



Bill 18, Stronger Workplaces for a Stronger Economy Act, 2014

The Issue

Home Care Service Provider Organizations are at risk of being directly affected by Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014*, thereby seriously compromising the health and social care provided to thousands of Ontarians across the province.

Background

Home Care Service Provider Organizations (SPOs) employ workers that are given assignments to provide service to the organization's clients. These clients may include Community Care Access Centres (CCACs), institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians. As individuals, Ontarians may retain SPOs to provide care while in facility-based care, typically to supplement the services already provided.

The ability to retain *services from a home care SPO is a cost effective way for health system partners to meet the demands of the health care system 24 hours per day*. Institutions are able to provide flexible, responsive service through on demand staffing without the cost of "standby" staff.

By working with a reputable home care SPO, both institutional clients and individuals are assured a standard of service that includes careful selection of staff; supervision and continuous education; adherence to Ontario's labour practices and occupational health and safety standards, and staff liability coverage that includes appropriate worker compensation insurance.¹

Members of Home Care Ontario™ are unique in that they annually complete the Association's Quality Template that establishes a self-evaluated level of compliance with Home Care Ontario's Standards. This is not a legislated requirement, however members of Home Care Ontario believe that reflective self-assessment and evaluation is an important way of encouraging continuous quality improvement.² The Association also strongly endorses accreditation and at this time 94% of members have achieved and/or are seeking accreditation with provincially approved organizations.³

¹Home Care Ontario (OHCA), (2010). Why Choose a Quality Home Care Organization? Retrieved from <http://www.homecareontario.ca/docs/default-source/position-papers/why-choose-a-quality-home-care-org-sept-2010.pdf?sfvrsn=6>

² A Balanced Scorecard report to the community is produced annually and can be found at <http://www.homecareontario.ca/about-us/reporting-to-the-community>

³ See information about Home Care Ontario members at <http://www.homecareontario.ca/our-members/about-members>

A temporary help agency is a company that sends its employees on temporary work assignments to its client businesses. The temporary help agency is the actual employer for the purposes of the ESA.⁴ Temporary help agency employers are governed by the Employment Standards Act (ESA), as are most employers in Ontario.^{5, 6}

The ESA currently provides a specific exception applicable to the home care industry:

- a) Where an ‘assignment employee’ is ‘assigned’ to perform the work ‘under a contract’ between a Community Care Access Corporation (CCAC)⁷ and the worker or the worker’s employer; ***and***
- b) The ‘assignment employee’ is providing professional services, personal support services or homemaking services as defined in the Long-Term Care Act, 1994 (renamed the Home Care and Community Services Act, 1994 as of July 1, 2010)⁸.

Members of Home Care Ontario assume full responsibility for employees’ vacation pay, wages and educating staff regarding their rights and responsibilities under the Occupational Health and Safety Act.

Bill 18 is designed to protect the interests of the vulnerable worker. As responsible employers, Home Care Ontario SPOs fully support the protection of workers’ rights to appropriate pay and safe working environments. The provisions in Bill 18 governing the *Workplace Safety and Insurance Act, 1997* (WSIA) that appear in Schedule 5 of the Bill, however, have serious potential for deterring the use of SPOs within the broader health system and, by so doing, could ultimately compromise health care service delivery to Ontarians.

Workplace Safety and Insurance

Bill 18 will limit the use of temporary health care staff as it imposes the risk of additional costs on the health care facility in a time of cost constraint. Bill 18 proposes to remove the costs associated with a temporary worker’s injury from the experience rating of the actual employer (the temporary help agency) and place it with the client employer contracting with the temporary help agency. In the context of health, this transfer of cost and responsibility would move from the home care SPO employer to the health care institution (e.g. long term care facilities, hospices and hospitals).⁹

Health care institutions within Ontario adhere to the Occupational Health & Safety Act and to the Employment Standards Act assuring their staff with the inherent protections. It is unreasonable to

⁴ Temporary Help Agency Employees Employment Standards Fact Sheet, November 2009
https://www.labour.gov.on.ca/english/es/pubs/is_tha.php

⁵ Ibid

⁶ Exceptions are listed under Ministry of Labour, Industries and Jobs with Exemptions or Special Rules. Retrieved from <http://www.labour.gov.on.ca/english/es/tools/srt/index.php>

⁷ Within the meaning of the Community Care Access Corporations Act, 2001

⁸ “Homemaking” services include housekeeping, laundry, ironing, shopping and banking services, preparing meals, and planning menus, among others. “Personal Support” services include assistance with personal hygiene activities and the routine personal activities of daily living. “Professional Services” include nursing, social work, physiotherapy, and dietetics services.

⁹ The Act is not clear as to the possibility of burdening individual Ontarians and their families with these costs if they choose to retain care privately in their own homes, although it is our understanding from the Minister of Labour’s office that this is not the intent.

expect these organizations to assume responsibility for SPO worker injury costs regardless of the circumstance and, as a result, to be responsible for securing relief from the SPO through cost transfer. Home Care Ontario SPOs recognize that they share accountability for safety and, as the employer of staff, have responsibility to their employees and for pursuing cost transfer if they believe it is warranted.

Home Care Ontario members all carry WSIB insurance¹⁰ and are fully accountable for their workers' injuries. These SPOs provide extensive training to staff and work closely with their clients to ensure a safe work environment. Where costs should be legitimately transferred, the SPO follows the existing processes in place through the WSIB.

Options for Consideration

Home Care Ontario supports the intent of Bill 18 to protect the interests of the vulnerable worker. Options are offered that we believe will address the implementation concerns and ensure a steady supply of healthcare staff available to our system partners.

Option #1 – Expressly exempt home care service provider organizations from the provisions within Bill 18.

Implications:

- No disruption to the supply of staff available to support health care facility based care.
- There will be a need to establish criteria for defining home care providers.
- Other organizations may need to be identified for exemption.

Option #2 – Remove the provisions governing the WSIA that appear in Schedule 5 of the Bill.

Implications:

- Removes potential implementation challenges such as the transfer of costs to the organization that does not have the ability to manage the employee's return to work.
- Allows the complex issue of WSIB cost management to be addressed as a separate issue.
- Does not delay implementation of Bill 18.

Option #3 – Modify the definition of temporary help agency to exclude home care provider organizations.

Implications:

- Will need an expert group to rework the definition of temporary help agency.
- An amendment expressing this intent and exempting providers as this work is completed.

Recommendation

In order not to significantly disrupt the supply of health care staff and to allow rapid passage of the Bill, Home Care Ontario recommends that Schedule 5 of the Bill be removed as outlined in Option #2. The Association also recommends that the definition of temporary help agency as outlined in Option #3 be identified as a priority for the Ministry of Labour.

¹⁰ This is a requirement for membership of Home Care Ontario

Conclusion

Home Care Service Provider Organizations are vital to the delivery of health care in Ontario. They provide necessary health care services to individuals in their homes, however so defined. **Members of Home Care Ontario subscribe to rigorous performance standards and are fully accountable for adhering to all labour legislation.** Without modification to the issues pertaining to workplace safety and insurance, Bill 18 will seriously erode the home care SPO sector and compromise care to Ontarians and the smooth function of the health care delivery system.

About Home Care Ontario

Home Care Ontario, *the voice of home care in Ontario™*, is a member-based organization with a mandate to promote growth and development of the home care sector through advocacy, knowledge transfer, and member service. Home Care Ontario members include those engaged in and/or supportive of home-based health care. In Ontario, service provider organizations are responsible for providing nursing care, home support services, personal care, physiotherapy, occupational therapy, social work, dietetics, speech language therapy and medical equipment and supplies in the home to individuals of all ages. An estimated 54 million hours of publicly and privately purchased home care service is provided annually across the province.

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