



Bill 18, Stronger Workplaces for a Stronger Economy Act, 2014

The Issue

Home Care Service Provider Organizations are at risk of being directly affected by Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014*, thereby seriously compromising the health and social care provided to thousands of Ontarians across the province.

Background

Home Care Service Provider Organizations (SPOs) employ workers that are given assignments to provide service to the organization's clients. These clients may include Community Care Access Centres (CCACs), institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians. As individuals, Ontarians may retain SPOs to provide care while in facility-based care, typically to supplement the services already provided.

By working with a home care SPO that is a member of an association, both institutional clients and individuals are assured a standard of service that includes careful selection of staff; supervision and continuous education; adherence to Ontario's labour practices and occupational health and safety standards, and staff liability coverage that includes appropriate worker compensation insurance.¹

Members of Home Care Ontario are unique in that they annually complete the Association's Quality Template that establishes a self-evaluated level of compliance with Home Care Ontario's Standards. This is not a legislated requirement, however members of Home Care Ontario believe that reflective self-assessment and evaluation is an important way of encouraging continuous quality improvement.² The Association also strongly endorses accreditation and at this time 94% of members have achieved and/or are seeking accreditation with provincially approved organizations.³

A temporary help agency is a company that sends its employees on temporary work assignments to its client businesses. The temporary help agency is the actual employer for the purposes of the ESA.⁴ Temporary help agency employers are governed by the Employment Standards Act (ESA), as are most employers in Ontario.^{5,6}

The ESA currently provides a specific exception applicable to the home care industry:

- a) Where an 'assignment employee' is 'assigned' to perform the work 'under a contract' between a

¹ Home Care Ontario (OHCA), (2010). Why Choose a Quality Home Care Organization? Retrieved from <http://www.homecareontario.ca/docs/default-source/position-papers/why-choose-a-quality-home-care-org-sept-2010.pdf?sfvrsn=6>

² A Balanced Scorecard report to the community is produced annually and can be found at <http://www.homecareontario.ca/about-us/reporting-to-the-community>

³ See information about Home Care Ontario members at <http://www.homecareontario.ca/our-members/about-members>

⁴ Temporary Help Agency Employees Employment Standards Fact Sheet, November 2009 https://www.labour.gov.on.ca/english/es/pubs/is_tha.php

⁵ Ibid

⁶ The ESA does not apply to employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways; individuals performing work under a program approved by a college of applied arts and technology or university; a secondary school student who performs work under a

- Community Care Access Corporation (CCAC)⁷ and the worker or the worker's employer; ***and***
- b) The 'assignment employee' is providing professional services, personal support services or homemaking services as defined in the Long-Term Care Act, 1994 (renamed the Home Care and Community Services Act, 1994 as of July 1, 2010)⁸.

CCAC funded home care service represents approximately 63% of purchased home care services.⁹ Home Care Ontario estimates that in excess of 20 million hours of service from home care SPOs are also retained in addition to the care that is provided through the public funded CCAC system.¹⁰ The ability to retain services from a home care SPO when needed is a cost effective way of meeting the demands of the health care system 24 hours per day. Institutions are able to respond to the need for flexibility without incurring staff overhead costs. They are also able to increase and decrease services in a timely manner by holding SPOs to strict performance criteria.

The provisions within Bill 18 are designed to protect the interests of the vulnerable worker. As responsible employers, Home Care Ontario SPOs fully support the protection of workers' rights to appropriate pay and safe working environments. Members of Home Care Ontario assume full responsibility for employees' vacation pay, wages and educating staff regarding their rights and responsibilities under the Occupational Health and Safety Act. Institutional and individual clients can be assured of the protection of worker rights through these clear employer responsibilities. The provisions in Bill 18 governing workplace safety and insurance, however, have serious potential for deterring the use of SPOs within the broader health system and, by so doing, could ultimately compromise health care service delivery to Ontarians.

Workplace Safety and Insurance

Bill 18 will limit the use of temporary health care staff as it imposes the risk of additional costs on the health care facility, and potentially every Ontarian, purchasing care privately from home care service provider organizations. Bill 18 proposes to remove the costs associated with a temporary worker's injury from the experience rating of the actual employer (the temporary help agency) and place it with the client employer contracting with the temporary help agency. In the context of health, this transfer of cost and responsibility would move from the home care SPO employer to the health care institution (e.g. long term care facilities, hospices and hospitals) and possibly to individual Ontarians and their families who choose to retain care privately in their own homes.

Health care institutions within Ontario adhere to the Occupational Health & Safety Act and to the Employment Standards Act assuring their staff with the inherent protections. It is unreasonable to expect these organizations to assume responsibility for SPO worker injury costs regardless of the circumstance and, as a result, to be responsible for securing relief from the SPO through cost transfer. Home Care Ontario SPOs recognize that they share accountability for safety and, as the employer of staff, have responsibility to their employees and for pursuing cost transfer if they believe it is warranted.

⁷ Within the meaning of the Community Care Access Corporations Act, 2001

⁸ "Homemaking" services include housekeeping, laundry, ironing, shopping and banking services, preparing meals, and planning menus, among others. "Personal Support" services include assistance with personal hygiene activities and the routine personal activities of daily living. "Professional Services" include nursing, social work, physiotherapy, and dietetics services are considered to be professional services.

⁹ Home Care Ontario - Facts & Figures - <http://www.homecareontario.ca/public/about/home-care/system/facts-and-figures.cfm>

¹⁰ Ibid.

The question regarding injury costs being applied to an individual Ontarian who retains a home care SPO privately to provide care in their place of residence has yet to be clarified. However, most Ontarians and their families who privately retain a home care SPO¹¹ could not afford the cost of a worker injury.

Home Care Ontario members all carry WSIB insurance¹² and are fully accountable for their workers' injuries. These SPOs provide extensive training to staff and work closely with their clients to ensure a safe work environment. Where costs should be legitimately transferred, the SPO follows the existing processes in place through the WSIB.

Recommendation

In order not to significantly disrupt the supply of healthcare staff within the province Home Care Ontario recommends:

- That members of Home Care Ontario, are expressly exempted from the provisions in Bill 18.
- And/or that Home Care Ontario members are expressly excluded from the definition of a temporary help agency.

Conclusion

Home Care service provider organizations are vital to the delivery of health care in Ontario. They provide necessary health care services to individuals in their homes, however so defined. **Members of Home Care Ontario subscribe to rigorous performance standards and are fully accountable for adhering to all labour legislation.** Without modification to the issues pertaining to workplace safety and insurance, Bill 18 will seriously erode the home care SPO sector and compromise care to Ontarians and the smooth function of the health care delivery system.

About Home Care Ontario

Home Care Ontario, *the voice of home care in Ontario™*, is a member-based organization with a mandate to promote growth and development of the home care sector through advocacy, knowledge transfer, and member service. Home Care Ontario members include those engaged in and/or supportive of home-based health care. In Ontario, service provider organizations are responsible for providing nursing care, home support services, personal care, physiotherapy, occupational therapy, social work, dietetics, speech language therapy and medical equipment and supplies in the home to individuals of all ages. An estimated 54 million hours of publicly and privately purchased home care service is provided annually across the province.

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¹¹ Ibid.

¹² This is a requirement for membership of Home Care Ontario