



*Bill 148, An Act to amend the Employment Standards Act, 2000 and the Labour Relations Act, 1995 and to make related amendments to other Acts:*

## **The Misalignment with Patients First**

### **ISSUE**

Bill 148<sup>1</sup> will negatively impact the delivery of home care to Ontarians and their families who receive publicly funded and/or privately retained service. It will also lead to increased use of the broader health care system at a time when government is trying to contain health care expenditures.

### **RECOMMENDATIONS**

A strong, well-functioning Ontario home care system is critical to support:

- Ontarians' growing wish to live, receive care, and spend their last days at home
- Demographic changes that will increase the patient expectation to remain at home
- Good utilization of the broader health care system including primary care, emergency care, acute care and long term care.

While home care is clearly an important part of the health care system in Ontario, it is not, and should not be treated as, the same as the rest of the health system. Home Care Ontario recommends that Government:

1. Exempt home care from cancelled shifts, on call and short notice changes
2. Invest to offset consequential increased costs in home care delivery
3. Protect against the inevitable growth of the underground market and potential increased demand on the health care system
4. Remove home care from the proposed special balloting provisions in the Labour Relations Act
5. Remove the reference to successor rights specifically directed to home care.

Frontline home care providers have an atypical health delivery model which is aligned to patient expectations, the environment, funding models<sup>2</sup> and the circumstances in which they operate. A delivery model that is flexible and responsive to patient expectations is critical to support the provider-patient relationship in the home.

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<sup>1</sup> Flynn, The Hon .K. (2017). Bill 148 An Act to amend the Employment Standards Act, 2000 and the Labour Relations Act, 1995 and to make related amendments to other Acts. Legislative Assembly of Ontario, 2nd Session, 41st Legislature, Ontario

<sup>2</sup> Home care services are only funded by government on a fee-for-service basis. As a result, frontline home care providers regularly experience volume fluctuations during the fiscal year.

Given that member organizations have high-quality, fair employment practices, Home Care Ontario believes that the provisions in Bill 148, targeting of home care in the Labour Relations Act (LRA) and the provisions with the Employment Standards Act (ESA) that impact daily operations, compromise the effective care currently provided across the province. It is vital for health system transformation that labour policy support the ability of frontline home care providers to attract and retain the best workers and enable an effective model of delivery for Ontarians.

## FACTS ABOUT HOME CARE IN ONTARIO

### The publicly-funded home care system

- Serves 729,357 people per year
- Frontline home Care staff deliver 39,318,763 hours/visits per year
  - 74% of care delivered was personal support/homemaking
  - 21.5% of service was nursing (shift and visits)
  - 4.5% of visits/hours were provided by therapy providers
- Recipients of publicly-funded home care have greater care needs
  - 93.5% more patients have higher care needs than five years ago

### Privately-retained home care

- An estimated 150,000 Ontarians purchase 20M hours of care per year<sup>3</sup> to supplement the services provided through the publicly-funded home care system.

Ontarians who can, and do, purchase care privately are supporting their loved ones to live, receive care and spend their last days at home. In addition to an act of compassion, the service from reputable<sup>4</sup> home care providers help to assure better system use and unnecessary health system costs and contribute to better quality of life.

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<sup>3</sup> Home Care Ontario. (2013) Private home care – a vital component of the health care continuum in Ontario. Retrieved on June 3, 2017 from <http://www.homecareontario.ca/home-care-services/search-for-home-care/useful-resources>

<sup>4</sup> Defined as organizations that, for example, are established with a Canada Revenue Agency business number, have WSIB and liability protection for staff, conduct thorough reference checks, and supervise their staff.

## DISCUSSION

Home care has been portrayed by some interest groups as insecure, or precarious<sup>5</sup>, primarily because of outdated and misinformed assumptions about the sector.

### *1. The Rationale for the Current Home Care Employment Model*

Home care service delivery, and hence employment practices do not follow typical institutional patterns of work. However, the non-institutional delivery model is one reason, of many, that most people prefer home as the place to recuperate from illness and to receive long-term support for chronic conditions caused by aging. The fundamental premise of home care service provision is to accommodate the needs and wants of patients first. This practice approach and philosophy are reasons why thousands of nurses, therapists and personal support workers choose home care as their preferred setting of employment.

A key success factor in home care is a result of the responsive home care staffing patterns that are prevalent today. Home care service is provided at times that are convenient to the family and patient. This concept is 'atypical' and foreign to the traditional, institutional work or 'shift environment' of a hospital or long term care home.

Home care staff provide care that accommodates the normal routines of their patients' lives, such as rising in the morning, enabling activities during the day, and preparing for rest at night. As society ages and more intensive care is enabled by technology, even more types of care will be provided in the home for such illnesses as cancer, dementia, diabetes, renal disease, and end of life care. Home is where Ontarians consistently say they want to live, receive care and spend their last days.<sup>6</sup>

Staff are carefully educated and closely supported to work as 'invited caregivers' in the home and to implement the care plan while respecting the family's home, routines and direction. Client care needs can change frequently. Frontline home care providers therefore increase or decrease services on short notice and accommodate employee preferences for assignment, geography and hours of work. Generally, there is an opportunity for the employee to make up the additional hours within the week in which the change took place. This ebb and flow of work is natural and cost effective as unlike an institution there is little opportunity for immediate redeployment of staff.

Frontline home care providers have adapted to this patient-centred way of managing the working schedules of staff to meet the needs of clients and families.

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<sup>5</sup> According to the International Labour Rights Forum, Precarious workers are those who fill permanent job needs but are denied permanent employee rights. Globally, these workers are subject to unstable employment, lower wages and more dangerous working conditions. They rarely receive social benefits and are often denied the right to join a union.

<sup>6</sup> Auditor General of Ontario. (2014). 2014 Annual Report of the Auditor General of Ontario. Ch 3 Section 3.08 P 261

The provision of work that aligns to patient need does not mean that home care work is 'insecure' or 'unsupported' in any way. Employees are provided with comprehensive paid orientation. A proper welcome to the organization provides the opportunity for a successful employer-employee relationship. Employee contracts are fully explained and new employees are allowed time to consider whether the expectations of the position fit with their needs.

Frontline home care providers working in the community have supervisors available to staff 24/7 to provide support, guidance and direction.

Frontline home care providers recognize the importance of robust compensation to attract and retain the best staff. Employees are paid competitive wages for all hours they work, including for their ongoing education time. Travel time between home care clients is compensated. Shift premiums and compensation for work related expenses are paid. Holiday pay for statutory days and vacation pay is provided. Employees are typically offered extended health benefits, Retirement Savings Plan (RSP) matching and pension contributions tiered to the number of hours they work.<sup>7</sup> The statutory and non-statutory benefits provided is on average 40.66% of the hourly wage.<sup>8</sup>

Factoring the new proposed ESA changes to increase the pay for Cancelled Shifts and for On-Call Work and to increase the timeframe in which staff can Refuse Shifts<sup>9</sup>, will increase the cost for service – both that which is privately retained and that which is paid for by government. More importantly, it will decrease patient responsiveness and satisfaction, which will be evident in LHIN and provincial key performance indicators (KPIs) regarding referral acceptance, patient wait-times and alternate level of care (ALC), to name a few. Understanding the actual cost and impact to patient quality of life needs to be thoroughly analysed for cost and system impact. However, the better result is to exempt home care from these requirements.

### **Recommendation 1**

Exempt home care from cancelled shifts, on call and short notice changes.

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<sup>7</sup> KPMG. (2014) Ontario Home Care Association Benefits Burden Analysis for PSW Wage Rate Increases.

<sup>8</sup> Ibid

<sup>9</sup> New Part VII.2 ESA. Scheduling which includes a minimum of three hours' pay for shifts that are under three hours, minimum pay for being on call, a right to refuse requests or demands to work on a day that an employee is not scheduled to work with insufficient notice and entitlement to pay for three hours of work in the event of cancellation with insufficient notice. Bill 148, pi

## 2. ESA Changes and Patient Centred Care

Frontline home care providers are concerned about practice standards and engaged in achieving excellence in all aspects of service. Most are accredited through Accreditation Canada, CARF Canada, and/or registered with the International Standards Association (ISO). Accreditation serves as third party validation of quality processes, including employment practices.

Home Care Ontario supports fair working environments for staff in home care and consistently advocates for adequate funding in the publicly-funded system to ensure that compensation in the sector can grow to equitably compare to the institutional sector. To that end, the Association has consistently called for a robust increase in funding for home care. In 2017, Home Care Ontario recommended that government increase the funding for home care to 6% of the total health care budget – an estimated increase of \$600M to the sector.<sup>10</sup> In addition to investments in areas of specific patient need, the Association stated that the funding would provide the means to undertake a ‘rate refresh’ for the provision of services to address staff compensation which has been impacted by the government’s wage restraint policy<sup>11</sup> and to offset the inflationary pressures<sup>12</sup> of the past five years. Even the PSW wage enhancement introduced in 2014, has had the effect of driving down the overall frontline home care provider reimbursement because related non-statutory overhead costs were not included in the funding.

Bill 148 adds an element of urgency to the request as otherwise the increased expenditures to accommodate the changes in the ESA, if not defrayed by government, will result in a reduction of publicly-funded service ultimately impacting the overall health system which will be reflected in increased emergency room use and the percentage of patients designated as ALC in acute care beds. The administrative savings of integrating the CCACs and LHINs are not enough to offset the increase in operating costs.<sup>13</sup>

In addition to costs, the government’s Patient First Strategy, which is intended to create a better health system that responds best to the aging population and all Ontarians, will be seriously affected. It is imperative that the home care system can accept 24/7 transfers home on very short notice, in as little as one hour, across the entire province.

### Recommendation 2

Invest to offset consequential increased costs in home care delivery.

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<sup>10</sup> Home Care Ontario (2016). The Road Home, Home Care Ontario’s Pre-Budget Submission. Retrieved on June 3, 2017 from <http://www.homecareontario.ca/home-care-reports/home-care-ontario-publications/submissions>

<sup>11</sup> Wage restraint has meant that frontline home care providers have not received an increase in bill rates to offset operating costs, education and wage increases since 2008.

<sup>12</sup> The average Consumer Price Index in Ontario, which has increased 9.1% in the past five years.

<sup>13</sup> Report from MOHLTC staff that 59 upper management jobs will be eliminated, saving about \$10.7 million a year, to be reinvested in patient care.

### ***3. ESA Changes and the Growing Underground Economy***

Proposed changes to the ESA such as Increased Pay for Cancelled Shifts, Pay for On-Call Work and the Right to Refuse Shifts, will significantly increase the costs to reputable home care employers. While contractual obligations for changes in applicable law will help to defray provider costs for government funded business, the impact will be felt by the consumer through their taxes and through increased bill rates for the services they purchase privately.

The costs associated with the proposed ESA changes will drive the underground economy. People will resort to purchasing care from unsupervised and untrained individuals to save money, not recognizing the inherent risks. A poll by Home Care Ontario found 65% of respondents were unaware of the increased exposure to harm (such as injury, theft or abuse) through lack of screening, education and supervision of care staff. By working with a home care organization, families can minimize their workload, mitigate the potential threats and are free to spend their time in the context of the family relationship.

Frontline home care providers carefully screen prospective employees to confirm proper training, qualifications and temperament. References (personal, work and criminal) are thoroughly checked and personal identification and certificates verified.

Protection for staff is equally important. Frontline home care providers ensure that staff are fairly compensated and provided with the labour protection required by law and best practice. Staff are insured and bondable. As responsible employers, frontline home care providers fully support the protection of workers' rights to appropriate pay and safe working environments. Home Care Ontario members all carry WSIB insurance<sup>14</sup> and are fully accountable for their workers' injuries. These providers provide extensive occupational health and safety training to staff and work closely with their clients to ensure a safe work environment.

Staff and patients are both assured of coverage for illness, vacation and extra demand with a frontline home care provider that has extra staff and 24 hours on-call support. This is vital to ensuring that people are not left unattended and providing family caregivers with continuity of service.

As established businesses, frontline home care providers assume responsibility for the employer tax obligations. They are familiar with reporting requirements, make the requisite employee deductions and submit the appropriate filings.

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<sup>14</sup> This is a requirement for membership of Home Care Ontario

The lost tax revenue and most importantly the risks to Ontarians through underground elder care could lead to greater reliance on the public system when issues arise. Mitigating actions for the government include:

- Taking a leadership role in educating the public through a comprehensive media campaign about the dangers of using untrained and unsupervised people to deliver care to vulnerable citizens.
- Adopting incentives such as tax relief or caregiver allowances for those Ontarians who can and do wish to purchase care from reputable, legitimate Ontario home care businesses that adhere to safe and responsible health human resource, occupational safety and accreditation standards.

### **Recommendation 3**

Protect against the inevitable growth of the underground market and potential increased demand on the health care system.

## **4. LRA Changes and Third Party Organizing**

Home Care Ontario supports fair wages and benefits for all home care staff. The Association represents organizations that are fully, partially or not represented by unions. Various unions, such as ONA, OPSEU, SEIU, CLAC, represent home care workers. There is no need to introduce an “alternate process for the certification of trade unions as the bargaining agents”<sup>15</sup> within home care. It is evident that employees who want representation can secure a third party.

However, the lower penetration of trade unions suggests that frontline home care workers do not believe themselves to be precariously employed. They also have reservations about the model of work favoured by unions but which do not reflect their desire for autonomy and flexibility in providing care to their clients.

Frontline home care providers and their staff know that successful home care is built on trust and respect. The introduction of the opportunity for application for certification without a vote in home care<sup>16</sup> presupposes the wishes of frontline staff. It is a policy that places the interests of unions ahead of those of Ontarians. There is a risk that people will sign a card, erroneously believing that they will still have an opportunity to express their wishes privately through a vote. The current process of card signing and secret ballot votes safeguard employees’ rights to freedom of expression and should therefore be retained in all circumstances.

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<sup>15</sup> Flynn, The Hon. K. (2017). Bill 148 An Act to amend the Employment Standards Act, 2000 and the Labour Relations Act, 1995 and to make related amendments to other Acts. Legislative Assembly of Ontario, 2nd Session, 41st Legislature, Ontario pii

<sup>16</sup> Ibid. p 26 Application for certification without a vote, certain industries

The requirement to distribute personal information to unions<sup>17</sup> is a further intrusion of staff privacy and compromises the very premise on which successful employer/employee relationships are built.

#### **Recommendation 4**

Remove home care from the proposed special balloting provisions in LRA.

### ***5. LRA and Potential Successor Rights***

The change envisioned in the Patients First Act requires that home care organizations innovate and undertake to do things differently. The relationship with the rest of the health care system will evolve and more work will move into the community. It is inevitable that there will be realignment of responsibilities and/or functions across organizations.

The proposed amendment to the LRA to permit the prescribing of successor rights to providers who directly or indirectly receive public funds will stagnate growth and improvement. The impact of increased successor rights because of transfer of care to a home care provider could have the effect of limiting the ability of the LHIN to improve service to their constituents. This is a serious health system consideration as home care evolves and provides more acute care in the home.

#### **Recommendation 5**

Remove the reference to successor rights specifically directed to home care.

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<sup>17</sup> Ibid. p22 Application for employee list



## CONCLUSION

Home care is a relatively new and emerging area of the health care system. The growth of home care in Ontario is a success story. Treatments and care plans that just a few years ago would have required a hospital stay are now managed successfully at home. Families are increasingly confident, society more receptive and technology more enabling. Investments by government have helped to increase the numbers of Ontarians to achieve their goal of remaining at home. More people know about home care, are planning for and requesting home care service – publicly and privately. Health care practitioners are increasingly attracted the opportunities and model of work.

As the voice of home care in the province, Home Care Ontario is aware of the sensitivities to delivering care in the home. The provisions from Bill 148 highlighted in this briefing place the sector at risk. The greatest concern is the erosion of the ability for frontline home care providers to be responsive to the needs of patients and their family caregivers. It is in the best interest of Ontarians to respect the home care contribution and not presuppose the approach to service delivery or the wants of the frontline staff.

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## 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 58 million hours of publicly and privately purchased home care service is provided annually across the province.

## About Home Care

Home care was formally established in Ontario in 1970. Since establishment, the home care system has gone through several changes, evolving and maturing to the comprehensive program of today. In Ontario, frontline home care providers 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.

Frontline home care providers are usually incorporated entities, and can be a non-profit organization, a private corporation, a municipal government or an aboriginal organization. Frontline home care providers meet high standards of excellence. Achieving excellence in home care is dependent on a highly-qualified workforce.

Home care allows Ontarians of all ages the opportunity to recover or manage their health care issues and age at home surrounded by family, friends and their community to which they can continue to make a meaningful contribution. Home care services help people with a frailty or with acute, chronic, palliative or rehabilitative health care needs to independently live in their community and co-ordinate and manage an admission to facility care when living in the community is not a viable alternative. Evidence indicates that people want to remain at home for as long as possible, and if given a choice would prefer early discharge from hospital followed by provision of home care.

Ontario's publicly-funded and privately purchased home care programs are vital to sustaining the publicly insured health system by enabling early discharge of patients from hospitals, reducing hospital congestion and non-acute emergency room visits – two key health care issues that currently challenge the province's health system capacity.

Government funded home care services are designed to complement and supplement, but not replace, the efforts of individuals to care for themselves with the assistance of family, friends and community. A fundamental component of home care is that family and/or friends will provide care to supplement the publicly-funded service. Home care service providers are often

contracted to deliver additional hours that supplement government funded care. This care is paid by privately-insured employment plans and/or direct private purchase.

Home care services are intensely personal and provided at a time when individuals are most vulnerable. As such, home care providers carefully recruit, educate and support their staff emphasizing a strong customer service orientation.