Ontario Health Coalition	REPORT

Ontario Health Coalition's Guide to the New Long Term Care Act

A new Long Term Care Act will be introduced during the Fall session of the legislature. In addition to replacing the Long Term Care Act of 1994, Bill 173 (which was intended to govern home care), the new Act will also replace the acts governing Long Term Care Facilities, both non-profit and for-profit. This legislation will effect millions of Ontarians, now and in the future, their health status, and the integrity of our public, not-for-profit health care system.

We are urging you to voice your concerns and expectations about the new legislation. Use this paper as a guide.

The Long Term Care Act: Our View

The Tories are dramatically reshaping our health care system. In hospitals, where the Canada Health Act requires that costs be covered, care and services are being cut and shifted to other sectors where no such protection applies. We are convinced the Harris government intends to enshrine the underfunding, understaffing, rationing of services, transfer of many costs to individuals and the active encouragement of the private, for-profit sector, that are the current hallmarks of Tory Long Term care.

To prevent this from happening, we have prepared this guide to assist you in promoting a vision of Long Term Care that adequately meets the needs of millions of Ontarians who will be relying on these services.

Health Minister Elizabeth Witmer's Health Business Plan for 1999-2000 has the following stated priorities: Hiring more nurses; reducing waiting lists; relieving pressure on emergency rooms and expanding home care and long term care. *"The Ministry's goal is a first-class health system that provides better and more accessible health services for all Ontarians when and where they need them, at every stage of their lives . . . This plan makes people the first priority."*

In your public forums, written submissions and interviews with the media, remind them of what the government has said about health reform. Use their own words to demand the government live up to the statements it has made, and as a contrast to its current policies. We are fed up with rhetoric and re-announcements of the same money for Long Term Care and for the hiring of nurses. The proof of the government's intentions will be in their actions, not their advertising. The following principles and details are in accord with **their** stated goals.

The government's Act will likely be divided into three distinct sections: General; Home Care; and Facilities.

General Principles

1. Entitlement: There must be a clear statement of rights. People should be entitled to receive quality care where and when they need it, not forced to hire private help or overburden their family members. Necessary care should be available from the public system, whether it is delivered at home, in the community or in care facilities.

We expect the government will draft a Purpose Clause and other provisions establishing that people are entitled to whatever care funding will allow. The underlying premise of this is that scarce resources are to be rationed on a triage basis and **no one is entitled to expect all their needs to be met,** except as resources allow. And, of course, the government can always determine, on the basis of immediate political expediency, the amount of resources to be allowed to any section of the health care system at any time. For residents of Long Term Care facilities, as well as those depending on Home Care, **it is imperative that the Purpose Clause and other provisions state instead that care plans must meet the patient's needs.**

The new Act must spell out that those who use Long Term Care have the right to full written information, including the terms of the Act's Bill of Rights, as well as the operative eligibility criteria, hours of care available and their care plan. They also have the right to be consulted in the development of their care plan and to agree with it.

2. Accountability: There must be a parallel set of obligations on all of the parties that are involved in organizing, delivering and regulating Long Term Care. Currently, accountability is limited: In facilities, it is deemed to be between the facility and client. In community care, the legislation simply talks about the approved agencies. Accountability must be broadened to include the Health Ministry and government as a whole.

Obligations of the government include:

* Funding

* Regulating and setting standards

* Monitoring

In the end, the government is ultimately responsible for, and has control over, the ability of Ontarians to access quality Long Term Care services. Clear liability must therefore be specified and a mechanism by which the government can be held accountable if they are found negligent must be incorporated.

Finally, accountability is an empty shell without full public disclosure, unimpeded access to information and a transparent process in all aspects of Long Term Care provision.

3. Enforcement: There must be a user-friendly enforcement mechanism for those requiring care at home or in a facility when their rights are violated or their needs are not being met. A neutral, third-party adjudication entity, fully independent from government must be established. It must be properly funded to provide the prompt action that all health care complaints require. This Long Term Care Appeal Board must be accessible, confidential and have the power to issue proper remedies. In addition, advocacy assistance must be adequately funded to ensure that individual, often vulnerable, citizens are not at a disadvantage when dealing with a large bureaucratic system, such as our health care system.

4. Funding: As our population continues to age at an accelerating rate, substantially increased - funding for the Long Term Care system must be provided, if services are not to be rationed even more than they are now. Continued underfunding will force Ontarians into paying even more out of their own pockets or going without care. Continuity of care will also be seriously compromised and our health care system will increasingly become a captive of the private, for-profit sector.

We must seek guarantees; however, we do not recommend specifying an amount in the legislation. Adequate funding must, therefore, be addressed in the following ways:

* Through a purpose clause that establishes that people are entitled to the care they need (See #1);

* By ensuring no top limits or maximum hours are specified in connection with services available;

* By insisting that all eligibility clauses are worded so that anyone who needs a particular type of care is eligible

* By insisting that consequences are attached to the accountability mechanisms (See #2)

5. Continuity of Care: This is one of the most crucial issues for patients and those who require services. In both facilities and the home/community care sector, wages, working conditions and the empowerment of staff are interconnected to the care we receive. Low wages, bad working conditions and weakened unions result in:

* significant problems recruiting staff

* loss of experienced and committed health care workers

* high turnover

* worse living conditions for both home care patients and residents of facilities, and

* lower quality care

Caring for patients and residents is an intimate interaction. The loss of continuity leads to stress for those dependent on services, and to compromised care. For these reasons, it is important that any new long-term care legislation include the following elements:

A. Whistleblowing legislation: Many health care workers are witness to bad care: not enough supplies; unclean or unsafe conditions; too few staff; employers who cut corners on standards. We want them to be able to speak up for patients and residents. Whistleblowers play an indispensable role in bringing to light unethical or illegal activities that might otherwise remain hidden from public scrutiny. Although there exists some whistleblowing protection in the facilities'legislation, it is inadequate. In addition to prohibiting reprisals, there must be an effective enforcement mechanism for these protections.

B. Successor Rights: In our December meeting, the Health Ministry agreed that there were significant problems recruiting and retaining staff in the Home Care sector. This problem is widespread. Community health care workers are being forced to take pay cuts and face the constant threat of losing their jobs. The situation will become even worse. Successor Rights are an integral part of the solution for both the Home/Community sector and Long Term Care Facilities. For facilities, successor rights allow workers to move with the work. If the beds move, employees should have the opportunity to move with them. Health care workers in Nursing

Homes and Homes for the Aged must be able to retain their salary and conditions of employment if work move to a new facility. **Successor Rights are vital to stabilizing the turbulence and loss of quality care that have come to characterize the current Long Term Care sector.**

C. Pay Equity: The vast majority of workers in the Home/Community and Long Term Care Facility sectors are women. For years, their wages have been kept artificially low as a result of discriminatory pay practices. Ontario women doing traditionally female work in almost exclusively female workplaces are among the lowest paid and most disadvantaged women in the public sector workforce. Pay Equity sought to remedy this. However, in 1995, the Harris Tories placed an annual cap of $500 million on pay equity adjustments. This cap means that thousands of women will be cheated out of pay equity adjustments. The government must remove the cap and effectively ensure that private sector employers meet their pay equity obligations.

6. Public, Not-for-Profit health care: The provincial government is in the process of creating a two-tier health care system. Two elements of Long Term Care are triggering massive privatization:

*** The Request-for-Proposal (RFP) or Competitive Bidding process**

*** The awarding of Long Term Care facility beds to the private sector**

A. Request for Proposal Process: The 43 Community Care Access Centres act as brokers, awarding one-to-three year contracts to home care providers in regions across the province. Effective April 1999, all agencies (non-profit and for-profit) providing home care services were required to compete in an open market through the RFP process.

As a result of this change, home care provision has become a race to the bottom: huge disruptions for patients; lower wages and much worse working conditions for health care workers; low-ball bids from the private sector intent on securing their profit margins at the expense of care. Competitive bidding jeopardizes the continuity and quality of care as standards are traded off against costs and staff turnover increases.

Since we believe that available funding should be spent on care and not profit, we are calling for an end to the RFP process and the immediate implementation of a publicly-funded, publicly administered and publicly-delivered community care system, with meaningful community control and adequate provincial standards that ensure quality care. The not-for-profit public provision of Home/Community care services is essential.

B. Long Term Care facility beds to the private sector: In 1998, the Tories announced the creation of 20,000 new long term care beds over the next eight years. Thus far, almost 70% of the awards have gone to corporations such as Leisureworld, Extendicare, Central Park Lodge and other private entrepreneurs. Public money is also being used to reimburse construction costs for new beds, as well as for renovations to older facilities.

* We are calling for a moratorium on the awarding of any more beds to the private sector. We must move towards a long term care system that is operated completely on a not-for-profit basis. Legislation is needed that would convert existing for-profit nursing homes into charitable not-for-profit homes for the aged.

* The province must continue to require that **every municipality adequately fund and manage a Home for the Aged and provide sufficient funding for them to do so. Municipal and Charitable Homes for the Aged must be prohibited from selling their beds to the private, for-profit sector or from abandoning the sector by closing their beds or facilities.**

Long Term Care Facilities

Read this in conjunction with Part 1 C General Principles

1. Entitlement: Each of the current facilities'statutes contains a clear provision guarantee-ing a care plan that meets the resident's needs. It would not be acceptable to provide for meeting needs as resources permit.

2. Accountability:

A. Public notices and public meetings must be used more extensively to get input on changes. There must also be a mechanism in the Act for calling public meetings when requested to do so by a stakeholder in order to discuss the operation of the facility. The Ministry must provide written responses, in a timely manner, to all of the issues raised at the public meeting. Operators must be required to have open books, open board meetings and be obligated to provide the public full disclosure of their operations and plans.

B. Residents Councils and Family Councils monitor the operation of a facility, advise residents of their rights and generally act as the residents'advocate. We need guarantees in the Act to ensure that both these Councils are able to be as effective as possible.

Under existing legislation, the right to participation in a Residents'Council is spelled out in the Residents' Bill of Rights. This is posted and **must continue to be posted** in every facility and be accessible to every resident.

The new Act must retain all the powers of the Residents'Councils and be expanded to include Family Councils. Residents'Councils now have power to advise residents of their rights, monitor the operations of the facility, review inspection reports, financial statements and the allocation of government funds. Without this power, grounded in legislation, operators would not be required to disclose all the relevant information or fully co-operate with the Residents' Councils. Further, the right of all residents to participate in their Council and act as resident advocates with the facility must be clearly spelled out in the Residents' Bill of Rights. **Family Councils must be similarly empowered and recognized in the Act as autonomous organizations with the same rights and obligations as Residents'Councils.**

In order for both councils to operate, **funding must be provided** for staff support which is independent and arms-length from government. The funding will help ensure these councils are independent, effective and truly reflect the interest of residents.

3. Enforcement: Monitoring procedures must be specified in the new Act; they must not be left to regulation. The government may try to abandon seniors by getting rid of the requirement for regular inspections of facilities, moving instead to a "complaints-based" monitoring procedure. This would be disastrous for maintaining the quality and standards of care. We must ensure that regular and surprise inspections of long term care facilities be maintained. At least one unannounced visit must be required every year, with no exceptions.

Currently the Health Ministry is required to investigate every complaint reported to it against a facility. The government may try to remove this requirement. In addition, the MOH through the Long Term Care Area Office should review the adequacy of measures taken by facilities to resolve complaints that are reported directly to them.

Results of all inspections should be posted in the facility and should be easily accessible and available to all interested stakeholders. There should be a time period of one week to make

corrections to any Ministry order, with extensions only possible with the agreements of the Residents' & Family Councils and the employees' Health and Safety Committee

4. Funding: The Act must include the obligation by the government to provide adequate funding to meet the comprehensive care requirements of residents.

5. Standards: Legislation must contain clear staffing standards tied to the real care needs of residents and their levels of acuity. The medical needs of residents have been dramatically increasing, but regulations which called for a minimum of 2.25 hours per resident day of nursing care and the requirement to staff one RN on each shift have been repealed.

We must call for the return of minimum standards. We can do this through the Case Mix Measure (CMM). This is a tool used to determine the level of care and funding allotted to a resident of a facility. The lowest CMM in the province should be required to provide at least the 2.25 hours per resident day of care; all other facilities should be required to provide the same minimum, adjusted by their own CMM. (For example, if the lowest facility in the province has a CMM of 60 and another had one of 90, the latter would be required to provide at least 3.375 hours of nursing and personal care per resident day.)

6. Privatization, two-tier health care and out-of-pocket fees: Some provisions with regards to charges exist in current legislation, but they are not satisfactory. There must be strong language clearly stating that all health related services be provided to the resident free of charge.

7. Chronic Care: The Tories are closing thousands of Chronic Care hospital beds and dumping these most vulnerable patients into much cheaper Long Term Care beds. These patients will not get the care they require. They will also be hit with many new charges for services that are no longer covered by the Canada Health Act. A crucial part of our campaign to secure quality long term care must be demands to **reopen chronic care beds and fund them at $200+/day with full services, staffing and with full OHIP coverage**.

8. Nurse Practitioners: 20 pilot projects have been launched. Each is attached to a long term care facility, or group of facilities. There must be consumer and advocacy group participation in the supervision and evaluation of these Nurse Practitioners pilot projects. There must also be a commitment by government to make this program universal if the evaluation makes this recommendation. Nurse Practitioners' collective bargaining rights should be recognized. The government should remove its directive to employers barring these health care workers from the bargaining unit.

Home and Community Care

Read this in conjunction with Part 1-General Principles

1. Entitlement: We must ensure that the Purpose clause and other provisions clearly establish that people are entitled to the care they need and not just to whatever care funding will allow. Tying entitlement to available resources will ensure that the real care needs will not be met.

The new Act must also stipulate that waiting lists are not acceptable.

2. Accountability:

A. Membership & elections. A uniform process for becoming a member or board member of any Community Care Access Centre (CCAC) should be mandated. The CCACs must have open membership for everyone living in their catchment area: Bylaws for elections to the Board of

Directors must be public documents, easily accessible; Only non-unionized representatives of companies that have contractual relationships with the CCAC, as well as non-unionized people working for the provincial government, should be prohibited from holding a position on the Board.

B. Service Providers: There must be full public disclosure of all financial agreements, financial reports and any other contracts between the CCAC and providers. This is one of the most offensive aspects of Tory Home Care. Even though CCACs are entirely financed by the government (our tax dollars), the Health Ministry will not divulge crucial information about their contracts with the providers. We cannot find out, for example, which agencies have received and are receiving the contracts; the units of service received or the value of the contracts. The commercial interests of competing companies takes priority over the public's right to know. This secrecy must end.

C. Disclosure of complaints: CCACs should be required to report on the complaints they have received. Confidentality of the recipients must be maintained. semi-annual reports that do not identify the recipient should be published. These reports should identify the nature of the complaint; the agency's response; the complainant should have the ability to indicate if they were satisfied with the outcome.

3. Enforcement: In addition to a new Long Term Care Appeal Board (see page 2, #3)

A. Regulation 386/99 which limits homemaking and personal support to 80 hours in the first month, 60 hours thereafter, must be revoked. We are calling for an amendment to the Act to return full discretion to the current Health Services Appeal and Review Board, or to any new third-party adjudication entity, such as a Long Term Care Appeal Board.

B. There must be ample funding for Legal Aid clinics. Individuals must be able to secure a lawyer to pursue their appeal.

C. There must be an internal appeal mechanism. Each CCAC must fund an advocate.

4. Privatization: The Request-for-proposal process is one of the very worst aspects of Tory Home Care (See page 4). This process has created a bureaucratic, inefficient system that wastes a significant amount of money on running the system rather than providing patient care. Bring as much pressure to bear as possible to call for an end to this terrible competitive bidding process.

If you need help with your letter to the government, Letter to the Editor or presentation at a shadow consultation that may be scheduled for your area, please phone the OHC at (416) 441-2502.

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