



**Submissions of
ARCH Disability Law Centre
to the Standing Committee on the
Legislative Assembly**

***Bill 175, Connecting People to
Home and Community Care Act,
2020***

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A. Introduction

ARCH Disability Law Centre is pleased to have the opportunity to address the Standing Committee on the Legislative Assembly, both orally and in writing, on Bill 175, *Connecting People to Home and Community Care Act*.

The goal of Bill 175 is to modernize the provision and delivery of home and community services in Ontario by integrating them into the broader health care scheme. While ARCH supports the improvement of an outdated service delivery system, Bill 175, as presently drafted, fails to recognize the unique needs and particular concerns of persons with permanent mobility disabilities.

Bill 175, if passed, will repeal the *Home Care and Community Services Act*¹ (hereafter referred to as HCCSA) and its regulations.² HCCSA is a stand-alone law that specifically addresses the provision and delivery of home and community services to persons with disabilities. The concerns raised and recommendations offered herein flow from a fundamental concern that Bill 175 does not contemplate or address the particular, complex, and specific needs of persons with disabilities.

In this submission, ARCH identifies key concerns with Bill 175 and provides recommendations that will help create a more comprehensive legal framework for persons with disabilities who use home and community services. ARCH urges this Committee to take this opportunity to address the myriad of barriers and issues that persons with disabilities faced when receiving services under HCCSA and ensure a

¹ *Home Care and Community Services Act, 1994*, SO 1994, c 26 [HCCSA].

² O Reg 386/99; O Reg 179/95.

more accountable, transparent, and responsive system under Bill 175.

B. About ARCH

ARCH is an Ontario-based specialty legal clinic that is dedicated to defending and advancing the equality rights of persons with disabilities. ARCH is governed by a volunteer board of directors, a majority of whom are people with disabilities. ARCH provides a telephone summary advice and referral service and represents individuals as well as provincial and national disability organizations in test case litigation at all levels of tribunals and courts. We provide education to persons with disabilities on disability rights and to the legal profession about disability law. We make submissions on matters of policy and law reform. ARCH maintains a website at: www.archdisabilitylaw.ca

The comments and recommendations herein are informed by ARCH's legal work which includes the direct representation of persons with disabilities, and working with community organizations and disability groups, on issues related to the delivery of home and community services.

C. Issues and Recommendations

I. Persons with Disabilities must be Included in Bill 175 Amendments

Bill 175 proposes to integrate home and community services with primary care and acute care.³ Bill 175 will govern the delivery of services which includes those that are

³ "Ontario's Newsroom: New Plan to Modernize Home and Community Care in Ontario", *Government of Ontario*, (25 Feb 2020). Online: <<https://news.ontario.ca/mohltc/en/2020/02/new-plan-to-modernize-home-and-community-care-in-ontario.html>>.

specific, critical and particular to persons with disabilities. These services make independence and community inclusion possible. Yet, Bill 175 does not distinguish hospital patients, discharged patients, rehabilitation patients, and seniors, from persons with disabilities. These communities of people are not interchangeable.

ARCH supports the formation of a connected system, but not at the expense of eroding the underlying principles of Independent Living, which are at the heart of home and community services. These principles reflect the rights of persons with disabilities to live with dignity in their chosen community, participate in all aspects of their life, and control and make decisions and choices about issues that affect their own lives.

Bill 175 amends the *Excellent Care for All Act* so that the definition of *patient* includes individuals “receiving” home and community “care”. The word “patient” reinforces the idea that persons with disabilities are not active consumers of services and supports that enable them to participate in society. The word “receiving” undermines control and direction of supports and services. The word “care” weakens independence and choice.

Recommendations:

- 1) Add a definition “Independent Living is the foundation for home and community services”.⁴ Independent Living includes that individuals with disabilities are enabled to exercise control over their lives and make all decisions that concern their lives. A person with a disability cannot be deprived of the opportunity of

⁴ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, Article 19. Article 19 of the CRPD states “that persons with disabilities have the right to be treated equally, make their own decisions, have their rights respected, and participate in society”. See also UN CRPD Draft General Comment No. 5 (2017) on the right to live independently and being included in the community.*

choice and control regarding personal lifestyle and daily activities.

- 2) Add a definition of “consumers” to section 1 of the *Connecting Care Act* which says “consumers are persons who use home and community services”.

Consumer must be used consistently in all acts and regulations consequentially affected by Bill 175.

- 3) Remove “care” where possible when referring to home and community services in Bill 175 and all acts consequentially affected by it. Rather, the terms “home services” and “community services” should be used.

II. Key Provisions Moved from Legislation to Regulations

ARCH is very concerned with the new legislative framework proposed in Bill 175 as it is silent on many fundamental aspects of service delivery currently enshrined in HCCSA. Rather, Bill 175 shifts important matters wholly to regulations to be developed at a future time.

Moving key aspects of the law into regulations is problematic for at least three reasons. First, regulations are intended to be a vehicle used to fill in details of a statute. They are not meant to address entire and critical aspects of that statute, as is the case with Bill 175.⁵

Second, the content of regulations can be altered without the oversight of the Legislature. This significantly contributes to a lack of oversight and transparency.

Third, this shift creates the risk of shifting the landscape on issues that are of utmost

⁵ David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at Ch 7-A (QL).

concern to consumers without consumers being provided notice or an opportunity to provide input.

Recommendations:

Fundamental and key aspects of HCCSA must be enshrined in legislation and not be left to regulations. It is recommended that Bill 175 include the following:

- the scope of services,⁶
- consumer eligibility for services,⁷
- eligibility of service providers,⁸
- content and assignment of care coordination functions,⁹
- the consumer Bill of Rights,¹⁰
- consumer complaints topics,¹¹
- procedures for addressing complaints,¹² and
- appeals to the Health Services Appeal and Review Board.¹³

III. Need for Uniformity in ‘Care Coordination Functions’

Bill 175 proposes regulations under the *Connecting Care Act* that state that care coordination functions are going to be the responsibility of “Health Service Providers”.¹⁴

⁶ HCCSA, *supra* note 1, ss 2(2)-(7).

⁷ *Ibid*, s. 22(1)(b).

⁸ *Ibid*, s. 5.

⁹ *Ibid*, ss. 22, 23(2).

¹⁰ *Ibid*, s. 3(1).

¹¹ *Ibid*, s. 39(1).

¹² *Ibid*, ss. 39(2)-(4).

¹³ *Ibid*, ss. 40-48.

¹⁴ As defined under the *Connecting Care Act*, 2019 SO 2019, c 5, Sched 1, s 1(2) [CCA].

They will have the discretion to assign care coordination functions to contracted providers or partner organizations. Under this proposed regulation, detailed expectations of care coordination functions are left to be outlined in *policy*, and what this policy “could” include is listed in general and vague terms.

This is an alarming change from HCCSA as care coordination functions are central to the delivery of services. Care coordination functions are the basis of many barriers and difficulties that consumers experience in this sector. Care coordination functions include:

- determinations of eligibility;
- assessing a consumer’s needs;
- reassessments of need;
- developing a services plan;
- updating services plans; and
- managing issues with service delivery.

Shifting these sizeable responsibilities to an unidentified and unaccountable health service provider raises red flags. Such health services providers may be for-profit or non-profit and vary in capacity, size, and resources. Moving such important aspects of home and community services in this way expands the scope of private companies that may sacrifice quality of services for fiscal efficiency. We have seen the impact of how private companies may sacrifice quality of services for fiscal efficiency as demonstrated by the COVID-19 pandemic.

Leaving details of care coordination to policy contributes to a serious lack of public

governance, accountability, and transparency. The proposed regulations, as drafted, provide minimal detail on this shift in responsibility. There is a need for uniformity in issues like reassessment requirements, and guidance to ensure equity across the province, but the draft regulations provide no detail as to how this will be carried out.

Recommendations:

- 1) ARCH submits that details on the expectations in care coordination must be identified under legislation, or in the alternative, regulation but not in policy.

These expectations include:

- evidence-based assessment tools;
- reassessment requirements;
- guidance on care planning
- the organization of navigation, information and referral services among multiple organizations; and
- requirement for home care assessments to be performed by a regulated health professional.

IV. Unlicensed New Care Setting

A significant change made by Bill 175 is the proposed addition of two new locations in which home and community services can be delivered. One of these locations is termed “residential congregate care” settings. This setting is intended to provide services that are within the community and for those whose needs fall between requiring a hospital or long-term care home and being at home. Almost all details of this setting are left to

regulations. Bill 175 states that the ministry “would” engage with the public, clients, caregivers, and health system partners to develop each model.

Recommendation:

- 1) Ensure that there is a definition of residential congregate care settings in *the Connecting Care Act*.
- 2) Amend Bill 175 to impose a legislative requirement that the Ministry must engage with the public, clients, caregivers, and health system partners to develop each congregate care model.

V. Important Sections of Current Home & Community Services Legislation Omitted

A number of important provisions in HCCSA have been omitted from Bill 175 and its regulations.

The purposes of HCCSA are not being promoted by the new home and community services system. HCCSA provides that, in all aspects of community services:

“the importance of a person’s needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial, and cultural factors.”¹⁵

Consumer preferences have heightened importance in the home and community sector because of the intimate nature of services being delivered within the consumer’s home.

A provision speaking to the importance of consumer preferences is needed to prevent health service providers from creating blanket policies that are not responsive to the

¹⁵ HCCSA, *supra* note 1, s 1(d).

unique and individual consumer needs that take into account their input, participation, and rights.

Duties of Health Service Providers

Part IV of HCCSA describes specific requirements for becoming a health service provider.¹⁶ Under this Part, the Minister has the role of approving and funding health service providers. When approving a health service provider, the Minister must be satisfied that the premises are suitable for the provision of a community service.¹⁷ In addition, the Minister can approve a health service provider as long as they are in compliance with the Bill of Rights and will be “operated with competence, honesty, integrity, and concern for the health, safety and well-being of the person receiving the service.”¹⁸ This is an essential commitment for consumers, as it provides assurance that the health service provider is committed to ensuring that the rights of consumers are protected and guaranteed.

Under section 36(2) of HCCSA, consumers have the right to request a copy and an explanation of their plan of service.¹⁹ This is vital as many consumers of home and community services entered into their service agreements years ago and are no longer aware of its details. Accordingly, a provision akin to section 36(2) of HCCSA must be maintained in the *Connecting Care Act*. The provision must specify that the health service provider shall provide the consumer with an explanation of their plan of service in a format that is accessible to that person. This may include requiring large print, hard

¹⁶ Please note that although HCCSA uses the term “agency”, these submissions are using the term “health service provider” to be consistent with the terms used in Bill 175.

¹⁷ HCCSA, *supra* note 1, s. 6.

¹⁸ *Ibid*, s. 5(1)(ii).

¹⁹ *Ibid*, s. 36(2).

copies, plain language, and/or a verbal explanation.

In addition, a health service provider must also create a quality management system.²⁰

The purpose of this system is to monitor, evaluate, and improve the quality of services provided by the health service provider. By omitting provisions similar to sections 26 and 27 of HCCSA from Bill 175, ARCH submits that the government's crucial oversight role is not being reflected in the *Connecting Care Act*.

Plan Preventing Abuse

Under section 26 of HCCSA, an approved health service provider must develop a plan “preventing, recognizing, and addressing physical, mental, and financial abuse of persons who receive community services.”²¹ There is a long history of abuse in the disability community in the provision and delivery of services.²² Vulnerability to abuse is exacerbated by the very nature of home and community services, as they are frequently of an intimate nature and provided in a consumer's home. Section 26 was included in HCCSA to ensure that abuse does not occur, and when it does occur, ensure that it is properly handled by the health service provider. A provision on abuse prevention and the consequences flowing from that, must be incorporated into Bill 175.

Bill 175 must mandate that the health service provider's policy must:

- clearly set out what constitutes abuse and neglect,
- provide for a program, that complies with regulations, for preventing abuse

²⁰ *Ibid*, s. 27.

²¹ *Ibid*, s. 26

²² “Canadians with disabilities about twice as likely to face violence: StatCan”, *Michelle McQuigge, The National Post*, March 15, 2018. Online: <<https://nationalpost.com/pmnl/news-pmnl/canada-news-pmnl/canadians-with-disabilities-twice-as-likely-to-experience-violence-statistics-canada>>.

- and neglect,
- contain procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of consumers,
 - set out the consequences for those who abuse or neglect consumers, and
 - deal with any additional matters as may be provided for in the regulations.

Recommendations:

- 1) Amend the *Connecting Care Act* to include a provision specifying that individuals' preferences are protected, as stated in section 1(d) of HCCSA.²³
- 2) Amend the *Connecting Care Act* to include the following provisions which are based on those currently in HCCSA:
 - A Health Service Provider must operate in compliance with the Bill of Rights. Home and Community services shall be provided with competence, honesty, integrity and concern for the health, safety and well-being of the persons receiving the services.²⁴
 - The Minister can only approve a Health Service Provider if they are satisfied that the premises are suitable for the provision of home and community services.²⁵
 - A Health Service provider shall develop and implement a plan for preventing, recognizing and addressing physical, mental and financial abuse of persons

²³ HCCSA, *supra* note 1, s. 1(d).

²⁴ *Ibid*, s. 5(1)(ii).

²⁵ *Ibid*, s. 6.

who receive home and community services.²⁶

- A health service provider shall ensure that a quality management system is developed and implemented for monitoring, evaluating, and improving the quality of the services provided or arranged by the health service provide.²⁷
- The health service provider shall upon request provide a copy of a consumer's plan of service. If the consumer also asks that their plan of service be explained to them, the health service provide shall provide the consumer with an explanation of their plan of service in a format that is accessible to the consumer.

VI. Impact of the Increasing use of Technology

On January 1, 2020,²⁸ a regulation under HCCSA came into force which allows a visit or service to be provided *virtually* using electronic means.²⁹ The introduction of virtual visits into the home and community services is novel and untested. The majority of persons with disabilities who utilize home and community services require in-person supports. For example, assistance with activities of daily living such as showering and getting dressed, and homemaking services such as house-cleaning and meal preparation³⁰ cannot be delivered virtually. We do not anticipate virtual visits to play a significant role in home and community services. Nonetheless, it is important to note

²⁶ *Ibid*, s. 26.

²⁷ *Ibid*, s. 27.

²⁸ O Reg 379/19.

²⁹ O Reg 386/99 s. 1(2).

³⁰ HCCSA, *supra* note 1, s. 2.

that virtual services are maintained in the new home and community services scheme as a method of delivery to supplement in-person services.

Where it is appropriate to supplement services with virtual visits, it is essential that this Standing Committee turn its mind to issues of access to technology and the security and privacy concerns of using technology in this sector. Many persons who receive home and community services cannot afford and/or operate technology such as a computer, microphone, and webcam device. Such devices are costly and may require additional security software and modifications to accommodate persons with disabilities who may require it. For example, an individual who is quadriplegic may require some remote assistance with the turning on and off of devices. This also raises concerns around sufficient security and privacy protections for consumers, who will presumably have these devices in their homes at all times.

There is also confusion in the home and community services sector about rights and responsibilities surrounding a consumer's file and records. This issue arises in view of the fact that records in the home and community services context often contain both health information and non-health information. Furthermore, if such records are digitized, it increases the risk of personal information, which is often voluminous for persons with disabilities, being accessed by individuals who are not permitted access under Ontario's privacy legislations.

One of the objects of the Ontario Health Agency is the "[o]versight and management of provincial patient care technology platforms."³¹ The Ontario Health Agency must

³¹ O Reg 376/19, s. 1(2)3.

ensure that technology platforms are accessible and secure to respect consumers' privacy rights.

Recommendations:

- 1) Bill 175 needs to direct that there be clear and binding regulations about who will be responsible for purchasing, setting up, maintaining, and replacing technology required for virtual service delivery.
- 2) ARCH recommends that issues about the privacy of, access to, and collection of all records used in the provision of funds and services covered by Bill 175 be carefully reviewed to ensure that comprehensive and clear protections exist.

VII. New Investigations and Enforcement Section

HCCSA currently provides for inspections by program supervisors.³² Through Bill 175, this scheme is replaced by investigations by investigators.

Section 26 of the *Connecting Care Act* introduces the role of an investigator. It permits the Ontario Health Agency to order an investigation whenever they consider it in the public interest to do so.³³ Bill 175 should describe what circumstances would necessitate an investigation in the home and community services sector.

The *Connecting Care Act* also fails to specify who can request an investigation. Bill 175 should specify that a complaint made by an individual, his/her support person, and by a parent or caregiver must be investigated.

³² *Ibid*, s. 62.

³³ *CCA*, *supra* note 14, s. 26.

The *Connecting Care Act* currently requires consent before an investigator can enter a dwelling.³⁴ ARCH does not agree with the government's decision to amend this provision, by adding s. 26(7.1).

Recommendations:

- 1) Bill 175 must amend section 26 of the *Connecting Care Act* to specify that an individual consumer can contact the Ontario Health Agency to request an investigation in respect to the quality and/or quantity of their services.
- 2) Remove section 26(7.1) from Bill 175. An investigator is not to be allowed to enter a dwelling without consent of the occupier.

VIII. Overhaul of the Health Services Appeal and Review Board and its Jurisdiction

The jurisdiction of the Health Services Appeal and Review Board's (hereafter referred to as the Appeal Board) is currently limited to hearing appeals on decisions relating to:

- A decision by the approved agency that the person is not eligible to receive a particular community service;
- A decision by the approved agency to exclude a particular community service from the person's plan of service;
- A decision by the approved agency respecting the amount of any particular community service to be included in the person's plan of service;

³⁴ *Ibid*, s. 26(7).

- A decision by the approved agency to terminate the provision of a community service to the person.³⁵

Quality of Services

Presently, there is an artificial divide between quantity and quality of services appeals at the Health Services Appeal and Review Board. ARCH submits that there must be a process which addresses all consumer complaints more holistically.

ARCH submits that the Appeal Board's jurisdiction be expanded to allow a consumer to appeal a decision relating to the quality of the services provided to them. These would include violations of any rights under the Consumer Bill of Rights. These include but are not limited to:

- 1) the consumer has been abused;
- 2) the consumer was not treated with dignity by the health service provider and/or the individuals providing the service;
- 3) the health service provider refuses to take into consideration the consumer's preferences.

The Health Services Appeal and Review Board's Practice and Procedures

Under the Appeal Board's *Rules of Practice and Procedure*, an appellant has the right to request a reconsideration of an Appeal Board's decision.³⁶ The Appeal Board still has the final decision of whether to allow a reconsideration. The right to a reconsideration needs to be included in Bill 175 in order to ensure a fair hearing. In addition, the nature

³⁵ HCCSA, *supra* note 1, s. 40

³⁶ *Health Services Appeal and Review Board, Rules of Practice and Procedures*, 2013, rules 16.5, 16.6, 16.7.

of services provided and delivered demands prompt resolution of appeals.

Reconsideration is the most efficient way to address the most basic needs of persons with disabilities.

ARCH submits that Bill 175 must specify that the Appeal Board has to make a decision within three days following the completion of the hearing.³⁷ An expedited hearing is necessary as issues dealt with in a hearing at the Appeal Board have a direct impact on the consumer receiving their services and on their quality of life.

Recommendations:

- 1) Expand the jurisdiction of the Health Services Appeal and Review Board to hear appeals on the quality of home and community services provided to a consumer by a health service provider, in accordance with the consumer Bill of Rights.
- 2) Amend the *Connecting Care Act* to specify the right to seek a reconsideration of a decision made by the Appeal Board.
- 3) Add an additional amendment in Bill 175 that specifies that the Appeal Board must make a decision within three days of the hearing.

IX. Review Community Consultation Required to Address Important Issues that will be dealt with in Regulation

As discussed above, ARCH urges this Committee to ensure that fundamental aspects of service delivery to persons with disabilities is enshrined in legislation. For areas that will be addressed by regulation, consultation with consumers is necessary to address

³⁷ HCCSA, supra note 1, s. 48.3.

the particular issues that affect disability communities. Home and community services are not static, so a mechanism to address new or developing concerns in legislation is important. ARCH is consistently made aware by our community partners and clients of ongoing concerns in receipt of services including:

- lengthy wait lists for supported living units;
- assessment decisions by occupational therapists that do not accurately establish the number of hours of services the consumer needs;
- inequities in services based on region;
- lack of safeguards to ensure uninterrupted access to services (i.e., consistent failure to ensure that a worker is scheduled for all bookings, poor lines of communication, over-reliance on emergency contingency plan provisions),
- discrepancy in worker skills and training.

Recommendations:

- 1) Bill 175 should be amended to require that every three years, a health service provider must conduct survey of consumers to measure their satisfaction with home and community services to support continuous quality improvement.
- 2) Bill 175 must be amended to require all home and community health service providers to report to the Minister and/or the Ontario Health Agency when the surveys are completed. Among other things, these reports must include: the number and types of complaints received; whether the complaints resolution process addressed the substance of the complaints; were the complaints referred to the Health Services Appeal and Review Board; how often consumer

services plans are updated; information regarding waitlists, and any measures the health service provider has undertaken to ensure that it is complying with the legislation, regulations and policy directives.

D. Conclusion

Throughout these submissions, ARCH has highlighted underlying trends in the home and community services sector that must be addressed by Bill 175. ARCH believes that if the recommendations included in these submissions are implemented, a more comprehensive framework for persons with disabilities who consume home and community services will be the result.

Thank you for the opportunity to provide our submissions on this important Bill. If you have any questions or if ARCH can be of further assistance, please do not hesitate to contact us.