OCSA
Ontario Community Support Association

Bill 41, Patients First Act: Response

November 8th, 2016

With the reintroduction of the *Patients First Act*, the Ontario Community Support Association (OCSA) is pleased to share its updated position on the new legislation. This position is based on the Bill 41 *Patients First Act* that was introduced in October of this year and feedback received on the previous *Patients First Act*, Bill 210 presented in June 2016. Our position is also informed by feedback from an in-depth survey of our membership, as well as input from stakeholder colleagues in the community sector, and legal and health policy experts.

OCSA represents hundreds of non-profit agencies across the province that provide compassionate, quality home care and community support services to over one million Ontarians per year. These services are important, cost-effective measures that prevent unnecessary hospitalizations, emergency room visits, and premature institutionalization. The need for these services is growing rapidly as the population ages and more people choose to remain and receive care in their homes and communities, for as long as possible.

The majority of OCSA members have a favourable impression of the *Patients First Act,* and OCSA welcomes the main objectives of the bill and many of its key elements. **However, the proposed legislation is not without significant areas of concern; if these concerns are not addressed, OCSA will be unable to continue to support the legislation**. We urge careful consideration of the recommendations below.

OCSA's top concern is the ability for LHINs to contract out the delivery of community support services to for-profit providers under the new legislation. The issue, while a technical one, is of utmost importance to OCSA and its members. **OCSA's support is contingent on the resolution of this issue.** OCSA has brought up this issue with the Minister's Office and shared its recommendation and hopes that a resolution can be found.

Priority Recommendations:

1. **That Bill 41 *Patient First Act* be amended to ensure that LHINs will not be able to contract out the provision of community support services to for-profit providers.**
    a. OCSA has proposed a new clause in Section 28.4 (3) that would accomplish this: Section 28.4(3) (3) A local health integration network may only provide funding to or purchase community support services from an "agency", as that term is defined in the *Home Care and Community Services Act.*

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Under HCCSA, approved agencies must be not-for profit organizations. However an approved agency can contract out services. It is under this framework that CCACs contracted out homemaking and professional services to for-profit providers.

In the proposed reforms LHINs will be made approved agencies under HCCSA. LHINs will have the power to purchase and contract out any of the services under HCCSA, including community support services, to for-profit providers. Currently, no legislative or regulatory language specifies whether these contracted providers would be not-for-profit or for-profit. For this reason, it is newly necessary to reaffirm and strengthen the not-for-profit nature of the delivery of community support services (See Appendix 1 for greater detail).

Delivery of publicly-funded community support services by for-profit agencies would put the quality of care received by clients at risk. Additionally, it could lead to the loss of much-needed funding in a few ways: a portion of public funding would go to profit rather than provision of service, significant charitable donations currently made to the home and community support sector would be lost, and volunteer service – the bedrock of not-for-profit community support services – would decrease, as individuals will not volunteer in a for-profit environment. OCSA members do this work for a purpose, not a profit – surpluses are reinvested in the community, and volunteers contribute over 3 million hours of service each year, a potential loss of up to $81 million were it replaced by paid staff.

In order for OCSA and its members to support Bill 41, it is essential that the Patients First Act reaffirm and strengthen the legislative and regulatory provisions that ensure LHIN-funded community support service providers must be not-for-profit.

2. **That language pertaining to care coordination recognizes and includes care coordination resources that currently exist in the home and community sector, specifically community support, as part of the continuum of care.**

Ensuring that there is clarity surrounding the provision of care coordination was the top concern listed by members in our survey. This is a critical detail that is apparently being left for interpretation once the legislation has been passed. Care coordination must promote a patient-centered approach: one which ensures that care coordination is situated where it makes the most sense, and is tied to the patient.

When an individual is being served by a CSS agency, it makes sense that care coordination be provided by that CSS agency – the service provider that knows and manages the client's care. Overall, wherever care coordination is situated, it is critical that this service be fully integrated within the full continuum of health care services that may be required by the client.

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3. That the conditions under which a LHIN can appoint a supervisor be further defined and that approval from the Minister of Health and Long-Term Care be required for the appointment of a supervisor.

The significant expansion of the authority of the LHINs without appropriate appeal mechanisms and Ministry oversight is of concern. Specifically, OCSA members have expressed concern regarding the ability of a LHIN to appoint a supervisor to replace the boards of directors of community-based health service providers. The current definition for what constitutes the "public interest" and the process for the appointment of a supervisor are too broad, and must be further defined. It is also imperative for there to be an appeal mechanism and Ministry approval built in to the appointment process. Given the strong provincial interest in guiding how such authority is exercised, we believe it would be appropriate to provide greater direction to LHINs about the conditions under which the appointment of a supervisor would be appropriate.

4. That a policy governing the powers and the appointment of a supervisor of an agency with multiple streams of funding be developed.

A large number of community support agencies hold Multi-Service Accountability Agreements (M-SAAs) with the LHINs, yet receive less than 100% of their funding from them. These organizations receive their revenues from multiple sources, including other federal and/or provincial ministries, private client fees and charitable donations. Should the LHIN appoint a supervisor to replace the board of directors as indicated in the legislation, it could result in the LHIN controlling all organizational assets, programs and property, including those that they do not have direct funding authority over. This could also put other source funding at risk.

In addition to the four recommendations above, there are two additional issues which OCSA has previously included in our submissions "*Response to Patients First: A Proposal to Strengthen Patient Centred Health Care in Ontario*" and earlier this year in *OCSA's Response to Bill 210 - Patients First Act*. Though they go beyond the legislative framework, these additional recommendations are crucial to our sector's ability to function and innovate effectively.

a. That cost savings arising from the reduction of administrative bureaucracies under Bill 41 be reinvested into the sector to support more and better care for clients.

For several years, OCSA has spoken to the need to address funding for information management and technology infrastructure and administrative requirements. While the province of Ontario has invested in home and community care in the past few years, these

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additional dollars have always been tied to new or additional service volumes. The vast majority of the home and community support sector has gone several years without an increase to base funding, restricting the capacity of agencies to innovate or create efficiencies by investing in new technology or improving training. Both the South West and South East LHINs have recognized the impact this has on our members and have allocated a base increase for 2015-2016 and 2016-2017, respectively. OCSA wishes to see a strong signal that cost savings arising from the reduction of administrative bureaucracies as the CCACs fold into the LHINs will be reinvested into the home and community support sector, to allow us to make these needed investments.

b. That the needs of individuals with unique needs – including those with physical and cognitive disabilities and medically complex children – be fully considered.

There are few references in the legislation to key populations with unique needs – such as those with physical and cognitive disabilities and medically complex children. Specialized services such as supportive housing and independent living services are an important and distinct form of care within the community, and must be treated as such in the planning and organization of health delivery.

In conclusion, we urge the government to move forward with *Patients First* legislation *judiciously*. We emphasize that of significant concern is the issue of Bill 41's language that opens the delivery of community support services to for-profit providers. OCSA is pleased to continue to offer its unique insights, experience, and expertise for further consultation.

Sincerely,

Deborah Simon

CEO
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Appendix 1: Explanation of legislative opening to for-profit delivery of community support services

- Under the *Home and Community Care Services Act* (HCCSA), there are four categories of service: Community support services (CSS), Homemaking services, Personal support services (PSS) and Professional services.
- Regulation 386/99 of the HCCSA calls for the provision of homemaking and professional services by Community Care Access Centres and for the provision of community support services and personal support services by other approved agencies.
- Under the current framework of the HCCSA, *only not-for profit organizations can be approved agencies*. However, a service does not always have to be provided by an approved agency, as the Ministry can "make payments for community services provided by others" and an approved agency can purchase out services. As an example, the CCACs – approved agencies – contract out the provision of homemaking and professional services to both not-for-profit and for-profit organizations.
- Community support services, however, are currently funded by LHINs through Service Accountability Agreements. The organizations who provide community support services must be approved agencies under HCCSA themselves, and are therefore not-for-profit.
- Under Bill 41, a LHIN will become an approved agency under HCCSA. As with other approved agencies, LHINs will be enabled to contract out the private delivery of any service. Additionally Section 28.5 of the *Patients First Act* specifically enables the Minister to "approve a local health integration network to provide funding to or on behalf of a person to purchase a prescribed community service in accordance with this section."
- This means that LHINs could purchase the delivery of community support services, regardless of whether they are an approved agency (not-for-profit) or not. Potentially, community support services could be provided by for-profit organizations.
- While approved agencies under HCCSA *technically* always had the opportunity to contract out services, as did the CCACs, it was extremely unlikely that a non-profit provider that received funding from the LHIN to deliver a service would contract out the delivery of that service to another, for-profit provider.
- However, the role of the LHINs as approved agencies would be fundamentally different than that of a not-for-profit service provider. The role of the LHINs is primarily to plan and fund the health system, *not* to deliver service. Therefore, they would be exponentially more likely to contract out the delivery of service.
- Currently, no legislative or regulatory language specifies whether these contracted providers would be not-for-profit or for-profit.
- For this reason, it is newly necessary to reaffirm and strengthen the not-for-profit nature of the delivery of community support services.

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