August 25, 2022

Fact Checker: Ford Government's Claims Re. Forcing Elderly Patients into Long-Term Care in Contravention of their Right to Consent

Toronto – Here are the facts about the Ford government's new legislation, Bill 7 – *More Beds, Better Care Act, 2022*, which was introduced in the Legislature last week and is currently under debate. The government has made an array of claims, some of which have been printed in major media stories, that do not accord with the facts. Here are the facts:

1. There are 38,000 people waiting for a long-term care home in Ontario. The reason that there are Alternate Level of Care (ALC) patients in hospitals waiting for LTC is the LTC wait list. The only long-term care homes that do not have long waiting lists are those to which people do not want to go.

2. The pandemic exposed horrific conditions of care and living in some long-term care homes. Despite numerous promises, accountability for the operators exposed for providing such substandard care has not happened. There have been no fines for failure to provide care. No licenses have been revoked. Annual comprehensive inspections of all homes have not been reinstated. Many people are frightened to go to homes which have histories of poor compliance with the law and poor outcomes during the COVID-19 pandemic. These are the homes that have spaces into which patients could be forced.

3. The majority of "ALC patients" are not, in fact, waiting for long-term care. Many ALC patients are waiting for another type of hospital care (rehabilitation, complex continuing care, mental health beds) for which all hospital beds are full. Targeting one patient population (the elderly and persons with chronic illness/disability) and suspending their fundamental rights is discriminatory. They have an equal right to health care as a patient waiting in emergency departments, or an ALC patient waiting for rehabilitation. Their lives have value and their needs are legitimate. In addition, the claim that a significant portion of ALC patients are waiting for home care is false. Generally, patients are now discharged to wait at home for home care. Advocates have been concerned about this "wait at home" strategy as patients can be promised home care that does not materialize.

4. After decades of downsizing Ontario has the fewest hospital beds per capita of any province in Canada. In fact, Canada is very low among all OECD nations in terms of hospital beds per capita, and Ontario is almost at the bottom of the entire OECD. The Ontario government's policy of hospital downsizing is one of the most radical in the developed world which has resulted in serious impacts on patients. Ontario funds its hospitals at the lowest rate in Canada. (Hospital funding by provinces as a proportion of provincial GDP and per person.) Patients are not at fault for the lack of proper health care planning and resourcing. The result is that the competition for scarce resources has been devastating to the elderly and those with chronic needs.

5. The new legislation clearly, overtly, does the following:
    a. Suspends the requirement for informed consent;
    b. Enables the hospital's doctors and nurses to assess any ALC patient (not necessarily just those waiting for long-term care) for eligibility for long-term care without their consent;
    c. Enables the placement coordinator to share the patient's personal information with any long-term care homes without consent;

d. Enables completion of the patient's long-term care application without consent; and
e. Enables the patient to be admitted into any long-term care home without their consent.

This legislation sets a tone – a tone of discrimination and coercion – which is very dangerous. Elderly and disabled patients are often already subjected to unacceptable levels of pressure as hospitals seek to clear out beds in a competition for too-few resources. This legislation gives them a new tool -- express powers to override consent.

6. The current situation: Patients are entitled to choose up to five (5) long-term care homes and rank them by preference. (If the patient has been deemed "crisis" they can make an unlimited number of choices.) When a bed becomes available in one of the homes they have chosen, they are discharged and are to be admitted to that home.

7. The right to consent is foundational to clinical practice. Targeting the elderly and persons with disabilities to contravene that right is, in our view, a violation of their human rights. In Ontario, the *Health Care Consent Act* and the *Fixing Long-Term Care Act* codify the requirement of informed consent in the admissions process.

8. The *Health Insurance* Act has allowed for the charging of the "chronic care co-payment" to hospital patients awaiting placement into a long-term care home since 1996. (See pp 16 here for a summary of the Harris government's Bill 26, an omnibus bill, passed in 1996 introducing new co-payments for hospital chronic care patients and patients waiting for long-term care.) The maximum co-payment is equivalent to the basic accommodation rate in a long-term care home. Nothing in Bill 7 changes that. Claims that the Bill enables hospitals to charge this co-payment are false. They have been able to do so, and have done so, for decades.

9. It is clear that hospitals cannot use physical force or restraints to transport a patient to a long-term care home. That would violate a whole array of laws. However, if a patient refuses a valid offer of admission – which will now include a long-term care home that they have not chosen and which might be far away, culturally inappropriate, substandard or that a patient is afraid to go to – the hospital may charge them the uninsured bed fee (usually $1,200 - $1,500 per day) for not leaving the hospital. If the Minister of Long-Term Care is honest and serious in his claim that this will not be done, he needs to amend his own legislation to forbid it. Bill 7 does nothing to prevent this from happening.

10. There is an unprecedented staffing crisis in long-term care as well as in our public hospitals.

    We do not accept the validity of the claim that it is in the interest of patients to move them against their will to a home that is not of their choice, that may be far away or not accessible for their families and supports, that is culturally inappropriate, and almost certainly is a home to which people do not want to go, and is likely short-staffed.

11. Our public hospitals do not provide only acute care. That has never been the case. Hospitals provide chronic (complex continuing) care, rehabilitation beds, mental health, palliative care, restorative care and an array of other levels of valid, important care. Acute care is important; however, it is not more important than other levels of care. Hospitals are not "acute care facilities". "Clearing patients out" or "patients taking up beds" are discriminatory, ageist, value-based statements that are unacceptable and cause enormous suffering.

12. Nothing in this Bill provides for better home care, primary care, assisted living and other care to prevent hospitalization and support Ontarians' choice to live at home.

This legislation was brought without forewarning and introduced only one week ago. It is our understanding that the government does not intend to refer this to committee hearings. Instead of holding public hearings and amending the legislation, the Ford government has introduced a time allocation motion and is using its majority to quickly pass it,

limiting debate. The result is that the new legislation can be passed with just two hours debate for Second Reading and two hours debate for Third Reading. Further, both Second and Third Reading can be scheduled, voted on, and passed, all in one day. This process is profoundly undemocratic.