

CUPE Ontario

Submission on

***Bill 21, Retirement Homes Act, 2010 —
(An Act to regulate retirement homes) to the***

Standing Committee on Social Policy

**The Hon. G. Phillips
Minister Responsible for Seniors**

Candace Rennick, Secretary-Treasurer, CUPE Ontario

Stella Yeadon, Legislative Liaison, CUPE

Shalom Schachter, Long-Term Care Researcher, CUPE

May 10, 2010

Queen's Park
Committee Room 1
Toronto, Ontario



**CUPE Ontario Bill 21 –
An Act to Regulate Retirement Homes**

May 10, 2010

CUPE, in Ontario, represents 230,000 members. The majority of our members work in the broader public sector. However, CUPE also represents several thousand members, covered by 51 collective agreements, who work in retirement homes across Ontario.

It is our contention that the government should be focused on a comprehensive strategy for a continuum of elder care that ensures universal health care access and public funding, while increasing public provision of long-term care, home care, as well as aging at home and assisted living services. Retirement homes are private, for-profit enterprises, where residents pay full fees out-of-pocket and, as such, these residences have no significant role to play in a system for elder health and care where access is universal.

While CUPE Ontario supports, in principle, the government's goal to enact a regulatory regime for retirement homes in order to better protect vulnerable seniors residing in these currently unregulated private homes, Bill 21, as currently written, falls short of that goal. It is troubling that Bill 21—introduced by the Seniors Secretariat—does not fall under any particular government ministry as part of a legislative regime and, as written, has little enforcement mechanisms to ensure that adequate care standards and oversight are provided.

Bill 21 – Part I – Interpretation

Currently, there are tens of thousands of Ontarians on wait lists for long-term care (LTC) beds. Simply put, the government is not funding the opening of enough LTC beds to meet the needs of an aging population in our province. We are extremely concerned that hospital patients, who are now receiving care in alternative level of care beds, may be moved into these residences as families, faced with no possibility of accessing an LTC bed for a loved one in their immediate area without a long wait period, have no choice but these private retirement homes.

CUPE Ontario does not support the expansion of elder care into the wholly privatized retirement home sector where residency costs, paid entirely by individuals, run between \$1500 and \$5000 per month. It is the expansion of government-funded LTC beds that would be in the best interest of the thousands of elderly, frail individuals with complex medical conditions who require assisted care beyond what would enable them to remain in their own homes. Therefore, retirement homes—even under new regulatory legislation—should not be seen by

the government as alternatives to LTC facilities and chronic care hospitals which are publicly-funded and, as a result, subject to higher standards and governing legislation under the oversight of the Minister of Health and Long-term Care.

CUPE Ontario recommends that, under Section 2, the role of retirement homes be limited and clearly differentiated from LTC homes and chronic care hospitals by limiting the types of health care services retirement homes can provide. In addition, retirement homes should be brought under the regulatory oversight of a government ministry that is currently responsible for similar forms of residential settings, such as group homes and hostels.

Bill 21 – Part II – Retirement Homes Regulatory Authority

Bill 21 establishes a self-governing, regulatory authority and allows for authority members to come directly from the industry that the authority is charged with overseeing. The legislation makes no mention of public interest or the role of seniors, advocacy groups or workers' representatives (bargaining agents).

Given that, under this legislation, the government will only appoint a minority of the members of the regulatory authority, it is akin to putting the fox in charge of the hen house when it is likely that the 'regulatory authority' will be dominated by the private retirement home industry itself. Under Bill 21—as currently written—retirement homes will be essentially self-regulating with no government ministry oversight.

CUPE Ontario recommends that Section 12(6) be amended as follows:

- **that the Board of Directors of the Regulatory Authority include representatives from Residents Councils/Resident Council Assistants, and the union(s) representing front line workers, and that at least one Board member come from each of these two categories. A similar amendment should be made to Section 12(8)**
- **that Board appointments are made by Cabinet**
- **that Board appointments are made for a 2-year term**
- **that Board members are appointed for a maximum of three, 2-year terms.**

Fees

Under the legislation, the Regulatory Authority may set its own fees in order to obtain revenue to administer the *Act*.

CUPE Ontario recommends that Section 21 be amended to prevent the Regulatory Authority from levying a fee for:

- **Submitting a complaint**
- **Accessing information covered under Section 54,55,63**

Risk Officer and Complaints Review Officer

Bill 21 allows for both a risk and a complaints review officer as part of the Regulatory Authority.

CUPE Ontario recommends that Sections (24) and (25) be amended to require the Regulatory Authority to provide adequate resources for the Risk Officer and the Complaints Review Officer to carry out the mandate of their respective roles.

Bill 21– Part III – License to Operate a Retirement Home

Licensing Procedure

Under Bill 21, the Regulatory Registrar is to give notice outlining the reasons to operator applicants for denying or revoking a license.

CUPE Ontario recommends that the Bill be amended to require notice to the public with the reasons a license is to be given, denied or revoked.

The amendment should also include a process whereby the public can comment on the licensing process decision by the Registrar.

This section should also include an amendment that, in the case of chain ownership, a license applies to a specific residence and is not transferable within the chain's other property holdings.

Home Closures

Section 49 (b) prohibits a home from closing without giving the amount of notice prescribed in the regulations.

CUPE Ontario recommends that Bill 21 be amended to require that the notice be at least 90 days. As well, Section 121, the section setting out the regulation making powers, appears to be silent on the right to set notice periods for closures. This should be corrected.

Bill 21 – Part IV – Residents’ Bill of Rights

In Part I – Interpretation, the Fundamental Principle section includes that retirement homes be operated as a place where residents live with dignity, respect, privacy and autonomy, in **security, safety and comfort**, and can make informed choices about their care options. But, the full set of these same principles are not included in Section 51 – the Residents’ Bill of Rights.

Therefore, CUPE Ontario recommends that Section 51(1)(8) be amended to include the following principles as part of residents’ rights: security, safety and comfort.

The Residents’ Bill of Rights, in CUPE Ontario’s opinion, is enforceable as a contract. Under the ‘contract mechanism,’ residents would have to take the Licensee to court to achieve restitution. We believe this puts undue hardship on residents who are frail or have complex health needs.

CUPE Ontario recommends the residents’ rights section of Bill 21 be amended to be enforceable in two distinct fashions:

- a) by order of the appropriate Ministry (such as the Ministry of Community and Social Services – the Ministry that currently has legislative oversight and is responsible for similar forms of residential settings, such as group homes and hostels) who would also have ultimate responsibility to ensure that homes are inspected for compliance, and**
- b) to permit residents to withhold a portion of their payments to the Licensee and that, if the Licensee believes that the withholding is too great or unwarranted, the Licensee should be obliged to make the arrangements for a tribunal hearing under the *Landlord and Tenant Act* to be convened in the Home to hear the dispute.**

Care and Safety

Section 60(1) requires homes to provide the care that is prescribed in the care standards. However, Section 121, the section setting out the regulation making powers, appears to be silent on the right to set care standards.

CUPE Ontario recommends an amendment to ensure that Bill 21 regulations include the residents' right to a set care standard.

Section 62 requires that retirement homes have plans of care for each resident and that the plan be based upon an assessment. However, subsection 2 states that no assessment can be done without consent.

CUPE Ontario recommends that the Bill be amended to require that at least the initial assessment is a condition of admission.

Subsection 1 does not set a maximum time line for the initial assessment and should be amended accordingly.

Level of Care Need

Section 63 recognizes that an initial assessment, or a reassessment, may indicate that the resident qualifies for admission into a long-term care home.

CUPE Ontario recommends the Bill be amended to require that the resident be advised that he or she so qualifies for admission into a long-term care home. The Bill should be further amended to require the Registrar to keep a record of the number of residents in each home who have been assessed as being qualified for admission to a long-term care home. The Registrar shall keep a subset record of the number of residents who are admitted from a hospital who are assessed as qualified to be admitted to a long-term care home as well as the name of the hospital from where the resident came. This information shall be readily available to the public.

Staff Qualifications and Training

Clause 65(1)(b) indicates that staff hired by Licensees must have the qualifications that are prescribed by regulation. Nowhere, in Section 121, is there a specific provision empowering the government to enact such regulations. Should the government decide to enact regulations, it is crucial that there first be consultation with Unions representing front line workers in such homes.

Subsection 65(5) requires specific additional training to be provided to direct care staff. Clause 1 specifies abuse recognition and prevention. There is no mention of neglect recognition and prevention. There is also no recognition that special training is required when the perceived violator is a supervisor.

The Bill must be amended to correct these gaps.

Secure Units

Section 70 identifies special procedures that may be used in a secure unit. However, persons requiring the care and protection of secure units are not able to be properly cared for in retirement homes, only in long-term care homes.

CUPE Ontario recommends the Bill be amended to prohibit retirement homes from establishing secure units and to prohibit admission or maintenance in retirement homes of residents requiring placement in secure units.

Bill 21 – Part V – Enforcement and Inspection

The process identified in Section 77, for enforcement and inspection of retirement homes, is deficient in that there is no built-in systemic aspect to ensure the inspector gets information from all relevant sources. The process does not require that inspectors consult with residents and front line staff.

CUPE Ontario recommends the Bill be amended to require such consultation in every case and where there is a residents' council, and, if staff are unionized, then the consultation should be with representatives of both entities.

Subsection 77(13) obliges the inspector to provide the Licensee with a draft copy of the report and Subsection 77(14) requires the inspector to consider the submissions of the Licensee when preparing the final report.

CUPE Ontario recommends these subsections be broadened to include parallel obligations on the inspector in respect of residents and front line workers.

Section 81 to 88 sets out provisions for dealing with complaints. While Section 88 allows complaints to be referred to the Complaints Review Officer, the right is too limited. Such a right only exists if the Registrar decides to take no action, but does not exist if some, but inadequate, action is taken. The Registrar is not obliged to require the Licensee to take whatever corrective action is recommended by the Complaint Review Officer. As well, subsection 88(11) states that the ruling of the Complaints Review Officer is not subject to appeal.

CUPE Ontario recommends that the Bill be amended to fill all these gaps and create the same right of appeal as exists for orders of the Registrar.

Compliance Orders

Section 90 has flaws similar to those set out above in respect of Section 77.

CUPE Ontario recommends Subsection 90(3) be amended to require the Licensee to secure and include the views of representatives of residents and front line staff in respect of the adequacy of the corrective action plan in the document sent to the Registrar in clause (a), and a new subsection (5) should be added to empower the Registrar to remit the plan back to the Licensee with direction to make specific amendments to the plan.

There should be a further amendment requiring the Licensee to make the corrective actions set out in the remedial plan.

Order to Revoke License

Consistent with the comments above in connection with Sections 41 & 77, residents and front line workers should have the right to become parties to such proceedings. They should have the same rights as Licensees in terms of making and reviewing submissions.

CUPE Ontario recommends Bill 21 should be amended accordingly.

Bill 21 – Part VI – Appeals

The changes referenced above for Section 95 apply equally to Section 100. The rights in this section should also apply to cases where there is a decision of the Registrar not to issue an order.

Bill 21 – Part VII – Whistle-blower Protection

While Section 115 outlines a measure of whistle-blowing protection, we have serious concerns that retirement home workers who ‘whistle-blow,’ will not be unjustly terminated, will have no redress or process of appeal under the legislation to have their job reinstated or receive compensation or outstanding pay.

CUPE Ontario believes that the whistle-blowing actions under Bill 21 are too narrow and must be broadened to include reporting to the government ministry given legislative oversight over retirement homes and the employees’ union.

As well, the protection is inadequate in that it doesn’t ensure deterrence.

The Licensee may willingly subject himself to a small monetary penalty in order to get rid of the whistle-blower and send a strong message to anyone else contemplating whistle-blowing that they also will be dealt with harshly and that the legislation cannot effectively protect them. Moreover, while the whistle-blower is subject to the immediate retaliatory action of the Licensee, it will likely take a long time to get the Licensee to Court, and the retaliated whistle-blower may not be around to testify leaving the Licensee to escape liability.

CUPE Ontario recommends that this section must be amended to prevent a Licensee from imposing any penalties on an employee once that employee has made a whistle-blowing charge without a labour tribunal first upholding the validity of the Employer’s proposed discipline.

General

At five years, the period to review the legislation is too long.

CUPE Ontario recommends that Section 120 be amended so that the initial review of the legislation takes place within two years.

COPE491/EW