



October 28, 2021

## Health Coalition Quick Initial Analysis of the Ford Government's New LTC Act

Toronto – The Ford government has gone to extreme lengths to brand this as a new LTC Act. It is not a new Act. It is almost clause by clause the existing Act. What improvements that could have and should have happened are far more than the changes that they have made. Basically, there are a few amendments to the existing act. Many of them fluff. A few of them (particularly those favouring expansion of for-profit ownership) are terrible. The most-teased promise of new enforcement is possible. Most of it currently exists and the current government has been sitting on those powers already for years without holding a single operator accountable (in fact quite the opposite). Bottom line? Lots of good sounding fluff, a few shots of strength to potential enforcement if they ever actually did it, significant damage in terms of for-profit privatization.

### **For-Profit Privatization:**

They have dropped the requirement that the government promote the delivery of long-term care by non-profit organizations. They added in "AND mission driven" which are weasel words for for-profit owned facilities. There is no definition of mission driven in the new Act. Under this government the for-profit Schlegel chain is considered mission driven (!) It is a gaping loophole that allows all the for-profits through, and of course we already know that the Ford government is mid-stream in awarding thousands of new beds to the same for-profit chains. This is a major loss and is not in the public interest. We will fight for the 46,000+ new beds to be owned and operated in the public interest not by those same for-profit corporations and chains that have caused so much suffering.

### **Staffing/minimum care standard:**

This is a reannouncement & so far the evidence does not support that this is real. Bottom line: we got it in the Act sort of. However, the struggle to win this for real continues.

Now in the Act there is a "target" to increase care to 4 hours per resident per day but not until 2025. This was released in December 2020. The plan is back-end loaded to the last two years, after the next provincial election when there is little way for advocates to hold them accountable for it. So far, the Ford government has announced and reannounced tens of thousands of staff for LTC at least four times in the last year, yet those staff have never materialized. The planned numbers are far below what is needed to get to 4-hours and staff the new beds that they say they are opening.

We have verified that they put the 4-hours of care into the Act as a "target" for 2025 and it expressly states that this is the direct care provided by RNs, RPNs & PSWs. This is a victory for us as we have been pushing for this -- along with our members and affiliated organizations representing residents, families and care staff -- as a priority for decades. We deserve a collective cheer. However, it is a reannouncement, it is delayed for 5 years, it is back-end loaded til the last two years, and we don't know what a "target" in law is, seems less than a requirement, and how it could ever be enforced, especially right after an election. Also please note (above) there is no actual staffing plan to get there.

### **Residents' Bill of Rights:**

It sounds good that they have added in pleasant-sounding clauses about residents having their lifestyle and choices respected. However, we have investigated and we have not found a single case in which a resident or family has ever successfully enforced the Bill of Rights against a LTC operator. (It is supposed to be enforceable as a contract in court.) The government surely knows this. Since actually making it meaningful is so inaccessible and difficult to do, the Bill of Rights -- which has been meaningless so far -- is not the place where real enforcement of improvements will happen.

**Annual Surveys:**

Basically meaningless. This is all window dressing. (Survey design is up to the home, many don't fill it out, most of the residents don't have the capacity to do so, people want to compliment the direct caregivers and surveys rarely ask questions about systematic understaffing and inadequacies in care.)

**Palliative Care Philosophy:**

They say that every home has to be operated with a palliative care philosophy. There is no definition for palliative care philosophy so this is meaningless. It is left to the regulations (which are not written and which may or may not ever be written) to define what that might be if the Minister decides to write a regulation on it.

**RN staffing:**

They have kept the requirement that each home have an RN who is not the DOC 24/7. Note: they have deregulated this requirement in the orders they made under the Emergency Act and subsequent legislation.

**PSW staffing:**

No changes in the Act. Note: we will have to see if they try to change the regulations re. the requirement that PSWs be PSWs (and not untrained people as they have allowed so far).

**Whistle-blower protection:**

We needed stronger protection and there is no change.

**Requirements for Medical Directors:**

Absentee Medical Directors (physicians), poor care, lack of accountability were major problems exposed in the pandemic (and long predated the pandemic). There is no improvement -- no change -- in the language here.

**Pandemic Plans:**

Bare bones wording has been inserted under "Emergency Plans" mentioning the requirement that there be a plan for pandemics and epidemics. Such a plan is left up to the home. If there are any further details they are not in the Act though there could be requirements in regulation if any regulation on this is written.

**Requirements for Licenses:**

They have kept the sections that require the Ministry/Minister to consider the public interest, take into account the record of the operator, and the need for LTC beds in a particular geographic area.

**Enforcement:**

The much touted parts of the new act are here. They are tentatively positive, but the context in which we have to assess them is this: this government has for 3 years done nothing to hold any of the terrible operators to account despite already having the powers in the Act to fine, have provincial offenses charged, suspend licenses, revoke licenses, appoint management to take over the homes and stop new admissions (which hurts them in the pocket book). Doubling fines sounds great but the existing hefty fines (\$100,000 per home or penalties provincial offenses) have never been enforced and the Ford government has been sitting on them without enacting/using them since it took office.

**More to come:**

We will send out more as we compare the new legislation with the previous act more closely. Frankly, since really it is the existing act with some amendments, it would have been much easier to do if they had amended the act. This is a LOT of PR for very little.