# Submission to the Standing Committee on the Legislative Assembly on Bill 37

## Providing More Care, Protecting Seniors, and Building More Beds Act, 2021

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**Introduction**

When assessing this legislation, which is not new, but rather a set of amendments to the existing Act, the images of the people who have suffered so egregiously in long-term care have haunted our thoughts:

- Diane Colangelo, who shakes and weeps as she describes her mom who weighed, she said, 110 lbs when she was admitted to for-profit chain Southbridge's Orchard Villa home. When she died, Diane says she was down to 68 lbs.
- Andrew King Watt whose mom was discharged from hospital into Orchard Villa which was in an outbreak. She contracted COVID-19. She died alone. Andrew described his mother at her funeral. She was so emaciated, he said, she looked like she was a concentration camp victim.
- Margaret (pseudonym) whose mother was in another home in the Peterborough region. She did not see a doctor from January to June. She was left in intense pain-- her daughter described her crying in pain on the phone. There was no staff to provide the care she needed. She did not get her foot care, even though the family paid for it. She succumbed ultimately, in August last year, of a urinary tract infection which was left untreated for so long she died of kidney failure.
- Pierrette died in for-profit chain Extendicare's West End Villa in Ottawa in September last year. Her daughter described her mother's room in which she died. Pierette's room was dirty, she had excrement on her hands, there was excrement on the wall, and she had not been cleaned. Her tongue was dry, and she was severely dehydrated, and although there were drink cartons on her table all but one had been left unopened: Pierrette, with dementia and COVID-19 was unable to open them. Despite being put into a private room for isolation as she had symptoms of COVID-19, other residents were wandering in and out, with no staff around to stop them from being exposed to the virus. There were not enough staff to provide hydration and nutrition, human company and basic care.

Does this legislation stop these things from happening? It does not.

And that really is the test, is it not?

Not only does this legislation not stop these things from happening, it actually gives license to the government to expand for-profit long-term care and give new 30-year licenses to tens of thousands of ltc beds, paid by public funds.

Since most of the other provisions in the Act are either nice-sounding language but not enforceable, or unenforceable targets set many years down the road, we are left to surmise that the real reasons for these amendments dressed up as new legislation are twofold:

1. To make changes to the provisions that set impediments for the government to hand over tens of thousands of beds in new 30-year licenses paid by public funds to the for-profits, including those with the very worst records. Such a policy choice would be clearly forbidden under the current Act as it stands. The most meaningful changes to the Act, seek to remove the impediments for this government to create a whole new generation of tens of thousands of for-profit long-term care beds.

2. For public relations messaging, creating the appearance of action to address the seething issues in long-term care prior to the provincial election, without actually doing very much substantive, if anything at all.

**The worst provisions in the new bill intend to remove impediments to for-profit privatization by this government tof the next generation of long-term care homes in Ontario:**

In the preamble, the government has changed the wording of the clause that commits the government to promoting non-profit (including publicly owned) long-term care *only*. The new language inserts the words *"and mission driven"* and then the bill goes on to require all long-term care homes to have a mission statement so that they can all be considered mission driven. This is very cynical. No mission statement will supersede a for-profit equity firm's, real estate company's or long-term care chain's fiduciary duty to its shareholders and investors. The fact is that those companies' raison d'etre is to make profits for their investors. Moreover, the existing Act already requires all homes to have a mission statement. Those mission statements did not save a single life. Nor did they protect residents from the most egregious of negligence and greed. What the change in the new bill does, is to remove the impediment that government is required to promote public and non-profit long-term care, and not promote for-profit long-term care. Since the Ford government is mid-stream in allocating the majority of thousands of new licenses to for-profit chains and companies, if they proceed, they are in violation of the existing Act. The clause in question here is language we won in the 2007 Act. It is vital and it should not be changed. This is the poison pill in the new bill. If it is not removed, the bill must be voted down.

Following this, there are changes in the licensing section of the Act. Currently, the Director in the Ministry of Long-Term Care can only issue new licenses if operators meet the criteria set out in the Act. That criteria includes that the operator must operate the home with integrity, honesty, competence, safety for the residents and in accordance with the law. The Director must look at the record of the operator and that record must be applied in evaluating license applications. Those criteria have clearly been violated by a number of the existing operators, including the large for-profit chains. Under the changes in the new bill, the government has taken away the requirement that the Director only issue new licenses when these criteria are met. Again, this is an unconscionable change given what has happened in Ontario to date.

The context in which these changes are being made matters. There are currently slightly more than 30,000 old outdated beds with licenses that expire in 2025. Those homes do not meet standards set decades ago and they need to be totally built again. In addition, there are 15,000 new beds slated to be built over 5-years. Ontario truly is at a precipice. There are more than 45,000 beds that will be licensed this year and in the next couple of years.

**In the rest of the bill, changes are minor, in fact much less than the rhetoric leading into the introduction of the bill would lead the public to believe:**

Section 8 Minimum Care Target:

While anything is welcome if it moves Ontario toward a safer level of care in long-term care, we must be clear that this section is not a minimum care standard. It is a "target", set for 4-years from now, beyond the lifespan of most of the elderly residents currently in long-term care. What is a "target" in law? It is meaningless. Moreover, the standard as described is not a minimum per home but an average across all the homes in Ontario. Even were the target met, it would not mean that all residents are protected by a minimum care standard. our mother in a public or non-profit home might get 6 hours per day of care while my Auntie Usha in a for-profit home might get 2-hours per day, and both homes would be perfectly in keeping with the way that this legislation is written.

Furthermore, the government has written an "escape hatch" to this section in the regulations section S 41(2)f. In that clause, the government has empowered cabinet to make a regulation to extend the target dates. So rather than a 5-year plan, the target could be extended to 6, 7 or even 10-years without ever going back to the Legislature. We see this as a major problem. How can a government pass a piece of legislation that can be changed by regulation?

It must also be noted that all close observers know that there is no staffing plan to get Ontario's long-term care to 4-hours of care in 4 years.

This is vital. Without staff there is no care. Without a staffing plan – that is a plan to train, retain and recruit back staff in the tens of thousands – and without the fiscal plan to get there, our province is planning systematic negligence for the residents of long-term care.

What we need is this:

A minimum of 4-hours of care per resident per day by March 2023 and an urgent, clear plan to get the staff and financial resources to get us there.

That *minimum average* will be calculated *per home*, and will not rely solely on self-reported staffing levels by operators. Operators must be required to report staffing levels quarterly and no later than 6-months after the end of the quarter. The staffing levels will include worked hours only and direct care staff only: PSW, RPN and RN. The staffing levels must be posted in a place that is easily accessible to all residents, families and staff, as well as on a public government website such as the Long-Term Care Reports site. Inspectors must inspect homes to the staffing standard and make orders against homes that do not meet the standard. Family councils, residents' councils and staff must be able to appeal inadequate orders. It must be made an offense to fail to report staffing levels or to falsify staffing levels. We note that in the last set of staffing levels reported that we have seen, only six for-profit homes reported.

In the staffing section:

One RN per home 24/7 not adequate for the acuity of the residents. This number needs to be increased. Further, the current requirement is one RN per home whether it is a 50-bed home or a 500-bed home. That clearly is insufficient. There must be sufficient RN staffing and an appropriate staff mix to meet the acuity of the residents' care need.

While personal support services are defined in the bill, a PSW is not. This is vital because we all know that homes are replacing PSWs with lesser-paid untrained staff. The provisions in the regulations that require a PSW to be a trained PSW with a valid College course must be put into the actual legislation and enforced.

This bill contains no improvements to medical leadership. It does not deal with absentee Medical Directors and physicians. People like Margaret need access to medical care in long-term care and this is a vital section of the legislation where there could have and must be improvements.

Whistleblowing Protection S. 27:

The culture of fear in long-term care is shocking. These services are entirely funded by the public and by residents through their fees. Yet many staff, residents and families were afraid to even testify before the Long-Term Care COVID-19 Commission because they had a real belief that they would face retribution by the long-term care home operators. Many staff have "gag" clauses in their employment contracts that are far wider than can possibly be justifiable or even legal. Furthermore, when residents and staff are facing death and irreparable harm, for example as a result of a preventable infectious pathogen and nothing is being done to protect them, the law must be clear that they have not only protection but a duty to speak out and there must be both internal and external avenues available for them to speak out.

The whistleblowing provisions in the legislation are largely intact from the current Act. Clearly this is not sufficient. We recommend looking at ways to strengthen these provisions as follows:

- Strengthen protection from retribution for whistleblowers including residents, families and staff.
- Look at the recommendations to improve Whistleblower Protection using best practices from G20 nations here: https://www.sygnalista.pl/wp-content/uploads/2016/10/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf
- Areas that could be improved according to these recommendations include:
    - A three-tiered system of reporting avenues, including clear external disclosure channels for whistleblowers to contact the media, members of Parliament, NGOs and labour unions where necessary. For example, when there is danger of irreparable harm or death as there was in the pandemic and the whistleblower has called the Ministry 1-800 line and has not received a timely and adequate response or when there are reasonable grounds to believe that there is corruption (as when home operators are tipped off about inspections), the whistleblower should be protected in going to MPPs, media, NGOs and unions. Note: this must not reduce or interfere with existing protections for union members speaking to their unions.
    - Anonymous channels for employees to report sensitive information to auditors or regulators without fear of being exposed;
- Internal disclosure procedures to adequately protect employees who report wrongdoing;
- Independent agencies to investigate whistleblowers' disclosures and complaints; and
- Transparent and accountable enforcement of whistleblower laws.

Licensing Part VII:

Please see an additional submission by lawyer Steven Shrybman at Goldblatt Partners regarding the changes to the Licensing section in the new bill seeking to remove requirements that would protect the public against new 30-year licenses being handed to the same for-profit chains that are responsible for the deaths of literally thousands of the residents entrusted to their care.

IPAC:

Given the experience of the pandemic, it is shocking that the requirements for infection prevention and control and pandemic preparedness are so anemic in the new bill. At minimum these sections must be amended to:

- Require that the IPAC lead be a nurse trained in infection prevention and control;
- Require that all staff use PPE in accordance with the precautionary principle and that the licensee be accountable for ensure that such PPE is provided and is fit-tested (not that staff are required to ask for it).

Residents' Bill of Rights:

Again, there is nice-sounding language added into this section in the new bill but this is not meaningful unless it can be enforced. The Bill of Rights is supposed to be enforceable as a contract. However, to our knowledge, no one has ever successfully taken an operator to court to enforce the Bill of Rights. The lifespans of the elderly residents in long-term care are not long while courts are extremely backlogged. Lawyers costs are an impediment. Many are afraid of retribution. Many simply do not know the Bill of Rights exists. We believe that a tribunal approach, like that under the Tenant Protection Act, would be a better model and would be more accessible for residents and their families.

Inspections:

There is no requirement for comprehensive annual surprise inspections in the legislation. It is unacceptable that the RQIs – the in-depth annual surprise inspections – cancelled by this government in 2018 have still not been reinstated. A plan to instate a new version with less requirements over 3-years is entirely too little. There is of course, no enforcement without inspections and the government knows this. While we are fine with doubling fines on operators who are routinely non-compliant, the government has had the power to exercise two types of fines already (administrative penalties up to $100,000 which can be brought by regular inspections and the Director, and provincial offenses which require a contracted provincial offenses officer to bring but which also could have been done). As one of our members noted 2 x 0 = 0. The issue is not the amount of the fine. It is the political will to hold the operators accountable, and to date that political will has not been there. Nothing in this bill changes the fact that the interests of the operators continue to supersede the interests of the residents, even after 4,023 residents and 10 staff members have died in 20 months, many of them preventably.

New Anti-Corruption:

Since the last three Conservative Premiers in Ontario have joined the boards of for-profit long-term care corporations upon leaving office, and since so much public money and public policy has been given to the benefit of these corporations, public confidence has been deeply shaken. During the pandemic, we watched while the Chief of Staff of the Attorney General, a cabinet position in the Ford government, left

his position as staff to the minister, and went a few months later to lobby for a legislative provision for a for-profit long-term care chain. At the same time as this person was lobbying for the long-term care company, Doug Ford announced that he would be bringing legislation to cabinet to shield such companies for liability for negligence in the pandemic. Subsequently the former minister's staff person delisted from the lobbyist registry. A couple of months later the Attorney General introduced the legislation (Bill 218) which makes it harder to sue long-term care homes and easier to defend them from lawsuits. In the same time period, the communications director for the Minister of Health ended a stint lobbying for a for-profit long-term care company and moved over to work for the Minister. These are just a few examples of the connections that we have found between the top echelons of this government and the for-profit long-term care industry. It is imperative that there be separation of government and for-profit long-term care and their investors. To that end, we recommend the amendment of the new bill to include an anti-corruption section.

Under the federal Accountability Act there are requirements as follows:

> S. 35 (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.
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> (2) No former reporting public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

Our proposal is to use a very similar clause and strengthen it to reflect the lived experience in our province. We recommend a 2-year cooling off period and that it be extended to political staff as well as advisors to the Premier and Ministers. We are certain the public would wholeheartedly join us in requiring a prohibition on the Premier joining a for-profit long-term care company board or investment firm as the last three Conservative Premiers have done when they left office.

Conclusion:

The public was given one day notice of public hearings on this legislation. Families, who have lost loved ones in utter squalor, without even basic care, were given one day to prepare presentations. Many were cut out of the perfunctory hearings that have been held over two days only. This process is in keeping with the way in which the previous health care laws have been passed by the current government, but it is unprecedented in the history of our province. We are writing into the public record that this process is anti-democratic, callous and unacceptable.

In this new bill there is much that may sound good on the surface but has little meaning in operation:

- Changes to the Bill of Rights may sound good but they have never been enforceable in reality
- Inspections have been announced by the Minister but they are planning to include fewer issues of inspection, they are not going to be reinstated for 3 years, and they have been cancelled since this government took office in 2018. The in-depth, comprehensive surprise annual

inspections that have been a key plank of every single public interest group's advocacy on long-term care for more than two decades are actually not in the Act and not in this new bill.
- Despite the title, there is no actual building plan in the bill.
- The minimum care standard is not a minimum, it is not a requirement, it is unenforceable and it is a target 4-years from now that can be changed by cabinet at any time.
- There is no change to the fundamental staffing requirements, including for medical leadership.
- There is barely any substance to the IPAC section.

Where we do see change is in the new provisions enabling the Ford government to promote for-profit long-term care and award thousands of beds to the for-profit chains, including the worst performers responsible for the worst mass casualty in our long-term care history. Under the Act as it is currently written, this would not be allowed, and therein lies the reason for this legislation, we believe. This is unspeakably immoral.

There are now 4,023 residents and 10 staff who have died of COVID alone in Ontario's nursing homes over the last 20 months. This is not normal. It is one of the worst records in the world. The suffering and death that we have witnessed is on a scale that requires a response that is momentous, definitive, that casts aside petty greed and partisanship for compassion and humanity.

This new legislation not only would not stop the same kind of suffering that we are seeing in long-term care now, that we saw in the pandemic, and that we documented and reported for many years prior to the pandemic, but it also is a terrible missed opportunity. We could have really moved forward and improved long-term care. This bill does not do that. Moreoever, it sets up our province for another generation of for-profit long-term care. Bill 37 should be voted down.