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Investing in Care, Not Profit

Recommendations to transform long-term care in Ontario

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Investing in Care, Not Profit

Recommendations to transform long-term care in Ontario

Introduction

The evidence is clear, overwhelming and tragic: Canada has a fundamental problem providing quality long-term residential care (LTC) to those whose lives and well-being depend upon it. Although many LTC homes did not experience high COVID-19 death rates, over two-thirds of Canada's overall deaths occurred in these homes, a ratio more than 50% higher than in other OECD countries.[1]

This catastrophe is rooted in decades of underfunding and neglect, as the recent reports by Ontario's Auditor General[2] and Ontario's Long-Term Care COVID-19 Commission[3] (the Commission) have laid bare. Addressing these problems will require comprehensive reform: increased government funding, reduced wait lists, better standards of care and staffing, effective enforcement, and far less contracting out. Crucial to success, as the Commission rightly acknowledges, will be limiting the profit motive in delivering this essential service.

In Ontario, the large majority of LTC homes are owned or operated by for-profit corporations, a far higher proportion than in any other province.

COVID-19 deaths in these homes were nearly double the average in not-for-profit homes and almost five times higher than those in homes owned by municipalities.[4] As the Auditor General documents, as of Dec. 31, 2020, among the 15 long-term care homes with the highest number of resident deaths, 13 were operated by for-profit entities.[5]

The dominant position of for-profit LTC in Ontario is a direct consequence of policies designed to attract and support private investment in the sector. This is a fundamental policy failure and one with dire consequences, as we have learned. Profit has no place in the delivery of publicly funded and necessary health care services. As the Commission states: "Care should be the sole focus of the entities responsible for long-term care homes."

The Commission has now set out a substantial reform agenda for increasing the availability and quality of LTC. For these reforms to be effective, the incentives of LTC operators must align with the priority of achieving the highest quality of resident care. That will not be the case with respect to for-profit LTC companies, whose fiduciary obligation is to shareholders rather than citizens or those who depend on their services.

The Commission only goes part way towards a lasting solution. It rightly recommends moving to publicly operated homes, but allows an operational role for certain "mission driven" for-profit providers. In our view, such an ethical test isn't a feasible nor enforceable regulatory standard. The simple option for a company with a "sole focus" on resident care would be to transition to not-for-profit corporate status.

The Commission also—and, in our view, mistakenly—concludes that the cost of renewing and expanding LTC homes is such that the province must look to private capital to fund the sector. Under the current funding regime, funding for LTC infrastructure is drawn from the public purse. The question isn't whether the province will be paying for LTC homes but, rather, how much. Whatever the short-term benefits of public-private partnerships, they should be weighed against their longer-term risks and cost.

When properly accounted for, it is clear that public ownership and non-profit administration will, in the end, cost provincial taxpayers far less and result in LTC homes that provide a much better standard and quality of care. While government may confront short-term fiscal challenges, historically low interest rates make this a particularly opportune time to renew public infrastructure, including LTC homes.

Recommendations

The terrible toll of the COVID-19 pandemic on LTC residents has brought us to a critical decision point, one that provides an opportunity to correct the policy and structural failures that are at the root of the current tragedy and to do so in a balanced, phased and fiscally responsible way. Accordingly, we recommend that:

1. The province commit to proceeding with an orderly and phased reduction of for-profit LTC, whether in homes owned or operated by such companies. While broad reforms are clearly necessary, a significant reduction in for-profit care will be essential to success.

2. New licenses for 30,000 LTC beds, which the province has committed to, be allocated entirely to the non-profit sector[6]—municipalities, hospitals, other public entities, and not-for-profit providers.

3. Both levels of government remove the impediments that now limit or prevent not-for-profit and municipal LTC providers from accessing the funding required to build, or rebuild, LTC homes.

4. The province create an independent agency, with a mandate and resources to provide non-profit homes with the capacity they need to efficiently manage the financial and operational demands of providing high quality LTC.

5. The province establish an independent task force to take up the Commission's recommendation that it: "...urgently implement a streamlined expedited approval process for creating redeveloped and new long-term care beds that accommodates the participation of existing and new not-for-profit and municipal licenses..."[7]

6. The federal government pass LTC legislation that recognizes that LTC is necessary health care and commits to ongoing funding for these essential services.

How did we get here?

Both levels of government bear responsibility for the ascent of for-profit care. When the Canada Health Act (the CHA) was passed in 1984, long-term residential care was not included as an insured health care service.[8] It was not, therefore, subject to the principles of the CHA, nor was it required to be

included in provincial health care insurance plans. Importantly, that meant that no federal cash transfers would be made under the Act to support LTC programs and costs.[9]

Yet the nursing and personal care provided to residents in LTC are essential and necessary health care services as surely as those provided in hospitals. The pandemic has made this all too apparent. As our need for such care has grown more apparent, the federal government has taken no steps to include long-term care in the framework of federal health care law. That failure is reflective of Canada's very narrow conception of health care—one that excludes pharmacare, home and dental care; programs that are part of the medicare system of many OECD countries.

The other principal driver behind the rise of for-profit LTC has been the historical commitment of both federal and provincial governments to policies of austerity. This embrace has led them to favour various forms of public-private partnerships and is founded on the notion that investment capital is available from private sources that is not available to government. But this approach rests on a fiction. It provides no real benefits, only significant longer-term cost and risks.

The dependence on private investors simply reflects a self-imposed constraint by government, since it is effectively committed to paying for the LTC homes regardless of how they are financed, owned or operated. The rational solution is for governments, both provincial and federal, to fund LTC capital costs, as they have done in the past for public hospitals. The reluctance to do so stems from a desire to maintain a fiction of the current public accounting regime that externalizes the cost of LTC capital funding subsidies.

This questionable approach involves treating provincial capital funding subsidies as payments made on account of operating leases, rather than as capital expenses to be accounted for, as such, in the budget. Maintaining this practice is expensive, in part because the cost of borrowing is significantly higher for the private sector (0.5% to 2%) than it is for the government.

These two drivers have led Ontario down the path of privatized and publicly funded LTC, including homes operated by for-profit providers. The role of for-profit care greatly expanded two decades ago, when the government decided to subsidize the sector's capital costs. Fifty-eight per cent of Ontario's LTC beds are now owned by for-profit companies and the operation of many non-profit homes has also been contracted to for-profit companies. Several of these companies belong to corporate chains, some of which are publicly traded, including as real estate investment trusts.

The hollow defence of for-profit care

In addition to the excessive cost of privatizing LTC, there is a fundamental conflict between the profit-taking imperatives of business corporations and the efficient use of public funding to provide high quality care.

The Commission acknowledges this conflict and recommends that profit-driven, as opposed to "mission-driven", corporations should no longer play a role in providing LTC services. But the Commission doesn't go very far in elucidating its reasons for drawing this distinction, nor in explaining how such a standard could be implemented. For-profit providers, who have considerable influence, will almost certainly claim they are, in fact, as mission driven as anyone else providing LTC. It, therefore, remains important to examine the claims that the for-profit industry has relied upon to defend its position.

To begin with, and as the Commission notes, the primary obligation of a for-profit operator is to shareholders. That priority is clearly incompatible with the provision of necessary health care services, where the first and overarching priority must be to ensure the health and well-being of residents.

The basic rationale for the profit model is that competition will improve service, but this claim has no relevance for publicly funded health care services, for which there is no competitive market, only long wait lists.[10] In fact, evidence shows that just the opposite is true. Quality tends to be lower in for-profit homes, especially in those owned by corporate chains. These homes had higher rates of hospitalization and mortality before the pandemic and much higher death rates during it.[11] It is no surprise that, for some time, those seeking a place in a LTC home have expressed a very strong preference for one that is non-profit.[12]

The contention that for-profit providers are more efficient doesn't hold water either. To begin with, all homes are funded on the same basis, and funding is already so close to the bone there are simply no meaningful nor healthy opportunities for offsetting efficiencies. Lowering labour costs, which represent the largest operating cost in LTC, will mean fewer and less qualified staff. Not only does this have obvious and immediate consequences for resident care, but as the COVID-19 pandemic vividly illustrates, health care workers and support staff have key roles to play in controlling the spread of disease and infection in LTC homes.

The reality, one documented by literally dozens of national and international studies,[13] shows a clear correlation between for-profit delivery and diminished care.

Operational funding for LTC homes is barely adequate to meet resident needs at a basic level; diverting any of this public funding to shareholder profits can only result in diminished care.

Put bluntly, the competing demand on the scarce resources in a for-profit home represents the quintessential zero-sum-game in which the investors' gain is the residents' loss.

Mining scarce public funding for investor returns

The wasteful use of public funds to enlist private investment in LTC is exacerbated in the case of for-profit LTC companies, which will look to public funding as a source for the investor returns they are obligated to deliver.

Ontario currently provides both capital and operating funding to LTCs.[14] For the most part, these same subsidies are available to all LTC service providers[15] according to a sliding scale that reflects the differential costs of building homes in large cities, smaller urban centres or rural areas.

To provide an example of the extent of this funding,[16] for a 160-bed home in an urban centre, the province will provide a capital grant of $8.22 million once construction is completed and a capital funding subsidy (CFS) for the 25-year term of the license, amounting to another $36.9 million.

These capital development grants and subsidies are intended to cover the cost of construction and land acquisition, but ownership of these assets remains with the LTC provider. This is akin to the bank owning your home after you pay off the mortgage. While a non-profit provider can be expected to continue to provide LTC for the long term, a for-profit company may find better opportunities to use these assets and real estate. LTC operators are also free to treat any unused portion of the CFS as profit.

In addition to this capital grant and subsidy, the province funds the costs of day-to-day care. The funding regime is complex and scaled but, on average, amounts to approximately $66,000 per resident each year.[17] Seventy per cent of this funding must be used to pay for nursing and personal care, food, and support services. The other 30%, allocated for such things as cleaning or sanitary supplies, which are obviously necessary to the health and well-being of residents, may be taken as profit if 'unneeded' for such purposes.[18]

Non-profit homes typically spend every penny of public funding on resident care. In fact, most supplement provincial subsidies through charitable donations or, in the case of municipalities, from local tax revenues.

However, it is from these same grants and subsidies that for-profit operators are free to seek investor returns. Profits are also taken from the co-payments made by residents and their families for accommodation fees, including the premiums charged for semi-private and private rooms.[19]

As for the value of real estate under the funding model, it not surprising that some LTC homes are assembled as real estate investment trusts. It is telling that under the business case for such investments, resident care becomes incidental to a play on real estate assets.[20]

The ways in which for-profit operators achieve the gains that they must realize will vary from operator to operator and it will be different for companies that are contracted to operate LTC homes they don't own.[21]

Many LTC homes, both for-profit and non-profit, contract out specific services in areas such as food, laundry, housekeeping, building maintenance, and security. The practice will often make it difficult to establish the common purpose and teamwork that is important to providing consistent and high-quality care.

These contracts are awarded to for-profit firms, creating another avenue for profit taking.

Certain large for-profit chains also offer management services on contracts to the for-profit and non-profit homes that they do not own. To the extent that non-profit homes engage these services, for-profit incentives are at work here too, again with negative implications for the cost and quality of care. As we know, there isn't any cream to skim from the bare bones of provincial LTC funding.

In our view, the practice of sub-contracting LTC services should be strictly limited. To be licensed, LTC homeowners must have the capacity to competently provide all of the services that residents require. While the Commission says very little about the practice, the logic of its position—that LTC operations be solely focused on resident care—lends strong support for limiting such contracting.

Too big to fail?

In spite of all this, defenders of the for-profit industry argue that whatever its cost and consequences, the industry is, essentially, too big to fail. That narrative is both cynical and false. There are far better and realizable options for providing necessary long-term care. The argument points to the risk of

having permitted for-profit providers to achieve such a dominant presence in Ontario, and underscores the need to significantly reduce their footprint.

The commanding position of the for-profit industry undoubtedly allows it considerable influence over government policy for a funding and regulatory environment acceptable to investors. This also puts the lie to the claim that privatization allows governments to shift enterprise risk to its private partner. In fact, the opposite is true. It would obviously be impossible for the government to simply abandon the residents of a failed LTC home and the *Long-Term Care Homes Act* provides ample authority for it to step in.[22] In fact, Ontario has gone so far as to transfer the risks of inadequate care from providers to residents by passing Bill 218, which shields the industry from certain negligence claims by residents and families for the harm they suffered during the pandemic.

Tilting the 'playing field' against non-profit LTC

Under the Long-Term Care Homes Act, Ontario states that it is: "....committed to the promotion of the delivery of long-term care home services by not-for-profit organizations." The current capital funding regime does the very opposite. After all, it is hardly surprising that a LTC funding regime designed to attract equity investors poses a serious problem for non-profit LTCs that, by their very nature, have little, if any, access to equity capital.

As we have described, under the current funding model LTC providers must borrow the money needed to build or rebuild a LTC home. In addition to providing a modest capital grant, payable upon the completion of the construction phase, the CFS provides ongoing funding to service that mortgage, but the requirement to finance capital costs privately is a serious obstacle for most not-for-profits because they lack the capital reserves needed to qualify for a mortgage.[23] They don't have those equity reserves for the simple reason that they spend every penny of limited public funding on resident care.[24]

Without a 'down payment', and notwithstanding the promise of long-term provincial funding, commercial banks routinely turn not-for-profits away. So does the province's own lender, Infrastructure Ontario. Acceding to the commercial conventions of capital financing, Infrastructure Ontario simply doesn't consider a not-for-profit LTC home to be a credit-worthy risk.

A not-for-profit faces a similar problem if it seeks support from the Canada Mortgage and Housing Corporation (CMHC) because it, too, requires a mortgagee to have cash reserves amounting to 15% of the mortgage it is

seeking. Moreover, even if that hurdle can be overcome, as a matter of policy the CMHC will not underwrite a mortgage for a health care facility.[25]

Not-for-profits will have no more success seeking support from the Canadian Infrastructure Bank or federal infrastructure funding programs. The programs reflect the same policy aversion to direct public funding for necessary infrastructure and, accordingly, are structured entirely for the purpose of attracting private sector and institutional investment to new revenue-generating infrastructure projects.[26] By their very definition, these criteria rule out non-profit long-term care.

In the recent budget, the federal government did commit $3 billion over the next five years to LTC (the provinces will spend more than $30 billion in each of those years on LTC). However, that funding is focused on developing accreditation standards, as well as those needed to support safety improvements to LTC homes, such as improved ventilation systems.

Municipal LTC homes also confront challenges in raising capital funds and most are already cash-strapped and have limited fiscal tools.

Regulation is key, but not a panacea

The federal government committed to having the Canadian Standards Association develop certain "technical" standards for the sector. The Commission has gone much further and proposed a host of policy and regulatory reforms that should, if implemented, significantly improve the quality of LTC care. Strong regulation, effective enforcement and greater transparency are crucial.

But the effect of these welcome reforms will be blunted in cases where LTC providers have an incentive to finesse or circumvent them; especially measures that impose additional costs on for-profit providers.

Certain types of regulations can also have unwanted consequences arising from the very disparate character of the LTC industry. For example, intrusive regulatory controls that may be needed to curtail the profit-taking proclivities of private companies limit the flexibility that non-profit operators rely on to efficiently allocate scarce resources to best meet residents' needs.[27]

The next 30,000 beds

The Ontario government has committed to funding the construction of homes to provide 15,000 new beds and to rebuild another 15,000 beds in homes that no longer meet acceptable standards. Ideally, all of this new investment

would be dedicated to homes that are publicly owned and operated. With interest rates at historic lows and widespread public acceptance of the need for governments to renew public infrastructure, this is an ideal time for Ontario to abandon its counterproductive and wasteful commitment to privatized LTC.

In any event, given the inherent conflict between profit and care, and the terrible failure of for-profit companies to protect residents during the pandemic, there is a compelling case that, at a minimum, present capital funding should be entirely dedicated to non-profit care providers: hospitals, municipalities and to not-for-profit LTCs.

For this to happen:

- Both provincial and federal infrastructure funding and mortgage programs must be made available to non-profit proponents, whether they have capital reserves or not;
- A new public agency must be established to provide not-for-profits and smaller municipalities with the capacity to plan, finance and operate LTC to a best-practices standard; and
- A task force must be mandated to develop a plan to phase out for-profit long-term care, beginning with a strategy to transition beds in for-profit homes that fail to meet current design standards and operate under licenses scheduled to expire in 2025.

Building capacity for non-profits

We recommend the recent report of AdvantAge Ontario[28] to both Canada and Ontario.

That report proposes that Ontario establish a separate program stream for the non-profit LTC sector in order to facilitate capital development and re-development. It includes various proposals to address the challenges that the sector now confronts and it urges governments to remove impediments to provincial and federal infrastructure and mortgage programs. It also proposes that non-profits be given access to the Ontario Financing Authority, which offers sub-prime interest rates that are now only available to hospital-owned LTCs.

In addition to having limited access to mortgage financing, a great many non-profit LTC homes will need more support if they are to meet the complex challenges of financing and building, or rebuilding, a LTC home. There

are hundreds of non-profit homes operating in the province. Very few are organized under common management and therefore lack the efficiencies that would come with pooling certain tasks. Larger municipalities may have the necessary financial and management infrastructure to cope with the demands of building and operating a modern LTC home, but smaller municipalities are in the same boat as most not-for-profits.

As the voice for the non-profit sector, AdvantAge Ontario has been an effective advocate on policy issues when its members can agree. Nevertheless, for many non-profits there remains a significant capacity deficit in managing the financial and operational demands of a modern LTC home. Unless addressed, non-profit ownership is likely to languish.

An effective way to fill this capacity deficit would be for the province to establish a provincial agency with a mandate and the resources to provide the planning, financial, and management services to the non-profit sector. The agency would effectively replicate the organization model and benefits of chain ownership.

The transition from for-profit LTC

LTC beds in Ontario are categorized in accordance with the design standards and the duration of their licenses. New beds are expected to meet current standards, such as those concerning the size and character of rooms and common spaces, as well as the ventilation and safety systems of an LTC home.

Beds in homes that don't meet current standards—and operate under those established nearly 50 years ago—are designated as "C" beds. These licenses are scheduled to expire in 2025 and such homes will continue to operate only if they are rebuilt. According to the Ministry of Health, there are nearly 25,000 of these beds. Approximately 80 per cent are located in 185 homes owned by for-profit LTCs. In addition, there are another 5,600 "B" beds that exceed the 1972 standards but do not meet standards set in 1998. These licenses are also scheduled to expire in 2025 and these homes also need to be rebuilt.

The licensing process to rebuild these "C" beds is currently underway. Accordingly, there is an urgent need for a strategy to meet the care needs of the communities served by these for-profit homes and to reduce wait lists in those communities. The Ontario government has already signalled an intention to fund the rebuilding of most for-profit homes. Locking Ontario

into the failed model of for-profit ownership for the next 25 years would be a tragic error.

In light of the recommendation of the Commission, including that: "the province must urgently implement a streamlined expedited approval process for creating redeveloped and new long-term care beds that accommodates the participation of existing and new not-for-profit and municipal licenses…,"[29] the Ford government should immediately establish an independent task force to develop a plan for licensing new and re-developed homes to the non-profit sector.

It will be key to the success of present reform efforts for those involved to not lose sight of the need to ensure that older Canadians are treated with respect—wherever they live and/or receive care—and that those who care for them are valued for the work they do. We need to be mindful that we are creating homes, not institutions, and that in licensing "beds" we are actually providing places where people can live out their lives with dignity.

We have both the need and opportunity to chart a new course for LTC. It is essential to any reform agenda that Ontario transition from policies designed to attract and support private equity investment in long-term care. That model has failed the people of Ontario, and caused great harm to the residents of LTC homes and their families.

Notes

1 "The Impact of COVID-19 on Long-Term Care in Canada: Focus on the First Months" and "Pandemic Experience in the Long-Term Care Sector, How Does Canada Compare With Other Countries." The Canadian Institute for Health Information; and see https://www.cbc.ca/news/canada/ottawa/canada-record-covid-19-deaths-wealthy-countries-cihi-1.5968749

2 "COVID-19 Preparedness and Management: Special Report on Pandemic Readiness and Response in Long-Term Care", Office of the Auditor General of Ontario, April 2021.

3 In 2020, Ontario established a Commission under the leadership of Associate Chief Justice Frank N. Marrocco, to investigate, inter alia, the spread of COVID-19 infections within long-term care homes and the adequacy of measures taken by the province and other parties to prevent, isolate and contain the spread. Its final report was released on April 30, 2021. http://www.ltcCommission-Commissionsld.ca/report/pdf/Ontarios_Long-Term_Care_COVID-19_Com mission_Final_Report.pdf

4 "For-profit nursing homes in Ontario say ownership has nothing to do with their higher COVID-19 death rates. A Star analysis finds that's not the case." Feb. 26, 2021.

5 See Auditor General footnote #2, p. 27.

6 The term "non-profit" is used herein to include all LTC homes, other than those operated on a for-profit basis. Not-for-profit LTC homes are included under this heading and are typically private entities with charitable status. For the purpose of this analysis, LTC homes that are owned by municipalities and public hospitals are considered to be pubicly owned non-profit entities.

7 Commission report; Recommendation 63.

8 The Canada Health Act was intended to correct non-compliance with and an erosion of the goals and intentions of a universal acute care hospital and physician-based medicare system. Monique Bégin subsequently expressed regret that she had not addressed issues like home care when she brought the Act forward.

9 While for-profit LTC would have been permitted under the CHA as written in 1984, it would likely have been far less common if LTC was included as an insured health care service and funded under provincial health care insurance plans.

10 There are now more than 38,000 people on that wait list for one of the 77,000 licensed LTC beds in Ontario.

11 https://www.jamda.com/article/S1525-8610(15)00414-4/fulltext

12 As reported by the Commission on p. 39, the preferences of those on the wait list for LTC are strongly (68 per cent) in favour of finding a place in a not-for-profit or municipal home.

13 "Does Private Equity Investment In Healthcare Benefit Patients? Evidence From Nursing Homes", National Bureau Of Economic Research, February 2021, and see various studies cited in that report. For an excellent Canadian analysis of this issue, see "A Billion Reasons to Care", Office of the Seniors Advocate, British Columbia. October 29, 2020 https://www.seniorsadvocatebc.ca/osa-reports/a-billion-reasons-to-care/

14 In 2018 the province spent $4.5 billion on LTC. These costs continue to go up significantly.

15 NFP homes are also provided modest development grants.

16 https://www.ontario.ca/page/long-term-care-home-capital-development-funding-policy-2020

17 https://www.health.gov.on.ca/en/public/programs/ltc/docs/level_of_care_per_diem_funding_summary_201908.pdf (2019).

18 Ibid.

19 The most common example being the additional charges for a private room, which may represent half the beds in the home, when both the capital cost of that room and resident services are publicly funded.

20 As noted, it is the emphasis on housing, not care, that explains why CMHC is willing to underwrite certain Extendicare mortgages.

21 One indication of the profitability of the sector can be found in how some for-profit companies faired during the pandemic, including those that received very substantial COVID-19 related funding. For example, as reported by the CBC last December, both Extendicare Inc. and Sienna Senior Living Inc. paid a combined total of $74 million in dividends in 2020. Meanwhile, more than 480 residents and staff have died of COVID-19 at the companies' care homes in Ontario. https://www.cbc.ca/news/canada/toronto/big-spend-long-term-care-aid-dividends-1.5832941

22 Long Term Care Homes Act, ss. 153–158.

23 While some not-for-profit homes, such as charities, can raise money in the community, this is clearly no answer to substantial capital funding required to build new or rebuild dated homes.

24 There is broad agreement among all LTC sectors that current funding levels are inadequate.

25 CMHC support is available for seniors housing. So a project that can be characterized as housing rather than care, such as in a mixed development, can garner its support. This explains why CMHC has underwritten certain Extendicare projects in the province, while a stand-alone not-for-profit LTC home will be turned away.

26 https://www.infrastructure.gc.ca/CIB-BIC/index-eng.html

27 Tamara Daly et al., "Prescriptive or Interpretive Regulation at the Frontline of Care Work in the 'Three Worlds' of Canada, Germany and Norway", Labour/Le Travail, 77, (Spring 2016).

28 "Supporting an NFP development, ideas to mobilize the not-for-profit LTC sector," AdvantAge Ontario, March 25, 2021.

29 Commission Recommendation 63.

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