ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

Bill 60, Your Health Act, 2023

TO

Ministry of Health

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Introduction

The Ontario Nurses Association (ONA) is the union representing 68,000 registered nurses (RNs) and health-care professionals, and more than 18,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, community, industry, and clinics.

ONA represents 60,000 registered nurses and health-care professionals working in publicly funded and publicly operated hospitals across Ontario. ONA also represents registered nurses and health-care professionals working in privately-operated health care settings such as long-term care homes and primary care facilities. As such, ONA is keenly aware of the detrimental impacts that the private delivery of health care has on both the conditions of work and the conditions of care.

ONA has significant, foundational concerns regarding the *Your Health Act, 2023*, which will deregulate nursing, worsen patient care, and expand the private delivery of, and private profit extracted from, health care in Ontario.

This legislation should not be passed in its current form, and this government should instead invest in the public delivery of health care. Publicly-delivered health care has been proven to be the most cost-effective, safe, and equitable model of health-care delivery over decades of experience at home and abroad.

Introducing profit motivation to the delivery of hospital care in Ontario will result in worse working conditions for nurses and health-care professionals, increased costs for government and taxpayers, and inequitable access to care for Ontarians. While this Bill attempts to rebrand “Independent Health Facilities” as “Integrated Community Health Service Centres”, we must be very clear that the intention is to permit the proliferation of for-profit, corporate businesses whose product happens to be health care services.

Further, this Bill dismantles the safeguards in place through our regulatory oversight bodies by permitting the government to define who may practice as a registered nurse (RN), registered nurse in the extended class (nurse practitioner) or registered practical nurse (RPN). The existing requirement for all nurses to be licensed by the College of Nurses of Ontario (CNO) is in place to ensure that nurses are accountable for their scope of practice to their College. This licensing structure allows nurses to have confidence that their colleagues possess the required skills, knowledge and judgement to perform their duties, and allows patients to have confidence in their health-care practitioners. This legislation would enable government to use regulations to amend the definition of “registered nurse”, “registered practical nurse” and “registered nurse in the extended class” to include individuals who are not licensed by the College of Nurses of Ontario. This is very alarming and inappropriate.

Regrettably, the details regarding the deregulation of licensing and profitization of hospital care contemplated in this bill are largely left to regulations. ONA fundamentally opposes the government's approach to policy-making through regulations rather than through legislation. This approach removes oversight, democratic accountability and transparency, and undermines the longevity and credibility of the policies enacted. Regulations can be amended by Cabinet, behind closed doors and without a public hearing process, whereas legislation is passed only by the rules of the legislature. To bury the details of this dramatic and foundational re-structuring of Ontario's public hospital care in the regulatory process is a disservice to the people of Ontario.

Nurses and health-care professionals know that investments in strengthening our public health-care system are badly needed. We have called on the government repeatedly to invest in the retention and recruitment of nurses in our public health-care system so that all patients have access to a nurse when they need care. Instead, this government is choosing to establish a separate, privately-operated health-care business stream which will pull nurses and health-care professionals out of the public hospital system. The result will be longer wait times in our public hospitals and further staffing challenges in hospitals already unable to retain and recruit the nurses they need to operate at full capacity.

ONA urges the government to carefully consider our concerns and recommendations, and to listen to the voices of front-line nurses and health-care professionals to make the investments that will truly improve access to health-care in Ontario.

Integrated Community Health Services Centres Act, 2023 (Schedule 1)

ONA has a number of concerns related to the establishment of a framework for privately-delivered, corporate health care. Fundamentally, ONA is opposed to the introduction of private profit-making in the delivery of medically-necessary health care. Allowing corporate executives to profit off of the health-care needs of Ontarians creates structures which prioritize shareholder earnings over patient outcomes. This is inappropriate and fundamentally contradictory to Canadian values of equal access to public health care for all.

Equitable Access to Health Care

The Ontario Health Coalition has shown through its research that in existing settings where surgical care is delivered privately patients are regularly refused service if they are deemed insufficiently 'healthy' to be treated at the private hospital. These higher-risk patients are refused, in order to increase profitability for the private hospital. In addition to being inequitable and unjust, this practice increases costs for public hospitals who have legal and moral obligations to treat all patients regardless of their underlying health conditions. Expanding private delivery of surgical care will further siphon low-risk, high-

profit cases out of the public system which will be left with the most complex and expensive cases.

Further, as we have seen in the long-term care sector, where privately-owned long-term care homes experienced far greater death rates during the COVID-19 pandemic than their publicly-owned and non-profit counterparts, privately-owned health care facilities erode patient care. These facilities will not be equipped to respond to emergent issues or complications, and will instead discharge patients to public hospitals if their cases become complex. For nurses working in public hospitals, this will mean an increase in patient acuity and a more unmanageable workload.

Staffing

ONA has significant concerns regarding the impact of Bill 60 on staffing in our public hospitals. While Part III (4) (e) requires prospective private clinic licensees to submit a staffing model, there are no clear requirements to ensure staff are not recruited from public hospitals. The legislation also does not place parameters around pay, benefits, and access to collective bargaining for its staff. Indeed, we have already seen privately-operated surgical clinics and nursing agencies offering to pay double the wages offered in public hospitals to attract nursing staff. This dynamic is further exacerbated by the application of wage-suppression legislation like Bill 124, which applies only to publicly-delivered health care settings and would exempt privately-operated facilities.

Ontario's public hospitals are already experiencing a devastating retention and recruitment crisis, with some hospitals reporting hundreds of nursing vacancies that are not able to be filled. Across Ontario, emergency departments have resorted to closing their doors due to understaffing. Operating rooms in public hospitals sit empty for up to 15 hours a day because staff are not available to operate these facilities for extended hours. Creating a new class of private, for-profit surgical clinics outside of the public system will further strain health human resources of public hospitals and lead to more widespread closures of emergency departments and operating rooms.

Fee for Service

Bill 60 explicitly contemplates these private facilities charging patients out-of-pocket expenses related to the provision of medically-necessary care. In Part IV, the legislation prohibits private clinics from charging or accepting payment for providing an insured person with a preference in obtaining access to an insured service. This is an important provision, but should be expanded to include uninsured persons as well to ensure that these clinics do not provide preference to paying patients from out-of-province or out-of-country.

While Part IV prohibits clinics from charging patients for OHIP-insured services, the legislation allows private clinics to practice “upselling”. Allowing private clinics to charge for uninsured services incentivizes private owners to pressure patients into paying for these services as a way to increase profits. Further, for those who rely upon documentation from medical professionals in order to receive benefits, such as Ontario Disability Support Program recipients, fees applied for providing this documentation could be prohibitive and make it even more challenging to access the services to which they are entitled.

It is important to remember the complex dynamics and power structures at play in patient-physician relationships. Many patients will place their trust in their clinicians that fee-paying options are being presented because they are the recommendation of the clinician. For many patients, this creates undue pressure to accept these fees regardless of the patient’s own preferences or ability to pay. ONA recommends that facilities not be permitted to charge fees for uninsured services and instead offer the OHIP-insured services which have been deemed appropriate by the province. If the province believes there are additional services, tests, lenses, implants, or procedures that should be offered to patient, the province can insure the same through OHIP, thus making these options available to all Ontarians regardless of ability to pay.

Oversight and Accountability

In Part II, the legislation broadens the qualifications for who may be appointed as a director overseeing and administering licenses to the proposed clinics. Currently, the Director is a public servant with pursuant public accountabilities. It is essential that this Director continue to be an employee of the Ministry of Health to instill public confidence that the director is a non-partisan, neutral decision-maker.

The Director, whether a person or corporate entity, will have extensive power to oversee and license a new private health-care business sector. This role must be insulated from corruption or influence, or even accusations of same. Allowing the Minister of Health to appoint a person or entity that is not employed by the Ministry of Health puts into question whether they can be influenced by partisanship or private interests.

Section 19 (3) provides for all information related to applications for a license under this legislation be kept confidential and exempt from Freedom of Information requests. Further, this section establishes internal processes at the clinics as the mechanism for handling complaints, again exempt from public access to information. Together, these provisions shield private businesses from public scrutiny of their finances or health and safety practices. This is inappropriate and should be remedied in the legislation to allow for public scrutiny and oversight.

Regulated Professions Amendments (Schedule 2)

ONA has serious concerns regarding Schedule 2 and the deregulation of nursing care. Through licensing, nurses are accountable to the College of Nurses of Ontario for their practice. The College sets professional practice standards and accountabilities, and regulates who can safely practice as a nurse. Permitting the government to prescribe who can serve as a nurse, rather than the College, undermines patient safety and the professional standards that nurses have upheld for decades.

It is not appropriate for the government to take on the regulation of nursing practice in Ontario. While the government has stated publicly that the intention of this provision is to allow licensed nurses from other Canadian jurisdictions to practice without first obtaining a license in Ontario, this proposed legislation opens the door to further deregulation of nursing. For example, what would prevent a government from enacting regulations to allow a registered practical nurse with a certain level of experience to practice as a registered nurse? Or a personal support worker enrolled in nursing school to work as a registered practical nurse? This government has already shown a willingness to deregulate nursing work to other health-care worker, for example removing nurses from the scrub nurse role in operating rooms and replacing them with unregulated workers.

With regards to the proposed amendments to the definition of nursing under the *Fixing Long-Term Care Act (2021)*, ONA is concerned that this deregulation could impact access to true nursing care in long-term care homes. Currently, each home is required to have a at least one RN on duty and present 24/7, as well as a Director of Care who must be an RN. The proposed legislation would allow the government to prescribe additional persons who are not licensed RNs to fill these roles. Further, current legislation limits the approval of the use of a personal assistance service device (restraint), assessment of residents for admission, and assessment of Alternative Level of Care (ALC) patients for transfer to long-term care to a physician or RN. Under the proposed legislation government regulations could prescribe additional persons to carry out these assessments and approvals. The deregulation of care for vulnerable Ontarians living in long-term care is inappropriate and unjust.

With regards to the proposed amendments to the Narcotics Safety and Awareness Act (2010), the government will have the authority to use regulations to designate who may dispense a monitored drug, collect personal health information, ensure that regulations regarding verification of identity are met, keep appropriate records of the dispensing of monitored drugs. In public comments, the government has indicated it intends to expand this role to include RNs in certain conditions, with training to be provided by the CNO. Nurse Practitioners have the requisite judgement, knowledge and skill to take on this responsibility and ONA has concerns that RNs could be placed in circumstances in

which they are called upon to practice outside of their scope without the requisite education to do so safely.

For many Ontarians, in addition to relying on qualified, licensed physicians, nurses and allied health-care professionals for their care, these practitioners are relied on as a gateway to accessing certain benefits. For example, Ontarians who received Ontario Disability Support Payments (ODSP) are required to provide routine medical documentation verifying their disability. These Ontarians could have their benefits called into question or halted in the event that their documentation is completed by an unlicensed physician, nurse or allied health-care professional practicing through the proposed exemptions set out in Schedule 2.

The regulation of physicians, nurses and allied health-care professionals through their respective Colleges is a bulwark for patient safety and professional accountability in our health-care system. To grant the government the authority to circumvent this licensing and accountability structure is unprecedented and will have far-ranging consequences.

Conclusion

This proposed legislation is unnecessary and ill-advised. The government already has the legislative capacity to privatize the delivery of surgeries and diagnostics under the *Independent Health Facilities Act*. The provisions of the *Your Health Act (2023)* will weaken regulatory oversight of private, for-profit health care clinics and undermine patient safety by deregulating the roles of licensed medical professionals including registered nurses, registered practical nurses and nurse practitioners.

Ontario's public health-care system is experiencing an unprecedented shortage of nurses. To address this shortage, ONA has time and again offered real, investment-ready solutions including repealing Bill 124 so nurses can be compensated fairly, bringing back the late-career initiative to provide mentorship to new nurses, increasing hospital base funding, and limiting the use of agency nursing. Instead, this government is proposing to expand a parallel privately-operated system whose primary objective and fiduciary responsibility will be to generate shareholder profits. This will exacerbate the staffing crisis as overburdened nurses feel they have no choice but to leave public hospital roles for the private sector.

Ontario has the capacity in our existing public hospital system to expand access to surgical care. Indeed, hospitals across Ontario have ORs sitting empty for up to 15 hours each day, which are closed because they do not have the resources to staff these ORs. The most expedient, safe, and cost-effective option to increase surgical capacity is to provide hospitals with the resources to extend operating hours in their ORs.

ONA encourages the government to listen to the voices of frontline nurses and health-care professionals rather than the voices of CEOs and corporate lobbyists. We have an

opportunity to invest in a stronger, more resilient public health care system. The government must not allow private profits and corporate interests to take precedence over patient safety and care.