

**SUBMISSION**

**TO THE STANDING COMMITTEE**

**ON SOCIAL POLICY**

**ONTARIO LEGISLATIVE ASSEMBLY**

**CONCERNING BILL 140**

**LONG TERM CARE HOMES ACT, 2006**

**Submitted by:**

**Service Employees International Union Local 1.0n**

**Sharleen Stewart, President**

**January 16, 2007**

# SEIU LOCAL 1.ON SUBMISSION ON BILL 140 LONG TERM CARE HOMES ACT, 2006

## (I) The Need for Nursing Home Standards in Ontario

Thank you members of this Committee for allowing the Service International Union Local 1.on to address our concerns regarding Bill 140. I am Sharleen Stewart, president of the Union.

The Service Employees International Union Local 1.on has been fighting for better nursing home care standards for years. SEIU Local 1.on represents 12,000 nursing home workers, (registered practical nurses, health care aides, personal support workers, dietary and housekeeping aides, and maintenance staff) at more than 140 nursing home facilities across Ontario.

Seniors in Ontario nursing homes are still not receiving the care they deserve.

In December, 2003 people across Ontario reacted with horror to revelations in the *Toronto Star* of widespread problems in Ontario's nursing homes. Seniors died painful, needless deaths in nursing homes because there was not enough staff to provide quality care and not enough government oversight to detect and correct problems. In response to public outrage, Minister of Health and Long Term Care, George Smitherman, vowed to take action to protect Ontario's seniors.

Those promises will not be kept with the enactment of Bill 140.

Ontario nursing homes are not required to maintain a base level of staffing. The Ontario government, despite promises made by Dalton McGuinty prior to the 2003 provincial election, refuses to establish a standard of quality care nursing homes must provide each resident.

Bill 140 enshrines the McGuinty government do nothing to approach to real nursing home reform.

Promised staff increases, did not materialize either from the government or private home operators. Since the McGuinty government came to office, there have been no significant increases to nursing home staffing levels, save for an increase in Registered Nurses.

The Ontario government's claim of having increased funding by \$155 million last year and adding 3,140 new staff can mainly be attributed to 24 hour RN care and the expansion of the number of beds. Established homes have not seen an increase in staff overall.

Moreover the Ontario government needs to increase funding by \$3,500 per resident annually to fulfill a 2003 election promise to increase nursing home funding to \$6,000 per resident annually.

Since the Ontario Health Minister's announcement in January, 2004 that there would be unannounced annual nursing home inspections and a toll-free phone service established for nursing home residents and the public to use to lodge complaints against nursing homes, there has been little else done to improve the quality of care Ontario nursing home residents receive.

The Ontario government promised a revolution of change to Ontario's nursing home industry. It mandated Monique Smith (MPP Nipissing) to write a report that would become a blueprint for change.

Smith's report (spring, 2004) said the government should implement systems that deliver confidence to the public. She said there must be openness and transparency in the complaints process.

The Ontario government's lack of action in developing any standards for a minimum number of care hours nursing home operators must provide is nothing short of scandalous. It is immoral.

Bill 140 will entrench the fact that Ontario will continue to have the lowest nursing home care standard in the Western World.

### **(a) Liberal Promises on Long Term Care**

Prior to the last provincial election SEIU asked the following questions. We point these out here.

Q. Will your party stop awarding long term care beds to private, profit companies?

A. We have a comprehensive plan to improve the quality of life for residents of long-term care facilities. Our plan includes restoring standards and providing

the necessary funding to increase the level of nursing care that long-term care residents receive. Inspectors will be required to audit the staff to resident ratios, the number of nursing hours per patient, the mix of staffing and number of staff who have taken a course in the care of seniors.

**Dalton McGuinty**

**April 4, 2003**

**Response to Ontario Federation of Labour questionnaire.**

Q. Will your government make public the number of care hours nursing home residents receive on a daily basis, for each Ontario nursing home?

A. Ontario Liberals are committed to ensuring that nursing homes residents receive more personal care each day. We will invest over \$400 million to increase the level of care in nursing homes and reinstate minimum standards.

Q. Will your government establish a minimum number of care hours nursing home residents must receive on a daily basis? If so what should the number of care hours per day be?

A. YES. Ontario Liberals are committed to reinstating the standards of care for nursing homes that were removed by the Harris government – including minimum 2.25 hours of nursing care daily and 3 baths per week.

**Dalton McGuinty**

**June 11, 2003 Response to**

**SEIU Local 204 questionnaire**

“Promising a ‘revolution’ in long term care Smitherman told the Star he will make fixing Ontario’s troubled nursing home system his top priority.”

“We are going to push forward on this very rapidly,” Smitherman said.

**Quoted in Toronto Star**

**December 8, 2003**

“We’re proud of our record in long-term care.”

**April 26, 2006**

**Dwight Duncan Acting Premier**

**(b) The Liberal Reality Since 2003**

Ms. Martel: Are you going to reinstate 2.25?

Hon. Mr. Smitherman: I answered the question yesterday, directly, and I'm pleased to answer it again.

Ms. Martel: OK, let me just confirm again. Are you going \_\_\_\_

Hon. Mr. Smitherman: NO.

Ms. Martel: So in fact you don't have any intention of keeping the promise you made in your election document, even though you were quite critical of the former government for canceling the 2.25 hour of nursing care.

**Standing Committee on Estimates  
October 5, 2004**

**(c) Every Other Jurisdiction in the Western World is Adopting Standards**

A Coroner's Jury report (May, 2005) in the inquest into the deaths of two nursing home residents in June, 2001 made 85 recommendations to improve nursing home standards.

The Ministry of Health and Long Term Care responses to these recommendations (July, 2006) remain cloaked in bureaucratic non committal language indicating the Ontario government will not make the changes to the care nursing home residents receive. To date Liberal promises for better standards remain broken promises.

For example, the Coroner's Jury Recommendation 29 calls on the MOHLTC, pending an evidence based study should fund and set standards requiring LTC facilities to increase staffing levels to, an average, no less than .59 RN hours per resident per day and 3.06 per resident per day overall nursing and personal care for the average Ontario case mix measure. The funding formula must be immediately adjusted to reflect this minimum staffing.

The MOHLTC claims it is closely monitoring the performance of each home in meeting hiring targets through staffing level reporting.

Even though there are now 24 hours a day on site Registered Nurses present, there is little evidence of staff improvements to other direct hands on care givers.

In fact in smaller nursing homes other care staff was laid off to accommodate the new RN regulation. The Minister of Health is proud of this regulation and it is justified. We would, however, like to remind the government it is only restoring what the Harris government abolished.

The Ministry's response to the Coroner's Jury recommendation that at a minimum, care hours in Ontario nursing homes must be comparable to similar jurisdictions is a total cop out.

There is no question about it. There must be a minimum standard of care provision placed directly into the Long Term Care Homes Act, 2006.

Dalton McGuinty made a commitment to the Service Employees International Union in June 2003. We take from that promise the logical step that it is a pledge to all nursing home residents.

In a response to a petition presented to the Legislative Assembly of Ontario, in the fall of 2006, the McGuinty government now says that a standard of care must be appropriate for each and every individual nursing home resident. It believes that every resident's needs have to be assessed and that a legislated care level would not be responsive to a resident's changing needs.

The McGuinty government thinks empowered front line workers should make the decisions and determine what care is needed for every single resident.

SEIU Local 1.0n wishes this were so, but the government position is completely untenable and flies in the face of all the international literature that underscores the need for minimum standards.

Does this government really believe that private nursing home operators will allow their front line workers to make a decision on the level of care a resident will receive?

Bill 140 proposes many new rules and regulations but the only one that will work to ensure nursing home residents get the care they need is sadly missing – that is a minimum number of daily care hours.

There is a wide support in the literature that suggests minimum staffing levels ensure better quality care.

Dr. Robyn Stone, the Executive Director, Institute for Policy Research, American Association of Housing and Services for the Aging in 2000 wrote:

Frontline workers, such as nursing assistants, homecare aides, and personal support workers are the centerpiece of a LTC system ... They are the “eyes and ears” of the care system ....

Inadequate staffing levels diminish quality care ....

The consequences of adequate staffing levels and poor training are:

- Diminished quality of care
- High turnover
- Poor job quality
- Abuse and neglect
- Higher rates of injury to staff and clients <sup>1</sup>

In a membership survey conducted by SEIU Local 1.on last fall, 69 per cent of nursing home workers indicated their workloads had increased over the past three years. Overall they estimated that their workload had increased by 36 per cent.

This government has lauded the fact that it has introduced patient lifts in every nursing home. While this is true, SEIU nursing home members report it takes at least 10 minutes to get another staff member to help lifting a patient. (Lifts require two people to operate).

Also this government prides itself on the fact that it increased resident baths from one to two per week, ignoring its election pledge that it would institute three baths per week. Even now our members report that residents always or sometimes (30 percent) miss their second weekly bath.

Nancy-Ann DeParle, Administrator Health Care Financing Administration, U.S. Department of Health and Human Services, testified before the Senate Special Committee on Aging, July 27, 2000, said:

Our findings to date show a strong association between staffing levels and quality care .... The findings demonstrate that there are

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<sup>1</sup> Stone R.I. (2000). *Frontline workers long term care: Challenges and opportunities for grant makers*. Institute for Future of Aging Services; Washington D.C.

significantly more problems in facilities with less than 12 minutes of registered nursing care, less than 45 minutes of total licensed staff care, and less than 2 hours of nursing aide care per resident per day.

That is the total of 2.95 hours of care per day. In no nursing home, SEIU Local 1.on surveyed was this standard anywhere near to being met.

DeParle’s department contracted research firms and gathered data from 1,786 nursing homes in three states. Her recommendation for daily care came out to:

	<b><u>SUGGESTED MINIMUM STAFFING</u></b>	<b><u>PREFERRED MINIMUM</u></b>
RN’s	12 min	27 min
Total Licensed staff	45 min	1 hour
Aides/PSW	2 hours	2 hours
Total	2.95 hours	3.45 hours

A conference on nursing home staffing in April 1998 at New York University recommended a proposed minimum total number of direct nursing care staff be 4.13 hours of care per resident per day and that the total hours of care including administrative and direct and indirect nursing hours be 4.55 hours of care per day.<sup>2</sup>

In the United States a study commissioned by the Federal Centres for Medicare and Medicaid identified three staffing thresholds below which the quality of care was found to suffer.<sup>3</sup>

The threshold is 45 minutes for RN’s; 1 hour, 18 minutes for total licensed services (RN, plus LPN’s; and 2 hours, 48 minutes for Certified Nurse Assistants. Any nursing home that meets these standards would provide at least 4 hours, 6 minutes of total nursing care per day.

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<sup>2</sup> Harrington et.al. (2000) “*Experts recommend minimum nursing staff standards for Nursing Facilities in the United States*”. The Gerontologist 40(1):5-16.

<sup>3</sup> Spitzer, Eliot (2006) . Quoted in *Staffing levels in New York nursing homes: Important information for making choices*. Office of the Attorney General, Medicaid Fraud Control Unit.

Spitzer also quotes staffing levels in a number of American states.

California	3.2 – total hands on care (RNs, LPNs, CNAs)
Vermont	3 hours of care per resident per day, 2 hours of which must be provided by CNA
Ohio	2.75 hours per resident per day total nursing care and 2 hours per resident per day of nurse aide care
Illinois	2.5 hours per resident per day, 0.5 of which must be by an RN & LPN
Florida	3.6 – 1 hour of licensed nursing care (RN & LPN) and 2.6 hours per resident per day of nurse aide care (CNA)

In 1996 the previous Conservative government eliminated the 2.25 hours of care per day standard nursing home residents were entitled to receive.

In February 2004 Dave Levac (MPP, Brant) chief government whip told a Brantford audience the 2.25 hours of care standard would not be sufficient to guarantee better quality care in Ontario's nursing homes.

What the Liberals said before the election and what they say now are worlds apart.

A PriceWaterhouseCoopers study commissioned by the Ontario government concluded in January, 2001 that Ontario offered the lowest amount of total care hours per nursing home resident per day in a sample comparing Canadian provinces to several states in the U.S. and a European country.<sup>4</sup>

The comparisons were:

Ontario	2.04	Saskatchewan	3.06
Manitoba	2.44	Maine	4.40
Michigan	3.40	Mississippi	4.20
South Dakota	3	Netherlands	3.3

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<sup>4</sup> PriceWaterhouseCoopers, "Report of a Study to Review Levels of Service and Responses to Need in a Sample of Ontario Long Term Care Facilities and Selected Comparators," January 11, 2001.

Other jurisdictions in the western world are rapidly moving to implement a specific standard of care.

Thirty-six U.S. states have adopted minimum standards of care.

Nova Scotia's Department of Health has set targets when establishing approved facility staffing budgets, <sup>5</sup> targets 3.25 hours of care for Level II nursing homes.

According to Online Survey Certification and Reporting (OSCAR) a data network maintained by the Centres for Medicare and Medicaid Services<sup>6</sup> in the United States, total staff hours per resident per day in 2004 averaged 3.6.

The OSCAR data points out that nearly 30 percent of U.S. nursing homes average fewer than the 2.75 nursing hours per patient per day, the minimum recommended by the Federal government, but 10 percent average more than 4.55 hours per patient per day, the level favoured by many experts.

The authors of the Brown University study point out that research has consistently demonstrated a relationship between staffing and quality care in nursing homes.

SEIU Local 1.0n thinks quality care can also be enhanced if a larger portion of the caregiving staff were full time. SEIU recommends a full time to part time ratio to be set at 75/25 for all nursing homes.

SEIU Local 1.0n in its compilations of nursing home care hours did not include administrative hours into our calculations, but as you can see even if administrative hours were factored in, standard care hours would not increase significantly.

William F. Benson, President of the National Citizens Coalition for Nursing Home Reform at a White House Conference on Aging (September 9, 2004)said:

Staffing is the primary issue that determines the quality of all of long-term care ... a minimum staffing level is absolutely essential to ensuring that basis care is provided to residents.

The Toronto Star in an editorial October 6, 2006 had this to say about the new Long Term Care Homes Act:

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<sup>5</sup> *Task Force on Resident – Staff Ratio in Nursing Homes* (2002). Research and Recommendations. Nova Scotia Department of Health.

<sup>6</sup> Cited in Miller Edward Allen and Mor, Vincent (2006). *Out of the shadows envisioning a brighter future for long term care in America*. A Brown University Report for the National Commission for Quality Long Term Care, Page 56.

Without such a [minimum] standard, other efforts to improve care and curb problems will almost certainly fall short. How can neglect be stopped if nursing homes are not required to hire enough workers to ensure adequate care? How can abuse be ended if harried workers are too busy to notice? ... Smitherman said this week he has not set a minimum level of care because it would encourage staff to treat people like widgets.

Smitherman's view has done exactly that, treated people as commodities rather than real people with real needs.

The economic costs of more care can also be offset by fewer workplace injuries.

More nursing care means fewer workplace injuries in nursing homes. For each additional hour of nursing care, injury rates for nurses and nurse's aides fell by nearly 16 per cent or two injuries per 100 full time workers<sup>7</sup>.

The study says the findings were consistent across states despite differences in data collection, classification of injuries and reporting procedure.

The study also found that for-profit homes generally have lower staffing levels which correlate with injuries.

In 2006 the average cost of a lost time injury is approximately \$98,000.<sup>8</sup> Direct costs to the WSIB account for about 20 per cent of that total. Indirect costs to the nursing home would include lost activity and lower employee productivity while on light duty.

If the private nursing home industry claims it is operating at a narrow profit margin (a claim we would dispute) a 6% profit margin would mean the nursing home needs \$1.5 million in revenue to recover the cost of a single injury.

#### **(d) Public Accountability for Nursing Homes**

*"In Ontario, families seeking a home for a loved one have no way of knowing whether a nursing home has a history of substandard care."* Toronto Star, December 7, 2003.

Untreated pressure sores, malnutrition, injuries are all signs of substandard patient care. Ministry of Health inspectors called "compliance advisors" visit nursing homes

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<sup>7</sup> Trunkoff et al. (2005). *Staffing and worker injury in nursing home*. American Journal of Public Health. 95:1220-1225.

<sup>8</sup> Workplace Safety and Insurance Board.

to look for these sorts of problems in annual inspections. However, their findings remain shrouded in secrecy, collecting dust at the Ministry and inaccessible to the public.

Although inspections have increased since 2002, when the Provincial Auditor of Ontario found that the Ministry “do[es] not routinely review the findings of these inspections” to identify facilities with chronic problems and patterns of non-compliance with the law.<sup>9</sup> Lacking analysis of their inspection findings, Ministry officials are unable to assess the quality of care nursing homes are providing. Too often in the past inspections were announced to the nursing home prior to the arrival of a Ministry of Health inspector.

The Ministry of Health and Long Term Care has indeed established a Public Reporting on Long Term Care Homes.

However, the information is dated to only year end and difficult to locate on the MOHLTC website.

Current data includes only information from the “current” reporting period which means it will be at least six months old and could be as old as 8 to 9 months. Data should be posted on a more timely basis.

Responding to public demands for more accountability, the Ontario government has made some improvements but they are not nearly enough. Bill 140 increases the amount of words in a new Long Term Care Homes Act but it does not increase by one second any more care to residents.

Last spring the Ontario Long Term Care Association circulated a petition calling on the Ontario government to increase care by 20 minutes per day per resident.

This is the same organization that in 1995 lobbied the Harris government to remove the 2.25 hours of care regulation each nursing home resident was entitled to and the same organization that 2001 said again there must be no standard of care hours legislated.

Twice the OLTC Association has been wrong. It is wrong again.

It is not just a matter of increasing funding to nursing homes and allowing them to set the standard of care, it is the matter of ensuring nursing homes be accountable to

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<sup>9</sup> 2002 Annual Report of the Provincial Auditor of Ontario, p. 119.

tax payers and residents alike. This can only be accomplished if the Ontario government sets a standard of care hours as it promised prior to last election. Tax payer money must not go to increase profits for nursing home operators.

The nursing home industry in Ontario is opposed to a regulatory standard of care. They want the public's money, but don't want any public control or accountability.

The Ontario Long Term Care Association<sup>10</sup> said minimum standards contribute to inefficiency by rewarding the status quo and reducing the incentive for innovations such as developing programs that would assist in moving patients out of hospitals or the special needs of residents with specific conditions, stroke, Alzheimer's etc.

It is the OLTCOA that lobbied the previous government to eliminate all care standards. OLTCOA is opposed to a regulatory care standard because it will limit its ability to make profits.

It seems the OLTCOA lobby has won. Nursing home residents and Ontario tax payers have lost.

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<sup>10</sup> "OLTCOA Advocacy Messaging 2003" (Winter Form, 2003).

## II (a) Why More Staff?

Understaffing is a chronic problem in Ontario nursing homes. Understaffing translates into poor resident care.

The typical situations that nursing home workers experience daily show the urgent need for increased staffing. Local 1.0n members responded to a survey about patient care and staffing with the following observations:

Nursing homes demand that a resident's diaper be 80% wet before it may be changed. There is a wetness indicator which turns colour when 80% wet. If a resident happens to have a bowel movement, the diaper wetness indicator will not register any additional wetness. If an extra diaper is needed for a resident in a one shift period, the health care aide or personal support worker must ask the charge nurse for it.

- Diapers are generally restricted to one diaper per shift.

Rick Salutin writing in the Globe and Mail December 22, 2006 relates the story of an old friend who 25 years ago did a report on homes for the aged in Toronto. Salutin says:

She found it grim. Currently she's interviewing staff at Ontario long term care facilities. The picture has worsened. In most institutions, for instance, workers are limited to using one diaper per shift. This infuriates them, so they hide and hoard diapers for the residents....In turn management unleashes the diaper police (the workers' term).

- One personal support worker reported generally taking care of 14 residents at a time.
- Many nursing homes do not replace absent employees and will not pay overtime to remaining staff, because homes claim it is not in the nursing budget.
- Nursing Home workers tell SEIU Local 1.0n that working short is the worst condition.
- If workers are absent they are not replaced. Too many workers have become stressed because of the heavy work loads and as a result more sick days are taken.

- In one home PSW bath attendants are taken away from baths to help out on the floors. As a result many residents are not getting their second bath per week as now regulated.
- At meal times PSWs are feeding up to three residents per meal. It is impossible to watch every resident to ensure they are not choking.
- Charting residents' care plans are taking up at least one hour per day of an RPN's time. SEIU supports the additional attention to the care plan, in fact a better resident assessment tool is needed to replace the current Case Mix Index. However, charting time does not constitute direct hands on care.
- In many homes housekeeping and custodial staff are told to answer any resident's call bell, but are not trained to do so.
- Workers report that additional work loads will occur on doctors' days when staff needs to attend medical meetings and prepare residents for physicals. Sick residents take even more attention.
- Often staff needs to cope with as many as three resident call bells ringing at one time. It is impossible to meet the residents' demands immediately. Nursing homes are now monitoring bells because they claim staff are not answering bells quickly enough.
- Staff typically comes in early, leave late, and do not take all their breaks just to try to keep up with the workload. The nursing home industry is essentially getting free labour from a significant portion of its work force.
- A typical work day for a personal support workers and health care aides includes helping with two meals, distributing morning and afternoon nutrition, delivering laundry to resident's room, full periodontal care, toileting, bathing, grooming, (finger and toe nails, shaving etc.) making beds, and tidying rooms.

Nursing Homes and Related Industries Pension Plan data (2005) – 21,892 active participants – mainly RPNs, PSW and housekeeping, laundry and dietary aides – show the average age to be 45 and an average of 8.1 years of service. Over 10,000 of participants in this pension plan had 4 years of service or less.

### III REAL TIME STAFFING HOURS IN ONTARIO NURSING HOMES

#### (a) Calculation of Staffing Ratio for Direct Personal Care.

Full-time hours available = 7 hours per day (Lunch and break times are excluded)

Registered Nurses generally are employed in a supervisory role and therefore provide limited direct hand on care.

Housekeeping and dietary personnel are not factored into the direct personal care ratio since they are budgeted from the Accommodation envelope and not the Nursing and Personal Care envelope provided by the Ontario government.

Care hours per resident per day = number of direct care hours available / number of residents.

#### (b) EXTENDICARE – PETERBOROUGH

	14 PSWs × 7	= 98
	14 RPNs × 7	= 28
	4 Bath PSWs × 6.5	= 26
	4 PT PSWs × 5.75	= 23
	3 RNs × 7	= 31
<b>Evening</b>	12 PSWs × 7	= 84
	5 RPNs × 7	= 35
	4 Bath PSWs × 5.5	= 22
	2 RNs × 7	= 14
<b>Midnight</b>	8 PSWs × 7	= 56
	2 RPNs × 7	= 28
	1 RN × 7	= 7
	<b>Total Care Hours</b>	<b>= 428</b>

**Total Residents 172**  
**428 / 172 = 2.48 Hours of care per resident**  
**If RNs are factored out**  
**386 / 172 = 2.24 Hours of care per resident**

Although this is an improvement from the fall 2004 when SEIU Local 1.on estimated the care level in this home to be 1.95 hours of care per resident per day, it still falls far short of the Coroner’s Jury recommendation of 3.06 care hours per day.

**(c) GRACE VILLA – HAMILTON**

	3 RNs × 7	= 21
	3 RPNs × 7	= 21
	15 HCAs × 7	= 105
	6 HCAs × 4	= 24
	3 HCAs × 6	= 18
<b>Afternoons</b>	1 RN × 7	= 7
	3 RPNs × 7	= 21
	12 HCAs × 7	= 84
	7 HCAs × 4.5	= 31.5
	1 HCA × 4	= 4
<b>Nights</b>	1 RN × 7	= 7
	3 RPNs × 7	= 21
	6 HCAs × 7	= 42
	<i>Total Care Hours</i>	<i>= 406.5</i>

**Total residents 184**

**406.5 / 184 = 2.20 Hours of care per resident**

**If RNs are factored out**

**371.5 / 184 = 2.01 Hours of care per resident**

(d) **BLLENHEIM COMMUNITY VILLAGE RETIREMENT RESIDENCE  
REIT**

<b>Days</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	PSWs × 7	= 46
<b>Afternoon</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	PSWs × 7	= 35
<b>Nights</b>	1 RN × 7	= 7
	PSWs	= 21
<b>Total Care Hours</b>		<b>= 139</b>

**Total number of residents = 65**  
**Total hours of care per resident**  
**139/65 = 2.13**

**If RNs are factored out**  
**118 / 65 = 1.82 Hours of care per day per resident**

(e) ST. CATHARINES – EXTENDICARE

	1 RN × 7	= 7
	1 RPN × 7	= 7
	1 HCA 7 – 11	= 4
	1 HCA 6 – 11	= 4.5
	1 HCA 7 – 12:30	= 5
	1 HCA 6 – 1:30	= 7
	6 HCAs x 7	= 42
<b>Second Floor</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	1 HCA 6 – 8	= 2
	1 HCA 6 – 11	= 4.5
	9 HCAs x 7	= 63
<b>Afternoons</b>	1 RN × 7	= 7
<b>First Floor</b>	1 RPN × 7	= 7
	1 HCA 3 – 9	= 5.5
	1 HCA 5 – 9	= 4
	5 HCAs x 7	= 35
	1 wound care RRN	= 7
<b>Second Floor</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	1 HCA 5 – 9	= 4
	1 HCA 3:30 – 8	= 4
	1 HCA 4 – 9:30	= 5
	3 HCAs 2:30 – 10:00	= 21
	4 HCAs × 2-10:00	= 28
	1 wound RPN 4 - 10	= 5.5
<b>Nights - First Floor</b>	1 RPN × 7	= 7
	2 HCAs 10:00 – 6:00	= 14
<b>Second Floor</b>	1 RN × 7	= 7
	2 HCAs 10:00 – 6:00	= 14
	1 HCA 12 – 6 :00	= 5.5

**Total Hours = 354.5**

**Total Residents 152**

**354.5 / 152 = 2.33 Hours of care per day**

**If RNs are factored out**

**326.5 / 152 = 2.14 Hours of care per day**

**(f) EXTENDICARE – KIRKLAND LAKE**

<b>Days Shift</b>	1 RN × 7	= 7
<b>Second Floor</b>	1 RPN × 7	= 7
	6 HCAs × 7	= 42
<b>Third Floor</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	6 HCAs × 7	= 42
<b>Evenings</b>	1 RN × 7	= 7
<b>Second Floor</b>	6 HCAs × 7	
	Two leave at 8:00 p.m.	= 22
<b>Third Floor</b>	1 RPN × 7	= 7
	6 HCAs × 7	
	Two leave at 8:00 p.m.	
	Two leave at 9:00 p.m.	= 34.5
<b>Nights</b>	1 RPN × 7	= 7
<b>Second Floor</b>	1 HCA × 7	= 7
<b>Third Floor</b>	1 RN × 7	= 7
	2 HCAs × 7	= 14
	<b>Total Care Hours</b>	<b>= 217.5</b>

**Total number of beds = 100**

**217.5 / 100 = 2.18 Hours of care per resident**

**If RNs are factored out**

**189.5 / 100 = 1.9 Hours of care per day per resident**

(g) EXTENDICARE – FALCONBRIDGE

Second Floor

<b>Days Shift</b>	6 PSWs × 7	= 42
	2 RPNs × 7	= 14
	1 RN × 7	= 7
<b>Evening</b>	2 PSWs × 7	= 14
	2 RPNs × 7	= 14
	4 PSWs × 5.5	= 22
	2 RNs (Whole Building) × 7	= 14
<b>Nights</b>	2 PSWs × 7	= 14
	1 RPN × 7	= 7
	1 RN(Whole Building) × 7	= 7

Third Floor

<b>Day Shift</b>	9 PSWs × 7	= 63
	2 RPNs × 7	= 14
	1 RN × 7	= 7
<b>Evening</b>	3 PSWs × 7	= 21
	6 PSWs × 5.5	= 33
	2 RPNs (Whole Building) × 7	= 14
<b>Nights</b>	2 PSWs × 7	= 14
	1 RPN × 7	= 7

Fourth Floor

<b>Day Shift</b>	7 PSWs × 7	= 49
	2 RPNs × 7	= 14
	1 RN × 7	= 7
<b>Evening</b>	3 PSWs × 7	= 21
	4 PSWs × 5.5	= 22
	2 RPNs × 7	= 14
<b>Nights</b>	2 PSWs × 7	= 14
	1 RPN × 7	= 7

*Total Care Hours = 487*

**Total number of beds = 230**

**487 / 230 = 2.12 Hours of care per resident**

**If RNs are factored out**

**445 / 230 = 1.93 Hours of care per resident**

In the fall of 2004 SEIU Local 1.0n estimated the total amount of care in this home was approximately 1.89 hours of care per resident.

**(h) LEISUREWORLD – NORTH BAY**

<b>Day Shift</b>	4 HCAx	× 7	= 7
<b>Pier 1</b>	1 RN	× 7	= 7
	1 RPN	× 7	= 7
<b>Pier 2</b>	5 HCAx	× 7	= 35
	1 RPN	× 7	= 7
	1 RN	× 7	= 7
<b>Pier 3</b>	5 HCAx	× 7	= 35
	1 RPN	× 7	= 7
	1 RN	× 7	= 7
<b>Evenings</b>	3 HCAx	× 7	= 21
<b>Pier 1</b>	1 RPN	× 7	= 7
<b>Pier 2</b>	5 HCAx	× 7	= 28
	1 RPN	× 7	= 7
<b>Pier 3</b>	4 HCAx	× 7	= 28
	1 RPN	× 7	= 7
	1 RN	× 7	= 7
<b>Nights</b>	5 HCAx	× 7	= 35
<b>Entire Building</b>	1 RPN	× 7	= 7
	1 RN	× 7	= 7
<b>Days / Evenings</b>	3 Bath people	× 6	= 18
	2 Bath people	× 6	= 12
	1 Treatment RPN	× 7	= 7
	Maybe another RPN		= 7
	position created Friday		
	October 6 <sup>th</sup>		
	<b>Total Care Hours</b>		<b>= 338</b>

**Total number of residents = 148**

**Total hours of care per resident**

$$338 / 148 = 2.28$$

**If RNs are factored out**

**289 / 148 = 1.95 Hours of care per day per resident**

**(i) NEW ORCHARD LODGE – OTTAWA**

<b>Day Shift</b>	2 RNs × 7	= 14
	8 HCAs × 7	= 56
	3 HCAs × 6	= 18
	4 HCAs × 5.5	= 22
	4 RPNs × 7	= 28
<b>Evening</b>	8 HCAs × 7	= 56
	2 HCAs × 4.5	= 9
	4 RPNs × 7	= 28
	2 RNs × 7	= 14
<b>Midnight</b>	4 HCAs × 7	= 28
	1 RPN × 7	= 7
	1 RN × 7	= 7
	<i>Total Care Hours</i>	<i>= 287</i>

**Total Residents 111**

**287 / 111 = 2.58 Hours of care per resident**

**If RNs are factored out**

**224 / 111 = 2.01 Hours of care per resident**

**(j) MAYNARD NURSING HOME (TORONTO)**

(Data as of August 8, 2006)

SEIU Local 1.0n opposed the renewal of this home's license until such time our concerns about care were met.

<b>Day Shift</b>	8 PSWs × 7	= 56
	2 RNs × 7	= 14
	1 Shower person × 7	= 7
<b>Evening Shift</b>	5 PSWs × 7	= 35
	2 RNs × 7	= 14
<b>Night Shift</b>	3 PSWs × 7	= 21
	1 RN × 7	= 7
	<i>Total Care Hours</i>	<i>= 154</i>

**Total Residents 78**

**154 / 78 = 1.97 Hours of care per resident**

**If RNs are factored out**

**119 / 78 = 1.52 Hours of care per resident**

**(k) UXBRIDGE HEALTH CARE CENTRE (UXBRIDGE, ONTARIO)**

Operated by Central Park Retirement Residence REIT

Data as of September 1, 2006 Facility Beds = 100

Current occupancy = 97

<b>Day Shift</b>	1 RN × 7	= 7
	2 RPNs × 7	= 14
	1 PSW (bath) × 7	= 7
	9 PSWs × 7	= 63
<b>Evening Shift</b>	1 RN × 7	= 7
	2 RPNs × 7	= 14
	1 PSW (bath) × 7	= 7
	9 PSWs × 7	= 63
<b>Night Shift</b>	1 RN × 7	= 7
	4 PSWs × 7	= 28
	<b>Total Care Hours</b>	<b>= 217</b>

**Each resident receives only 2.23 hours of care per day.**

**If RNs factored out = 1.87 hours of care per day**

**(l) CARESSANT CARE - MARMORA**

<b>Day Shift</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	8 PSWs × 7	= 56
	1 PSW (10-6p.m.) × 7	= 7
<b>Evening Shift</b>	1 RN × 7	= 7
	1 RPN × 7	= 7
	7 PSWs × 7	= 49
<b>Night Shift</b>	1 RN × 7	= 7
	3 PSWs × 7	= 21
	<b>Total Care Hours</b>	<b>= 168</b>

**Total residents 84**

**168 / 84 = 2.00 Hours of care per resident**

**(m) CARESSANT CARE – ON MARY BURKE - ST. THOMAS**

<b>Days</b>	4 HCAs – 6 - 2	= 28
	1 HCA – 6 – 9:15	= 3
	2 Bath HCAs – 7 - 3	= 14
	1 RPN – 10-6	= 7
	1 RN – 7 - 3	= 7
<b>Evenings</b>	1 HCA – 1:30 – 8:30	= 5.5
	1 HCA – 1:30 – 9:00	= 7
	1 HCA – 5 - 9	= 4
	2 HCA – 3 - 11	= 14
	1 RN – 3 – 11	= 7
	Sometimes a treatment nurse is present for 3.5 to 5 hours per day	= 5
<b>Nights</b>	2 HCAs – 11- 7	= 14
	1 RN – 11 - 7	= 7
	<b>Total Hours</b>	<b>122.5</b>

**60 Beds**

**Care per resident per day**

$$122.5/60 = 2.04 \text{ hours of care per resident per day}$$

**If RNs are factored out care is:**

$$101.5 /60 = 1.69 \text{ hours of care per resident per day}$$

Bath HCAs are sometimes asked to help out with resident care so some residents may miss their baths. On weekends there is even less care.

<b>Days</b>	4 HCAs – 6 - 2	= 28
	1 HCA – 6 – 12:30	= 6
	1 RN – 3 - 7	= 7
	1 Treatment Nurse	= 4
<b>Evenings</b>	Same as weekdays	= 32
<b>Nights</b>	Same as weekdays	= 21
	<b>Total hours of care</b>	<b>98</b>

**On weekends total care hours available to residents in this facility**

$$98/60 = 1.63 \text{ hours of care per resident per day}$$

**(n) LONGFIELDS MANOR – OTTAWA**

**262 scheduled nursing hours per day**

**114 residents**

**Total hours of care per resident**

**$114/252 = 2.21$  hours**

16.5 hours are paid breaks. 2 hours per day is spent serving meals.

Putting away laundry amounts to 20 minutes per day.

If one takes into account all this time the actual time a resident receives in a given day is 1.84 hours.

For this home the CMI for 2007 went down 4 per cent (99 to 95).

This suggests 2 full time equivalent staff will need to be laid off.

## **IV BILL 140 – NEW LONG TERM CARE HOMES ACT**

### **(a) RESIDENT’S RIGHTS**

The definition of abuse in Bill 140, Part I is limited. Abuse is defined as physical, sexual, emotional, verbal or financial abuse. It may be that definition will be made clearer under regulations, however nowhere in Bill 140 is neglect of care defined as a state of abuse.

Abuse must also be defined as neglect of care.

Section 3(1) (3) of Bill 140 states: “Every resident has the right not to be neglected by the licensee or the staff.

Section 178 of Bill 140 will allow for the definition of neglect to be defined by regulations.

SEIU Local 1.0n recommends that a definition of neglect be expanded to include “neglect of care” and that such a definition be incorporated into the Act.

Section 93 refers to the operation of residential premises for persons requiring nursing care but no where in this Bill is nursing care defined nor will it be spelled out in regulations since nursing care is not mentioned in Section 178 as an inclusion of definitions to be made under Regulation.

The Bill of Rights in this proposed legislation has offered limited enhancements to the current Long Term Care Act, (1994) provisions.

There is no provision for a Long Term Care Ombudsmen as promised by Premier McGuinty.

It is crucial ombudsmen be appointed because far too many seniors have been neglected by family members and friends. No one takes care of their needs and interests save for the administrators of the nursing home.

In the United States an Ombudsman Program exists under the Older Americans Act, administered by the Administration on Aging.

The U.S. Department of Health and Human Services reports that in 2005 about 13,800 (1,277 paid) ombudsmen investigated over 300,000 complaints made by 186,000

individuals. We add that the most frequent complaint involved lack of resident care due to inadequate staffing.

The Ministry of Health and Long Term Care's 1-800 complaint number does not meet the needs of residents who are unable to use the telephone by themselves or may have no one to act on their behalf because they have no family or friend.

Section 3(1)(7) and Section 3(1)(11) – the right to be told who is responsible for and who is providing the resident's direct care must be expanded to include an ombudsman independent of any nursing home's administration for those residents who have not family or friends, or their family is no longer willing to assume the role of the resident's advocate.

Section 3(1)(13) – the right not to be restrained must be expanded to include by either chemical or physical restraints.

From 2002/2003 to 2005/2006 drug costs for nursing home residents have increased from \$158,418,430 to \$268,991,078, an increase of 70 percent in just four years. Some of this increase may be accounted for by an increase in nursing home residents over the same period (an increase of only 15.3 per cent) and increased drug costs overall, but we can not help wonder whether some of the increase is attributable to keeping residents more sedated.

SEIU Local 1.on recommends the MOHLTC review the administration of all drugs to nursing home residents and report on the amount of "psychotic" drugs used and their increased use year over year.

## **(b) CARE PLANS**

Since the regulation for 24 hour Registered Nursing came into effect, SEIU Local 1.on has found that care plans over all have improved.

The problem is there is not enough staff to ensure care plans are carried out.

In many homes, particularly smaller sized homes (60 to 80 residents), when the RN 24 hour regulation came into effect laid off other support staff such as Registered Nursing Assistants, Personal Support Workers and Health Care Aides to accommodate the increased salary costs of employing higher wage RN's.

The present Case Mix Measure determines the allocation of provincial funds for direct nursing care.

The Case Mix Measure determines the Case Mid Index. If a nursing home for example had an index of 100 last year and this year it fell to 96, then its funding too will drop. However, the nursing home's population may not have dropped at all.

The Case Mix Index may have dropped because staff does not have enough time to do or complete a shift's charting. Many resident activities and interventions are thus not recorded. Unrecorded activities will drive the Case Mix Index down even if acuity levels of a stable resident population increase.

The rush to get the work done can only lead to errors, accidents and injuries.

### **(c) CARE AND SERVICES**

There is a provision made for 24 hour registered nursing care (Section 7(3)), but there is no provision for the number of care hours for RPN's, PSW's and/or HCA's.

A Coroner's Jury in July 2006<sup>11</sup> recommended an evidence based study on the present situation to determine the appropriate staffing levels for Ontario LTC facilities. Included would be the amount of direct RN care and the total hours per resident per day of overall nursing and personal care (RN, RPN and PSW and/or HCA).

We have already pointed out that in American jurisdictions ratios for care are already the norm.

The Coroner's Jury recommended .59 RN hours per resident per day and 3.06 hours per resident per day of overall nursing and personal care.

The Ministry claims new RAI data will form the basis of future improvements to the funding system.

SEIU Local 1.0n is skeptical of such a claim. If the staff cannot complete the charting then funding and care both will continue to suffer.

The government claims that it has increased, "by \$264 million for the purpose of hiring 2000 new front line LTC homes staff including 600 nurses sector wide" (Response to Coroner's Jury recommendation 29). If this is so then each new position

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<sup>11</sup> Office of the Chief Coroner (2006). Report on the inquest into the deaths of Ezzeidine EL Roulsi and Pedro Lopez.

would cost Ontario tax payers an average of \$132,000 for each new position created. Given that PSW's earn less than \$35,000 per annum, we think the government is over paying by a large margin. Additional funding has not necessarily resulted in additional staffing.

At the very least staffing levels for each nursing home in the province must be posted quarterly on the Ministry of Health and Long Term website. The MOHLTC claims it compiles this data on a quarterly basis. It should therefore be posted as frequently.

The government maintains that quality of care is not guaranteed by setting minimum staffing levels or ratios, but it is an absolute certainty there can be no quality guarantees without a minimum standard.

#### **(d) PREVENTION OF ABUSE AND NEGLECT**

Section 17 of Bill 140 reads "Every licensee of a long term care home shall protect residents from abuse by anyone and shall ensure that residents are not neglected by the licensee or staff.

Again the problem is the definition of abuse.

Abuse is clearly a fist in the mouth. Abuse can also take the form of having residents sit in a wet diaper until it is 80% wet. Abuse can also take the form of helping a resident to toilet but when a PSW or HCA must rush to help another resident, the resident is unattended and falls off the toilet and breaks a hip. Does this constitute abuse because there is not enough staff to care for the resident? If this does constitute abuse who is held responsible? The PSW, the licensee, or the Ontario government, because it has not adequately funded for a minimum amount of care?

SEIU Local 1.on thinks the blame will generally fall on direct nursing staff, where in actual fact it is lack of provincial legislation, regulation and enforcement that is really at issue.

SEIU Local 1.on recommends that in Section 18 wherever "neglect of residents" is mentioned that it be rewritten to read "neglect of care".

#### **(e) COMPLAINTS PROCEDURE**

SEIU Local 1.on is puzzled as to what the difference is between a complaint going directly to the licensee and a complaint to the provincial 1-800 reporting number? Will the 1-800 number be eliminated as a result of Section 21(2)? A licensee shall

report to the Director the results of every investigation undertaken and every action taken.

Will this mean that complaints against nursing homes will no longer be posted on the Ministry's website? Or will the Ministry post every complaint and the resultant action taken on the website?

Will follow up inspection reports (Section 23(1)) be posted at the home?

SEIU Local 1.0n recommends all inspection reports be posted.

Whistle blowing protection (Section 24) while a welcome addition to legislation, the legislation as it reads is limiting as to enforcement. This legislation will not encourage the reporting of abuse, particularly in cases where abuse may be difficult to ascertain particularly in one on one intervention with no other party present.

#### **(f) RESIDENTS' COUNCILS**

No licensee administrator or staff may be a member of a Resident's Council. However, Section 56 gives every licensee the right to appoint a Resident's Council assistant who is acceptable to that Council.

The Section should be amended to have the Resident's Council interview staff for the position of Resident's Council assistant. Such an assistant shall not be a part of the nursing home's administration and management. A Resident's Council Assistant must serve at the pleasure of the Residents' Council.

#### **(g) FAMILY COUNCIL**

Change Section 57(1) to read every long term care home must have a Family Council.

#### **(h) STAFFING**

Section 72. Amend to read, "That in order to provide a stable and consistent workforce and to improve the continuity of care to residents every licensee of a long term care home shall ensure there is a staffing ratio of not less than 70% full time to 30% part time. No nursing home licensee shall allow the nursing staff to resident ratio fall to below 3.5 hours of care per resident per day.

No nursing home shall employ any "agency staff".

Add to Section 72 the following:

“No nursing home licensee shall allow the nursing staff to residents ratio fall below 3.5 hours of care per resident per day.”

**(i) TRAINING**

Amend Section 74(6) to read, “every licensee shall ensure that all staff who provide direct care to residents provide training to at least the certification level of Personal Support Worker as defined by regulation”.

**(j) QUALITY MANAGEMENT**

Section 82. Amend to read, “quality management system developed by regulation.”

Each nursing home must benchmark itself according to a common provincial quality standard for accommodation, care, services, programs and goods provided to the residents.

There is a significant difference between directors of non-profit and for-profit nursing homes. Many directors of non-profit homes serve as volunteers. These people may need greater assistance from the Ministry of Health and Long Term Care as to training and education re: government, human resources and financial planning. Closer monitoring by the Ministry will help these non-profits ensure best practices.

**(k) REGULATIONS**

Section 87 is clear as to what the government can make regulations for. (Section 87(2)(g)) for example allows a regulation governing the duties that the staff of a long term care home are required to perform and 87(2)(a) respecting the management and operation of long term care homes.

If the government can do all this by regulation there is no reason why it can not allow also enact a minimum staffing requirement.

SEIU Local 1.on wants that requirement enshrined in the Act, not by regulation.

## (1) FUNDING

SEIU Local 1.0n agrees long term care is chronically underfunded. However, the government must resist the private sector's call for more money, if increased care is not the end result.

The private sector nursing home industry has done very well for a very long time with Ontario taxpayer money.

Extencicare, despite the federal government's pronouncements on income trusts, converted itself to an income trust in November 2006.

Extencicare is now one of the largest real estate investment trusts on the Toronto Stock Exchange.

According to the Globe and Mail's Derek DeCloet (December 6, 2006) Extencicare's net asset value is about \$16.50 a share, meaning the units are trading at a discount. Most REITs trade at a premium. In other words in terms of unit price it will have lots of room to access capital without any help from the Ontario government.

The current unit price (January 3, 2007) was \$14.40. Extencicare assumes there will be a pay out of \$1.20 per annum per unit. At the current unit price that is a return of 8.33 per cent before taxes.

Extencicare has 59,178,788 units outstanding.

If the payout to unit holders holds at \$1.20 per unit that means \$71,014,537 of Ontario taxpayer money will go to unit holders rather than direct nursing care.

Similarly Retirement Residence Retirement REIT has 92,757,896 units outstanding. Current payments (December 4, 2006) are \$0.025 per unit per month. The Public Sector Pension Investment Board has made a takeover offer to acquire all of the issued and outstanding units of Retirement Residences REIT and can continue to pay distributions equal to the lesser of \$0.035 per unit per month according to the takeover offer.

At the \$0.025 per month distribution this amounts to \$27,827,368 dollars going to unit holders and not direct care.

MacQuarie Power and Infrastructure Income Fund offers a current cash distribution (December, 2006) of \$0.08583 per unit. MacQuarie Power has a 45% interest in

Leisureworld, an Ontario's long term care provider with approximately 17 nursing homes.

The math, to separate 45% of MacQuarie's interest in Leisureworld from its power facilities becomes a little complicated. Suffice it to say that there is considerable leakage from Ontario taxpayers, that goes to unit holders and not resident care.

(We grant you all operations are not entirely Ontario based, but the point remains Ontario taxpayers are contributing to nursing home profits and not necessarily to better quality resident care).

Will funding be a specific standardized rate set provincially or will Local Health Integration Networks be able to decide on how much funding a nursing home will receive within its geographical boundary? Will LHINs be able to fund nursing homes at or below current provincial standards?

## **(m) LICENSING AND FUNDING**

There is no definition of nursing care provided in Section 93 nor is nursing care defined under Section 2 (interpretations).

Section 95 (b) – Amend to read:

“All new licenses will be issued to not-profit long term care homes.” Only where a not for profit long term care home has not made an application for a license will the Minister consider a for profit provider.

The type of ownership of nursing homes does matter.

There has been no commitment in Bill 140 to enhance the not for profit sector.

Increasing the not for profit sector makes sense from both a financial perspective and a quality of care perspective.

Municipal Homes for the Aged have public involvement through City or Regional Councils. Charitable homes have the ability to raise funds from the community that sponsors them such as ethnic or cultural homes.

It is very unlikely that a family will bequeath any money from a resident's estate to a private for profit operator, but is probable charitable homes would receive such gifts.

Charitable homes are more likely to have volunteers to assist residents than would their for profit enterprise counterparts.

A British Columbia study<sup>12</sup> found that the mean number of hours per resident per day was higher in not-for-profit facilities than in for-profit facilities, for both direct care and support staff and for all facility levels of care. Not for profit status was associated with an estimated 0.34 more hours of care per resident per day.

The study also refers to American studies that show not for profit facilities have higher direct care staffing levels and lower staff turnover rates than do for profit facilities.

The study's authors also point out that an extensive body of research in the United States links higher direct-care staffing levels in long-term care facilities to better care outcomes.

Ontario has one of the highest rates of private for profit nursing homes in Canada. More than 50% are for profit compared to Manitoba with only 15% of the homes being for-profit. Nova Scotia the next highest province for private nursing homes has less than 30% of homes privately operated.

SEIU Local 1.on finds it abhorrent that the Ontario Long Term Care Association's main criticism of Bill 140 is that a nursing home license shall be issued for a fixed term which shall not exceed 25 years (Section 100) notwithstanding that Section 101 allows for the fact that at least three years before the date on which the term of a license is to end, the Director shall following the determination by the Minister, give an undertaking to the licensee to issue a new license for a fixed term.

Renewal of licenses must be conditional on structural compliance the government must establish a capital renewal program that will reward operators who deliver the best quality care and not solely operator, who have the best infrastructure.

The need for increased staffing not only reflects the need for improved quality patient care, but must also take into account the fact that nursing home care givers are getting older and staff turn over rates are also increasing.

Dr. Arnold Relman, Professor Emeritus of Medicine at Harvard and a former Editor-In-Chief of the New England Journal of Medicine told a Senate Committee.<sup>13</sup> "The facts are that no one has ever shown, in fair, accurate comparison, that for-profit makes for greater efficiency, or better quality".

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<sup>12</sup> McGregor, Margaret I. *et.al* (2005). *Staffing levels in not for profit and for profit long term care facilities: Does type of ownership matter?* Canadian Medical Association Journal, 172(5).

<sup>13</sup> Proceeding of Standing Senate Committee on Social Affairs, Science and Technology, Issue 48 – Evidence. February 21, 2002.

This criticism clearly demonstrates that the private for profit nursing home sector is more interested in protecting its investment than ensuring quality care.

The previous Conservative government did indeed fund the construction of 20,000 new beds. 67.7 percent of these beds went to for-profit operators. (Each bed will cost the Ontario taxpayer \$75,555 over a twenty year period).

## **(n) TERM OF REPLACEMENT LICENSE**

SEIU Local 1.on agrees that each class of homes should have a specific license time period.

We believe that the Ontario Long Term Care Association's campaign, claiming that this Act will force 35,000 seniors to continue to live in 3 or 4 bed wards and to line up in wheelchairs for crowded dining rooms is disingenuous and self serving.

At no time has the private sector put a dime into the construction of facilities or the upgrading older facilities. Private operators and the OLTCA only lobby to ensure that the Ontario taxpayer foots all costs of care including construction of facilities.

Class B & C beds can be upgraded via the Upgrade Option Guidelines. It is up to private licensees to move forward and upgrade their facilities.

The Ontario Long Tem Care Association's critique of Bill 140 appears to be focused solely on the issue of the term of replacement licenses. In other words private nursing homes have only one interest in mind and that is to preserve their real estate investments. The Conservative opposition has done an effective job during the legislative debate on Bill 140 arguing that 35,000 substandard beds should be replaced.

There is no question, seniors living in these facilities deserve better accommodations. However, SEIU Local 1.on questions the motives of the private nursing home sector and the Ontario Conservative Party caucus. It's all about the money and investments, never the care.

SEIU Local 1.on reminds this Committee that it was the Conservative government that removed the standard of care hours. It did what the industry asked and Ontario seniors have paid for enhanced living accommodations by accepting less care.

Currently nursing homes are re-licensed yearly.

As an aside, we note that the present government plans to construct 1,750 new and replace 662 long term care beds.<sup>14</sup>

Rather than the current practice of the Minister of Health announcing the funding and construction of new homes on a largely political basis, the MOHLTC should establish a capital program for the construction and upgrading of nursing home facilities. These facilities should be built on population demographic factors in defined regions of the province.

Total income nursing homes receive from the Ontario government is approximately - \$2.1 billion annually.

Accommodation charges received from residents are approximately \$1 billion.

The previous Conservative government funded the construction of 20,000 new beds at the cost of approximately \$75,000 per bed. Two thirds of these beds were granted to private nursing home operators such as Extencare.

Even though the Provincial Auditor found that this funding may not be consistent with the actual construction costs incurred given that the Ontario taxpayer pays for the construction of facilities and personal nursing care, nursing home operators are virtually guaranteed to make a profit. It's like running a hotel with a guaranteed 98 per cent occupancy rate.

36,000 beds receive \$10.35 per day per bed (A & D homes).

35,000 beds receive \$2.50 to \$5.00 per day per bed (B & C homes).

C homes are not in compliance with standards set in 1972. These homes have been receiving structural compliance funding for years.

Current annual licenses under Bill 140 will be guaranteed for B & C homes for ten years. When is the last time anyone has heard that a nursing home has not had its license renewed?

So again, SEIU Local 1.on asks, what is the sound and fury of the OLTCA all about, particularly when Bill 140 provides a three year window before a license expires to discuss future plans?

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<sup>14</sup> News Release Ministry of Health and Long Term Care. *McGuinty government moves to shorten ER wait times*, October 27, 2006.

## **(o) Contracted Services**

We are concerned that (Section 109) may open the door to the contracting of specific nursing home services, as long as the contract is approved the Director.

The new Act must be more specific. No nursing function or any other function related to the care of a resident must be allowed to be contracted out to a third party. The licensee must operate and be held directly accountable to all services within the nursing home.

Section 113 allows for a competitive bidding process to be used in the issuance of licenses. This clause must be removed. Only if no non-profit entity has not submitted an application for a nursing home license should a for-profit operator be considered for a license.

## **(p) MUNICIPAL HOMES**

Section 134 and 135 allows the Director to take control or operate and manage a municipal home if the Director believes that the home is not being operated competently.

There is nothing in Bill 140 that will prevent a private operator from managing a municipal home for up to one year (Section 137(3)) or exceed one year (Section 137(4)) if the Minister so authorizes, and the Minister may authorize an extension of the period from time to time.

In other words a private operator could manage a public municipal nursing home indefinitely if the Minister so decides.

Section 134, 135, 136 and 137 must be amended to include that when a municipal home comes under the control of the Director or the Minister, staff of the nursing home must have their entitlements and rights under all labour standards and their collective agreement, if one exists, protected.

We note that Section 155 does mention that an interim manager may continue the employment of some or all employees of the licensee and does not affect the employment relationship between the employee and licensee or their respective rights against, and obligations to each other, including under any contract of employment or collective agreement and entitlements owing under the Employment Standards Act.

## **(q) INSPECTIONS**

Section 141(2) allows for certain classes of long term care homes, (Classes to be defined by regulation) to have less frequent inspections than once per year.

Remove this clause and amend Section 141 (1) to read: Every long term care home shall be inspected at least once a year.

Amend Section 146 to include all inspection reports will posted in a conspicuous place within the nursing home.

Section 151 and 152 offers a carrot and stick approach to ensuring a licensee complies with the Long Tem Care Homes Act and its regulations.

SEIU Local 1.on has over the years witnessed unscrupulous nursing home closings when profits disappeared. These sections will do nothing to ensure that quality and continuity of care is maintained if an operator shuts down the home. A \$50.00 per day per bed withholding of funding will over time become a meaningless amount over time.

To ensure that a licensee does not allow care to deteriorate further from the time a Director or the Minister takes action and a home again becomes “compliant”, under an appeals process (Section 164), it would be better to have a licensee post a bond of significant value for each bed it operates. Failure to comply with the Long Term Care Act and its Regulations within a specific amount of time means the licensee has surrendered the bond for the amount of beds in non-compliance.

Bill 140 does nothing to ensure all applicants for a nursing home license receive an extensive background review of the corporation. If a corporation is to be the licensee, the individual officers and major shareholders of the corporation and all its employees from directors or administrators and above be subjected to a background review.

Section 154 only allows a license to be revoked if a licensee has made a false statement or the misconduct of a licensee. There is no provision for criminal background checks for corporate officers and/or directors of a nursing home corporation, yet there is a provision (Section 73) that staff be screened and shall include criminal reference checks.

SEIU Local 1.on has had a long history of dealing with unscrupulous nursing home operators. Royal Crest Lifecare is a case in point.

In January 2003, Royal Crest Lifecare, which operated 17 Long Term Care and Retirement Homes with over 2,000 residents across Southwestern Ontario, declared bankruptcy.

The creditors listed almost \$85 million in debts.

The chain's owners, brothers John Martino and Aldo Martino, had according to newspaper accounts a lavish lifestyle and had been charged in the United States with fraud relating to their nursing home businesses there.

Going all the way back to 1991 SEIU had won arbitration after arbitration award confirming Royal Crest Lifecare's wrong doing and ordering the chain to comply. The chain continued to ignore the judgments.

What was amazing about this situation is that the Ministry of Health and Long Term Care never took action to ensure taxpayer money was actually being spent on resident care. The Ontario taxpayers supported the Martinos' extravagant lifestyles.

SEIU nursing home members at this chain were fortunate that their union's actions protected their interests. Under normal bankruptcy proceedings, the workers would have the last claim to any assets owed them.

In a precedent setting case the worker "victims" of this unscrupulous employer were able to win back lost wages and pension benefits.

Section 155 must be amended to reflect that any interim manager operating a long term care home, pursuant to an order under subsections 154(4), must assume and recognize the terms and conditions of employment including all collective agreements that were in place between the workers union and the licensee.

It is essential that this condition apply since, as we have mentioned in other sections, an order in respect to non-compliance may be appealed. The appeal process outlined in Section 160 to 168 inclusive may take years, if the appeal process proceeds to the courts.

## **(r) PENALTIES**

### **Section 177 (3)**

SEIU Local 1.on believes that a corporation convicted of an offence under this Act should be substantially more than \$50,000 for a first offence and \$200,000 for a subsequent offence. Individuals and corporations found guilty of an offense under the Occupational Health and Safety Act pay larger fines.

Amend Section 177(3) to read, "Every corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000 for a first offense and to a fine of not more than \$1,000,000 for a subsequent offence. Any corporation that has three convictions under this Act will have its license removed from all its homes for a period of not less than five years.

## **(s) REGULATIONS**

We note that Section 178 (2) allows for regulations defining physical, sexual, emotional, verbal and financial abuse for the purposes of the definition of abuse.

There is a serious omission in that this section will not allow a regulation to be developed that will define "neglect of care".

SEIU Local 1.on believes this is a purposeful omission because if the Minister of Health and Long Term Care had included a definition for "neglect of care" he would have needed to also include a specific standard of care as a measurement to determine neglect of care. "Neglect of care" will have a greater weight than simply allowing a definition for neglect (Section 178 (2) (c)).