



Proposed Temporary Help Agency legislation has the potential to jeopardize health and social care in Ontario

The Issue

Home Care Service Provider Organizations are at risk of being directly affected by two pieces of legislation under consideration: Bill 146, *Stronger Workplaces for a Stronger Economy Act, 2014*, and Bill 159, *Employment Standards Amendment Act (Temporary Help Agencies), 2014*. These two bills have the potential to seriously compromise 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 at home or while in facility-based care, typically to supplement the services already provided.

By working with a 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.

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. The Association also strongly endorses accreditation and at this time 74% of members have achieved accreditation and/or are registered with ISO.

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.¹ Temporary help agency employers are governed by the Employment Standards Act (ESA), as are most employers in Ontario.^{2,3}

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'

¹ Temporary Help Agency Employees Employment Standards Fact Sheet, November 2009

https://www.labour.gov.on.ca/english/es/pubs/is_tha.php

² Ibid

³ The ESA does not apply to employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways; individuals performing work under a program approved by a college of applied arts and technology or university; a secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled; people who do community participation under the Ontario Works Act, 1997; police officers (except for the Lie Detectors part of the ESA, which *does* apply); inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court; people who hold political, judicial, religious or elected trade union offices.

- between a Community Care Access Corporation (CCAC)⁴ 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)⁵.

CCAC funded home care service represents approximately 63% of purchased home care services.⁶ Home Care Ontario estimates that in excess of 20 million hours of service from home care SPOs are also retained in addition to the care that is provided through the public funded CCAC system.⁷ The ability to retain services from a home care SPO when needed is a cost effective way of meeting the demands of the health care system 24 hours per day. Institutions are able to respond to the need for flexibility without incurring staff overhead costs. They are also able to increase and decrease services in a timely manner by holding SPOs to strict performance criteria.

Bill 146

The provisions within Bill 146 are designed to protect the interests of the vulnerable worker. Home care SPOs fully support protecting the workers' rights to pay and safe working environments. Home care SPOs can assure their institutional and individual clients of assuming full responsibility for their staff's vacation pay and wages and for educating staff on the Occupational Health and Safety Act. The provisions in Bill 146 governing workplace safety and insurance, however, have the greatest potential for deterring the use of SPOs and ultimately compromising health care service delivery.

Workplace Safety and Insurance

Bill 146 proposes to remove the impact of the costs associated with a temporary worker's injury from the experience rating of the actual employer (the temporary agency) and to place it with the client employer using the temporary agency. In the context of health, this would be from the home care SPO to the institution and possibly the individual in the case where s/he is directly retaining the SPO. Health care institutions within Ontario adhere to the Occupational Health & Safety Act and to the Employment Standards Act. It is unreasonable to expect them to assume responsibility for worker injury costs regardless of the circumstance and, as a result, to be responsible for securing relief through cost transfer. Home care SPOs recognize that they share accountability for safety and, as the employer of the temporary staff, have responsibility to their employees and for pursuing cost transfer if they believe it is warranted. Furthermore, home care SPOs work with their clients to create a safe working environment for staff. This amendment will limit the use of temporary agency staff as it imposes the risk of additional costs on the health care facility⁸.

⁴ Within the meaning of the Community Care Access Corporations Act, 2001

⁵ "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 are considered to be professional services.

⁶ Home Care Ontario - Facts & Figures - <http://www.homecareontario.ca/public/about/home-care/system/facts-and-figures.cfm>

⁷ Ibid.

⁸ Opinions from OLTCA, OHA, ORCA

The question regarding injury costs being applied to an individual Ontarian who retains a home care SPO to provide care in their place of residence needs to be clarified. Most people that privately retain a home care SPO could not afford the cost of a worker injury.

Home Care Ontario members all carry WSIB insurance and are prepared to be 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 processes in place through the WSIB.

Bill 159

The intent of Bill 159 is to ensure that temporary help agencies are licensed, compensated fairly and not exclusively relied upon by Ontario's employers. Home care SPOs are usually incorporated entities, and can be one of the following: a non-profit organization, a privately held organization, a municipal government or an aboriginal organization. These employers provide important health and social service by assigning to staff to provide care in a variety of settings as outlined above. They pay competitive wages and offer a range of extended benefits. They are vital to ensuring provision of health care services and experience various levels of performance auditing, including by Health Quality Ontario. There can be no interruption in their operations without seriously disrupting the system of health care in the province.

Recommendation

Home Care Ontario recommends that ***home care SPOs be expressly exempted from the provisions in Bills 146 and 159.*** Alternatively and/or in addition to the exemption, Home Care Ontario suggests that home care SPOs be excluded from the definition of a temporary help agency.

Conclusion

Home Care service provider organizations are vital to the delivery of health care in Ontario. They provide 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. Failure to exempt home care service provider organization from Bills 146 and 159, will seriously erode the home care SPO sector and compromise 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.

For more information, contact:

Sue VanderBent, CEO

Phone: 905-543-9474 Email: sue.vanderbent@homecareontario.ca

For the latest in news and information about the home care sector in Ontario, subscribe to "[House Call](#)" or follow us on [Twitter](#).