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Submission to Alberta Health
2016 Regulation Review:
Nursing Homes Operation Regulation
Nursing Homes General Regulation
Co-ordinated Home Care Program Regulation

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Since its inception in 1979, Friends of Medicare has been advocating for the protection and expansion of our universal public health care system through quality publicly funded and delivered health services that are accessible to all regardless of ability to pay.

We are thankful for the opportunity to provide recommendations on the Nursing Homes Operation Regulation, Nursing Homes General Regulation, and Co-Ordinated Home Care Program Regulation.

When Tommy Douglas worked to establish Medicare as we now know it, it was intended as a first step. Many services that are required to maintain good health remain privatized and unavailable without costly service fees, and the goal of a truly universal Medicare system was and still is to bring those services under the umbrella of public coverage delivered by facilities owned and operated by the public. Continuing care/Seniors care is part of this vision for what has been called Medicare 2.0.

Alberta has failed in moving towards this very important public goal and instead has opened up seniors care to the highest bidder and allowed it to be commodified and marketized. The Health Quality Council of Alberta report of 2014 helps to capture what we have heard over years of advocacy in the area of continuing care:

“Historical problems with accessibility and appropriateness either related to inadequate forecasting or the inability to deliver on a planned number of spaces; an inappropriate number and mix of supportive living and long term care living options; environments that are not appropriate for patients assessed needs”.¹

Alberta’s continuing care system is a patchwork of public, not-for-profit, and private delivery both for long-term care (LTC) and home care. The expanded privatization of care was sold to the public as a means to offer “choice” to patients. The reality of extensive wait lists means that instead of “choice”, Albertans are assigned the first available bed. Instead of building and upgrading publicly operated long-term care, the long-standing trend in Alberta is to close public long-term care, making the presentation of “choice” a mere illusion.

Due to the government’s failure to expand our seniors care system in proportion to the growing number of seniors, it has become a reality that families are being split up through the process of the ‘first available bed’ policy – under which seniors are being moved out of their communities and left in social isolation, far from their families and far from friends.

Families are still being told that if they turn down the first bed that becomes available, they will have to pay anywhere from \$1300 to \$1600 per month for their family member to remain in the hospital. If they choose that option, they are actually being told they will be removed from the waiting list for LTC placement. This may be more appropriately addressed through policy measures rather than regulation; however, immediate change is needed in this area.

Not only has the public option for long-term care been eroded, but private appetite to open long-term care is limited in favour of the more lucrative and under-regulated Designated Supportive Living (DSL)

¹HQCA “Review of Alberta Health Services’ Continuing Care Wait List: First Available Appropriate Living Policy – 2014. Retrieved July 27, 2016 https://d10k7k7mywg42z.cloudfront.net/assets/538f4ef14f720a200000016/FAALO_FINAL_Report.pdf, pg. 9.

facilities, where operators are not required to have registered nursing care available twenty-four hours a day, and resident fees are subject to more “market freedom” for operators to charge patients more.

The magnitude of the privatization agenda in this area has been well documented in a study done by the Parkland Institute. *From Bad to Worse – Residential Elder Care in Alberta* demonstrates the deterioration that has occurred in Alberta from 1999 to 2009. As the report shows, the availability of LTC beds in Alberta relative to the age 75+ population has slipped by 20% and is now the second lowest of any Canadian province. This decline is on top of the 40% cut in LTC beds per capita that occurred in the 1990s. Further, over the study period the number of Assisted Living beds (now Supportive Living) which provide a much lower level of care grew by 187%.²

A lack of public data has made it difficult to pinpoint just how serious the problem has become. As recent as this year, AHS has been unable to provide advocates such as Friends of Medicare with information regarding regional wait lists for long-term care.

The Alberta NDP were correct to identify this deficiency in long-term care and promised to “shorten emergency room waiting times by creating 2,000 public long-term care beds over four years, which will improve seniors care and reduce hospital congestion”.

Funding of Long-Term Care and its Impact on Care and Staffing

While AHS provides funding to these facilities for staffing care workers such as health care aides, licensed practical nurses, registered nurses etc., they do not attach strings to these funds to ensure 100% of it is spent on those staff. On top of that, the contracts awarded by AHS with public funds to private facilities and home care operators are not made available for the public to scrutinize. This lack of accountability and transparency are a disastrous mismanagement of public dollars.

The funding structure creates incentives for both not-for-profits and especially for-profit providers to pursue a low wage strategy for their staff, where many are treated unequally in pay, benefits, and workplace rights in comparison to those of similar education and experience working at public facilities. A funded dollar not spent on staff compensation is a dollar to be diverted to profits, executive bonuses, or other operational priorities. The *From Bad to Worse* report quantified the de-skilling of the staffing mix in LTC facilities. Over a 10-year period, Health Care Aides increased from 35% to 50% of the staffing complement. LPNs dropped from 45% to 37%, while RNs dropped from 20% to 17%. While all staff in seniors care facilities play a vital role in providing care to our seniors, this trend to fewer nurses and other health professionals means too many seniors are not getting the medically necessary assessment and care they need.³

The regulations under the Nursing Home Act provide the only guarantee of staffing levels in Alberta nursing homes. The Regulations specify minimum hours of combined nursing and personal care per resident, per day, and that a registered or certified graduate nurse must provide 22% of that care.⁴

² Parkland Institute “From Bad to Worse – Residential Elder Care in Alberta” 2013. Retrieved July 27, 2016 <http://s3-us-west-2.amazonaws.com/parkland-research-pdfs/frombadtoworse.pdf>, pgs. 15-16

³ Parkland Institute “From Bad to Worse – Residential Elder Care in Alberta” 2013. Retrieved July 27, 2016 <http://s3-us-west-2.amazonaws.com/parkland-research-pdfs/frombadtoworse.pdf>, pg. 31

For the past decade, the Alberta government has been using various means to circumvent these requirements:

- The government has paid numerous nursing homes to be down-graded to assisted (now supportive) living, thereby eliminating the need for registered nursing staff.
- Nursing homes have actually been reclassified as auxiliary hospitals, again to eliminate the need for specific levels of qualified nursing staff.

Measures such as these have robbed vulnerable seniors of the skilled care they require and made them the principal target of government efforts to curtail its health care costs and to increase profit margins for private providers.

The growing privatization of continuing care also results in under staffing. Many times staff on sick leave are not being replaced, and patients and care givers regularly report that there is not enough one on one care time to meet health and human needs.

Many operators also hire a large portion of staff as casual or part time, leading to many in the health care workforce working for multiple employers. Staff quickly learn that publicly operated facilities and some private ones pay and treat staff better than many of the low wage operators, creating a growing sense of inequality among care workers and support staff. It also creates a problem of retention. Competition between facilities to have shifts filled result in workers opting for the better paying facility and leaving the patients underserved in the lower paying facilities.

As a result of this precarious and unequal environment created by AHS funding policies, there have been eight labour disputes from a lockout or strike with continuing care providers since Alberta Health Services was formed in 2008. This has impacted hundreds of residents and staff, with some disputes lasting months before reaching settlement. Signs of labour unrest continue today with many staff considering strike action to achieve more equal treatment for their work.

The Alberta NDP while in opposition were regular supporters of staff addressing these issues through negotiations and job action.

Another issue with private providers has been the corporate welfare model established by the "Affordable Supportive Living Initiative" (ASLI) grants. Under ASLI grants, private providers are awarded up to 50% of the capital costs to build new facilities. This is on top of the operational funding mentioned above. This further subsidy of private providers is an unacceptable use of public money at a time when Albertans are told the public purse is stretched thin.

The Alberta NDP platform rightly identified issues with the previous government's reliance on private providers, quoting then Executive Director of Public Interest Alberta Bill Moore-Kilgannon: "We have a crisis in our seniors care system. We don't have enough long-term care. The care that's being provided is being cut back significantly... [the PCs are] pairing with private, for-profit corporations, where a lot of the taxpayers' dollars are being siphoned off." This analysis is supported by promises to "end the PCs' costly experiments in privatization, and redirect the funds to publicly delivered services".

Concerns also remain at both public and private facility-based providers about accountability and system navigation for patients and families. Alberta does not mandate that facilities support resident and family councils. These councils should act as valuable peer support for residents and families

adjusting to and dealing with the transition from home to facility, and support for dealing with facility and system based issues.

Resident and family councils should also be a part of the accountability framework for continuing care residents. While these regulations are not the place to address this, the role of the seniors advocate must be expanded to report to the Legislature rather than the Minister, and to add teeth to their role to resolve issues and enforce standards where necessary.

Home Care Services

Home Care has been AHS's best kept little secret – Alberta's home care delivery is a perfect example of how the privatization of an integral part of our healthcare system has been carried out by stealth and so normalized that people no longer know where their services are coming from.

In Alberta, the Resident Assessment Instrument for Home Care is used to determine the type of medical care that best fits the clients' needs (i.e., home care, supportive living or long-term care). This formed the basis for plan to implement Activity-based Funding (ABF) for home care.

Patient based funding calculates the needs of each patient and provides a standard funding amount based on the care provided. This funding formula places different values on various medical services by creating a pricing mechanism for individual activities, creating an internal market for long term care services, as well as home care services. Assessments to determine patients' needs are based on universal minimum standards of care instead of taking into consideration the changing medical needs of individuals. With patient based funding, different provinces are assessing services in very different ways. The question that Albertans have always had, is whether best practice drives the assessments or are budgets driving decisions that negatively impact patients?

“Long-term home health care” provided by home care agencies in Alberta by definition are programs that offer comprehensive, coordinated long-term care with the objective of preventing patients' removal from the home to a long-term care facility. These services are in large part provided by for-profit private agencies.

The experience in Alberta is that home care providers have become burdened with similar problems faced in finance driven for-profit operators because of the market pressures exerted in a competitive environment. After Alberta Health Services disastrous restructuring of home care service providers in the Edmonton and Calgary regions in 2013 Revera had backed away from providing one half of its contracted services in the Edmonton region. We have also seen non-profits like home care provider Victorian Order of Nurses unable to compete and close up shop in the province.

In Alberta home care is largely not unionized. Many of the staff may be lacking knowledge of wage and working condition inequalities, and do not have the ability to challenge them like their counterparts in facility based care. This may be set to change with the recent unionization of CBI Home Health and if others seek union representation. Ontario's home care sector faced waves of labour unrest due to inequalities in pay and treatment and it may only be a matter of time before Alberta sees the same.

The Alberta NDP has called for public delivery of home care, and we agree with that position. This experiment in privatization has led to inadequate care hours, bottom level wages, high staff turnover, and a lack of proper training. It has created a precarious work force that is undervalued and underpaid.

Stability, proper oversight, regulations, and funding under our public system are needed for home care. In response to the previous government home care restructuring, then NDP health critic David Eggen said on October 9, 2013 "This whole thing has been chaos. The government needs to reverse it now and start delivering home care publicly."⁵

Again we welcome this opportunity to provide feedback on the regulatory review. We are keenly aware that regulations and positive improvements to them will only be as good as our ability to monitor and enforce them, and we hope to see a serious increase in resources as soon as possible to ensure regulations are being followed.

Our Recommendations

Albertans value an improved and expanded public health care system and this regulatory review is a chance to make good on those values.

Our recommendations recognize the unfortunate existing reality of privatization in continuing care, but with a goal of improving care for all providers, and a focus on holding the private sector accountable. There should be an end to new approvals for private providers, and the end goal for our continuing care system should be to phase out private operation of such a critical component of Albertans health needs while improving patient outcomes and experiences in the public system.

Recommendations for the Nursing Homes Operation Regulations:

1. Transparent Wait List Data.

Albertans value transparency in health care delivery, and deserve to know that adequate resources are being targeted to communities needing long-term care services.

The regulations should mandate reporting on long-term care wait lists including:

A public listing that includes the number of people on wait lists for long-term care by encatchment area, which specifies those that are waiting in their home for placement, and those that are occupying other health care beds such as acute care or even emergency care that require long-term care placement. This listing should also include the number of people on wait lists to be assessed for possible long-term care placement. The listing should be updated monthly on a publicly accessible website.

2. Support residents and families by mandating Resident & Family Councils.

Some facilities in Alberta provide valued Resident & Family Councils to provide peer support and a venue for discussing and taking action on issues with care and services. Many facilities lack this support as there is currently no obligation to do so.

Regulations should be added that mandate all operators to support the establishment and continued function of Resident and Family Councils who are independent of facility or AHS management.

⁵ Global News "NDP calling on province to reverse private contract model for home care" 2013. Retrieved July 27, 2016. <http://globalnews.ca/news/893739/ndp-calling-on-province-to-reverse-private-contract-model-for-home-care/>

3. Improve patient input in assessment processes.

The assessment committee as established in Section 6 does not mandate patient or family involvement in the process. Regulations should be amended to ensure the transparent engagement of patients and family in the assessment process.

4. Improve care by increasing mandated care hours.

Section 14 mandates a mere 1.9 *paid* hours of combined nursing and personal care services per resident per day (hprd). Paid hours are an inadequate standard as it is broad enough to include sick time, holidays and other time off. Research published suggests 4.1 nursing hours worked per resident day⁶, and some going as high as 4.5 to 4.8 worked hprd to improve care⁷. Regulations should mandate a minimum of 4.1 hprd. and should specify care provided or worked, not care paid.

5. End the expansion of private care and service delivery. Phase out private providers.

Albertans deserve consistent quality continuing care that is under full democratic accountability in the public sector. While it may not be financially or logistically feasible to terminate existing private contracts, no new contracts should be entered into, and all new beds should be run by Alberta Health Services or its subsidiaries such as Capital Health and CareWest. As private contracts expire the public sector should become the operator of those facilities.

Section 4 – Application for Contract should be renamed Amendments to Grandfathered Contracts and have section 4(1) removed to reflect that no new applications will be considered. Regulations should be added specifying that private contracts will not be renewed and the public will assume responsibility for operations when those contracts expire.

6. End the expansion of contracted out care and service work.

When patients choose care homes there is an expectation of having services maintained as is or improved. The practice of contracting out care and services is often to for-profit providers, adding unnecessary third party profits to health care costs, and contracting out to either for-profit or not-for-profit providers creates an unnecessary duplication of administration. Regulation should be added to prohibit the practice of contracting out care and support services. Regulations should also be added to specify that where contracting out currently exists, the operator will bring the services in-house at the expiration of the contract or sooner where allowed for.

7. Keep Registered Nursing as a component of care delivery in long-term care.

Registered Nurses are an important part of the care and service team in long-term care and should remain mandatory as specified in current regulations.

⁶ Harrington et al. The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes. Health Services Insights 2016;9 13–19 doi:10.4137/HSI.S38994. ("Harrington (2016)") Retrieved July 21, 2016 from <http://www.la-press.com/the-need-for-higher-minimum-staffing-standards-in-us-nursing-homes-article-a5529>

⁷ U.S. Centers for Medicare and Medicaid Services, Abt Associates Inc. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes. Report to Congress: Phase II Final. Volumes I-III. Baltimore, MD: CMS; 2001. ("CMS (2001)") Retrieved July 21, 2016 from [http://www.allhealth.org/briefingmaterials/abt-nursestaffingratios\(12-01\)-999.pdf](http://www.allhealth.org/briefingmaterials/abt-nursestaffingratios(12-01)-999.pdf).

Recommendations for Nursing Homes General Regulations:

1. Transparency and accountability for contracts with private providers.

The public deserves to know the details of contracts for long-term care awarded to all private providers. The public, residents, and especially the staff of long-term care facilities deserve not only a transparent funding system, but an accountable one in which funds provided for providing care hours have strings attached that ensure they go to the staff providing that care. Regulations should be added that gives the Minister the authority to disclose details of all grants and contracts with private providers, and requires the Ministry to disclose those details on a publicly accessible website.

Regulations should also be added to specify that funding is to be assigned specifically for care staff and that 100% of that funding should go towards that staff.

2. End the practice of providing public funds towards building private facilities.

All new facilities should be operated publicly. Even if private care were desirable or necessary, it is unacceptable that public funds be used to subsidize the building of a private business.

Section 10 – Grants should be amended to remove the ability for private operators to receive capital grants to establish new facilities.

Recommendations for Co-Ordinated Home Care Program Regulations:

1. Transparency and accountability for contracts with private providers.

Regulations should be added that gives the Minister the authority to disclose details of all grants and contracts with private providers, and requires the Ministry to disclose those details on a publicly accessible website.

Regulations should also be added to specify that funding is to be assigned specifically for care staff and that 100% of that funding should go towards that staff.

2. Transparent Wait List Data.

Regulations should mandate disclosure of the number of people on wait lists for home care assessment and home care services by AHS Zone, to be published on a publicly accessible website and updated monthly.

3. End the expansion of private care contracts and new providers.

All new home care services should be provided by the public sector, to avoid duplication of administration, unnecessary cost cutting in the name of competition, and to ensure equal treatment of staff.

Section 5 – Provision of services in the regulations should be amended to reflect that the public sector will provide services, except where existing private contracts remain. Upon expiration of existing private contracts, the public sector will assume responsibility for delivery of home care services.