst on the continent. Abetted by a see-no-evil state government, weak standards, minimal inspections and no-strings federal subsidies, predators used Wall Street merger-and-acquisition tactics to buy or build homes for the aged and infirm.

The largest U.S. conglomerates surged into the sunshine mecca for seniors, picking up properties that came with guaranteed federal per diems for almost 80,000 qualifying residents. So did Annette Martino, and the Ontario-based Extencicare nursing home chain.

For a while, Ms. Martino and others like her mined federal Medicare and Medicaid dollars. Then Washington woke up. Federal auditors began finding what proved to be billions in fraudulent billing claims.

Meanwhile, some say, another species of shark converged on the Florida nursing home scene -- sleek, silk-shirted litigation lawyers like Tampa-based Bennie Lazzara. Soon after, the Florida nursing home industry and its insurers declared his law firm, Wilkes and McHugh, their No. 1 enemy.

His courtroom adversaries, nursing home lobbyists, and some state politicians have called Mr. Lazzara a parasite. A pirate. A hired hit man. A Rolex Robin Hood. Even an anti-Christ. Yet others have praised him as an 11th-hour angel -- albeit with one eye on lucrative contingency fees -- who took on a rapacious, unregulated business and began cleaning it up.

"We see here the worst of the worst," says the gravel-voiced, elegantly attired Mr. Lazzara, sizing up his interviewer with a penetrating gaze. "I can't condemn every nursing home operator. But the people who come to us are those who've had abusive or negligent treatment -- when the care provided has been abysmal.

"The worst are the giant, publicly traded nursing home chains. They are putting profits and their bottom line ahead of what they should be putting into the medical care of their residents."

Mr. Lazzara contends that his Tampa-based law firm, housing four dozen attorneys on several floors of a gleaming glass office tower, is fighting for social justice.

"From our experience, the care is worst where there haven't been many lawsuits, or enforcement of regulations. When cases are brought before juries, the care improves. That's what happened in Florida. We became the enforcement."

His adversaries scoff at Mr. Lazzara's professed concern, noting his law firm typically claims up to 40 per cent of multimillion-dollar negligence awards.

"When the dust settles on these cases, who wins?" counters Ed Towey, spokesman for Florida's 700 nursing and assisted living home operators. "It's not the seniors, the nursing staff, or even the nursing home operators. It's the lawyers."

What isn't in doubt is that Mr. Lazzara and his partners win most of their cases. Now private nursing home operators in Florida, Arkansas, Tennessee, Texas and California quake when they show up -- because juries are nailing those found guilty.

Two years ago, a Florida jury stung Extencicare with the largest nursing home negligence penalty in state history -- \$20 million U.S. — after hearing a chilling account of the final months of retired truck driver Charles McCorkle.

According to court evidence, the 67-year-old Alzheimer's victim was virtually abandoned inside the pastel-pink walls of the Colonial Care Center in suburban St. Petersburg. Relatives found him emaciated, dehydrated, riddled with bed sores that exposed bone, and lying in his own wastes. He died months after.

The Florida jury also heard that Extencicare staff later altered Mr. McCorkle's treatment charts to disguise a month-long gap in entries verifying care. Apparently determined to send Extencicare's Canadian directors and Florida regulators a message no one could miss, the jury awarded the victim's relatives \$3 million in compensatory damages, and \$17 million in punitive damages. (All numbers in U.S. dollars.)

That message hit home. Extencicare sold all of its 16 Florida nursing homes for \$60 million, and paid an undisclosed settlement. In a subsequent financial report, the company said it had placed \$25 million in a reserve for pending damage awards, and also sold its Texas properties "due to the increased frequency of claims and settlement amounts, related primarily to Florida and Texas."

The jury got it right, says Mr. Lazzara.

"It was our position at the McCorkle trial that Extencicare was trying to set the bar of care very, very low. They defended the case on the basis this was acceptable care. They never said, 'We messed up here. It was an isolated incident. We're sorry.' Instead, they called experts to say the care they gave was fine."

"The jury (members) were outraged by what they heard. The company cared more about revenues than Mr. McCorkle. The evidence was that Extencicare neglected him so badly that he could never recover. Later, they back-charted treatment for him (for dates) when he wasn't even there."

The McCorkle judgment came on the heels of a \$15-million award in 1999 against an unrelated company in Florida, following the death of an elderly man who fell 30 times, then died of untreated ulcers and malnutrition. Bennie Lazzara's law firm won that case, too.

That same year, a jury hit another private Florida nursing home operator with a \$10-million judgment, after an elderly woman lost most of her leg following an untreated minor toe infection. In still other cases, nursing home staff was caught convening "charting parties" -- mass revisions of resident treatment records -- after lawsuits were filed.

These haven't been isolated cases. Mr. Lazzara's law firm has won hundreds of smaller judgments against private Florida nursing homes, and has 500 more pending.

But dozens of lesser Florida law firms openly troll for clients from the front and back covers of telephone books, during broadcasts of college basketball games and on highway billboards. They too are winning awards against nursing homes -- and driving their insurance premiums upward. Other law firms, hired by nursing home chains and the companies that insure them, earn a living repelling those claims in court.

"Some awards are dramatic. They set records in Florida," concedes Mr. Towey. "But the larger problem is the sheer volume of them. Now it costs \$12,000 per year per bed for insurance. Since 95 per cent of nursing home revenues are from Medicaid and Medicare, that's taxpayer's money going to pay lawyers and insurance companies when it should go to the elderly."

Yet the most serious consequence of the fierce legal fighting in Florida may be the collateral damage it has caused.

By 2001, one in five Florida nursing homes was in bankruptcy protection, and dozens were reportedly sinking into insolvency each month. Citing the negligence awards and skyrocketing insurance premiums, big chains were selling out.

Some moved to places where it appeared regulations were weaker and lawyers like Bennie Lazzara didn't dine out on their deep pockets.

That didn't last long. Mr. Lazzara and his law partners were soon literally on their case in Arkansas, Alabama, Georgia, Texas, Tennessee and California. Wilkes and McHugh branch offices spread across the Deep South. New lawyers were hired.

In 2001, the firm won a \$78.4-million jury award after a 93-year-old woman died of complications stemming from her dehydrated condition in an Arkansas nursing home. Her sons were awarded \$63 million in punitive damages. The nursing home was part of a chain controlled by Advocat Inc., and its subsidiary, Diversicare. It also owned nursing homes in four Canadian provinces (including Ontario), which were sold soon after.

"This was a very conservative area in Arkansas," says Mr. Lazzara, part of that legal team. "But when people sat in a trial for two weeks and heard what happened in that nursing home, that verdict resulted."

"Companies like Diversicare and Extendicare blame everyone but themselves. They have blamed the poor resident for being sick. They blame families for not being more attentive. They blame doctors or nurses. It's easy to blame trial attorneys -- nobody likes us. But it's juries that are coming up with these verdicts."

That \$78.4-million negligence judgment, the largest in Arkansas history, followed five other unrelated nursing home cases in the state that exceeded \$1 million in penalties.

One involved a jury award of \$12.3 million, prompting the owner to sell its state nursing homes to a California broker, which then leased them to the Arkansas division of Diversicare. Last year,

already facing the \$78.4-million negligence judgment, Diversicare was hit with a lawsuit by the state attorney general for repeatedly failing to properly care for its residents.

"The filing is indicative of the consequences other nursing homes can expect if they don't fulfil the requests demanded by this office," the Arkansas attorney general said.

Meanwhile, several of the largest U.S. private nursing and retirement home chains, and their home care affiliates, were facing a formidable adversary on their opposite flank -- the U.S. federal Justice Department.

Beverly Enterprises, the largest nursing home operator in the U.S., pleaded guilty to criminal charges for defrauding the federal Medicare system. It paid a \$5-million fine on the criminal charge, and agreed to a \$170-million civil penalty after it was charged with filing \$460 million in inflated or phoney billings. Ten of the Beverly Enterprises nursing homes involved were ordered sold. The chain has since voluntarily sold another 49 nursing homes in Florida.

"They were the biggest in Florida and they just got up and left," says Mr. Towey. "Extendicare, a Canadian company, has been gone for a year. Genesis, now our largest chain, has put its homes up for sale and will likely be gone by the summer. Florida is now the worst place in the nation to be in this business."

Another Florida company, operating as Kimberley Home Health Corp., pleaded guilty to federal criminal and civil charges for kickback schemes and defrauding Medicare programs. It paid a \$10-million criminal fine, and a \$51-million civil penalty.

The charges stemmed from the collusion of its parent company, Olsten Corp., with the largest private hospital chain in the U.S., Hospital Corporation of America (HCA). In December, HCA agreed to pay a \$631-million civil penalty for defrauding Medicare. That brought HCA's combined criminal and civil penalties to \$1.7 billion in a period dating back a decade. It operates nine private hospitals in the Tampa Bay area, and 180 in two dozen U.S. states and Europe. They generated gross revenues of \$18 billion in 2001.

The recent slate of negligence and fraud charges has jolted the private sector segment of the U.S. nursing home industry, which accounts for two thirds of the 1.6 million beds nationally. Those beds represent combined government and private payments of \$87 billion.

As the Annette Martino case showed, there was little to stop her and her Canadian partner from acquiring U.S. health care facilities. No background checks were made. No federal or state officials checked her credentials or controversial track record in Ontario. Key Medicare and Medicaid billing approvals were granted on bogus social security numbers.

There is also little to prevent U.S. corporate bad actors from relocating to Canada or acquiring the wreckage left by counterparts north of the border -- including, once again, the Martino family.

In December, Ms. Martino's two Ontario-based brothers signed documents confirming they and their Royal Crest chain of 17 private nursing and retirement homes had debts of \$179 million. The Royal Crest facilities are now under the authority of a court-appointed bankruptcy trustee. The interim operator is Extendicare Inc.

The former Martino family chain is currently on the auction block. Prospective owners from across North America are being invited to bid on the 17 Ontario properties. The main creditors and provincial Health Ministry must approve the sales to new owners.

Back in Florida, the legal upheavals of the past decade haven't abated. In 2001, three of every five nursing homes were facing lawsuits, many for negligence. According to Mr. Towey, one in five Florida nursing homes had no liability insurance; one in three had only self-coverage.

Since then, state regulators have made liability insurance mandatory to maintain operating licences -- and the average annual insurance cost per bed has doubled. There are now fewer buyers or new builders, which portends a pending crunch in the supply of additional nursing home beds.

"The volume of lawsuits hasn't let up. We are getting two or three new ones per day," says Mr. Towey. "That drives up insurance, which is mandatory. So you have many homes which might pay \$150,000 per year for insurance, with only \$100,000 in coverage. That protects no one -- not the seniors, and not even the financial lenders to the nursing homes."

Tragically, none of this upheaval has helped provide better quality care for elderly shut-ins. Instead, it has made money for their care even scarcer.

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The Ottawa Citizen (April 29, 2003)

Ontario's Nursing Home Crisis — Part 4

By Paul McKay

Taxpayers finance construction boom:

Over the next 20 years, Ontario will heavily subsidize the construction and renovation of thousands of nursing home beds in the province. As Paul McKay reports, a company controlled by the Reichmann family is the single biggest beneficiary.

When the Ontario government promised in 1998 to build 20,000 new nursing home beds across the province at a cost of \$1.2 billion, it wasn't a moment too soon.

The pledge came after a decade without new capital funds from Queen's Park for long-term care facilities. Eight-teen thousand Ontario residents were already waiting for beds. Another tidal wave of elderly entrants — plus 3,500 from downsized chronic care hospital wards -- was building behind existing queues from Kanata to Kenora.

More than 15,000 existing beds did not meet modern safety, fire, health and privacy standards adopted in 1998. Almost 70 nursing homes with 7,000 beds failed to meet standards dating back to 1972. All were facing major renovation or complete reconstruction after the alarm was raised by the provincial auditor general in 1995.

Even more trouble was on the horizon. Demographic trends left little doubt the crest of seniors would keep rising fast until 2020, when a fifth of Ontario citizens will be over 65 and those over 85 will quadruple.

But the 1998 announcement to build 20,000 new beds before 2006, approved by then-Ontario finance and Superbuild agency minister Ernie Eves, called the tune without paying the piper.

The government put up no capital. Instead, it contractually obligated future Ontario governments to spend a revised amount of \$1.5 billion -- from annual operating funds over the next two decades -- to compensate those approved to build new nursing homes.

Under iron-clad contracts, the province promised to pay \$10.35 per bed per day for 20 years (cumulatively \$75,555 per bed) to offset new capital construction costs. The province will make the same daily payment per bed to owners who retrofit the most decrepit nursing homes to meet modern standards. Others will recoup lesser amounts, depending on the renovations required.

All will also continue to receive daily provincial per diems for resident food, care and programs, currently \$70 per day. As well, they will collect mandatory minimum resident fees set by the provincial government, currently \$41 per day per resident for a basic ward bed. The contracts ensure:

- Two decades of guaranteed government revenues;
- More in mandatory resident fees, already slated to increase 15 per cent by 2005 for 63,000 seniors;
- More still from a government-sanctioned shift toward "preferred" residents able to pay semi-private and private room fees, and a waiver of the share formerly recouped by the province;
- That every bed will be filled with minimal vacancy rates and marketing costs;
- A steady stream of monthly cheques from one government source.

By the end of the two decades, each new and renovated facility would be largely paid for by Ontario taxpayers. Private-sector owners could then sell, lease, or convert the facilities to residential apartments.

For companies with pockets deep enough to finance nursing home construction, those terms were irresistible. For politicians like Mr. Eves, it was a way to get 20,000 new beds built fast, and thousands more renovated, while reaping the political credit and keeping \$1.5 billion off current books.

The plan worked like a charm. Builders lined up. All 20,000 beds were awarded in three phases, roughly in regions of highest demand. Nearly 16,000 more retrofits were approved.

A construction boom is now under way. Almost 200 new facilities are expected to be finished by 2006. Once their doors open, government capital and operating funds will start flowing.

The province awarded the largest allotment of new and retrofit nursing home beds to Central Care Corporation, a Tory-connected company controlled by the Toronto-based Reichmann family. Former billionaires, they once amassed a fortune larger than the Queen's, then lost most of it in the \$18-billion Olympia & York real estate crash a decade ago.

According to the Health Ministry, the Central Care Corporation was approved to receive funding for 15 new nursing homes with 1,493 beds, and 1,160 beds in existing Ontario facilities that only meet standards dating back to the 1970s. If brought up to 1998 standards, they will also qualify for full provincial capital payments of \$10.35 per bed per day -- or \$200 million for the combined 2,653 beds over the next two decades.

Those beds alone represent another \$185,000 each day in Ontario government operating subsidies, or \$68 million per year, at current rates. They also generate \$41 per day per bed in average resident fees, or almost \$40 million a year. Those fees are slated to increase 15 per cent between 2002 and 2005.

Combined, the nursing home allocations to Central Care Corporation are expected to generate \$1.36 billion in provincial operating subsidies over the next two decades, and another \$800 million in resident fees. During the same period, the company will recoup more than \$200 million in capital costs from Ontario taxpayers. (The company reports it has 788 of the 1,160 approved beds in sub-standard facilities under renovation).

Family patriarch Paul Reichmann and his son Barry are major unit holders and officers of the parent corporate vehicle, now called Retirement Residences Real Estate Income Trust (REIT). A founding trustee and the current chairman is former Ontario premier Bill Davis. A current trustee is former Davis cabinet member and Ontario treasurer, Darcy McKeough. Another is Douglas Bassett, representing the family dynasty that controls the CTV television network and has supported the Ontario Conservatives for decades.

Central Care Corp. obtained approval in 1999 to build most of the beds it was awarded, while Mr. Eves was the finance and Superbuild agency minister. It also sought more new and renovation bed allocations during Mr. Eves' year-long hiatus from politics, when he became a trustee of Retirement Residences REIT, Central Care's parent.

When he joined that board in March 2001, Mr. Eves was granted a three-year option to purchase 35,000 trust units for \$10 each, paid a \$15,000 annual retainer, and up to \$1,000 per board meeting. When he left the company in April 2002, 11,666 of the options became vested and his to exercise.

Mr. Davis still retains an option to purchase 50,000 units for \$10 each. He is paid \$30,000 annually as company chairman. Mr. McKeough has a trustee's option to purchase 45,000 units, and owned 6,000 as of last December. Company president Barry Reichmann was granted an option on 200,000 units, and a CEO salary of \$246,346 in 2001.

Company records show Mr. Eves and Mr. Davis endorsed a merger plan that year that would make the firm the biggest nursing and retirement home conglomerate in Canada. A meteoric climb in asset acquisitions, revenues, and shareholder dividends followed. The subsidiary Central Care Corp. is the corporate vehicle for new nursing homes.

The TSX-listed trust (RRR.UN) owns or operates 181 nursing and retirement homes in Canada and some U.S. states, housing 20,000 seniors. In Ontario, it operates the former Central Park Lodges and Versa-Care nursing home divisions, which have several facilities in Eastern Ontario. It also owns retirement homes such as the Colonel By complex in Ottawa, a home care division called Central Health Services, and another called Medisys Nursing Placement.

Mr. Eves resigned from Retirement Residences REIT one year ago, weeks after his successful campaign to become leader of the Ontario Conservatives. Through the Reichmanns' O & Y Properties real estate company, Mr. Eves' campaign received \$10,500, as well as \$5,000 from

Versa-Care. Health Minister Tony Clement received \$43,568 from O&Y; Properties and \$5,000 from Versa-Care for his rival leadership bid last year. Jim Flaherty, who succeeded Mr. Eves as finance and Superbuild minister, received \$10,000 for his Tory leadership bid from O&Y; Properties.

In 2002, Retirement Residences REIT donated \$14,979 to the Ontario Conservative party, and \$7,750 to the provincial Liberals. In 2001, it donated \$1,040 to the Conservatives and none to the Liberals. To date in 2003, according to the company, it has donated \$2,250 to the provincial Liberals and \$900 to the Tories.

Those donations were preceded by others to the Ontario Conservatives. From 1995 to 1999, the Reichmanns' nursing and retirement home companies donated \$22,865. According to provincial records, long-term care companies donated \$336,545 to the Conservatives between 1995 and 1999, \$72,918 to the Liberals and \$2,000 to the NDP.

In addition to the donations from O&Y; Properties and Versa-Care, Mr. Clement received \$18,000 from the nursing home chain Leisureworld Inc., and \$1,000 from Extendicare, Inc. to help finance his leadership race. He has been the minister for health and long-term care since January 2001.

Leisureworld, a private company, was allocated 1,895 new beds. Extendicare was awarded 1,164 new beds, and approved to renovate 449 existing beds.

No one contends anything illegal has occurred. Or that Mr. Eves or Mr. Clement personally intervened to reward donors to their political campaigns. But, critics say, two-thirds of the 20,000 new nursing home beds were awarded to private nursing home chains because the process was tilted toward those with deep pockets.

The top five municipal and charity-based nursing home proponents were awarded 2,049 new beds, while Leisureworld alone was awarded 1,895. The top five private companies were allocated 6,573 new beds.

Past financial and nursing care practices also didn't preclude the awarding of new nursing home beds.

The Reichmanns had amassed \$18 billion in debts by the time their real estate empire collapsed in the early 1990s. Their company declared a \$2- billion loss in 1991, largely tied to massive commercial office tower developments in London, New York, Toronto and Ottawa. Among the 91 creditors in the Canadian court imbroglio that followed was the Ontario government, which eventually wrote off \$14.3 million.

Eventually, the major creditors agreed to a salvage plan in which the Reichmann family relinquished many of the major properties in return for being shielded against the related debts and personal lawsuits by creditors.

Soon after, however, the creditors hired the Reichmanns to manage many of the projects, and eventually the family assembled the financing to re-acquire control of most of the same properties. Highly regarded for their entrepreneurial acumen and engineering innovations, the Reichmanns are again on the ascent with major office tower and commercial real estate projects in London, the U.S., Mexico City, Toronto, Calgary and Ottawa.

They also control the largest nursing and retirement home conglomerate in Canada. In 1994, Paul Reichmann, his son Barry, a son-in-law, and two partners purchased the Central Park Lodges nursing home chain for \$220 million. By 1997, the 12 nursing homes, comprising 1,889

beds, had been folded into an income trust entity that avoids paying corporate tax by paying out the profits as monthly dividends to shareholders, including the Reichmanns. That year, it acquired the Ontario-based Versa-Care chain of 29 nursing homes with 3,700 beds. In 1999, it acquired another 1,412 beds in Canada, and 1,354 in the U.S.

While it was assembling this new empire, and seeking to win allocations to build new nursing home beds in Ontario, tragedy struck at a Central Park Lodges nursing home in Kitchener.

A virulent strain of influenza A hit 82 residents and 49 staff, triggering the deaths of 25 seniors. It followed a Christmas party for residents, staff and relatives in December 1998. It was the single worst case of fatalities at a nursing home in recent decades.

A coroner's inquest later traced the cause to a lack of immunization, inadequate staff-ing, and delays in lab sampling and reporting the outbreak. The inquest made 25 recommendations, including mandatory immunizations for all staff and seniors, and an infectious disease control specialist for each facility.

The company says it has exemplary hygiene and infection control practices, and more than 80 per cent of its nursing home staff and 93 per cent of residents comply with provincial immunization directives. It has also designated a registered nurse at each facility to prevent viral infections and flag potential outbreaks.

Despite the Kitchener tragedy, and provincial directives for mandatory immunizations, the recent provincial auditor general's report concluded:

"The Ministry was not adequately tracking complaints, unusual occurrences and outbreaks of contagious diseases to identify and resolve systemic problems. In 2001, of seven regions, only two regions recorded unusual occurrences, which totalled 1,900. In the same year, only four regions recorded outbreaks of contagious diseases, which totalled 219 and affected 7,500 residents and staff."

The auditor general also warned that some Health Ministry regional offices were failing to keep logs on infectious disease outbreaks.

He recommended those logs be mandatory, and that all of Ontario's 530 long-term care facilities be inspected at least once yearly.

The Reichmanns' rival in the Canadian nursing home business, Ontario-based Extencicare Inc., was allocated 1,613 new and retrofit beds by the province, even while facing a civil trial in Florida that resulted in a \$20-million U.S. jury judgment -- the largest nursing home negligence award in that state's history.

Citing high litigation risks and insurance costs, Extencicare has since sold all its facilities in Florida and Texas. It has 260 nursing and retirement homes in Canada and the U.S., with 26,000 residents, and is the interim operator of the recently bankrupt Royal Crest chain of 17 nursing and retirement homes in Ontario.

The main private players in Ontario's nursing home sector are expected to bid for those facilities.

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The Ottawa Citizen (April 30, 2003)

Ontario's Nursing Home Crisis — Part 5

By Paul McKay

Out of mind, out of sight:

Ottawa's most vulnerable, voiceless seniors have a new home. But few ever visit or volunteer help, and political promises remain unfulfilled. Paul McKay reports.

Mavis Morgan is a rock of devotion -- with an earthquake of anger rumbling beneath.

Every day since last July she has come to Ottawa's Peter D. Clark nursing home complex to tenderly take the hand of an elderly stranger named Ernie and help wash, dress, feed and supervise him.

She always puts in a full shift, from 11:30 a.m. until 7:30 p.m., often serving food to others, and tidying tables and kitchen counters after meals. She is there seven days a week. She doesn't get paid a nickel.

Once, Ernie was anything but a stranger. Now, except for a flicker of recognition most mornings, and the familiar handsome features, Ernie is a ghost of the man Mavis vowed to love in sickness and health almost a half century ago.

A workplace accident and a failed medical diagnosis robbed them both. Ernie suffered brain damage at age 64. He can no longer talk, walk unassisted, feed or bathe himself, or follow spoken or printed thoughts. He cannot recognize the Morgans' two grown daughters, nursing attendants, or the 48 Alzheimer's and dementia patients who pace and drift incessantly through his ward.

Inexplicably, blessedly, Ernie briefly lights up when his grandchildren appear for a visit, or a melody embedded deep in his memory gets stirred. But the rest of his life is a relentless blank, and that has now stolen half of Mavis's life, too.

She accepts that fate, and that her beloved husband will never recover.

"I think the day I brought Ernie in here was worse than it will be the day I will have to bury him," she says, fighting back tears and laying her hand on his. "I took care of him at home for six years, but it got to be too much for me alone."

Yet there are other chronic cruelties she cannot accept.

"In the first few weeks, he got hit seven times by other patients, and punched so he needed stitches on his mouth. He also got a black eye. I was just furious," she says in a voice so angry it

shakes. "One patient pinned me into a cupboard one day. They didn't know what they were doing. God bless the staff who work here -- they are so caring and dedicated. But there are just not enough of them."

"How can one attendant feed 12 people soup, the main meal, a drink and dessert at the same time? Or dress 12 people at once, and still keep an eye on everyone out in the halls? So that's why I'm here every day."

So are Jim Reid and Fern Bergeron, who have spouses in the same block of bright, tidy bungalows dedicated to seniors with advanced dementia and Alzheimer's. Jim's wife Vivien is a 75-year-old former Ottawa school teacher who, he recalls proudly, never missed a day of work over four decades. They have been married 45 years. Fern's wife, Cecilia, is 87. They were married in 1947.

Both men nod solemnly as Mavis takes aim at the politicians they say have betrayed those in their hour of greatest need.

"I think the government is terrible for not sending enough money to these (nursing) homes," says Mavis. "Do they not know what's happening here, to the people who worked and paid taxes all their lives?"

"I'd love to see those high muckymucks in Toronto forced to come in here, and see what's going on. That would open their eyes. They don't understand one bit what goes on in these homes."

Mavis pays \$1,993 in resident fees for her husband's accommodation each month, drawing down RRSPs because his work as an independent maintenance contractor left no pension. When those are depleted, she says, her Ottawa home will be the only asset left.

Jim and Fern say they can afford the similar monthly fees for their Alzheimer's afflicted-spouses, but the provincial share of \$70 per day provides only cut-rate care.

"Everybody here is potentially violent. Even my wife. But there's not enough money to pay for the help," says Jim.

"The big problem is not lack of good people. The staff here are very caring, absolutely excellent. I couldn't do what they do.

"The big problem is: there's not enough bodies to help. So I get mad when I see politicians with personal trainers, or the prime minister flying off in his own jet. They've got all the wrong priorities."

All three cite incidents in which they have had to help break up arguments, track down wanderers, or supervise demented residents while beleaguered staff responded to a fracas or a vanished patient. Fern discovered his wife had a broken wrist and it torments him not knowing how it occurred.

"She only speaks in gibberish, so she can't explain if she fell or was pushed," he says. "If there was more money for more staff, this could be avoided. The shortage is dangerous."

Yet the new secured special unit for those with dementia and Alzheimer's has a higher ratio of nursing and attendant care than the provincial average. Each of 48 residents receives about 45 minutes of registered nurse care time daily, compared to the Ontario nursing home average of 15 minutes.

In the U.S. states of Mississippi and Maine, combined care from RNs and aides is four hours per resident per day, compared to 2.25 hours per day at the Ottawa complex. In Florida, the new state-legislated minimum to maintain a nursing home licence is almost three hours per resident per day. There, the government financial assistance level is twice that of Ontario.

For mentally infirm residents like Ernie, the extra nursing care is due solely to financial support from the City of Ottawa. The Clark complex receives \$1 million annually out of \$3 million in property tax funds dedicated to four city-owned long-term care facilities. The city also donated land for the site, and has backed capital costs and a mortgage. (The province pays \$10.35 per bed per day to partially offset capital costs).

The trio singles out Councillor Alex Munter and Mayor Bob Chiarelli for praise. Mr. Munter, who chairs the city council health committee, is their unofficial champion. They say he is the only politician who comes by in person, and advocates on behalf of Ottawa's most vulnerable seniors.

Most have been all but consigned to oblivion. Visits are rare, even from relatives. Some have deceased spouses or are too ill themselves to visit regularly. Mavis, Jim and Fern are the exceptions.

Despite the pressing need for volunteers, and care-related items like replacement mattresses to minimize bed sores, the dementia complex has no civic club sponsors like Kiwanis or Rotary. It also receives no corporate endowments.

Noreen Langdon, a former nurse who now manages the 216-bed Clark nursing home complex, says the adjacent facility for 48 advanced dementia cases suffers most from a capricious provincial funding system.

The provincial assessors who decide grant levels never meet the afflicted residents or their caregivers. Instead, they rely on charts compiled the previous year that don't even have categories for many of the unique care needs of dementia and Alzheimer's victims.

"The tool that they use to classify the residents does not take into account the dementia cases," says Ms. Langdon, "which is now a large part of the nursing home population. That requires a higher staffing level than for people who are just physically frail."

Compounding the flawed funding formula, says head RN Shelagh McQuarrie, is a perverse system that penalizes improvements in resident health and functioning.

"We call it 'documenting for dollars.' The province gives us money based on a point system -- if they can't walk, or feed themselves, or are incontinent when they arrive. But if we improve their condition with exercise programs, or nursing care, or better diets, the province takes money away the next year."

Despite this, and daily ordeals with often explosive and erratic residents, Ms. McQuarrie remains irrepressibly committed to her elderly charges. She and her staff organize bowling and movie excursions, and the monthly calendar is crammed with exercise sessions, church services, sing-alongs, bingo, tea parties and craft classes.

A staff bake sale at Christmas raised funds for a "rummage room" in which some residents spend hours trying on hats and jewelry, collecting car and house keys, typing out imaginary letters, or teaching a phantom class of school children.

One constant customer is Alice Hart, a former painter. In what might pass for a movie star's dressing room, she delightedly puts on a string of plastic pearls, throws a canary-yellow boa across her shoulders, grins into a mirror -- and perhaps sees Marlene Dietrich.

That's just fine with nurse McQuarrie.

"I love them still seeing the humour in life," she laughs. "I want it to be loud and lively here, just like life is."

When Ernie first arrived, he was assaulted by oblivious adversaries, and reacted by trying to break every mirror or window in which he saw his reflection. Now he is strapped into a reclining wheeler. Jim's wife Vivien sometimes confuses him with her father, or accuses him of being a shiftless Scot. Fern's wife Cecilia can no longer compose a sentence.

Ms. McQuarrie says there is no way to measure the torment spouses like Mavis, Jim and Fern endure each day -- but every dollar invested in resident care actually benefits those imprisoned in dementia and those left to watch over them.

"When we first opened, we had no idea how people like Mavis were suffering, because they were dropping off their heart and soul at our door. They were just wrecks. Now they have some relief. They know we are doing our best, and there are counselling services for them."

The trio agrees they all hit a wall of emotional exhaustion and despondency when their spouses entered the facility, but can now at least reclaim a peaceful sleep most nights.

"Everybody here is so dedicated. There's just not enough of them," says Fern, who dedicates many of his own weekdays to help his wife and others.

The lack of funding, Ms. Langdon contends, is driving nurses out of the province or out of the profession. Those that remain choose higher-paid, lower-stress hospital placements.

During a visit to the facility, councillor Munter says the provincial funding formula fails those who need help most.

"It represents a past time and place when there were lower needs. The provincial government investment in long-term care has not kept up with an aging population that lives longer and needs more help.

"Now the residents are facing big increases (for monthly accommodation fees). That cynical attempt to shake down seniors to pay for the improvements that are needed really says a lot about this government's approach to long-term care."

Professional dietitian Hilda-Anne Troupe says she is allocated 15 minutes per resident per month to evaluate their nutrition status and needs.

"That's an impossible task. There's not a nursing home in Ontario that can do it. Yet those with dementia often require more liquid proteins and nutrients because they burn off so much energy pacing and wandering.

"That leads to broken skin and bed sores, weight loss, cognitive decline, and the inability to recover from an illness. Poor nutrition also means they are constantly frustrated, irritable. It's just a vicious circle."

The daily residents' food allotment from the province of \$4.49 has increased just 23 cents in the past decade, an increase of 5.1 per cent, compared to the consumer price index increase of 21.6 per cent. To match that, 2003 per diems to cover three meals should be \$5.27.

That means instant crystals instead of real fruit juices, powdered potatoes and processed vegetables instead of fresh ones, smaller portions, more leftovers, and reducing expensive nutrition-packed supplements. According to dietitians like Ms. Troupe, those cuts in nutrition will guarantee higher health care costs down the road.

Distant politicians may have broken election promises to treat seniors fairly, but one person who won't be breaking any vows is Mavis Morgan.

"Ernie and I had 48 wonderful years. We've been lucky. Very lucky. I love helping out here, because I am a caring person, and because if it was me, I'd want somebody to treat me well. Or to treat Ernie well if I couldn't."

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The Ottawa Citizen (May 1, 2003)

Ontario's Nursing Home Crisis — Part 6

By Paul McKay

How to fix the system:

Ontario has a long way to go to bring its nursing homes up to basic North American standards. The task will require more money, more accountability, higher standards and constant vigilance. Paul McKay reports. The provincial auditor found that 68 Ontario nursing homes were so decrepit they failed to meet standards dating back to the 1980s.

Last in a class of 11. That's the grade Ontario gets for the overall quality of care given to 63,000 seniors living in the province's 530 long-term care facilities.

That was the central finding of a 2001 report card paid for by the provincial government. In it, PricewaterhouseCoopers compared Ontario to 10 provinces, U.S. states and European countries.

It ranked Ontario at rock bottom for nursing, physiotherapy and counseling levels -- despite evidence that our seniors have some of the highest levels of age-related illnesses and mental infirmities. The province failed to lead in any of the care categories.

A parallel alarm rang late last year, when the Ontario auditor general found:

- No evidence that the ministry had addressed the results of the PricewaterhouseCoopers study.
- A dedicated nursing home inspection team was disbanded in 1999, and annual inspections dropped dramatically between 1995 and last year.
- Contagious disease outbreaks in long-term care facilities were not being properly tracked.
- There was virtually no way to verify that provincial funds meant for seniors' care were allocated as intended.

Overall funding for long-term care has not matched inflation, let alone the steady increase in seniors leaving their own homes or those being shifted from hospital beds once considered -- and funded -- as chronic care placements. Seniors themselves are making up the shortfall, paying almost twice as much in monthly basic accommodation fees as nursing home residents in British Columbia, Alberta, Saskatchewan, Manitoba and Quebec.

Nurse staff and wage levels also lag behind most Canadian provinces and many U.S. states, creating an incentive for new nurses to leave Ontario after years of publicly assisted training. Those who remain often must deal with 60 residents each during a day shift, and 100 or more on a night shift, while being paid an hourly wage lower than jail guards.

Nursing home inspections are increasingly infrequent, and routinely occur only after advance notice. Ontario's regulatory standard is one inspection annually, but between 1995 and 2001 barely half that level occurred. In 1999, the low point, only 200 of the province's 520 nursing homes were inspected.

In 1984, 497 charges were laid under the provincial Nursing Homes Act. In 1988, only 12 were filed. None have been filed since, though the number of residents and facilities has swelled to a historic crest.

Florida has 260 full-time inspectors for 668 facilities housing 71,000 residents. Every inspection is unannounced. By contrast, Ontario has 56 full-time staff for 530 facilities housing 63,000 seniors, but that includes nursing home "compliance advisers," dietitians, environmental advisers and one enforcement nurse.

Recent Florida legislation backs up its inspection division with higher fines, provisions for more frequent inspections for non-compliant facilities, and the suspension of new admissions or state and federal funds for delinquent operators.

"Nurse hirings have gone up because the law requires it," says Ed Toney, spokesman for Florida nursing home operators.

"It's been a two-year boom. They are coming from all over, including Canada, because it's a great time to be a nurse in Florida."

By contrast, Ontario nursing homes rank near the bottom for coveted placements because wages are 20-per-cent lower than on hospital nursing wards, the workload is heavier and more physically demanding, and there are fewer opportunities for advancement.

Florida also has another way to ensure high care levels -- it publicly exposes the worst operators. Both the state and the federal agency Medicare have user-friendly Web sites that publish inspection reports -- and rank -- all nursing homes receiving government funds.

The Web sites allow seniors and their families to compare nursing homes before one is chosen, and let family members monitor their loved ones.

Molly McKinstry, the Florida director of nursing home inspections, says the state Web site was designed and tested for ease of use. First posted in 2001, it divides nursing homes by county, then ranks them in the same area by overall score and a five-star rating system.

Ontario has nothing comparable. There is no Web site that discloses infractions, or ranks performance and care levels. Inspections are sporadic, partly because a dedicated inspection team was disbanded in 1999, partly because there are too few inspectors, and partly because those inspectors are often assigned other tasks such as reviewing bids to build new nursing homes.

Most alarming, the provincial auditor found last year that 68 Ontario nursing homes with 7,000 beds were so decrepit they failed to meet standards dating back to the 1980s, and required complete retrofits. They were among facilities with nearly 16,000 beds requiring substantial renovations.

When inspections do occur in Ontario, the results are only posted at the facility. Sometimes they are displayed in the nursing home foyer; often they can only be read upon request during a personal visit.

It is also impossible to verify in advance the nurse-to-resident care standard, because the Ontario government dropped the former requirement (2.5 hours per resident) in 1998. Yet every Florida nursing home and those in 36 U.S. states are legally obligated to provide almost three hours of personal nursing care per resident per day -- or face the loss of their operating licence or revenues from new entrants.

In Ontario, it is easier to reliably choose a quality sofa, car or appliance than a nursing home. It is easier to check by Web site an airplane arrival time than it is to see if a nursing home with hundreds of vulnerable seniors has been inspected. And there are few guarantees about the quality of care those seniors will receive.

Improving Ontario's nursing home system will require more money, more accountability, higher standards and constant vigilance. Here are six reforms needed to move Ontario near the top of the class in care for seniors:

1. Mandatory nursing care standards

As a condition of licence, Ontario should require every long-term care facility to provide a minimum of three hours of nursing care per resident per day -- four hours for those with dementia or clinical chronic care status. At least one of those hours should be for registered nurse care.

The province should restore the requirement that all facilities have at least one RN on site at all hours. Failure to verify minimum care levels would result in an automatic deferral of provincial funding. Repeated failures would result in a loss of operating licence.

2. Funding nursing care

The province should increase the average per diem for nursing care per resident to \$100 from \$60, and the daily care level for those with dementia to \$120. This would still leave Ontario far behind the Florida average per diem of \$137 U.S. The food allowance for three daily meals should be raised from \$4.49 to \$7, in line with recommendations made by professional dietitians. Both should be matched to the consumer price index.

3. Mandatory inspections

All Ontario nursing homes should be inspected annually by a dedicated division led by nursing, food hygiene and fire safety experts. All inspections should be unannounced. The inspection standards should be set by a committee reporting to the provincial legislature or the auditor general.

The inspection division would represent the Health Ministry, nursing home operators, the Ontario Nurse Association and seniors' advocacy groups, and compile an annual report on inspection results.

Failure to comply with inspection orders would trigger quarterly inspections for two years and an automatic deferral of provincial revenues until the problems are rectified. The most serious problems would result in a suspension of new admissions, or a loss of licence.

4. Inspection and care level transparency

Inspection results, enforcement orders and care staffing levels of every Ontario nursing home should be posted on a Ministry of Health Web site. Modeled on the Florida or U.S. Medicare Web sites, this would help in choosing the best nursing homes, and allow relatives to monitor the performance of facilities where loved ones reside. It would also act as a discipline for indifferent or potentially negligent operators, and for the Ministry of Health to maintain an inspection process with high integrity.

Ottawa Councillor Alex Munter, chairman of the city council health committee, says he will propose that the city's Web site include inspection compliance reports on the four nursing homes co-funded by municipal taxpayers.

The central inspection report Web site is also endorsed in principle by Ontario's private nursing home association, the association representing non-profit nursing homes, and the Ontario Nurses Association.

"The inspections aren't happening. That means the patients are at risk," says Barb Wahl, president of the Ontario Nurses Association.

5. Protecting residents from financial abuses

Florida nursing home operators must post bonds to protect residents against unscrupulous operators or bankruptcy. Funds they have deposited for rent, personal care and social activities - often totalling millions -- cannot be withdrawn without written authority, and all resident accounts are covered by bonds posted by operators. If money is stolen, or the facility declares bankruptcy, the residents do not lose their money.

To help prevent fraud and financial mismanagement, the federal Medicaid authority conducts rotating audits covering one quarter of Florida nursing homes a year. Both the state and federal governments also screen applicants for new nursing home licences for past fraud, bankruptcy history, and resident care improvement orders by other state and federal regulators.

Ontario should adopt similar protection methods. It should require all private and charity or religious run nursing homes to post bonds with the province to cover potential problems such as the recent Royalcrest bankruptcy fiasco.

The Health Ministry should also adopt the Medicaid system of rotating financial audits, with the results kept strictly confidential. This would help ensure fiscal integrity at each facility, prevent abuses and act as a monitor on the \$1.7 billion Ontario taxpayers contribute as operating funds to long term care facilities each year.

Applicants for new or renewed nursing home licences should be required to disclose all previous cases (including affiliates) of bankruptcy, regulatory enforcement orders, and criminal and civil convictions for fraud or negligence. Those sections of the applications should be posted on the Health Ministry Web site before the application is considered.

6. Option to reacquire publicly financed nursing homes

Ontario recently approved awards for the construction of 20,000 new nursing home beds. Almost two-thirds were granted to private-sector operators, and the rest were approved for municipal, charity, ethnic and religious organizations.

All qualify for government capital cost recovery payments of \$10.35 per bed per day, or \$75,000 per bed during the 20-year contract period.

However, the private owners will own the facility at the end of that period, while the non-profit homes will remain owned by city agencies or community organizations. The private-sector owners are free to sell the facilities, even though the public effectively will have paid the bulk of capital costs.

This could lead to huge private windfalls on what amount to public investments. To minimize this, the province should retain the legal option to re-acquire the facilities -- at the market price -- if such nursing homes are sold in the future.

This would protect the public from paying \$1.5 billion for nursing home assets, then having them sold without any public revenues recovered. The sale price would be established by an independent appraisal. The owner could then choose not to sell, or the province could choose not to buy.

These reforms would provide Ontario's most vulnerable seniors -- the very citizens who have productively contributed to our society for seven decades or more -- the care and vigilance they deserve.

The reforms would give those paying the billions needed to provide decent care to our fast-aging population more fiscal accountability. They would also open new windows of democratic disclosure, and allow for the retention of publicly financed assets.

"The people of Ontario can't let this go," says ONA president Barb Wahl. "They need to push their MPPs to make sure staffing is increased. A ranking of last place is totally unsatisfactory."

This concludes the Citizen's special report on Ontario's crisis in nursing home care.

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