

Ontario Health Coalition

Analysis of Bill 135 – Ford Government’s New Home Care Legislation

November 5, 2023

Background

[Bill 135, the *Convenient Care at Home Act*](#) has passed First and Second Reading in the Ontario Legislature. After Second Reading, bills are sent to Committees of the Legislature for public consultation. In this case, the bill has been referred to the [Standing Committee on Social Policy](#) and there will be just [two days of public hearings](#) before it returns to the Legislature for Third Reading and final passage.

Since they took office, the Ford government has, piece by piece, been setting up its new structure for home and community care. This new bill amends their previous legislation to make more specific the structures for home care.

In 2019, the Ford government introduced a sweeping new omnibus bill that restructured Ontario’s health care system. COVID-19 was spreading around the globe at the time the bill was introduced and the legislation was [subsequently passed with virtually no public hearings](#) (see this link for a summary and our formal submission to the hearings that includes details of the lack of consultation) during the first year of the pandemic. This was the first step in restructuring health care by the Ford government. The part of this bill that subsequently became the [Connecting Care Act \(2019\)](#) – it was retitled with the passage of the omnibus bill – is what is amended by the new legislation about which we are concerned today.

In 2020, at the height of the pandemic, the Ford government passed a major new home care bill, euphemistically titled ***Connecting People to Home and Community Care Act (2020)***, it gutted the existing home and community care legislation. The Coalition’s [public statement on that legislation](#) gives a sense of how profoundly disappointing and disturbing that legislation is:

This Bill was rushed through First and Second Reading in the Legislature in ten business days with very little time for stakeholders to learn about its implications and without adequate time for proper parliamentary debate. Yet the Bill has profound implications. It will result in the wholesale restructuring of home care, the dismantling of much of the existing public governance and oversight, the privatization of existing public and non-profit home care, the creation of a new tier of residential “congregate care”, the potential expansion of private for-profit hospitals and the privatization of public hospital care, among other major changes. It repeals significant clauses in existing legislation that protect clients’ and the public’s interests in home and community care including the Bill of Rights and complaint processes. It does nothing to improve the major problems in home care including poor and inequitable access, missed visits, and staffing shortages. It moves all of the key items of governance and democracy, and of public protection and client protections, to regulations that may or may not ever be written and that can be changed by Cabinet without ever going back to the Legislature. In this way, it takes Ontario’s home and community care backward more than 25 years. It would fragment home care and destabilize the workforce, which already suffers from severe staffing shortages.

“There is no justification that would warrant moving forward with this legislation even under normal circumstances. Currently, Ontario is in the midst of the first wave of the COVID-19 pandemic. The last thing that is needed in home care, community care and hospitals in Ontario is significant destabilization and more privatization. Given the terrible experience of COVID-19 in long-term care homes and other congregate care settings, and in the for-profit homes in particular, we cannot understand how the government could countenance the expansion of another tier of congregate care without any clarity about the purposes; total permissiveness regarding for-profit privatization; no regulatory, inspections and enforcement system; and no governance regime.

“For all of these reasons, Bill 175 should be withdrawn and a proper consultation process regarding reform of home and community care in the public interest should be undertaken when the pandemic is under control and the context is appropriate.”

The Coalition has only twice in more than 20-years found legislation to be so problematic that it should be withdrawn.

In our [formal submission](#) to the public hearings on this bill, we outlined the changes:

The new regime set out for home and community care in Bill 175 [***Connecting People to Home and Community Care Act (2020)***] and the summary regulation dismantles most if not all public governance of home care. The general thrust of the Bill is to repeal the existing legislation and dismantle the existing governance of home and community care. Almost all of the key aspects of the governance and structures for home and community care are moved out of legislation into regulation that can be changed by Cabinet without ever going back to the Legislature. In this way, the Bill takes us backward more than 25 years.

This new legislation is the latest in the process of the Ford government fundamentally restructuring home and community care, following the 2019 ***Connecting Care Act*** and the 2020 ***Connecting People to Home and Community Care Act***, and the new legislation needs to be understood in this context.

What Bill 135, Ford’s New Home Care Legislation Does

This bill does not improve home care. It has nothing in it about improved access to care, any rights for patients to access care, quality of care, democratic governance, responsiveness to communities etc.

This bill is all about the provider companies. At core, the new bill creates two new entities or types of entities:

1. “Ontario Health atHome”, which will be a subsidiary of the Ford government’s super agency called “Ontario Health”. “Ontario Health atHome” will be an amalgamation of the LHINs which will formally cease to exist. Ontario Health at Home will be able subcontract home and community care provider agencies or Ontario Health Teams to privatize functions like care coordination – formerly done by the LHINs as public entities. There are no real details in the legislation, but it clearly sets up the structure and specifically enables the contracting of this work to provider companies and/or Ontario Health Teams

(which are made up of provider companies – both for- and non-profit – and in home care the majority of services are in the hands of the for-profits). This is what we warned of in the preceding two pieces of legislation.

2. “Client service providers” which can be health provider companies (for- or non-profit) or Ontario Health Teams (which are groups of provider companies) that can be subcontracted to provide home and community care services, including care coordination functions and other functions that have been public to date (provided by LHINs’ staff).

Summary of Bill 135

1. Amends the *Connecting Care Act (2019)* to say that the Agency (which is Ontario Health, the “super agency” that the Ford government created in 2019) can fund a new entity that will be titled a “client provider” which will be a health service provider or an Ontario Health Team that is funded by the Agency under section 21 to provide home and community care services to the provider’s or Team’s patients and to which the Service Organization provides operational supports.

This is an add in to the existing Section 21 that provides for:

21 (1) The Agency may provide funding to a health service provider or Ontario Health Team in respect of health services that the provider or Team provides.

(1.1) The Agency may provide funding to a health service provider or Ontario Health Team for the purpose of the provider or Team providing funding to or on behalf of an individual to purchase home and community care services.

(2) The Agency may provide funding to a health service provider, Ontario Health Team or other person or entity in respect of non-health services that support the provision of health care.

Thus, there will be a new name “client service provider” for Ontario Health funded home and community support services.

2. Amends the *Connecting Care Act (2019)* to create a new Health Service Provider that will be called, “The Service Organization”. Currently there is no such thing in the definitions of Health Service Providers that include hospitals, long-term care, home care agencies etc.

It then further amends the Act to say:

Section 1 (3) The regulations may provide that the Service Organization is deemed not to be a health service provider or to have been funded by the Agency under section 21 for the purposes of any provision of this Act or its regulations or any other Act or regulations.

Thus, the Service Organization may be considered a Health Service Provider, or may be excluded from being defined as a Health Service Provider under the regulations. It is not clear what they intend with this.

It gives Ontario Health oversight over the Service Organization as follows:

Section 6 (b.0.1) to provide oversight of the Service Organization in a manner consistent with the health system strategies set by the Ministry;

Presumably, to avoid conflict of interest, an additional amendment says:

A director, officer or employee of the Service Organization is not eligible to be appointed to, or to remain a member of, Ontario Health's board of directors. (Addition under Section 8.)

And; The CEO of Ontario Health shall not be a board member or officer of the Service Organization. (Amendment Section 10(3).)

3. Defines and clarifies the role of the new Service Organization which will be called "Ontario Health atHome". (Not a typo.) Like the LHINs, Ontario Health atHome will be like a crown corporation – a non-profit corporation that will replace all of the LHINs and roll them into one central organization. Part III of the bill covers the final dissolution of the LHINs, their formal amalgamation and transition into the new centralized "Ontario Health atHome" which will formally be a subsidiary of Ontario Health.
4. Sets up the governance of Ontario Health atHome.

Ontario Health atHome will be governed by a Board of Directors, up to six of whom will be appointed by the Minister and up to three of whom will be appointed by the Minister upon recommendation from Ontario Health. The Minister will appoint a Chair and Vice Chair and the Board will meet four times per year. The Board will appoint a CEO.

Ontario Health atHome will also comply with any directives from Ontario Health and any regulations passed by cabinet under the powers given to cabinet to make regulations under the legislation.

There are no provisions for public meetings of the Board, public notice, public access to Minutes and documents nor any other democratic provisions. There are provisions for audits and reporting (upwards, to Ontario Health, not to the public per se).

5. Sets out the roles of Ontario Health atHome as follows:

1. Providing home and community care services to patients of Ontario Health atHome (no details about eligibility, access etc.)
2. Providing the following operational supports to "client providers" to enable them to deliver home and community care services to their patients:
 - i. Care co-ordination services.
 - ii. The assignment of employees of the Service Organization to work under the direction of a client provider to deliver care co-ordination services.
 - iii. Any of the following shared services:
 - A. Administrative or business support services that facilitate the management of service contracts with providers of home and community care services.
 - B. Enablement and support of patient care technology platforms.
 - C. Any other shared services that may be prescribed. (Prescribed means passed in a regulation, which Cabinet – ie. The Ministers of the Ford government – can make without going back to the Legislature.)
 - iv. Any other operational supports that may be prescribed.

3. Providing information to the public about, and referrals to, health and social services.

4. Providing placement management services to patients of the Service Organization or to patients of other health service providers or Ontario Health Teams.

5. Any other objects that may be prescribed.

6. Sets out rules re: assignment of employees to provide care co-ordination services:

If the Ontario Health atHome enters into a service contract with a “client provider” which provides for the assignment of one or more Service Organization employees to work under the direction of the client provider to deliver care co-ordination services to the provider’s patients, the assigned employee remains an employee of the Service Organization and there is no termination of employment or change in the employment relationship between the employee and the Service Organization.

7. There are also a number of housekeeping amendments to clean up and correct language of the Act.

8. Amends to other legislation:

Most of these are housekeeping, to amend other legislation to include the new entities created under this legislation and/or to remove references to discontinued entities (LHINs). There are some amendments pertaining to reporting on the use of consultants (upward, to Ontario Health or the Minister) and some regarding the public reporting of expenses – with no details because any reporting requirements are left to regulations that may or may not be created.