



Advant**Age**
Ontario

Advancing Senior Care

Response to Proposed Regulations Pertaining to the Health and Supportive Care Providers Oversight Authority

January 15, 2024

Proposed regulations under the Health and Supportive Care Providers Oversight Authority

Introduction

As one of the largest seniors' care associations in the province, we appreciate this opportunity to have our voice heard on the proposed regulations to establish a Personal Support Worker (PSW) Oversight Authority (the Authority).

In every long-term care home in Ontario and in many seniors' supportive housing buildings and day programs, PSWs play an invaluable role in providing high-quality care and companionship to seniors. Over half of the PSWs in Ontario work in long-term care, where they provide the vast majority of daily hours of care to residents. It is therefore vital that the impacts of the proposed Authority on our sector be considered.

As we have raised in previous submissions and in our ongoing dialogue with government, Ontario's seniors' care sector is facing a myriad of challenges: we are struggling in the aftermath of the province's worst public health emergency in living memory—one that exacted a disproportionate toll on seniors in congregate care settings; we are continuing to grapple with persistent underfunding; and our staffing situation has become so dire that it is now commonly known as a health human resources (HHR) crisis.

All of this is occurring as the long-term care sector adapts to a new regulatory regime and increasingly complex reporting requirements. The addition of the Authority has the potential to be a positive force in seniors' care and in the health system more broadly. If done properly, it could create pride in the PSW profession, instill public confidence in the quality of care in long-term care and protect vulnerable seniors populations from potential abuses. However, it also has the potential to exacerbate these challenges by creating more complexity and confusion and potentially discouraging PSWs from entering or remaining in seniors' care or long-term care. As proposed, it could also put additional strain on long-term care homes' limited resources.

In this submission we will begin with general comments that outline our concerns with the proposal in its present state and make recommendations that, after consulting with our membership, we believe could help the Authority achieve its stated aims. In the second half of the submission, we respond directly to the discussion questions shared by both ministries following the webinars. As this Ministry of Health proposal has also necessitated changes to Ontario Regulation 246/22 as proposed by the Ministry of Long-Term Care, both submissions should be read together.

Commentary

Mandatory versus Voluntary

As proposed, registration with the Authority is voluntary. This underscores the most conflicted concern our members have with this proposal, as it is hard to see how the government can achieve its objective of protecting vulnerable populations by guaranteeing that a PSW in the province will have a minimum level of qualification, oversight, and be subject to a complaints and disciplinary process to which the public can appeal. This guarantee is mooted by the voluntary nature of registration. It is also difficult to understand what would compel a PSW to

go through the registration process and pay whatever fees end up being set. We appreciate that the proposal gives employers the option of making registration a condition of employment, but foresee very little uptake with this, given the previously noted HHR challenges in the sector.

Another complication arising from the voluntary nature of registration is the explicit statement in the proposal that employers may make registration a condition of employment. Already, some homes are hearing from family and resident councils that they should be pursuing a mandatory registration requirement for PSWs. Given the HHR challenges that make many homes and seniors' care services providers reluctant to pursue the mandatory option, this has the potential to put employers in conflict with seniors and their families. Especially in communities where there is not a critical mass of seniors' care organizations requiring registration, it puts an employer at a potential hiring disadvantage in the middle of an HHR crisis in healthcare. This is a difficult position to put employers in.

The Ministry's rationale for voluntary registration is to not disrupt the workforce, but it is also foreseeable that a mixed, two-tier workforce of unregistered and registered PSWs, and a bifurcation of employers whereby some do and others do not require registration with the Authority, will contribute to workforce disruption and confuse seniors and the public. There is also a false assumption of a quality of care difference that may not actually exist.

On the other hand, while we cannot accurately estimate the number of PSWs who would exit the sector (or not join it in the years ahead) if registration with the Authority were to be made mandatory, we know it is not zero. Given the present circumstances, any attrition of the long-term care or seniors' care workforce is cause for concern.

There are no easy answers here. Mandatory and voluntary registration both have their merits. For now, as the Authority is set up and gradually builds capacity and works towards opening each of the registration pathways, voluntary registration may be best. In a few years' time, once the Authority has demonstrated its capacity to assess, register and discipline PSWs, it may be preferable to move towards a mandatory registration regime. The most important caveat with any mandatory registration mandate is that it apply equally to all PSWs in the province, regardless of health care setting. If registration were to be made mandatory in just long-term care, for example, we would suffer a degree of workforce attrition that would have a debilitating impact on homes' ability to provide consistent, high-quality care to residents.

Financial Implications

As the proposal does not indicate how much funding the Authority will require to carry out its duties or what the fee structure will look like, our members are understandably wary of endorsing the proposal as presented. The proposal's Analysis of Regulatory Impact states that "there is no anticipated regulatory cost impact associated with the proposed regulations." This seems to suggest that neither employers nor PSWs will be required to bear the costs of registration. But elsewhere in the proposal and in the Ministry's discussion questions, it is suggested that employers might be responsible for verifying the credentials of PSWs applying for registration with the Authority, or in the case of long-term care, would otherwise have to bear the costs of proving that an unregistered PSW is eligible for registration or meets an exception as set out in the *Fixing Long-Term Care Act, 2021* (FLTCA). The proposal also states that "the Authority will eventually self-fund its operations." All of these statements indicate that the Authority will come at a cost to either employers or PSWs; without additional resources from

government, this will punish a workforce and sector that are already underpaid and underfunded, respectively.

Similarly, if the Authority is to be funded in the same manner as other professional oversight bodies—through registrant fees—employers are wary of putting any additional financial pressures on what is already an underpaid, overwhelmingly female workforce. There is a consensus that if there are registration and annual fees, these should be covered by the government. This would help ensure greater uptake in registration.

Currently, many long-term care homes and seniors' care service providers cover the registration fees of nurses, as required by unions in their collective agreement. There is a strong likelihood that unions will push for the same treatment—indeed some have already suggested as much. Given that PSWs can account for as much as 70% of a long-term care homes' direct care staff, this could have serious financial implications on homes, who are already struggling to meet their obligations with the limited financial resources they are provided. Therefore, if the proposal moves ahead, it should include explicit mention of the Ministry's intention to reimburse employers for the registration fees of PSWs.

The proposal also claims that the Act will have a lower cost to administer, resulting in lower fees than those typically associated with a health regulatory body. While the Act may be less expensive to administer, this must be viewed in the context of a PSW workforce that is paid significantly less relative to other health care professions, and seniors' care service providers that face funding shortfalls and increasing costs. Also, it is not clear that registration costs will be appreciably less than other health workers, relatively speaking, for internationally trained PSWs in the near term, for example. Start-up costs for assessment of international work experience and educational credentials will likely be high because the Authority and third-party organizations will not have the expertise and knowledge relating to verification and assessment of international educational credentials and experience for PSWs. In addition, other health regulatory bodies often require legal verification of documents, which involves a cost to applicants. This will be challenging in the PSW context, where income is significantly lower than other health professions. Assessment of good character, which is typically a factor in employment verification, is also more challenging and costly in the international context.

Finally, as mentioned earlier, there are the financial implications of the Authority delegating to employers the job of credentialing PSWs for registration with the Authority. This is discussed in greater detail in the discussion questions as it merits second thought.

Verification

Certainly, in the normal course of hiring a PSW, an employer would verify employment history. But it is atypical for an employer to verify employment history for the purpose of registration with a regulatory authority, as suggested by the proposal. In most regulatory settings, the registering authority or a third-party assessment service verifies the history. The Authority Regulation should not place an undue burden on employers to verify employment history and educational credentials. Nor should the Authority require an employer to attest to the history of a PSW. Yet, the proposal states, "The Authority will provide guidance and a legacy form to be signed by the applicant and the employer on its website." This may require heightened due diligence by the employer, shift liability for this verification onto an employer, and increase the administrative burden of employers in the context of PSW registration. This could also have the unintended effect of discouraging registration.

Transition Periods

The proposal includes a three-year transition period for legacy PSWs but not for internationally-trained PSWs. If the Ministry of Long-Term care removes the exception in regulation for internationally-educated PSWs without the Authority providing a transition period or other transitional arrangements, there will be confusion as to whether internationally educated PSWs currently working in long-term care homes would meet the qualification requirements. This is because the qualification requirements for internationally-trained PSWs as laid out in the Ministry's proposal include a competency assessment requirement. The Ministry should rectify this by providing a transition period for internationally-educated PSWs or directing the Ministry of Long-Term Care to retain the exception that allows internationally-educated PSWs to work in long-term care.

Enactment of Regulations

The Ministry's proposal lacks critical details in key areas, including competency assessments, legacy pathways, and the question of who will verify the credentials of registrants. If the Ministry moves ahead with the Authority before addressing these fundamental areas of concern, it will undermine the Authority and create confusion across the sector. With so much at stake, the Ministry should not rush to enact these Regulations. More time is needed before any of what is proposed comes into force.

Discussion Questions:

Proposed Pathways

- 1) *Are there any other pathways that the Ministry should consider for PSW registration?*

The five proposed pathways are comprehensive enough to capture every PSW type. Later in this submission, we will raise our concerns with pathway 5c, which appears to open the door for anyone working as a PSW, regardless of education, to qualify for registration with the Authority.

- 2) *Are the registration pathways and related requirements for each pathway appropriate to support public confidence that a PSW registered with the Authority will deliver safe, competent, ethical, high-quality care to patients, clients and residents in their homes, hospitals, long-term care facilities, or other health care environments?*

Our assessment is that these pathways are appropriate.

Competency Assessments:

- 1) *Once a competency assessment tool has been developed, whom would be best positioned to undertake PSW evaluations and what might be the positive or negative consequences?*
 - a. *The Authority*
 - b. *A third-party evaluator*
 - c. *Employers*
 - d. *Other regulated health professionals*
 - e. *Any combination of the above*
 - f. *None of the above*

The Authority should develop the capacity to assess the competency of applicants. If the Authority is not capable of assessing competency, it will just be handling complaints, appeals and disciplinary actions. Overall, we strongly believe that competency assessments should not fall to employers. Credentialing is a specialized discipline that requires training and resources; employers are health care providers who should be focused on caring for the people under their care. These skills are not contemplated in a seniors' care provider's current HHR skillset requirement, nor should they be. The legitimacy of the Authority and the impact it can have on elevating the role of PSW and protecting the public is best served if there is only one body who is using the same tool and assessing PSWs the same way.

Further, if competency assessments were to fall to employers, this would expose them to potential liability, as discussed briefly above. In the event that a PSW were to err in a significant way and, upon further scrutiny, not be properly qualified to be registered, the employer would be responsible for having signed off on the PSW's eligibility. Third-party credentialing bodies carry special insurance specifically for this reason. One of the reasons the Authority could be attractive to employers is that it removes this responsibility: if a potential hire is registered with the Authority, the employer is assured that they meet a certain standard, either through education or experience, and can be counted upon to deliver a high quality of care. This creates consistency, ensures a level of quality, and frees up the employer to focus their resources on patient care.

This question is confusing because it would appear as though the government understands that credentialing is a primary purpose of the Authority, stating in the proposal *“employers are responsible for validating credentials, education, training, employment history, and criminal background checks. This creates inconsistency in competencies within the PSW workforce and uncertainty for the public on the expected quality and safety of care to be received from a PSW.”* The purpose of the Authority is to deliver this consistency. If employers are the ones signing off on the qualifications and competencies of their PSWs, this consistency will not be achieved.

Finally, while a third party may be an appropriate mechanism for assessing the competency of applicants instead of the Authority, we cannot endorse this idea without knowing who this third party would be. This decision should not be made without consultation with the sector.

- 2) *What competencies (e.g., knowledge, skills, abilities, and behaviours) would be expected within a competency assessment tool to best evaluate an applicant's ability to perform as a PSW in any Ontario healthcare setting?*

The Authority should work with the Ministry of Training, Colleges and Universities, accredited institutions delivering PSW training, and long-term care and other health care providers to develop a competency assessment framework that ensures a broad equivalency using the competencies of graduates of an Ontario-based PSW training program as a baseline, and that factors in the needs of employers and residents.

- 3) *In what way might a competency assessment framework be delivered and what supporting tools and/or resources would be most appropriate to assist individuals in undergoing the assessment?*

Basing the competency assessment framework off of existing, similar jobs to that of a PSW would be a prudent way for the MOH to develop this framework. As an example, social workers and social service workers could be an appropriate job class to model the tools after.

The Ministry should also consider an online evaluation system for applicants to the Authority, in which they could indicate their experience, training and competencies. Third-party providers should be allowed to develop resources and modules to help applicants align their experience with the competency requirements of the Authority. Following this, applicants should have their competency assessed by the Authority or a third party. This could help those who are not yet ready for registration but want to grow their skillset to eventually be able to register.

- 4) *Should there be a minimum amount of on-the-job experience (i.e. hours) for applicants that do not have any health-related education (i.e., Pathway 5C) before they are eligible to have a competency assessment undertaken by the employer or the Authority?*

In order to balance high quality resident care with recognition of those who have been working as PSWs for an extended period of time, this is an important area for the Ministry to get right. As such, the establishment of this threshold should be driven by data. But at present, we do not have a firm grasp as to how many PSWs there are currently working who would not meet the Authority's education requirements, and would therefore be impacted by this decision. If the bar is set too high, it may result in the loss of critical care staff. On the other hand, if it is set too low, it could put vulnerable populations at risk.

We understand that the intention of 5(c) is in part to ensure that there is no PSW currently working in long-term care who is ineligible to continue to work in long-term care when these regulations come into force. But because it will capture PSWs in other settings who may then become eligible to work in long-term care, in order to safeguard seniors, we believe there should be a minimum of 18 months, or equivalent hours, of on-the-job experience to qualify for this pathway. If this is too stringent for PSWs working in other health care settings, a different requirement for long-term care as it pertains to 5(c) should be considered and set out as an exception under the FLTCA. But we would feel more comfortable asserting this position if it were backed up by data.

Given the blind spots mentioned above, we recommend that the Ministry postpone finalizing this particular pathway and instead undertake data collection from a subset of employers in healthcare. This data collection should include the total number of staff they have working as PSWs who lack the educational equivalencies as set out by the Authority, the number of years or months these people have been employed, and the percentage of their PSW workforce that they represent. This way, there would be more certainty as to what the baseline currently is in the system and the Ministry can make an informed decision.

Proposed Regulatory Framework:

Please note that only those areas where AdvantAge Ontario received specific comments from members are included.

1) *Please provide your feedback / general comments on other aspects of the proposed regulatory framework under the following headings:*

i) *Codes of Ethics*

Either the Ministry of Health or the Ministry of Long-Term Care should add an addendum to the Authority's Code of Ethics that specifically captures the ethical expectations for PSWs working in long-term care.

viii) *Continuous Quality Improvement (CQI) Activities Program*

It would be preferable to have seen an outline of the CQI program as part of the Proposal. A good CQI program could help employers get on board with the Authority as it could potentially take some work off their plates by helping to ensure PSWs are always refreshing and upskilling with the latest and best practices.

Conclusion

The regulatory changes for PSWs proposed by both the Ministry of Health and the Ministry of Long-Term Care are complicated, lacking clarity in key areas, and in other critical areas are not yet fully formed. If these regulations come into force as presented, they will undermine the Authority, create confusion across health settings and potentially lead to significant administrative and regulatory burden for employers. The Authority has the potential to be transformative for long-term care and other health care settings across Ontario. It must be done right, which means that it must not be rushed; the government should take its time to go through all of the responses to this consultation and re-issue the regulations with the greater level of detail that is required for the Authority to succeed.

The sector appreciates the benefits of establishing an Authority to regulate and oversee PSWs. AdvantAge Ontario is always available to answer any questions related to the Ministry's consultation and appreciates this opportunity to share our feedback on the proposed regulatory change.

About Us

For more than 100 years, AdvantAge Ontario has been the voice of not-for-profit seniors' care in Ontario. We represent close to 500 providers of long-term care, seniors' housing, supportive housing and community service agencies, including 98 per cent of all municipal long-term care homes and 83 per cent of all not-for-profit long-term care homes.

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