



Medicine & Morals

A Publication of the
Canadian Catholic Bioethics Institute at Assumption University

Fall/Winter 2022

Bill 7: More Beds, Better Care... But is it Really?

Recently the Ontario Government passed a controversial piece of legislation that gives power to hospitals to move patients who no longer need acute or complex care to a long-term home without consent, if necessary. Known as *More Beds, Better Care Act 2022*, the Bill which took effect on Sept 21st, is meant to address the bed shortages plaguing Ontario hospitals and attempts to stabilize a health care system on that has been on the verge of collapse for some time. The Bill authorizes attending clinicians to move patients who require an alternate level of care (ALC for short) to long term care. That is unless they can pay a \$400.00 a day fine for refusing to be transferred. ⁱ The chief function of the new law is to give the hospitals new powers to:

- Assess a patient without their consent
- Share that patient's personal information with an array of health provider companies (for and non-profit) without their consent
- Fill in the applications for the patient without their consent
- Admit a patient into a long-term care home without their consent including a long-term care home that may be a distance from family and friends.



So why is this Bill concerning?

It is important to understand how the long-term care admission process worked in the past to fully appreciate the implications of Bill 7. Historically, a person was assessed to determine whether they were eligible for long-term care. If the person could make decisions for themselves, they would consent to be added to a long-term care home wait list. Once consent was given, they could choose up to five homes to which they were willing to move. If a bed became available at one of those five homes, they would have a 24-hour period to choose whether to accept or decline the bed. If the person were unable to make their own decisions due to a lack of capacity, their substitute decision maker would consent or decline on their behalf. Throughout this process, consent was required from either the patient or the patient's substitute decision maker. ⁱⁱ

There is no doubt the ALC issue in Ontario hospitals needs immediate attention, but this Bill fundamentally changes the way society's most vulnerable people (seniors, patients with disabilities, and

those with diverse mental health needs) are treated in our healthcare system and does nothing to address the genuine issues at hand.

The Bill raises ethical issues, particularly regarding healthcare consent. Informed and voluntary consent has been upheld by Canada's Supreme Court as a fundamental right. Most recently in *Cuthbertson v Rasouli*, 2013 SCC 53, the Court held that informed consent is fundamentally "rooted in the concepts of an individual's right to bodily integrity and respect for patient autonomy." When a patient lacks capacity to consent, the focus then shifts from patient autonomy to the patient's best interests as decided by their substitute decision-maker pursuant to the Health Care Consent Act.ⁱⁱⁱ

Although Bill 7 also states these actions may only be performed without consent if "reasonable efforts" have been made to obtain consent, the language is vague and does not specify what 'reasonable efforts' means and who decides if it is reasonable. Some hospitals are far more aggressive than others with respect to discharging and transferring ALC patients.

Once a patient is declared ALC, OHIP will not cover the cost. The legislation rightly does not allow an ALC patient to be restrained or physically transferred to an LTC facility without consent, so then how does a hospital get a patient to move? The government's response is to fine them for remaining in



hospital. The rate is set at \$400.00 per day for those who refuse to leave." and because OHIP will no longer pay the patient and family must foot the bill.^{iv} One could argue that voluntary consent is not possible while being threatened with a fine of \$400.00 per day to remain in hospital. Many advocates view this financial coercion as a form of abuse which is not only ethically and morally disturbing but also open to legal challenge.^v

Bill 7 also removes the right to choose the specific homes which has historically been important to ensure individuals can be close to family or in places that have language, religion, or culture similar to their own but also, whether to accept the bed.^{vi} Reluctant patients and families may have good reasons for turning down many LTC facilities, including those who have a long-standing reputation for poor quality care, or the home may not speak their language, provide culturally appropriate food, respect their religious/cultural values and traditions, or cannot accommodate their disability. If an individual is moved to a home that is inaccessible because of distance or ease of access this may result in essential care not being provided. This is not only harmful to the resident but an added burden to the LTC staff.^{vii}

The legislation also states that if a facility cannot be found within the patient's community, then they can be admitted to a facility outside the community. For southern Ontario, the distance is within a 70 km radius and for northern Ontario it can within a 150Km radius. Should there be no home within the specified radius the patient can be placed ever further away from family and friends.^{viii} The issue of distance is troubling to families since LTC facilities often rely on them to perform numerous daily tasks such as bathing, feeding, and providing social contact for relatives.



In an open letter to the Ontario Government a number of Health care researchers address their concern over Bill 7: “research shows that premature discharge of ALC patients without considering their health complexity and needs leads to their higher chance of readmission and death, which eventually increases health care costs. Few would argue that the ability to exercise choice over one’s living situation (including location) is a fundamental Canadian freedom: why should this right be denied to people simply because they are older?”^{ix}

Physician, nurses as well as other healthcare professionals are expressing great concern regarding the ability to choose one’s living situation. Dr. Samir Sinha, Director of Geriatrics at Sinai Hospital and University Health Network and the director of Health Policy Research at the National institute on Ageing, is one such person. According to Dr. Sinha “This really can hasten people’s demise when you send them to a place they do not want to be. It may not be a place that can meet their needs.” This new long-term care plan will allow patients to be sent far from their home and their loved ones. These loved ones often include substitute decision makers who have power of authority. Being close to the long-term care resident is important for monitoring a resident’s well-being.^x



In addition to overriding decades of jurisprudence on consent in the health care setting, the Bill also has implications with regard to privacy rights. Protection of personal health information is equally fundamental, and privacy law rests on maintaining confidentiality. Bill 7 authorizes personal health information to be shared with all long-term care homes, *without consent* . Information on ALC patients (or anyone else) disclosed without consent violates privacy legislation, is contrary to human rights.^{xi}

Most recently public health advocates have officially launched a Charter challenge against this law calling it an “unprecedented and egregious deprivation” of seniors’ rights and freedoms.” The Ontario Health Coalition, along with the Advocacy Centre for the Elderly (ACE), are co-applicants for the Charter Challenge, which seeks a ruling from the Ontario Superior Court of Justice to strike down the law as a violation of the Charter of Rights and Freedoms.



The challenge will be brought under two sections Section 7 of the Charter which protects the fundamental right to life, liberty, and security and Section 15 of the Charter stipulates that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity and consideration.^{xii}

Benjamin Piper, representing the Ontario Health Coalition, notes that this bill violates all three of these rights under the Charter. He further expands this position outlining that “choosing where you will live, particularly where it is tied to the choice of medical and nursing care, is basic to an individual’s autonomy

and dignity, the essence of the rights protected under section 7". Since the bill specifically targets a vulnerable segment of the population, Piper goes on to say that an effort to obtain consent to move is in fact "coerced consent" and therefore, not a real choice at all. Based on these facts, the Ontario Health Coalition argues that Bill 7 also "infringes the right of an ALC patient to equality" under Section 15 of the Canadian Charter of Rights and Freedoms.

The Coalition holds that by forcing patients into LTC homes puts their health and well-being at risk. Bill 7 will cause suffering for not only patients and families but also causes moral distress for health care professionals who are responsible to oversee the process.

What it does not do is give those nursing homes the resources to care for more patients. Ontario, like many jurisdictions, faces an unprecedented staffing crisis in hospitals and LTC. Where will this additional staff come from? There is a compelling argument that the harm done by this Bill will far outweigh any benefits that result for others. Health advocates also hold that there are other less restrictive solutions to the problem. ^{xiii}

Conclusion

There is no doubt the Alternative Level of Care (ALC) issue in Ontario hospitals needs prompt attention. Bill 7, *More Beds, Better Care Act, 2022*, was pushed through the legislature in 13 days with minimal debate and the government used its majority to prevent the bill from being sent to committee.

^{xiv}

Health professional groups, disability groups, unions and advocacy groups have all spoken against this bill at every stage, however the government has fast-tracked the bill, shortened debates and skipped committees, thereby removing opportunities for public and stakeholder consultation.

Bill 7 does nothing to address the healthcare crisis. An Opinion piece published in the *Ottawa Citizen* (Oct.14, 2022) summarizes the issues most effectively. Bill 7 was touted as a means of addressing bed shortages that have plague our system for years. But this legislation does nothing to address the real issues – it does not address the long wait times for LTC beds, nor the poor standard of care in some LTC homes; it does not address the lack of resources in hospitals nor the lack of support services that keep ALC patients stuck in the hospital in the first place. What it does do is "separate patients from their communities and render their needs illegitimate, particularly if they do not have the financial means to "prove" their worth to receive timely, appropriate, and safe care. This creates hierarchical access to care based on a patient's socioeconomic status and perpetuates a common negative stereotype that certain patients (typically those already marginalized by society) are merely "blocking" beds for other, supposedly more deserving patients. A sustainable solution to hallway medicine must address the root causes of the problem: poor patient and resource management. It is patients' inability to access the appropriate care when and where they need it that leaves them stuck in hospitals, occupying beds for longer than necessary."^{xv}



This legislation will have implications and consequences well beyond what most Ontarians, particularly seniors, consider acceptable for themselves or their loved ones. Elderly and disabled patients are often already subjected to unacceptable levels of pressure as hospitals seek to clear out beds in a competition for too-few resources. This legislation gives express powers to override consent. Bill 7 establishes a dangerous tone of coercion and discrimination.^{xvi}

-
- *Maria Giannotti is the clinical ethics consultant for the Canadian Catholic Bioethics Institute as well as a Spiritual Care Practitioner in Palliative Care.*

References and Resources

- ⁱ More Beds, Better Care Act, 2022, S.O. 2022, c. 16 - Bill 7. <https://www.ontario.ca/laws/statute/s22016>
 - ⁱⁱ Home and Community Support Services LTC resources <https://healthcareathome.ca/long-term-care>
 - ⁱⁱⁱ Cuthbertson v Rasouli, 2013 SCC 53 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do>
 - ^{iv} *A public policy dead end: The More Beds, Better Care Act*, <https://healthydebate.ca/2022/09/topic/more-beds-better-care-act/>.
 - ^v <https://carewatchontario.com/bill-7/>
 - ^{vi} More Beds, Better Care Act, 2022, S.O. 2022, c. 16 - Bill 7 <https://www.ontario.ca/laws/statute/s22016>
 - ^{vii} **More Beds, Better Care Act, 2022, S.O. 2022, c. 16 - Bill 7** <https://www.ontario.ca/laws/statute/s22016>
 - ^{viii} More Beds, Better Care Act, 2022, S.O. 2022, c. 16 - Bill 7 <https://www.ontario.ca/laws/statute/s22016>
 - ^{ix} *New 'more beds' legislation adds up to worse care*, <https://www.thespec.com/opinion/contributors/2022/09/09/new-more-beds-legislation-adds-up-to-worse-care.html>
 - ^x *New 'more beds' legislation adds up to worse care*
 - ^{xi} <https://carewatchontario.com/bill-7/>
 - ^{xii} <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>
 - ^{xiii} Hannah Alberga *Ontario long-term care law deprives seniors' right: advocates* | CP24.com, <https://www.cp24.com/news/ontario-advocates-fight-ltc-law-posing-an-egregious-deprivation-on-seniors-rights-1.6161839>. November 21, 2022.
 - ^{xiv} <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-7/status>
 - ^{xv} *Schreyer, Dephoure and Ahmed: Ontario's Bill 7 is not the solution to ...*, <https://www.msn.com/en-ca/health/medical/schreyer-dephoure-and-ahmed-ontario-s-bill-7-is-not-the-solution-to-the-hospital-bed-shortage/ar-AA12Xo7q>.
- Fact Checker: Ford Government's Claims Re. Forcing Elderly Patients into Long-Term Care in Contravention of their Right to Consent
<https://ochu.on.ca/2022/08/26/read-the-ontario-health-coalitions-bill-7-fact-checker/>

Food For Thought:

Has our Church's mission been Christlike? Gays and Lesbians in the Catholic Church

There are many, many questions dealing with faith issues surrounding those brothers and sisters who self-identify as attracted sexually and exclusively to persons of their own sex. In this short questioning article, therefore, I am restricting my remarks to those persons who are of male-male orientation or female-female orientation. I am also limiting my remarks to what are known as same sex unions. In these days of general internet expertise and educated articulation, one must be careful not to insult a group. I hope not to do so.

My questions are concerned with what help or advice do priests in our diocese offer to people facing same-sex questions and their Catholic faith. For example, how do practicing parents minister to their

thirteen-year-old daughter who tells them that she is lesbian? Or their eighteen-year-old son who tells them that he is in love with a male classmate? Should Catholics attend a gay marriage? And many more questions.

Official Catholic teaching seems clear enough. Sexual intercourse is morally permitted only between a man and a woman who are married to each other.

But may this teaching change? There have been changes to Catholic moral teaching through the years. It took us a long time to realize that slavery is diabolical. Even a change recently between the teaching of the Catholic Catechism about the death penalty, the correction of Pope John Paul the Second and the definitive denial of Pope Francis is quite dramatic.

And so, we come to the ambivalence of the notion of universal. Of course, there are universals, even with respect to practical moral matters. For example, the direct killing of an innocent human being for any reason is always immoral.

But let us look at the matter of same-sex unions and Church teaching. Marriage is unique in its particular bonding and its co-creation of human life. But why should this true teaching about one reality (marriage) apply to a different reality (a union not given to producing another person)? Persons in a same-sex union are called to loving service to each other, and together of being of service to the community. Why should the Church teaching about marriage be imposed these persons? Why should such persons be denied the mutual love expressed, strengthened, and enjoyed by them?

One early respondent wonders why science should be excluded in the question. Formerly, we thought of same-gender attraction as an aberration that could be corrected as other medical or psychological pathologies. Now we know it as another way of being human.

Of course, people living in a same-sex union are subject to temptations like those of married people – unfaithfulness, abuse, and the like. But even here, we learn about heroic love and forgiveness. A man in such a union for years learned that his partner has a life-threatening disease. Instead of walking out of the union, he nurses and cares for his partner.

All we are asking is a conversation about pastoral care of gays and lesbians, our brothers and sisters in Christ. Has our Church's mission been Christlike?

Rev. Leo Walsh CSB, is the Executive Director of the Canadian Catholic Bioethics Institute and Vice-Principal, Academic Assumption University

We would love to hear from you! Please direct any feedback or comments to our staff:

Rev. Leo Walsh CSB, STL, STD: Executive Director CCBI-A

Assumption University

Phone: 519-973-7033 Ext.3377 Email: leowalsh@basilian.org

Maria Giannotti MA, MSc Bioethics: Editor and Ethics Consultant

Email: CCBI-A@assumptionu.ca

IF YOU ARE CONCERNED ABOUT BILL 7

You may write a letter to your MPP using the template below or go to <https://ochu.on.ca/2022/08/26/speak-up-against-bill-7-2/> and fill in the information required to send by email

Subject line: Protect Patients' Rights – Stop Ford's Bill 7

Dear Minister Calandra,

Bill 7 is an attack to the human rights of all Ontarians needing ongoing medical care. The legislation will neither add more beds nor provide better care for Ontarians. Instead, it will strip the basic rights of patients and permit the authorization of someone's admission to a long-term care (LTC) home without their consent and their relocation to a community hundreds of kilometres from family and friends. This is cruel, traumatic, and does not ensure that people are placed in a health care setting that can provide proper medical care and that is most conducive to their ongoing medical needs.

Our health care sector is already overworked and understaffed, and all your Bill will accomplish is to shift people who need convalescent care from hospitals, where they are already receiving care and close to their families and loved ones, into an already overburdened and understaffed LTC sector, where there is a waiting list of 38,000 people for beds. Bill 7 will not do anything to fix our health crisis and will only further privatize healthcare by forcing seniors and other patients into the empty beds in undesirable private long term care facilities.

It is shameful that your legislative solution to the very real hospital staffing crisis will simply ensure that the unfilled beds in private sector long term care facilities are fully occupied. No one wants to go to these facilities given their tragic record during the pandemic, patients deserve the right to appeal, and a right to be heard through a full consultation and legislative process.

Minister Calandra, I am calling on you to commit to protecting the dignity of patients by withdrawing Bill 7 and making real investments in Ontario's beleaguered health care sector to ensure that patients receive the proper level of care in an appropriate facility. If you will not withdraw the Bill, then I ask that your government hold public hearings on this legislation.

Sincerely,

Your Name

Your Email