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CAN FEDERAL STANDARDS IMPROVE LONG TERM CARE?

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In this report the issues surrounding Federal standards for long term care are analyzed. Why are key stakeholders and government ignoring the wishes of older adults and people with disabilities who have repeatedly said they wish to receive care and services in their own homes and communities, not in institutions? Why are governments wrongly asserting that long term care residents' needs are so much more complex now? And why, when it is the provincial, not federal government that is responsible for standards and enforcement, do some stakeholders continue to believe that it is the federal government that can hold long term care operators accountable?

Key Stakeholders Call for Federal Standards

For months various stakeholders have called for Federal standards to address care-related issues in long term care institutions rather than calling for an alternative to these institutions to reduce reliance on them. Most of the advocacy occurs from a staff-centered viewpoint. The call is for better wages, full-time work, more staffing etc. Residents are portrayed as having "high acuity" in order to support unions' and the long-term care industry's specious arguments that their needs are so much more complex now than in the past. But are they? Data in the Ministry of Health's own database does not appear to support these arguments.

The Continuing Care Reporting System, 2020/21 (Q2 data cut, Ontario Ministry of Health, extracted February 2021) information obtained by SSAO shows that there are 48,184 residents of all ages listed in the Ministry's database as being "without a significant disability". That's 69% of the resident population of long-term care facilities in Ontario! 21,976 or only 31% of residents are listed as having a "significant disability".

So what are 69% of residents doing in these institutions? Why are they not receiving a sufficient level of in-home or community-based residential care in small, staffed neighborhood-based homes?

And when individuals with complex care needs are currently being cared for in private family homes and community settings operated by non-profit organizations in many cases, why are we forcing anyone who does not want to be institutionalized into congregate care?

If there are to be Federal standards, should they not be based on facts?

And should they not reflect the stated wishes of older adults and people with disabilities to be able to receive care in their own homes and communities?

Who Creates and Enforces Standards in Long-Term Care?

Seniors for Social Action Ontario (SSAO) has long taken the position that federal standards would not be effective because it is the provinces that are responsible for long term care. Provinces set standards and are supposed to enforce them.

Aside from tying funding to certain initiatives to try to entice the provinces into accepting specific policy and programming approaches, federal standards are essentially unenforceable. All that the federal government can do is offer these kinds of financial incentives. But we have already seen Ontario forego hundreds of millions in federal funding for staffing and to upgrade facilities rather than be held publicly accountable for that funding (Gallant, 2021).

The reality does seem finally to be dawning on union stakeholders who claim to be "flabbergasted" that there is no deal between Ontario and the federal government. A spokesperson claims to not understand why there would be such a delay. Another union spokesperson is concerned that the Ford government is not acting to access the federal funding, saying that her union had asked the federal government to hold provinces accountable for how the funding is spent (Gallant, 2021).

Perhaps the Ontario government's lack of action in accessing funds for which it would need to be publicly responsible comes as a surprise to union stakeholders, but it comes as no surprise to SSAO. Hence our longstanding position that federal standards will not be enforceable provincially. In this case, not even the incentive of hundreds of millions in federal funding is enticing the Ford government to accept that funding with strings attached.

Enforcement Does Not Work in a For-Profit, Corporate-Dominated System

With 85% of long-term care facilities not having met the requirements of the Long-Term Care Homes Act (Pedersen et al, 2020), and no Ontario government ever having been able to bring this sector into compliance with its own legislation, it seems reasonable to believe that the federal government attempting to step into this arena is also doomed to failure. We are already seeing that the attempted inducement of federal funding is not working.

In Ontario, long term care facilities are subject to compliance and enforcement actions supposedly enforced by the Long Term Care Inspections Branch.

Compliance relates to actions inspectors take during inspections, as well as actions they take in response to reported incidents, inquiries, and complaints to try to ensure that facilities comply with the Act. Compliance-oriented actions are the basic modus operandi of Ontario's Inspection Branch.

Enforcement activities are escalated actions usually involving the Director under the Long Term Care Homes Act. They are undertaken in response to issues with significant care or operational implications that pose a high risk to resident safety. They also happen when facilities are continuously in non-compliance with the Act (Chou, 2020). Issues that are extremely high risk can result in an inspector making a referral to the Director (Chou, 2020).

The Ontario government has failed to use effective sanctions to enforce its own Act. There is no legislative authority to levy fines against operators who repeatedly flout the law. Proposed legislation in 2017 would have required facilities to pay an "administrative penalty" for repeated violations of compliance orders, but it was never enacted, so financial penalties are not available to inspectors (Mancini, 2021).

The only sanctions available to provincial inspectors are issuing:

- Written notices of violations;
- Voluntary plans of correction;
- Compliance orders;

or making a referral to the Director.

The Director under the Act may:

- Cease admissions;
- Install an interim manager to take over a facility on a temporary basis;
- Issue a Director's Order;
- Issue a license revocation.

In the case of written notices, thousands are handed out each year, yet non-compliances and problems continue, often with no sanctions for facility operators. Voluntary plans of correction are not mandatory. They are closer to being suggestions. Compliance orders are supposed to result in a follow-up inspection to determine if action has been taken to address the infraction.

Director's referrals are issued in less than 1% of infractions. Information obtained through Freedom of Information by SSAO shows that from July 1, 2018 to July 24, 2020, 99 Director Referrals were issued to 47 facilities. During that same period only 7 Director's Orders were issued to 7 facilities.

To better understand the volume of these "sanctions" more than 30,000 infractions were recorded by inspectors from 2015 – 2019 with just over half resulting in only voluntary plans of correction, and one in six resulting in compliance orders. Only one license was revoked in 2017 -of a facility in Trout Creek Ontario.

The magnitude of the problem is clear. Numbers of written notices against a single facility ranged from 289 for Hogarth Riverview Manor in Thunder Bay to 110 for Sheppard Lodge in Toronto from January 1, 2015 to December 31, 2019 (CBC News, 2020).

Ontario's actual inspection and enforcement record provides a glimpse of its failure to achieve compliance.

- 85% of facilities are regularly out of compliance with the Act;
- The Inspection Branch receives tens of thousands of complaints a year but few inspections result in effective sanctions;
- The Ontario government eliminated comprehensive yearly inspections, called Resident Quality Inspections in favor of a reactive system of inspections that responded primarily to complaints and critical incidents – inspections well after the harm had been done.

Financial Accountability of Long-Term Care Sector?

Ontario's tracking of how tax dollars are spent in the long term care sector may be just as problematic.

The public has a right to question what is going on in long term care when both the Provincial and Federal governments provided major subsidies to help the long term care industry through the pandemic. This, at the same time companies that were regularly out of compliance with the Act, some with high infection and death rates, paid shareholders significant dividends and senior managers' healthy bonuses while receiving these subsidies. Extendicare and Sienna received a total of $157 million in federal and provincial COVID-19 relief while paying a combined total of $74 million in dividends to shareholders (Lancaster, 2020). Sienna had the highest death rate in the province during the pandemic (Mancini et al, 2020). Meanwhile Extendicare managed or licensed facilities were being taken over by hospitals in order to manage outbreaks, sometimes by order of a local medical officer of health (Durham Region, 2020; Payne, 2020).

Tendercare, another Extendicare (Canada) managed facility was taken over by North York General on December 25, 2020, but even after its takeover in January of 2021, inspection reports showed inspectors issued 13 written notices following complaints about nutrition, hydration, lack of staffing, and unexplained injuries (Russell, 2021) [1] Five additional written notices, three voluntary plans of correction, and one non-compliance were also issued after inspections conducted in May, 2021.[2] These included residents not properly assessed for pain due to an "unwitnessed fall", the facility was still not considered safe with

[1] Please see Inspection report http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=27100&FacilityID=20490

[2] Please see Inspection report http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=27682&FacilityID=20490

respect to infection prevention and control measures, and that safe transfer procedures were not being used, follow up after falls was not being done, and the Director was not being informed concerning incidents in the facility.

The public also has a right to question what is going on when residents pay from $2280.04 to $2701.61 monthly in co-payments[3] intended for accommodation expenses (including upkeep of facilities, meals and amenities), but quite a few facilities failed to install air conditioning and never upgraded the facilities in which they live. The government has now poured millions of additional taxpayer funds into these facilities to address issues that many believe residents had already paid for and facilities have still not installed air conditioning in residents' rooms (CBC News, May 27, 2021).

Even when government gave facilities additional funds to top up their workers' wages, the Minister of Long Term Care had to "remind" them to actually pay it to their workers. Since April 2020 the government of Ontario provided $243 million in emergency funding plus an additional $135 million for "ongoing prevention and containment efforts" to the long term care sector. A portion of the funding, along with money provided by the Federal government added $321 million for temporary pandemic pay that was to have increased wages by $4.00 per hour for approximately 100,000 eligible staff who had worked in this sector between April 24, 2020 and August 13, 2020.[4] Yet, as of January, 2021, the Minister of Long Term Care had to "remind" Extendicare and Chartwell to pay their PSW's this hourly pay enhancement flowed to them by the government (Wilson, 2021). One might also ask why the press was reporting that the temporary pay increase was $3 per hour, while the Ministry was saying it had paid $4 per hour. If the Ministry actually did pay an extra $1 per hour for 100,000 workers from April to August of 2020 where did it go?

Ontario Seems Uninterested in Additional Federal Funding for Long Term Care

Now Ontario taxpayers are learning that the Ontario government has failed to take advantage of hundreds of millions of dollars in available Federal funds for staffing, air conditioning and wages. It seems this government has not wanted to sign on to a financial accountability agreement with the federal government outlining how those funds would be spent. They would have had to make it public. "Ontario is missing out on hundreds of millions of federal dollars – earmarked for long term care – because of the lack of an agreement with Ottawa….the money can be used for improving ventilation, infection control, hiring more staff and wage top ups. These dollars come with strings attached. A

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[3] Please see https://www.ontario.ca/page/get-help-paying-long-term-care

[4] Please see Slide 8 Presentation by the Ministry of Long Term Care to the COVID-19 Long Term Care Commission September 24, 2020 - http://www.ltccommission-commissionsld.ca/presentations/pdf/Long-Term_Care_Staffing_and_Funding_Overview.pdf

province must agree to provide a detailed spending plan and commit to making it public" (Gallant, 2021).

Are we to assume that the government of Ontario is reluctant to be accountable for its spending of Federal dollars and does not wish to make its spending plan public and is therefore foregoing hundreds of millions in federal funding?

How then, is the Federal government to be able to use the incentive of Federal funding to get Ontario's long term care sector to toe the line on standards?

Rearranging the Deck Chairs on the Titanic: Federal Standards?

Accreditation

The federal government appears to be fiddling while long term care burns by going the accreditation route and addressing design issues in long term care facilities.

Many facilities have achieved accreditation, but has that improved the care they provide? A study to determine whether accreditation through Accreditation Canada was associated with more favorable resident safety outcomes in Ontario long term care facilities showed that out of 5[5] safety areas examined, only one – a lower occurrence of falls - showed improvement (McDonald et al, 2015).

A consolidated data set of long term care facilities' accreditation status (Paul Allen, 2020) shows that "based upon information gathered from the RLTCH website, the Consolidated Dataset of LTC Homes indicates that **520 of 626 (83.1%) LTC Homes are accredited** by one of two national bodies recognized by the Ontario government."(Paul Allen, 2020).[6]

Some of the worst facilities in Ontario with the highest death rates were accredited. Some of the best municipal facilities with the lowest infection and death rates were not accredited.

Facilities like Orchard Villa, Tendercare, Extendicare West End and Laurier Manor in Ottawa – all of which had to be taken over by hospitals - in three cases by orders of Medical Officers of Health – were accredited.

So much for the track record of accredited facilities.

Why then is the federal government embracing this strategy rather than funding in-home and community care which would greatly reduce the provinces' reliance on institutional

[5] The study examined falls, physical restraint use, urinary catheters, pressure ulcers, and infections. https://www.longwoods.com/content/24214//accreditation-and-resident-safety-in-ontario-long-term-care-homes

[6] Go to https://paulallen.ca/consolidated-dataset-of-ltc-homes-in-ontario/ scroll to Final Results, click on Excel spreadsheet.

facilities like this that have demonstrated, again and again, despite of marketing strategies like having accreditation, that they not provide quality supports?

Design Standards

The second strategy that the Federal government has embarked on is to improve design standards believing the research provided by medical doctors that the way to reduce infections in institutions is to have fewer people in a room. So how did facilities with modern design standards do during Ontario's pandemic?

Schlegel Villages have been touted as an example of a more modern approach to building long term care institutions. St. Clair Village, a modern Schlegel facility in Windsor has had repeated outbreaks (Campbell, 2021). Tansley Woods, another "modern" Schlegel facility is also again in outbreak (Warren, 2021). A $110 million lawsuit was filed against 19 Schlegel Villages long-term care facilities and 9 retirement homes (CTV News Windsor, February 26, 2021).

None of this bodes well for the improving design standards strategy either.

Why Not Listen To Older Adults And People With Disabilities?

Decades ago Denmark shifted its policy, programming and funding priorities to keeping people in their own homes and communities. It has not built a single institution since 1987. This highly successful strategy is now considered the gold standard in long term care.[7]

The question is why is Canada's federal government not following suit with real fundamental change to its long term care system? Why is it not following Denmark's example and funding municipalities and local governments to provide in-home and community-based residential care in small, neighborhood homes? It could easily give itself the legislative authority to do so. It already uses the gas tax to fund municipalities directly.[8] Why can municipalities not be funded directly by the federal government to provide in-

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[7] Please see SSAO's research paper on Denmark's approach here https://d5bb3c6f-31a3-47ef-a85b-5c06ab03f844.filesusr.com/ugd/50033d_d612afead4c041fcaa092cc240a8c141.pdf

[8] "As of June 29, 2021, the Gas Tax Fund has been renamed the Canada Community Building Fund (CCBF)." The Canada Community-Building Fund delivers over $2 billion every year to 3600 communities across the country. In recent years the funding has supported approximately 4000 projects each year. Communities select how best to direct the funds with the flexibility to make strategic investments across the following 18 different project categories" – everything from capacity building to airports, to culture, tourism, sport, and recreation. https://www.infrastructure.gc.ca/plan/gtf-fte-eng.html

home assistance and neighborhood-based residential support in a process of building alternatives to long term care institutions as Denmark has done?

Why is it the federal government instead embarking on a strategy promoting accreditation and design standards when the evidence so clearly shows that neither will greatly improve long- term care? Why is the federal government not using a readily available strategy to fund municipalities directly in order to bring long term care support and services into the 21st century?

The current approach does not respond to what older adults and people with disabilities have been saying for decades – let us age in place! The federal government has an opportunity to do what Denmark did – shift its funding priorities to in-home and community-based care. If provinces want to continue to fund institutions, leave them on their own to do it. But use federal funds to build a truly progressive system – one that would truly meet the needs of an aging population to age in place.

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