

**Summary of Notice of Application by the Ontario Health Coalition (OHC) and the
Advocacy Centre for the Elderly (ACE) to Ontario Superior Court of Justice**
to have key provisions of the *More Beds, Better Care Act*, and its related regulations and
practices (Bill 7), declared invalid and of no force and effect.

April 12, 2023

Bill 7 concerns a particular group of hospital patients who are designated “alternative level of care” (ALC) and considered eligible for admission to a long-term care (LTC) home.

Each year, thousands of patients are admitted to hospital because of a need for acute care. Upon resolution of their acute care issue, a number of these patients wait in hospital for another level of care and are designated as ALC patients. ALC patients can be waiting for another level of care usually provided by a hospital, for example rehabilitation, palliative care, complex continuing care. Other ALC patients may be waiting for home or community care services. A minority of ALC patients are waiting in hospital for long-term care and are among the nearly 40,000 Ontario residents waiting to be admitted to one of approximately 80,000 LTC home beds in Ontario.

These ALC patients typically suffer from various co-morbidities, including dementia, cancer, hypertension, chronic obstructive pulmonary disease (COPD), and other chronic conditions. Most of these patients are elderly, unable to care for themselves or be cared for in the community, and are among the most vulnerable members of our society. Many also do not have capacity to make decisions about their care and must rely on a substitute decision-maker (SDM) to do so. A significant number of these ALC patients are in the final months of their lives, and those who are ultimately admitted to an LTC home will join a population with a life expectancy of less than 2 years.

Bill 7 empowers thousands of physicians, nurses and other “clinicians” operating in very different hospital settings to designate such hospital patients as no longer requiring “the intensity of resources or services provided in the hospital care setting”, but it does not establish any guidelines, criteria, or standards for making this determination. In consequence, the ALC designation has and continues to be arbitrarily, inconsistently, and improperly applied, including by mischaracterizing patients as ALC who then become subject to the deprivations of Bill 7 when in fact they still require hospital treatment.

The majority of these ALC patients have no wish to remain in hospital. Most want to return home or to be admitted to an LTC home that is close to family and other supports, and that has a record of providing for the proper treatment, care, safety and well-being of their residents. Because of long waiting lists for such homes, many ALC patients face lengthy waits for admission to a LTC home that is capable of providing the treatment and care they require. As of January 2023, these older, ill and vulnerable patients occupy a little over 5% of Ontario’s 30,980 in-patient hospital beds.

Through absolutely no fault of their own, these ALC patients find themselves the casualties of a health care system that is unable to provide the health care services they require because of the failures of Ontario governments to: provide the home care services that would reduce the need for hospital and long-term care; ensure the availability of properly staffed and resourced hospital services necessary to meet the needs of Ontario residents; and establish, fund and regulate LTC homes that can properly provide for the treatment, care, safety and well-being of Ontario residents who require such care.

Ostensibly put forward to address the problems of a health care system struggling to meet the demand for hospital care, the Legislature passed the *More Beds, Better Care Act, 2022* on August 31, 2022. Despite the putative claim of this title, it will do neither.

Instead, Bill 7 singles out a particular cohort of older, ill and very vulnerable patients to be deprived of their right to informed consent about where they will live and the health care they receive. It authorizes the discharge from hospital of ALC patients, some of whom as noted, still require treatment in hospital, for admission to LTC homes that have not been willingly chosen or consented to by them, and that may not be capable of providing for their treatment, care, safety or well-being. It therefore results in needless physical and psychological suffering by and will hasten the deaths of some ALC patients.

In doing so, Bill 7 deprives these ALC patients of their right to life, liberty and security of the person under s. 7 of the Charter. Moreover, by denying them their right to consent in respect of the medical care they will receive, or to appeal or seek review of the actions of hospital and provincial officials, these deprivations do not accord with the principles of fundamental justice required by s. 7.

Furthermore, by singling out a cohort of very elderly patients to be deprived of rights that all other residents of Ontario enjoy, Bill 7 also deprives these patients of the right to equality under s. 15 of the Charter which makes clear that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity, and consideration.

There are many things that the provincial government can do to reduce competing demands for acute care hospital beds while improving the quality of care for patients, but Bill 7 isn't one of them. Instead, the government should:

- provide sufficient and reliable home and community care services, including palliative care, that would allow individuals to remain in their homes and obviate their need to seek hospital admission, or admission to a LTC home;
- increase funding for, and the capacity, suitability and effective organization of hospital services to better meet the needs of ALC patients that cannot be properly provided for either at home, in the community, or in a LTC home. These are services hospitals have historically provided, but that have suffered from successive funding constraints even while the need has increased; and
- increase funding for and oversight of LTC beds to ensure that Ontario LTC homes provide quality of care for all Ontario residents that require such care.